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The Director of the Bureau of Corrections is **DIRECTED** to **INFORM** the Court of the action taken hereon within five (5) days from receipt hereof.

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa, Lazaro-Javier, and *Lopez, JJ.*, concur.

FIRST DIVISION

[G.R. Nos. 225750-51. July 28, 2020]

KEPCO PHILIPPINES CORPORATION, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. TAXATION; 1997 NATIONAL INTERNAL REVENUE CODE (R.A. 8424); COMMISSIONER OF INTERNAL REVENUE (CIR); THE CIR MAY COMPROMISE AN ASSESSMENT WHEN A REASONABLE DOUBT AS TO THE VALIDITY OF THE CLAIM AGAINST THE TAXPAYER EXISTS OR THE FINANCIAL POSITION OF THE TAXPAYER DEMONSTRATES A CLEAR INABILITY TO PAY THE TAX. — The power of the CIR to enter into compromise agreements for deficiency taxes is explicit in Section 204(A) of the 1997 National Internal Revenue Code, as amended (1997 NIRC). The CIR may compromise an assessment when a reasonable doubt as to the validity of the claim against the taxpayer exists, or the financial position of the taxpayer demonstrates a clear inability to pay the tax.

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2. ID.; COURT OF TAX APPEALS; FOR PURPOSES OF DETERMINING WHETHER TAXPAYERS MAY ALREADY APPEAL TO THE CTA, THE INACTION OF THE CIR WITHIN 180 DAYS SHALL BE DEEMED A DENIAL OR AN ADVERSE DECISION OF THE CIR. — Section 7(a)(2) of RA No. 9282 provides that the "inaction" of the CIR or his failure to decide a disputed assessment within the 180-day period is "deemed a denial" of the protest. Section 3(a)(2), Rule 4 of the Revised Rules of the CTA further clarifies that "that in case of disputed assessments, the inaction of the [CIR] within the [180]-period under [Section] 228 of the [1997 NIRC] shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the [CTA]." Clearly, the *inaction* is deemed an *adverse decision* of the CIR on the administrative protest. Thus, for purposes of determining whether taxpayers may already appeal to the CTA, the *inaction* of the CIR within 180 days shall be *deemed denial* or an *adverse decision* of the CIR. Since Kepco failed to appeal the *inaction* or *deemed denial* or *adverse decision* of the CIR on June 24, 2010, the assessment for deficiency VAT and FWT for TY 2006 became final, executor and demandable.

APPEARANCES OF COUNSEL

Guillermo P. Dabay, Jr., Maria Angelica A. Paglicawan & Ma. Veronica S. Guangco for petitioner.

The Solicitor General for respondent.

R E S O L U T I O N

LOPEZ, *J.*:

This resolves the *(1)* Petition for Review[1] filed under Rule 45 of the Rules of Court which seeks to reverse the Decision[2]

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[1] *Rollo*, pp. 3-55.

[2] *Id.* at 59-70; penned by Presiding Justice Roman G. Del Rosario, with the concurrence of Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, Amelia R. Cotangco-Manalastas, and Ma. Belen M. Ringpis-Liban.

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dated November 26, 2015 and Resolution[3] dated July 11, 2016 of the Court of Tax Appeals (CTA) *En Banc* dismissing Kepco Philippines Corporation's (Kepco) appeal for being filed out of time; and *(2)* Manifestation and Motion to Render Judgment on the Case Based on the Parties' Compromise Settlement under Section 204 (A) of the National Internal Revenue Code (NIRC)[4] (Manifestation) filed by Kepco which prays to declare the case closed and terminated.

Facts

On September 8, 2009, Kepco received Preliminary Assessment Notice for alleged deficiency income tax, value-added tax (VAT), expanded withholding tax, and final withholding tax (FWT) for taxable year (TY) 2006.[5] On October 30, 2009, Kepco received Final Letter of Demand (FLD) for deficiency VAT in the amount of ₱159,640,750.79 and for deficiency FWT in the amount of ₱124,286,821.11.[6] Kepco filed its protest to the FLD on November 26, 2009.[7]

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[3] *Id.* at 71-81; penned by Presiding Justice Roman G. Del Rosario, with the concurrence of Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Esperanza R. Fabon-Victorino, Amelia R. Cotangco-Manalastas, and Ma. Belen M. Ringpis-Liban; with the dissenting opinion of Associate Justice Lovell R. Bautista; and Associate Justices Caesar A. Casanova, Cielito N. Mindaro-Grulla (on leave).

[4] *Id.* at 422-427.

[5] *Id.* at 87.

[6] *Id.* at 62, 87-88. The deficiency taxes are computed as follows:

Deficiency VAT	
Basic tax due	₱102,409,676.58
Interest and compromise penalty	₱ 57,231,074.21
Total deficiency VAT	₱159,640,750.79
Deficiency FWT	
Basic tax due	₱ 79,459,643.84
Interest and compromise penalty	₱ 44,827,177.27
Total deficiency FWT	₱124,286,821.11

[7] *Id.* at 63.

Subsequently, on June 25, 2010, Kepco filed its petition before the CTA Division (docketed as CTA Case No. 8112).[8] The Commissioner of Internal Revenue (CIR) filed his Answer on September 29, 2010.[9] In due course, after trial, both parties submitted their respective memorandum and the case was submitted for Decision.[10]

On December 6, 2013, the CTA Division partly granted Kepco's petition and cancelled the deficiency FWT assessment and the compromise penalties.[11] Kepco was ordered to pay deficiency VAT plus interest and surcharges. Kepco and the CIR filed motions for reconsideration but were denied for lack of merit.[12]

Not satisfied, on May 5, 2014, Kepco elevated the case to the CTA *En Banc*;[13] while the CIR filed his Petition for Review on May 22, 2014.[14] After consolidation and the filing by the parties of their comments and memorandum,[15] the CTA *En Banc* rendered its Decision on November 26, 2015, dismissing Kepco's petition in CTA Case No. 8112 for being filed out of time, and granting the CIR's petition. The dispositive portion of the Decision reads:

WHEREFORE, foregoing premises considered:

1) The Petition for Review filed by Kepco Philippines Corporation, docketed as CTA EB No. 1161, is hereby **DENIED** for lack of merit; and,

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[8] *Id.* at 63, 88.

[9] *Id.* at 63.

[10] *Id.* at 64.

[11] *Id.* at 84-128.

[12] *Id.* at 59-60.

[13] *Id.* at 64; docketed as CTA EB No. 1161.

[14] *Id.* at 64; docketed as CTA EB No. 1166.

[15] The CIR filed a Manifestation seeking to adopt its Petition for Review filed on May 22, 2014 and Comment filed on May 22, 2014 as its Memorandum; *id.* at 65.

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2) The Petition for Review filed by the Commissioner of Internal Revenue, docketed as CTA EB No. 1166, is hereby **GRANTED**. Accordingly, the Decision dated December 6, 2013 rendered by the Special First Division is hereby **REVERSED** and **SET ASIDE**. A new one is hereby entered dismissing the Petition for Review filed by Kepco Philippines Corporation in CTA Case No. 8112. Accordingly, Assessment Notice No. LTAID II/WF-06-00032 and LTAID II/VT-06-00028 issued by the BIR are hereby **UPHELD**.

SO ORDERED.[16] (Emphasis in the original.)

Kepco sought reconsideration but the CTA *En Banc* denied the motion on July 11, 2016, *viz.*:

WHEREFORE, premises considered, Kepco Philippines Corporation's **"MOTION FOR RECONSIDERATION"** filed on December 21, 2015 is hereby **DENIED** for lack of merit.

SO ORDERED.[17] (Emphasis in the original.)

Thus, Kepco filed the instant petition[18] on August 3, 2016. The CIR, through the Office of the Solicitor General (OSG), filed his Comment[19] on May 29, 2017, and Kepco, its Reply[20] on June 14, 2017.

Meantime, on December 28, 2017, Kepco filed a Manifestation[21] that it entered into a compromise agreement with the CIR on its tax assessments for the years 2006, 2007 and 2009. For TY 2006, which is the subject of the instant petition, Kepco paid a total of ₱134,193,534.12.[22] As proof,

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[16] *Id.* at 68-69.

[17] *Id.* at 76.

[18] *Id.* at 3-55.

[19] *Id.* at 380-400.

[20] *Id.* at 408-414.

[21] *Id.* at 422-427.

[22] ₱102,409,676.58 (100% of basic deficiency VAT) plus ₱31,783,857.54 (40% of basic deficiency FWT of ₱79,459,643.84).

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Kepco attached the Certificate of Availment[23] issued by the CIR on December 11, 2017 certifying that the National Evaluation Board (NEB) approved Kepco's application for compromise settlement for deficiency taxes for TYs 2006, 2007 and 2009. Thus, Kepco moved that the case be declared closed and terminated.

In compliance with this Court's Resolution[24] dated February 14, 2018, the OSG filed its Comment[25] on July 20, 2018 opposing Kepco's manifestation and motion.

The OSG avers that the compromise agreement is not valid because *first*, it failed to allege and prove any of the grounds for a valid compromise under Section 3[26] of Revenue Regulations

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[23] *Rollo*, p. 469.

[24] *Id.* at 470-471.

[25] *Id.* at 478-488.

[26] SECTION 3. *Basis for Acceptance of Compromise Settlement*. — x x x

1. *Doubtful validity of the assessment*. — x x x

(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 looking 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

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(RR) No. 30-2002;[27] *second*, the CTA did not yet issue any adverse Decision against Kepco, hence, there is no "doubtful

(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.

2. *Financial Incapacity*. — x x x

(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 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/authority/body/government agency as bankrupt or insolvent.

x x x x x x x x x

[27] Revenue Regulations Implementing Sections 7 (c), 204 (A) and 290 of the National Internal Revenue Code of 1997 on Compromise Settlement

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validity" to speak of as a ground for a valid compromise pursuant to Section 2[28] of RR No. 8-2004;[29] and *third*, Kepco did not pay in full the compromise amount upon filing of the application in violation of Section 2[30] of RR No.

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of Internal Revenue Tax Liabilities Superseding Revenue Regulations Nos. 6-2000 and 7-2001, December 16, 2002.

[28] SECTION 2. *Basis for Acceptance of Compromise Settlement*. — Sec. 3 of Revenue Regulations No. 30-2002 is hereby amended to read as follows:

"SEC. 3. BASIS FOR ACCEPTANCE OF COMPROMISE SETTLEMENT. — The Commissioner may compromise the payment of any internal revenue tax on the following grounds:

1. Doubtful validity of the assessment. — x x x

(a) X X X

(b) X X X

(c) X X X

(d) X X X

(e) X X X

(f) X X X

(g) X X X

(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. X X X"

[29] Revenue Regulations Implementing Sections 7 (c), 204 (A) and 290 of the National Internal Revenue Code of 1997 on Compromise Settlement of Internal Revenue Tax Liabilities Superseding Revenue Regulations Nos. 7-2001 and 30-2002, May 19, 2004.

[30] SECTION 2. *Amendment*. — Section 6 of Revenue Regulations No. 30-2002 shall now read as follows:

"SEC. 6. Approval of Offer of Compromise. — x x x

x x x x x x x x x

The compromise offer shall be paid by the taxpayer upon filing of the application for compromise settlement. No application for compromise settlement shall be processed without the full settlement of the offered amount.

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9-2013.[31] The OSG posits that the CIR improperly arrogated unto himself the power of the NEB to decide on the offer of compromise when the CIR accepted Kepco's additional payment of ₱16,661,759.20 before the NEB could approve or reject Kepco's original application.

Further, the OSG manifests that it is entitled to collect 5% success fee in case of government approved compromise agreements, pursuant to Section 11 (i)[32] of Republic Act (RA) No. 9417, otherwise known as "*An Act to Strengthen the Office of the Solicitor General by Expanding and Streamlining its Bureaucracy, Upgrading Employee Skills and Augmenting Benefits, and Appropriating Funds Therefor and for Other Purposes*." Accordingly, the OSG prays that Kepco be ordered to pay the balance of ₱343,248,516.65 plus additional interest, fees, or surcharges as a consequence of its void tax compromise settlement with the CIR, and that the OSG be awarded the sum of ₱17,162,425.83 or 5% of the ₱343,248,516.65 balance.[33]

In its Reply,[34] Kepco insists that there exists doubtful validity on the assessment for TY 2006 which prompted the CIR to consider and accept Kepco's compromise offer. Contrary to

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In case of disapproval of the application for compromise settlement, the amount paid upon filing of the aforesaid application shall be deducted from the total outstanding tax liabilities.

x x x x x x x x x"

[31] Amending Certain Provisions of Revenue Regulations No. 30-2002, May 10, 2013.

[32] SECTION 11. *Funding*. — The funds required for the implementation of this Act, including those for health care services, insurance premiums, professional, educational, registration fees, contracted transportation benefits, the other benefits above, shall be taken from:

(i) five percent (5%) of monetary awards given by the Courts to client departments, agencies and instrumentalities of the Government, including those under court-approved compromise agreements;

x x x x x x x x x

[33] *Rollo*, p. 485.

[34] *Id.* at 496-508.

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the OSG's claim, Kepco paid 40% of the basic tax assessed for TYs 2006, 2007 and 2009 in the amount of ₱143,891,831.90. In compliance with the recommendation of the Technical Working Group (TWG) of the Bureau of Internal Revenue (BIR) to increase the compromise offer, Kepco paid additional amounts and finalized the compromise offer to ₱260,848,425.80. This amount was approved by the NEB on December 11, 2017.

Meanwhile, the CIR filed his own Reply[35] to the OSG's Comment. The CIR asserts that Kepco paid the full 40% of the basic tax assessed for TYs 2006, 2007 and 2009 when it applied for compromise. In consonance with Revenue Memorandum Order (RMO) No. 20-2007,[36] the application was evaluated and processed, the LT Enforcement Collection Division recommended the approval of Kepco's application and thereafter, forwarded the favorable recommendation to Large Taxpayers Service (LTS)-Evaluation Board. After various proposals from the LTS-Evaluation Board to increase the compromise amount and the immediate compliance of Kepco by paying the proposed increase, the LTS-Evaluation Board recommended the approval of the application to the NEB based on doubtful validity. Eventually, the NEB approved Kepco's application and the CIR issued Certificate of Availment in its favor.

Ruling

There is no dispute that Kepco entered into a compromise agreement with the CIR on its deficiency taxes for TY 2006, and the CIR issued Certificate of Availment on December 11, 2017. On this basis, the deficiency tax assessment subject of the Petition can now be considered closed and terminated. However, the OSG opposed the motion and questioned the validity of the compromise alleging irregularity in the procedure that led to its approval.

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[35] *Id.* at 571-575.

[36] Simplified Processing of Application to Avail Taxpayer's Remedies under Section 204 (A), Compromise Settlement, and Section 204 (B), Abatement, Both of the National Internal Revenue Code of 1997, August 13, 2007.

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We grant the motion and rule in favor of the compromise.

The power of the CIR to enter into compromise agreements for deficiency taxes is explicit in Section 204 (A)[37] of the 1997 National Internal Revenue Code,[38] as amended (1997 NIRC). The CIR may compromise an assessment when a reasonable doubt as to the validity of the claim against the taxpayer exists, or the financial position of the taxpayer demonstrates a clear inability to pay the tax.

In this regard, the BIR issued RR No. 30-2002, as amended by RR No. 08-2004, which enumerates the bases for acceptance of the compromise settlement on the ground of doubtful validity, *viz.*:

SEC. 3. *Basis for Acceptance of Compromise Settlement.* — x x x

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:

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[37] SECTION 204. *Authority of the Commissioner to Compromise x x x 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 (₱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 four (4) Deputy Commissioners.

[38] Republic Act No. 8424, January 1, 1998.

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(a) The delinquent account or disputed assessment is one resulting from a jeopardy assessment x x x; 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 looking 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.

Kepco's case falls under paragraph e — the assessment became final because Kepco failed to appeal the inaction or "deemed denial" of the CIR to the CTA within 30 days after

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the expiration of the 180-day period and there is reason to believe that the assessment is lacking in legal and/or factual basis.

It must be noted that when Kepco filed its protest to the FLD on November 26, 2009, the CIR had 180 days or until May 25, 2010 to act on the protest.[39] Thereafter, Kepco may elevate its protest to the CTA within 30 days from the lapse of the 180-day period,[40] or until June 24, 2010. Section 7 (a) (2)[41] of RA No. 9282[42] provides that the "inaction" of the CIR or

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[39] See *Armigos v. Court of Appeals*, 258-A Phil. 561 (1989).

[40] See Section 3 (a) (2), Rule 4 of the Revised Rules of the CTA.

SEC. 3. *Cases within the Jurisdiction of the Court in Divisions*. — The Court in Divisions shall exercise:

(a) Exclusive original or appellate jurisdiction to review by appeal the following:

x x x x x x x x x

(2) Inaction by the Commissioner of Internal Revenue in cases involving disputes assessments, x x x where the National Internal Revenue Code or other applicable law provides a specific period for action: *Provided*, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; x x x.

[41] Sec. 7. *Jurisdiction*. — The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

x x x x x x x x x

(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case **the inaction shall be deemed a denial**; x x x (Emphasis supplied.)

[42] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank To The Level Of A Collegiate Court With Special Jurisdiction And Enlarging Its Membership, Amending For The Purpose Certain Sections Or Republic Act No. 1125, As Amended, Otherwise Known As The Law Creating The Court Of Tax Appeals, And For Other Purposes, March 30, 2004.

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his failure to decide a disputed assessment within the 180-day period is "deemed a denial" of the protest.[43] Section 3 (a) (2),[44] Rule 4 of the Revised Rules of the CTA further clarifies that "that in case of disputed assessments, the inaction of the [CIR] within the [180]-period under [Section] 228 of the [1997 NIRC] shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the [CTA]." Clearly, the *inaction* is deemed an *adverse decision* of the CIR on the administrative protest. Thus, for purposes of determining whether taxpayers may already appeal to the CTA, the *inaction* of the CIR within 180 days shall be *deemed denial* or an *adverse decision* of the CIR. Since

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[43] See *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398-99 & 201418-19, October 3, 2018, 881 SCRA 451, 509.

[44] SEC. 3. *Cases within the jurisdiction of the Court in Divisions.* — The Court in Divisions shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

x x x x x x x x x

(2) Inaction by 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, where the National Internal Revenue Code or other applicable law provides a specific period for action: *Provided*, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; *Provided, further*, that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3 (a), Rule 8 of these Rules; and *Provided, still further*, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code;

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Kepco failed to appeal the *inaction* or *deemed denial* or *adverse decision* of the CIR on June 24, 2010, the assessment for deficiency VAT and FWT for TY 2006 became final, executory and demandable.

As to whether the CIR properly accepted Kepco's offer for a compromise because "the assessment is lacking in legal and/or factual basis," the general rule is that the authority of the CIR to compromise is purely discretionary and the courts cannot interfere with his exercise of discretionary functions, absent grave abuse of discretion.[45] Here, no grave abuse of discretion exists. Kepco complied with the procedures prescribed under the BIR rules on the application and approval of compromise settlement on the ground of doubtful validity.

Contrary to the OSG's claim that Kepco did not pay the full amount offered for compromise upon filing of its application, records show that Kepco paid ₱143,891,831.90[46] representing 40% of the basic tax assessed for TYs 2006, 2007 and 2009 when it applied for compromise on January 19, 2017.[47] For TY 2006, which is the subject of the instant case, Kepco paid ₱40,963,870.63[48] (40% of basic deficiency VAT of ₱102,409,676.58) and ₱31,783,857.54[49] (40% of basic deficiency FWT of ₱79,459,643.84) on January 19, 2017. Notably, the minimum compromise amount under Section 204 (A)[50] of the 1997 NIRC and Section 4[51] of RR No. 30-2002 is 40% of the

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[45] See *PNOC v. Court of Appeals*, 496 Phil. 506, 572 (2005).

[46] *Rollo*, p. 517.

[47] *Id.* at 510-522.

[48] *Id.* at 433.

[49] *Id.* at 441.

[50] *Supra* note 37.

[51] Sec. 4. *Prescribed Minimum Percentages of Compromise Settlement.* — x x x

x x x x x x x x x

2. *For cases of "doubtful validity"* — A minimum compromise rate equivalent to forty percent (40%) of the basic assessed tax.

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basic tax assessed. Kepco complied with the requirement of payment of the compromise offer as a pre-condition for the processing of the application.

Further, the TWG evaluated Kepco's application and on October 19, 2017, recommended to the NEB its approval on the basis of doubtful validity.[52] The application was approved by a majority[53] of all the members of the NEB composed of Deputy Commissioners Jesus Clint O. Aranas (Legal Group), Lanee Cui-David (Information Systems Group), and Celia C. King (Resource Management Group), and Commissioner Caesar R. Dulay in compliance with Section 2[54] of RR No. 9-2013. Thereafter, the CIR issued Certificate of Availment in favor of Kepco on December 11, 2017.[55]

A compromise agreement has the effect of *res judicata* on the parties.[56] Compromises are generally to be favored and those entered into in good faith cannot be set aside,[57] except when there is mistake, fraud, violence, intimidation, undue influence,

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[52] *Rollo*, pp. 584-587.

[53] *Id.* at 582.

[54] SECTION 2. AMENDMENT. — Section 6 of Revenue Regulations No. 30-2002 shall now read as follows:

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

x x x x x x x x x"

[55] *Rollo*, p. 583. Signed by Mr. Alfredo V. Misajon, OIC-ACIR, Collection Service, Head, TWG on Compromise.

[56] See Article 2037, Civil Code. A compromise has upon the parties the effect and authority of *res judicata*; but there shall be no execution except in compliance with a judicial compromise.

[57] See *PNOC v. Court of Appeals, supra* note 45.

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or falsity of documents.[58] None of these exceptions obtain in the present case.

To be sure, Kepco already paid 100% of the basic deficiency VAT and 40% of the basic deficiency FWT for TY 2006 in the aggregate amount of ₱134,193,534.12, as evidenced by BIR payment forms.[59] The CIR approved the compromise settlement as early as December 11, 2017. Kepco now only seeks to have the instant case closed and terminated. Thus, to allow the OSG to question the validity of the compromise settlement alleging anomalies in its approval is not only unfair to Kepco and taxpayers alike that entered into compromise agreements in good faith but there will also be no final and definitive settlement of tax compromises. The dissenting opinion of Justice Carpio in *PNOC v. Court of Appeals*[60] is enlightening:

> A compromise agreement constitutes a final and definite settlement of the controversy between the parties. A compromise agreement, even if not judicially approved, has the effect of *res judicata* on the parties. Article 2037 of the Civil Code provides:
>
> > A compromise has upon *the parties the effect and authority of res judicata*; but there shall be no execution except in compliance with a judicial compromise. (Emphasis supplied.)
>
> The compromise agreement has the force of law between the parties and no party may discard unilaterally the compromise agreement. Under Section 8.1 of RMO No. 39-86, upon payment of the compromise amount, the tax "*case is already closed*." The Solicitor General, who withdrew as counsel for the BIR, maintains that the compromise agreement is valid.

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[58] See Art. 2038, Civil Code. A compromise in which there is mistake, fraud, violence, intimidation, undue influence, or falsity of documents, is subject to the provisions of Article 1330 of this Code.

[59] *Rollo*, pp. 430-441.

VAT	₱	40,963,870.63
VAT	₱	61,445,805.95
FWT	₱	31,783,857.54
Total	₱	134,193,534.12

[60] *Supra* note 45 at 619-622.

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Where a party has received the consideration for the compromise agreement, such party is estopped from questioning its terms and asking for the reopening of the case on the ground of mistake. As explained in *McCarthy v. Barber Steamship Lines*:[61]

> *Hence it is general rule in this country, that compromises are to be favored, without regard to the nature of the controversy compromised*, and that they cannot be set aside because the event shows all the gain to have been on one side, and all the sacrifice on the other, if the parties have acted in good faith, and with a belief of the actual existence of the rights which they have respectively waived or abandoned; and if a settlement be made in regard to such subject, free from fraud or mistake, whereby there is a surrender or satisfaction, in whole or in part, of a claim upon one side in exchange for or in consideration of a surrender or satisfaction of a claim in whole or in part, or of something of value, upon the other, however baseless may be the claim upon either side or harsh the terms as to either of the parties, the other cannot successfully impeach the agreement in a court of justice . . . Where the compromise is instituted and carried through in good faith, the fact that there was a mistake as to the law or as to the facts, except in certain cases where the mistake was mutual and correctable as such in equity, cannot afford a basis for setting a compromise aside or defending against a suit brought thereon. x x x
>
> x x x x x x x x x
>
> And whether one or the other party understood the law of the case more correctly than the other, cannot be material to the validity of the bargain. For if it were, then it would follow that contracts by the parties settling their own disputes, would at last be made to stand or fall, according to the opinion of the appellate court how the law would have determined it. (Emphasis supplied)

In *People v. Magdaluyo*,[62] the BIR Commissioner approved the agreement which compromised the taxpayer's violation of the Tax Code. The taxpayer paid the compromise amount before the filing of

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[61] G.R. No. L-20410, December 10, 1923.

[62] 122 Phil. 801 (1965).

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the criminal information in court. The Court ruled that the government could no longer prosecute the taxpayer for violation of the Tax Code.

The same principle holds true in the present case. **The parties to the compromise agreement have voluntarily settled the tax liability arising from PNB's failure to withhold the final tax on PNOC's interest income. The parties have fully implemented in good faith the compromise agreement. The new BIR Commissioner cannot just annul the legitimate compromise agreements made by his predecessors in the performance of their regular duties where the parties entered into the compromise agreements in good faith and had already fully implemented the compromise agreements.**

To rule otherwise would subject the validity and finality of a tax compromise agreement to depend on the different interpretations of succeeding BIR Commissioners. Such lack of finality of tax compromises would discourage taxpayers from entering into tax compromises with the BIR, considering that compromises entail admissions by taxpayers of violations of tax laws. A tax compromise cannot be invalidated except in case of mistake, fraud, violence, undue influence, or falsity of documents. Article 2038 of the Civil Code provides:

> Art. 2038. A compromise in which there is mistake, fraud, violence, intimidation, undue influence, or falsity of documents, is subject to the provisions of Article 1330 of this Code.
>
> x x x x x x x x x
>
> (Emphasis supplied)

Article 1330 of the Civil Code makes compromises tainted with such circumstances voidable. In the present case, there is no mistake because PNOC's delinquent account clearly falls within the coverage of EO No. 44. Also, PNOC clearly filed its application for tax compromise before the deadline. Thus, none of the circumstances that make a compromise voidable is present in this case.[63] (Emphasis and underscoring supplied.)

Indeed, while taxes are the lifeblood of the government, the power of taxation should be "exercised with caution to minimize the proprietary rights of a taxpayer. It must be exercised fairly,

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[63] *Supra* note 45 at 622.

equally and uniformly, lest the tax collector kill the "hen that lays the golden egg." x x x [T]o maintain the general public's trust and confidence in the Government this power must be used justly and not treacherously."[64] After all, "in balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution."[65]

Accordingly, we rule that the compromise settlement between Kepco and the CIR is valid. As such, there is nothing left for us to do but to declare the case closed and terminated.

The OSG is entitled to 5% of total deficiency taxes paid by Kepco.

Finally, records show that the OSG acted as counsel for the BIR in the case proceedings before the CTA Division in CTA Case No. 8112. Consistent with R.A. No. 9417,[66] the OSG is entitled to 5% of the total deficiency tax liabilities of Kepco but only for TY 2006.[67] The deficiency tax liabilities of Kepco for TYs 2007 and 2009 are not the subject matter of the present petition.

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[64] *Philex Mining Corp. v. Commissioner of Internal Revenue*, 356 Phil. 189, 202 (1998), citing *Roxas v. Court of Tax Appeals*, 131 Phil. 773 (1968).

[65] *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*, 738 Phil. 335, 356 (2014), quoting *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, 652 Phil. 172 (2010).

[66] Otherwise known as "*An Act to Strengthen the Office of the Solicitor General by Expanding and Streamlining its Bureaucracy, Upgrading Employee Skills and Augmenting Benefits, and Appropriating Funds Therefor and for Other Purposes*."

[67] See *Commissioner of Internal Revenue v. Sec. of Justice, et al.*, 799 Phil. 13 (2016).

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FOR THESE REASONS, the petition for review is **DISMISSED**; the Manifestation and Motion to Render Judgment on the Case Based on the Parties' Compromise Settlement under Section 204 (A) of the National Internal Revenue Code filed by Kepco Philippines Corporation is **GRANTED**. The case is considered **CLOSED and TERMINATED**.

The Bureau of Internal Revenue is **DIRECTED TO REMIT** 5% of the total compromise amount paid by Kepco Philippines Corporation for taxable year 2006 to the Office of the Solicitor General.

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa, Reyes, J. Jr., and *Lazaro-Javier, JJ.,* concur.

FIRST DIVISION

[G.R. No. 226449. July 28, 2020]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **FEDERATION OF GOLF CLUBS OF THE PHILIPPINES, INC.,** *respondent*.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES; A PURELY LEGAL ISSUE ALLOWS THE RELAXATION THEREOF; CASE AT BAR. — Giving due course to the petition, the Court held that while the issuance of RMC No. 35-2012, being an interpretative rule, is subject to the review of the Secretary of Finance following Section 4 of the NIRC,