

**REPUBLIC OF THE PHILIPPINES**  
*Court of Tax Appeals*  
**QUEZON CITY**

*Third Division*

**ORO DARE  
CORPORATION,**

**LOGISTICS CTA CASE NO. 9846**

*Petitioner,* Members:

*-versus-*

**UY, Chairperson,  
RINGPIS-LIBAN, and  
MODESTO-SAN PEDRO, JJ.**

**COMMISSIONER OF INTERNAL REVENUE,** Promulgated:

*Respondent.*

MAY 19 2022

*2:20 P.M.*

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**DECISION**

**MODESTO-SAN PEDRO, J.:**

**The Case**

Before the Court is a Petition for Review,<sup>1</sup> filed by petitioner Oro Dare Logistics Corporation against respondent Commissioner of Internal Revenue (“CIR”), seeking the nullification and cancellation of the (1) CIR’s Letter of Denial (“Notice of Denial”), dated 21 June 2017 of petitioner’s offer of compromise; (2) Final Notice Before Seizure (“FNBS”), dated 24 May 2018; (3) Formal Letter of Demand and Assessment Notices (“FLD/ANs”), dated 24 October 2014 assessing petitioner for alleged deficiency income taxes in the amount of ₱3,220,514.10 and deficiency VAT of ₱3,179,424.77 or a total amount of ₱6,399,938.87 for the taxable year 2010; and (4) Preliminary Collection Letter (“PCL”), dated 24 February 2015.<sup>2</sup> /

<sup>1</sup> See Petition for Review, Division Records Vol. 1, pp. 10-96; See also Amended Petition for Review, Division Records Vol. 1, pp. 97-189.

<sup>2</sup> Pre-Trial Order dated 21 February 2019, *id.*, pp. 419-430.

### **The Parties**

Petitioner, Oro Dare Logistics Corporation, is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal address at Door 9, Promenade Bldg., National Highway, Kauswagan, Cagayan de Oro City, Misamis Oriental (now Suite 205, The Paragon Bldg., Kauswagan Road corner National Highway, Cagayan de Oro City, Misamis Oriental), and is primarily engaged in the business as freight and cargo forwarders of all classes of goods and merchandise.<sup>3</sup> Petitioner is likewise registered with the Bureau of Internal Revenue (“BIR”) with Tax Identification No. 006-240-237-000.<sup>4</sup>

On the other hand, respondent CIR is charged with the assessment and collection of all national internal revenue taxes, fees, and charges, and enforcement of all forfeitures, penalties, and fines connected therewith including approval of compromise settlement and claim for refund among others. He may be served with summons and other Court processes at the BIR National Office Building, Agham Road, Diliman, Quezon City.<sup>5</sup>

### **The Facts**

On 25 April 2012, petitioner received Letter Notice Nos. 098-RLF-10-00-00181<sup>6</sup> and 098-TRS-10-00-00058,<sup>7</sup> signed by former CIR Kim S. Jacinto-Henares, for the taxable year 2010. The Letter Notices informed petitioner of the discrepancy resulting from the Reconciliation of Listing for Enforcement-Summary List of Sales and Purchases (“RELIEF”) and Tax Reconciliation System (“TRS”).<sup>8</sup>

On 8 February 2013, BIR Revenue District Office No. 89 issued a follow-up letter, signed by Officer-in-Charge Samson Q. Carcueva, Jr., reminding petitioner of the discrepancy per Letter Notices.<sup>9</sup>

On 16 October 2013, BIR Revenue District Office No. 98 issued a Notice of Informal Conference<sup>10</sup> for the alleged deficiency taxes as follows:<sup>11</sup>

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<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

<sup>6</sup> Exhibit “P-35”, BIR Records, p. 9.

<sup>7</sup> Exhibit “P-36”, *id.*, p. 10.

<sup>8</sup> Pre-Trial Order dated 21 February 2019, Division Records Vol. 1, pp. 419-430.

<sup>9</sup> *Ibid.*

<sup>10</sup> Exhibit “P-38”, Division Records Vol. 2, pp. 527-529.

<sup>11</sup> *Ibid.*; Pre-Trial Order dated 21 February 2019, Division Records Vol. 1, pp. 419-430 (discrepancy in basic income tax as stated in par. 6).

Tax Type	Basic	Surcharge	Interest	Compromise	Total
Income Tax	₱ 1,440,458.93	₱ 720,229.47	₱ 720,229.47	₱ 25,000.00	₱ 2,905,917.87
VAT	1,394,036.05	697,018.03	836,421.63	25,000.00	2,952,475.71
<b>TOTAL</b>	<b>₱ 2,834,494.98</b>	<b>₱ 1,417,247.50</b>	<b>₱ 1,556,651.10</b>	<b>₱ 50,000.00</b>	<b>₱ 5,858,393.58</b>

On 12 September 2014, BIR Revenue Region No. 16-Cagayan de Oro City issued a Preliminary Assessment Notice (“PAN”) signed by OIC Regional Director Alberto S. Olasiman, for alleged deficiency taxes pursuant to Letter Notice Nos. 098-RLF-10-00-0018 and 098-TRS-10-00-00058 in the aggregate amount of ₱6,327,375.80.<sup>12</sup>

On 8 October 2014, petitioner filed a letter of even date to the Office of the Regional Director, Mr. Alberto Olasiman, requesting a reinvestigation of the assessment for the taxable year 2010.<sup>13</sup>

On 24 October 2014, BIR Revenue Region No. 16- Cagayan de Oro City issued the subject FLD/ANs signed by OIC Regional Director Alberto S. Olasiman, for alleged deficiency taxes as follows:<sup>14</sup>

	Income Tax	VAT	Total
Basic	₱ 1,440,458.93	₱ 1,394,036.05	₱ 2,834,494.98
50% Surcharge	720,229.47	697,018.02	1,417,247.49
20% Interest	1,034,825.70	1,063,370.70	2,098,196.40
Compromise Penalty	25,000.00	25,000.00	50,000.00
<b>TOTAL DEFICIENCY</b>	<b>₱ 3,220,514.10</b>	<b>₱ 3,179,424.77</b>	<b>₱ 6,399,938.87</b>

Petitioner received the FLD/ANs by registered mail on 30 October 2014.<sup>15</sup>

On 24 February 2015, BIR Revenue District Office No. 84 issued the subject PCL, signed by Revenue District Officer Teodoro A. Huelva, directing the petitioner to pay the aforesaid taxes within ten (10) days from receipt of the letter.<sup>16</sup>

On 26 May 2015, petitioner filed a letter dated, 25 May 2015, with RDO Teodoro A. Huelva requesting the BIR to allow petitioner to pay 40% of the basic tax due as per FLD/AN.<sup>17</sup>

<sup>12</sup> Pre-Trial Order dated 21 February 2019, *id.*, pp. 419-430; Exhibit “P-39”, Division Records Vol. 2, pp. 530-534.

<sup>13</sup> Pre-Trial Order dated 21 February 2019, Division Records Vol. 1, pp. 419-430; Exhibit “P-40”, Division Records Vol. 2, p. 535.

<sup>14</sup> Pre-Trial Order dated 21 February 2019, Division Records Vol. 1, pp. 419-430; Exhibit “P-41”, Division Records Vol. 2, pp. 537-543.

<sup>15</sup> Pre-Trial Order dated 21 February 2019, Division Records Vol. 1, pp. 419-430.

<sup>16</sup> *Ibid.*; Exhibit “P-42”, Division Records Vol. 2, p. 536.

<sup>17</sup> Pre-Trial Order dated 21 February 2019, Division Records Vol. 1, pp. 419-430.

On 3 July 2015, petitioner filed a letter, dated 25 June 2015, with RDO Teodoro A. Huelva, transmitting the promissory note pursuant to their verbal agreement to pay in six (6) monthly installments the 40% of the alleged deficiency Income Tax and VAT pursuant to its application for compromise.<sup>18</sup>

On 9 August 2016, petitioner filed a letter, dated 8 August 2016, with RDO Venerando B. Homez of Revenue District No. 98- Cagayan de Oro City providing the justification of its compromise application based on doubtful validity- jeopardy assessment.<sup>19</sup>

On 23 May 2018, petitioner received the subject Notice of Denial dated 21 June 2017 denying petitioner's application for compromise settlement.<sup>20</sup> The Notice of Denial, signed by Commissioner Caesar R. Dulay, directed petitioner to pay the amount of ₱5,266,140.43 net of ₱1,133,798.04 which was previously paid, plus all increments incident to the delinquency within fifteen (15) days from receipt thereof.<sup>21</sup>

On 14 June 2018, petitioner received the subject FNBS, dated 24 May 2018, signed by Chief of the Collection Division of BIR Revenue Region No. 16- Cagayan de Oro City Ms. Estella M. Laga-Ac, directing petitioner to pay the said tax liability as indicated in the PCL dated 24 February 2015.<sup>22</sup> Otherwise, the said office will be constrained to take appropriate civil remedies or legal action pursuant to *Sec. 205 and 255 of the Tax Code*.<sup>23</sup> The PCL,<sup>24</sup> dated 24 February 2015, reflects a total tax due for deficiency income tax and VAT in the aggregate amount of ₱ 6,399,938.87 as indicated in the FLD/Ans.

Petitioner then filed the instant Petition for Review on 4 June 2018, praying that the FLD/Ans, dated 24 October 2014, finding petitioner liable for deficiency taxes in the total amount of ₱ 6,399,938.87, PCL, dated 24 February 2015, and Notice of Denial of Compromise Application, dated 21 June 2017, be cancelled and withdrawn.<sup>25</sup>

Subsequently, petitioner filed an Amended Petition for Review on 20 June 2018, praying that the FLD/Ans, dated 24 October 2014, and PCL, dated 24 February 2015, be cancelled and withdrawn and further praying that the Notice of Denial of Compromise Application, dated 21 June 2017, and FNBS, §

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<sup>18</sup> *Ibid.*; Exhibit "P-43", Division Records Vol. 2, p. 544; Exhibits "P-44" and "P-45", *id.*, pp. 545-546.

<sup>19</sup> Pre-Trial Order dated 21 February 2019, Division Records Vol. 1, pp. 419-430; Exhibits "P-46" to "P-48", Division Records Vol. 2, pp. 547-550.

<sup>20</sup> Pre-Trial Order dated 21 February 2019, Division Records Vol. 1, pp. 419-430; Exhibit "P-49", Division Records Vol. 2, p. 551.

<sup>21</sup> *Ibid.*

<sup>22</sup> Pre-Trial Order dated 21 February 2019, Division Records Vol. 1, pp. 419-430; Exhibit "P-74", Division Records Vol. 2, p. 576.

<sup>23</sup> *Ibid.*

<sup>24</sup> Exhibit "P-42", Division Records Vol. 2, p. 536.

<sup>25</sup> Petition for Review, Division Records Vol. 1, pp. 10-96.

dated 24 May 2018, be declared void and, consequently, cancelled and withdrawn.<sup>26</sup>

Summons was served upon respondent on 4 July 2018.<sup>27</sup> Petitioner was notified of such service on 2 August 2018.<sup>28</sup>

On 28 August 2018, within the extended period,<sup>29</sup> respondent filed his Answer,<sup>30</sup> interposing the following defenses:

- (1) The Court has no jurisdiction over the instant petition;
- (2) While maintaining that the Court has no jurisdiction over the petition, petitioner does not have any cause of action against respondent;
- (3) While maintaining that the Court has no jurisdiction over the petition, petitioner can no longer assail the validity of the assessment;
- (4) While maintaining that the Court has no jurisdiction over the petition and petitioner can no longer question the validity of the assessment, the revenue officer has authority to conduct the audit investigation on petitioner's tax liability for taxable year 2010;
- (5) While maintaining that the court has no jurisdiction and that petitioner can no longer question the validity of the assessment, respondent's right to assess petitioner for deficiency income tax and VAT for taxable year 2010 has not yet prescribed. The 3-year limitation within which to make the assessment finds no application in the instant case as petitioner filed a false and fraudulent return;
- (6) While maintaining that the court has no jurisdiction and that petitioner could no longer question the validity of the assessment, the assessment has bases both in fact and in law; and
- (7) The assessment issued against petitioner is valid and lawful.

Meanwhile, on 22 October 2018, respondent transmitted the BIR Records of the case consisting of seven hundred twenty-five (725) pages contained in one (1) folder and filed the corresponding Compliance,<sup>31</sup> of which the Court took note in a Minute Resolution dated 23 October 2018.<sup>32</sup>

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<sup>26</sup> Amended Petition for Review, Division Records Vol. 1, pp. 97-189.

<sup>27</sup> *Id.*, p. 190.

<sup>28</sup> *Id.*, p. 191.

<sup>29</sup> *See* Motion for Extension of Time to File Answer, *id.*, pp. 192-196; Resolution dated 30 July 2018, *id.*, pp. 197-198; Motion for Additional Time to File Answer, *id.*, pp. 199-202; Resolution dated 10 September 2018, *id.*, pp. 224-226.

<sup>30</sup> *Id.*, pp. 203-223.

<sup>31</sup> *Id.*, pp. 232-235.

<sup>32</sup> *Id.*, p. 236.

Petitioner and respondent filed their Pre-Trial Briefs on 5 December 2018<sup>33</sup> and 6 December 2018,<sup>34</sup> respectively. Following this, the Pre-Trial Conference was held on 11 December 2018.<sup>35</sup>

The parties filed their Joint Stipulation of Facts and Issues (“JSFI”) on 9 January 2019,<sup>36</sup> which the Court admitted and approved in its Resolution,<sup>37</sup> dated 17 January 2019. Thus, on 21 February 2019, the Pre-Trial Order<sup>38</sup> was rendered.

During trial, petitioner presented the following witnesses:

- (1) Sheryl R. Ratunil, petitioner’s General Manager and Corporate Secretary, who testified and identified her Judicial Affidavit<sup>39</sup> during the hearing on 3 September 2019;<sup>40</sup> and
- (2) Maribel B. Jimenez, petitioner’s Finance and Admin Officer, who testified and identified her Judicial Affidavit<sup>41</sup> during the hearing on 3 September 2019.<sup>42</sup>

Petitioner formally offered its documentary evidence on 20 September 2019<sup>43</sup> without comment from respondent despite order.<sup>44</sup>

In a Resolution dated 26 December 2019,<sup>45</sup> the Court admitted all of petitioner’s formally offered documentary evidence and took note of the following:

- (1) Slight discrepancy in the description in the FOE and the duly marked exhibits for Exhibits “P-40” and “P-74”;
- (2) Machine validation on Exhibits “P-51”, “P-53”, and “P-57” are unreadable; and
- (3) The date stamped on Exhibits “P-70” and “P-72” are not clearly visible. *L*

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<sup>33</sup> *Id.*, pp. 237-253.

<sup>34</sup> *Id.*, pp. 391-396.

<sup>35</sup> *Id.*, pp. 398-400.

<sup>36</sup> *Id.*, pp. 403-408.

<sup>37</sup> *Id.*, pp. 409-410.

<sup>38</sup> *Id.*, pp. 419-430.

<sup>39</sup> Exhibits “P-75” and “P-75-a”, Division Records Vol. 2, pp. 577- 591.

<sup>40</sup> *Id.*, pp. 448-450.

<sup>41</sup> Exhibit “P-76” and “P-76-a”, Division Records Vol. 2., pp. 592-596.

<sup>42</sup> *Id.*, pp. 448-450.

<sup>43</sup> Division Records Vols. 1-2., pp. 453-596.

<sup>44</sup> Division Records Vol. 2, p. 598.

<sup>45</sup> *Id.*, pp. 599-601.

This prompted petitioner to file an Omnibus Motion (1) For Partial Reconsideration of Resolution dated December 26, 2019; (2) To Re-Open the Case; and (3) To Defer the Submission of the Parties' Memoranda Pending the Resolution of Petitioner's Omnibus Motion.<sup>46</sup> Petitioner essentially prayed to be allowed to replace/ substitute the admitted Exhibits "P-51", "P-53", "P-57", "P-70", and "P-72" that are faithful reproductions of the original copies thereof and transfer the marking to the originals. This was granted in the Court's Resolution, dated 19 June 2020.<sup>47</sup> During the Commissioner's Hearing on 14 July 2020,<sup>48</sup> the marking for Exhibits "P-51", "P-53", "P-57", "P-70", and "P-72" were transferred from the faithful reproductions to the originals thereof.

On 16 July 2020, petitioner filed a Supplemental Formal Offer of Evidence,<sup>49</sup> offering the duly marked originals of Exhibits "P-51", "P-53", "P-57", "P-70", and "P-72". The Court admitted these exhibits anew in a Resolution dated 2 February 2021.<sup>50</sup>

Considering respondent's counsel's manifestation during the hearing on 3 September 2019 that she would not be presenting any evidence,<sup>51</sup> the parties were directed to file their respective memoranda.

Thus, on 10 March 2021, respondent filed his Memorandum.<sup>52</sup> Meanwhile petitioner filed its Memorandum<sup>53</sup> on 17 March 2021.

With the filing of both parties' respective memoranda, the case was submitted for decision on 19 May 2021.<sup>54</sup>

### **The Issues**<sup>55</sup>

The issues submitted for the Court's resolution are the following:

- I. Whether the Court has jurisdiction to rule on the validity of the Notice of Denial of the Compromise Application; relative thereto, whether the Court can assume jurisdiction over cases where there's no disputed assessment; *ℓ*

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<sup>46</sup> *Id.*, pp. 602-609.

<sup>47</sup> *Id.*, pp. 619-622.

<sup>48</sup> *Id.*, pp. 623-628.

<sup>49</sup> *Id.*, pp. 629-638.

<sup>50</sup> *Id.*, pp. 640-642.

<sup>51</sup> Division Records Vol. 1, pp. 448-450.

<sup>52</sup> Division Records Vol. 2, pp. 643- 661.

<sup>53</sup> *Id.*, pp. 663-703.

<sup>54</sup> *Id.*, p. 705.

<sup>55</sup> See Issues, Pre-Trial Order, Division Records Vol. 1, pp. 423-424.

- II. Whether the denial of petitioner's compromise application/ offer has factual and/or legal basis; and
- III. Whether the issuance of the FNBS dated 24 May 2018 is valid and did not violate petitioner's right to due process.

### Arguments of the Parties

#### Petitioner's Arguments<sup>56</sup>

*First*, petitioner argues that this Court has jurisdiction over the CIR's denial of its compromise application as it arose from the FLD/ANs assessing petitioner for deficiency income tax and VAT, a controversy within the jurisdiction of the CTA. Petitioner invokes the jurisdiction of the CTA over "other matters" arising under the Tax Code and other laws administered by the BIR as provided in *Section 7(a)(1) of R.A. No. 1125, as amended by R.A. No. 9282* and *Section 3(a)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals ("RRCTA")*. Petitioner explains that the present case involves the authority of respondent CIR to compromise the payment of internal revenue taxes pursuant to *Section 204(A) of the Tax Code, as amended*, which falls within the purview of "other matters" under the Tax Code. Petitioner cites *Philippine National Oil Company v. Court of Appeals, et al* and *Philippine National Bank v. Court of Appeals, et al.* to support this position.<sup>57</sup>

*Second*, petitioner argues that the Court can assume jurisdiction over cases where there is no disputed assessment. Citing *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*,<sup>58</sup> petitioner further argues that the Court has jurisdiction to review not only disputed assessments but also the BIR's right to collect upon an assessment as "other matters" arising under the Tax Code or laws administered by the BIR. Thus, according to petitioner, this Court has jurisdiction to rule on the validity of the FNBS as a separate and independent from the issue as to whether or not there is a disputed assessment.

*Third*, petitioner also assails the validity of the FLD/ANs. According to petitioner, these are void due to the absence of a LOA and the power of respondent to issue the subject FLD/ANs had prescribed. Petitioner adds that the FLD/ANs are void as they lack the definite amount of tax liability for which petitioner is accountable and do not contain a demand to pay. In view of the foregoing infirmities, petitioner claims that a void assessment cannot

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<sup>56</sup> See Memorandum for Petitioner, Division Records Vol. 2, pp. 663-703.

<sup>57</sup> G.R. Nos. 109976 & 112800, 26 April 2005.

<sup>58</sup> G.R. No. 162852, 16 December 2004.



attain finality, thus, making the issues on petitioner's failure to file a protest or whether there is a disputed assessment irrelevant, moot, and academic.

*Fourth*, respondent's denial of petitioner's compromise agreement has no factual and/or legal basis. Petitioner cites *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*<sup>59</sup> and *Commissioner of Internal Revenue v. Sony Philippines, Inc.*,<sup>60</sup> which both hold that the absence of an LOA renders the assessment arising therefrom a nullity.

*Fifth*, due to the infirmities in the assessment, any collection efforts, particularly the FNBS, are invalid.

### **Respondent's Arguments**<sup>61</sup>

Meanwhile, respondent maintains that this Court has no jurisdiction over the instant case involving a decision of the Commissioner on an application for compromise. Respondent argues that the decision of the Commissioner that is appealable to this Court as contemplated in *Section 7 of R.A. No. 1125, as amended* refers to decisions on disputed assessments.

Respondent further argues that the instant petition indirectly attacks the respondent's denial of the application for compromise which is among the discretionary powers of the Commissioner that cannot be properly passed upon by this Court. According to respondent, the Commissioner's authority to compromise is among its discretionary powers enshrined in *Section 204 of the Tax Code, as amended* that cannot be the subject of judicial review.

While maintaining that this Court has no jurisdiction over the instant petition, respondent further argues that:

- (1) Petitioner can no longer assail the validity of the assessment which has attained finality due to petitioner's failure to file an administrative protest from receipt of the FLD/FAN. Respondent cites *Section 228 of the Tax Code, as amended*, and *Rev.Regs. No. 18-2013*.
- (2) The revenue officer has authority to conduct the audit investigation on petitioner's tax liability for taxable year 2010. Respondent maintains that although the Letter Notice was not entitled Letter of Authority, it contains all the elements necessary to establish a contract of agency between the CIR and the revenue officer. Respondent insists that *Section 13 of the Tax Code, as amended*, which provides that examination be pursuant to a

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<sup>59</sup> G.R. No. 222743, 5 April 2017.

<sup>60</sup> G.R. No. 178697, 17 November 2010.

<sup>61</sup> See Memorandum for Respondent, Division Records Vol. 2, pp. 643-661.

Letter of Authority, is not applicable in the present case as there was no actual examination of the petitioner's books. According to respondent, there is no strict requirement for the existence of a Letter of Authority in a "no contact-audit-approach." He argues that under *Revenue Memorandum Circular No. 40-2003*, a Letter Notice is sufficient notice of audit and investigation, receipt of which prevents the subject taxpayer from amending the relevant tax return.

- (3) Respondent's right to assess petitioner for deficiency income tax and VAT for the taxable year 2010 has not yet prescribed. The 3-year limitation within which to make the assessment finds no application in the instant case as petitioner filed a false and fraudulent return due to under-declaration of sales;
- (4) Respondent's assessment has bases both on fact and in law; and
- (5) All presumptions are in favor of the correctness of tax assessments. The burden of proof is on the taxpayer contesting the validity or correctness of an assessment.

### **The Ruling of the Court**

The instant Petition for Review is meritorious.

### **The CTA has jurisdiction over decisions of the CIR on compromise applications.**

The jurisdiction of the CTA is not limited to decisions of the CIR on disputed assessments. This Court also has jurisdiction to review, by appeal, the decisions of the CIR on other matters arising under the Tax Code or other laws administered by the BIR. This is conferred by *Section 7(a)(1) of Republic Act ("R.A.") No. 1125, as amended by R.A. No. 9282* as follows:

"SECTION. 7. Jurisdiction. - The CTA shall exercise:

- a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

1. **Decisions of the Commissioner of Internal Revenue** in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;**

..."

(Emphasis supplied.) 4

This is further echoed in *Section 3(a)(1) of the Revised Rules of the Court of Tax Appeals (“RRCTA”)*:<sup>62</sup>

“SECTION. 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:

- (1) **Decisions of the Commissioner of Internal Revenue in cases involving** disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters arising under the National Internal Revenue Code** or other laws administered by the Bureau of Internal Revenue;

...”

(Emphasis supplied.)

As respondent points out, the CIR’s authority to compromise taxes emanates from *Section 204 of the Tax Code, as amended*. It 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.

...”

(Emphasis supplied.) ¶

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<sup>62</sup> A.M. No. 05-11-07-CTA.

In *Philippine National Oil Co. v. Court of Appeals*,<sup>63</sup> the Supreme Court clarified that the CIR's discretionary authority to enter into a compromise agreement is not absolute and is subject to judicial review by courts.

*“D. The BIR Commissioner's discretionary authority to enter into a compromise agreement is not absolute and the CTA may inquire into allegations of abuse thereof.*

The foregoing discussion supports the CTA's conclusion that the compromise agreement between PNOC and the BIR was indeed without legal basis. Despite this lack of legal support for the execution of the said compromise agreement, PNB argues that the CTA still had no jurisdiction to review and set aside the compromise agreement. It contends that the authority to compromise is purely discretionary on the BIR Commissioner and the courts cannot interfere with his exercise thereof.

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

The manner by which BIR Commissioner Tan exercised his discretionary power to enter into a compromise was brought under the scrutiny of the CTA amidst allegations of "grave abuse of discretion and/or whimsical exercise of jurisdiction." **The discretionary power of the BIR Commissioner to enter into compromises cannot be superior over the power of judicial review by the courts.**

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

...”  
(Emphasis supplied.)

The subject of appeal in the present case is the CIR's Decision on petitioner's offer of compromise embodied in the CIR's Letter dated 21 June 2017. Undoubtedly, the CTA has jurisdiction to review by appeal the decisions of the CIR over compromise applications as it is a matter arising under the Tax Code, specifically *Section 204(A)* thereof. *h*

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<sup>63</sup> G.R. Nos. 109976 and 112800, 26 April 2005.

**Respondent's claim against petitioner is not only of doubtful validity but is, in fact, void.**

The CIR may compromise payment of any internal revenue tax on either of the following grounds provided in *Section 204(A) of the Tax Code*: (1) when there is reasonable doubt as to the validity of the claim against the taxpayer; or (2) financial position of the taxpayer demonstrates a clear inability to pay the assessed tax.<sup>64</sup>

Records show that petitioner applied for compromise settlement of its income tax and VAT liabilities on the ground of doubtful validity of the assessment.<sup>65</sup> A perusal of the CIR's denial letter shows that the disapproval was due to failure of petitioner to present company records:

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

Reason: The taxpayer mentioned that it can no longer present its company's records to justify its claims since its files were destroyed by Typhoon Sendong. Be it noted that Typhoon Sendong happened in the year 2011, prior to the request for reinvestigation dated Oct. 8, 2014.”

Considering that the ground invoked in the present case is the doubtful validity of the assessment, this Court shall determine whether reasonable doubt exists as to the validity of the claim against petitioner that would warrant the compromise payment of tax liabilities.

Records show that the assessment against petitioner for taxable year 2010 arose from Letter Notice Nos. 098-RLF-10-00-00181<sup>66</sup> and 098-TRS-10-00-00058,<sup>67</sup> where petitioner was informed that respondent found discrepancy resulting from its RELIEF system and TRS. These systems detect tax leaks by matching the data available under the BIR's Integrated Tax System (“ITS”) with data gathered from third-party sources.<sup>68</sup> Through the consolidation and cross-referencing of third-party information, discrepancy reports on sales and purchases can be generated to uncover under declared income and over claimed purchases of goods and services.<sup>69</sup> *h*

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<sup>64</sup> Sec. 204, Tax Code, as amended.

<sup>65</sup> Exhibits “P-46” and “P-47”, Division Records Vol. 2, pp. 547-548.

<sup>66</sup> Exhibit “P-35”, BIR Records, p. 9.

<sup>67</sup> Exhibit “P-36”, *id.*, p. 10.

<sup>68</sup> Revenue Memorandum Order No. 30-03 (SUBJECT: Guidelines and Procedures in the Extraction, Analysis, Disclosure/Dissemination, Utilization, and Monitoring of RELIEF data for Audit and Enforcement Purposes), 18 September 2003.

<sup>69</sup> *Ibid.*

Pursuant to the resulting discrepancies in the Letter Notices, respondent eventually assessed petitioner for deficiency income tax and VAT in the amount of ₱3,220,514.10 and ₱3,179,424.77, respectively.<sup>70</sup>

Of note is that there was no LOA issued in this case.

The Supreme Court categorically pronounced in *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*,<sup>71</sup> that the absence of a LOA violates the taxpayer's right to due process and renders the entire assessment void:

“An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives. Section 6 of the NIRC clearly provides as follows:

...

Based on the afore-quoted provision, **it is clear that unless authorized by the CIR himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken.** The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. **These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority.**

...

In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, the Court said that:

Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. **In the absence of such an authority, the assessment or examination is a nullity.** (Emphasis and underlining ours).

...”

(Emphasis supplied.)

In the aforementioned *Medicard Case*, the Supreme Court further held that a Letter Notice cannot be converted into an LOA as these serve different purposes and that a LOA is nonetheless required in RELIEF system and ITS: *A*

<sup>70</sup> Pre-Trial Order dated 21 February 2019, Division Records Vol. 1, pp. 419-430; Exhibit “P-41”, Division Records Vol. 2, pp. 537-543.

<sup>71</sup> G.R. No. 222743, 5 April 2017.

**“The Court cannot convert the LN into the LOA required under the law even if the same was issued by the CIR himself.** Under RR No. 12-2002, LN is issued to a person found to have underreported sales/receipts per data generated under the RELIEF system. Upon receipt of the LN, a taxpayer may avail of the BIR's Voluntary Assessment and Abatement Program. If a taxpayer fails or refuses to avail of the said program, the BIR may avail of administrative and criminal remedies, particularly closure, criminal action, or audit and investigation. Since the law specifically requires an LOA and RMO No. 32-2005 requires the conversion of the previously issued LN to an LOA, the absence thereof cannot be simply swept under the rug, as the CIR would have it. In fact Revenue Memorandum Circular No. 40-2003 considers an LN as a notice of audit or investigation only for the purpose of disqualifying the taxpayer from amending his returns.

...

Contrary to the ruling of the CTA *en banc*, an LOA cannot be dispensed with just because none of the financial books or records being physically kept by MEDICARD was examined. To begin with, **Section 6 of the NIRC requires an authority from the CIR or from his duly authorized representatives before an examination "of a taxpayer" may be made.** The requirement of authorization is therefore not dependent on whether the taxpayer may be required to physically open his books and financial records but only on whether a taxpayer is being subject to examination.

The **BIR's RELIEF System has admittedly made the BIR's assessment and collection efforts much easier and faster. The ease by which the BIR's revenue generating objectives is achieved is no excuse however for its non-compliance with the statutory requirement under Section 6 and with its own administrative issuance.** In fact, apart from being a statutory requirement, **an LOA is equally needed even under the BIR's RELIEF System because the rationale of requirement is the same** whether or not the CIR conducts a physical examination of the taxpayer's records: to prevent undue harassment of a taxpayer and level the playing field between the government's vast resources for tax assessment, collection and enforcement, on one hand, and the solitary taxpayer's dual need to prosecute its business while at the same time responding to the BIR exercise of its statutory powers. The balance between these is achieved by ensuring that any examination of the taxpayer by the BIR's revenue officers is properly authorized in the first place by those to whom the discretion to exercise the power of examination is given by the statute.

That the BIR officials herein were not shown to have acted unreasonably is beside the point because the issue of their lack of authority was only brought up during the trial of the case. **What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives. Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void.”**

(Emphasis supplied.) ʘ

More recently, the Supreme Court emphasized the importance of a LOA in *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*, to wit:<sup>72</sup>

“An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers and enables said revenue officer to examine the books of accounts and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. The issuance of an LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives.

...

Pursuant to the above provisions [Sections 6, 10(c), and 13], only the CIR and his duly authorized representatives may issue the LOA. The authorized representatives include the Deputy Commissioners, the Revenue Regional Directors, and such other officials as may be authorized by the CIR.

**Unless authorized by the CIR himself or by his duly authorized representative, an examination of the taxpayer cannot be undertaken.** Unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority. There must be a grant of authority, in the form of a LOA, before any revenue officer can conduct an examination or assessment. The revenue officer so authorized must not go beyond the authority given. In the absence of such an authority, the assessment or examination is a nullity.”  
(Emphasis supplied.)

Based on the foregoing jurisprudential pronouncements, the absence of a LOA is fatal to the validity of respondent’s claim against petitioner. The Letter Notices issued to petitioner are not equivalent to a LOA. Being a void assessment, no valid fruit can be derived therefrom.<sup>73</sup> Accordingly, the assessment could not have attained finality, nor can any tax collection be pursued by petitioner pursuant to such assessment. Considering the utter invalidity, not only doubtful invalidity, of respondent’s assessment, the denial of petitioner’s compromise application is without basis in fact and in law.

**WHEREFORE**, in light of the foregoing considerations, the Petition for Review filed by petitioner Oro Dare Logistics Corporation is hereby **GRANTED**. Accordingly, the CIR’s Notice of Denial, dated 21 June 2017, is hereby **ANNULLED, REVERSED, and SET ASIDE**. The FNBS, dated 24 May 2018, FLD/ANS, dated 24 October 2014, assessing petitioner for alleged deficiency income taxes in the amount of ₱3,220,514.10 and deficiency VAT of ₱3,179,424.77 or a total amount of ₱6,399,938.87 for the taxable year 2010, A

<sup>72</sup> G.R. No. 242670, 10 May 2021.

<sup>73</sup> *Commissioner of Internal Revenue vs. Liquigaz Philippines Corporation, et al.*, G.R. Nos. 215534 and 215557, 18 April 2016; *Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue* G.R. No. 241848, 14 May 2021.



and the PCL, dated 24 February 2015, enforcing collection for the total amount of ₱6,399,938.87, are hereby **CANCELLED** and **SET ASIDE**.

**SO ORDERED.**



**MARIA ROWENA MODESTO-SAN PEDRO**  
Associate Justice

**WE CONCUR:**



**ERLINDA P. UY**  
Associate Justice



**MA. BELEN M. RINGPIS-LIBAN**  
Associate Justice

**ATTESTATION**

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



**ERLINDA P. UY**  
Associate Justice  
Chairperson

## **CERTIFICATION**

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

A handwritten signature in black ink, appearing to read 'Roman G. Del Rosario', with a stylized flourish at the end.

**ROMAN G. DEL ROSARIO**  
Presiding Justice