

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

ARCHIPELAGO MOTOR
CORPORATION,

Petitioner,

CTA EB No. 1258
(CTA Case No.8321)

Present:

- versus -

DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, JJ.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

Promulgated:

AUG 15 2017 3:02 p.m.

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RESOLUTION

UY, J.:

For this Court's resolution are the following:

1) Petitioner's "**MOTION FOR RECONSIDERATION (of the Decision dated October 14, 2016)**" filed on November 21, 2016, without respondent's comment despite due notice; and

2) Petitioner's "**MANIFESTATION WITH MOTION TO WITHDRAW PETITION**" filed on March 6, 2017, without respondent's comment despite due notice.

In the *Motion for Reconsideration*, petitioner seeks to annul and set aside the Court *En Banc*'s Decision promulgated on October 14, 2016, denying the instant *Petition for Review* for lack of merit, the

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dispositive portion of which reads:

"WHEREFORE, in light of the foregoing considerations, the Petition for Review is **DENIED** for lack of merit. Accordingly, the Decision dated August 1, 2014 and Resolution dated December 2, 2014, both rendered by the Court in Division in CTA Case No. 8321 are **AFFIRMED.**

SO ORDERED."

In support of the *Motion for Reconsideration*, petitioner maintains its position that there was no false or fraudulent return on which the assessment is based was filed by petitioner, and that the three-year period to assess should be applied instead of the extraordinary prescriptive period of ten (10) years. It further reiterated that the waiver of defense of prescription signed by respondent's representative is not legally valid, hence respondent's right to assess was not extended.

Anent the *Manifestation With Motion To Withdraw Petition*, petitioner prays for the following:

1. To declare that the subject assessment has been fully satisfied;
2. To allow petitioner to withdraw the instant *Petition for Review*; and
3. To declare that the case subject of the instant petition closed and terminated.

THE COURT *EN BANC*'S RULING

For an orderly discussion of the Court *En Banc*'s ruling, We shall first address petitioner's *Motion to Withdraw Petition*.

In the said *Motion to Withdraw Petition*, petitioner alleges the following:

1. While the petition was pending, petitioner continued exerting efforts to have the subject assessment settled through its offer of settlement under Revenue Regulations No. 30-2002;



2. To support its offer, petitioner paid the aggregate amount of ₱2,512,594.68, representing the basic value-added tax (VAT) which respondent is collecting from petitioner under the subject assessment;
3. Respondent accepted petitioner's offer of compromise for the settlement of the latter's deficiency VAT under the subject assessment, as evidenced by Certificate of Availment No. CAV 200100001302 dated February 3, 2017¹.

We deny petitioner's *Motion to Withdraw Petition*.

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

"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

¹ Annex "C" of petitioner's *Manifestation With Motion To Withdraw Petition*, EB Docket, p. 138.



Evaluation Board which shall be composed of the Commissioner and the four (4) Deputy Commissioners. *(Emphases and underscoring supplied)*

Relative to the foregoing provisions, Section 6 of Revenue Regulations No. 30-2002², as amended by RR No. 9-2013, reads as follows:

“SEC. 6. APPROVAL OF OFFER OF COMPROMISE. – Except for offers of compromise where the approval is delegated to the REB³ 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 NEB⁴ 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.**

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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. 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 liabilities.”
(Emphases and underscoring supplied)

Based on the foregoing provisions, it is clear that respondent is vested with power to grant a compromise of the payment of any internal revenue tax. However, where the basic tax involved exceeds ₱1,000,000.00 or where the settlement offered is less than the prescribed minimum rates, the compromise settlement is still subject to the approval by a majority of all the members of the National Evaluation Board (NEB) [composed of respondent and the four (4)

² SUBJECT: Revenue Regulations Implementing Sections 7(c), 204(A) and 290 of the National Internal Revenue Code of 1997 on Compromise Settlement of Internal Revenue Tax Liabilities Superseding Revenue Regulations Nos. 6-2000 and 7-2001.

³ Regional Evaluation Board.

⁴ National Evaluation Board.

Deputy Commissioners], with respondent having concurred with the same.

In this case, there is no showing that petitioner's offer of compromise was ever approved by the NEB, much less, with the concurrence of respondent, considering the fact that the basic VAT involved in this case exceeds ₱1,000,000.00.⁵

The Certificate of Availment No. CAV 200100001302 dated February 3, 2017 issued in favor of petitioner cannot be considered as proof of the required approval of its offer of compromise. It states:

"CERTIFICATE OF AVAILMENT

This is to certify that
ARCHIPELAGO MOTOR CORP. of **2724 Faraday Cor. Aragon Sts, San Isidro, Makati City** with Taxpayer Identification Number **005-341-597-000** has availed of the provisions of ***Revenue Regulations No. 30-2002***, and its implementing Revenue Memorandum Order, and his/her/its offer of compromise for the settlement of **Php 7,256,140.87 representing deficiency Value Added Tax** under Assessment No. **VT-6765-01-05-0272** dated **July 22, 2005** covering the period **2001** has been accepted.

Issued this **3rd** day of **February**, 2017.

CAESAR R. DULAY
Commissioner of Internal Revenue

BY: (Signed)
ELVIRA R. VERA
ACIR, Collection Service
Head, TWG on Compromise"

A cursory reading of this Certificate would reveal that the contents thereof is to the effect that petitioner has availed of the provisions of RR No. 30-2002 and its implementing Revenue Memorandum Order; and that petitioner's offer of compromise for the settlement of its VAT liability for 2001 has been "accepted".

⁵ The actual amount of basic VAT is ₱1,558,808.49 [as stated in the Final Decision on Disputed Assessment dated July 1, 2011 issued by then Commissioner of Internal Revenue, Kim S. Jacinto-Henares, Docket (CTA Case No. 8321), p. 20].



We, however, cannot take that the word “accepted”, as used in the said Certificate, as tantamount to the word “approved”. This is so because the certification was not signed by respondent, but only by an Assistant Commissioner. As already emphasized, the approval of a compromise settlement rests on the NEB, with the concurrence of respondent, not on any other officer or officers of the BIR. Furthermore, the power to compromise cannot be delegated to such an official in accordance with Section 7(c) of the NIRC of 1997, to wit:

“SEC. 7. *Authority of the Commissioner to Delegate Power.* — The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the rank equivalent to a division chief or higher, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner: *Provided, however, That the following powers of the Commissioner shall not be delegated:*

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(c) **The power to compromise or abate, under Section 204(A) and (B) of this Code, any tax liability:**
xxx” (*Emphases and underscoring supplied*)

Thus, the approval of the NEB on the offer of compromise by petitioner on its VAT liability, was not duly proven. Correspondingly, We see no valid basis to grant petitioner’s *Motion to Withdraw Petition*.

Anent petitioner’s *Motion for Reconsideration*, the same must likewise be denied.

A careful perusal of the *Motion for Reconsideration* filed by petitioner shows that the arguments raised therein are mere reiterations of matters which have already been considered, weighed and exhaustively passed upon by the Court *En Banc* in the assailed Decision. Finding no reversible error to reconsider and modify the said Decision, We shall no longer belabor to repeat the disquisitions and rulings made therein.

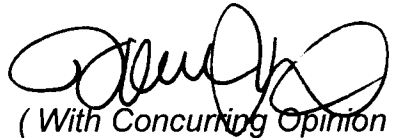
WHEREFORE, premises considered, petitioner’s *Motion for Reconsideration* and *Motion to Withdraw Petition* are **DENIED** for lack of merit.

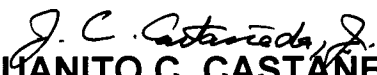


SO ORDERED.


ERLINDA P. UY
Associate Justice

WE CONCUR:


(With Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice


JUANITO C. CASTANEDA, JR.
Associate Justice


LOVELL R. BAUTISTA
Associate Justice


CAESAR A. CASANOVA
Associate Justice


ESPERANZA R. FABON-VICTORINO
Associate Justice


CIELITO N. MINDARO-GRULLA
Associate Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice


CATHERINE T. MANAHAN
Associate Justice

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Promulgated:

AUG 15 2017 3:02 p.m.

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CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* in denying petitioner's Motion for Reconsideration of the Court *En Banc*'s Decision dated October 14, 2016 and its Motion to Withdraw Petition for Review for lack of merit.

I wish, however, to expound on the denial of petitioner's Motion to Withdraw Petition for Review. In support of said Motion, petitioner alleges that on February 3, 2017, respondent accepted petitioner's offer of compromise for the settlement of petitioner's deficiency Value-Added Tax (VAT) assessment for the year 2001 as evidenced by the Certificate of Availment No. CAV 200100001302 dated February 3, 2017. Petitioner further alleges that it paid the total amount of ₱2,512,594.68, representing the basic deficiency VAT in settlement thereof. Thus, petitioner prays that: (i) the subject

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assessment (in the total amount of P7,256,140.87) be declared as fully satisfied; (ii) the Petition for Review be withdrawn; and, (iii) the case be considered closed and terminated.

Records disclose that the Court *En Banc* promulgated the assailed Decision on August 14, 2016. On March 6, 2017, petitioner filed the Motion to Withdraw Petition for Review. I submit that the Motion to Withdraw may no longer be granted after a Decision therein has been rendered. Parenthetically, a decision may not be recalled or set aside *sans* compliance with the appropriate procedure and remedies provided by the rules. On this score, I wish to reiterate the position I have taken in ***Commissioner of Internal Revenue vs. Nippon Express (Phils.) Corporation***¹ relative to the withdrawal of a petition for review, *viz.*:

“In granting Nippon's Motion to Withdraw Petition for Review, the Court in Division recalled and set aside the assailed Decision. I am of the view that a decision rendered by the Court of Tax Appeals (CTA) cannot simply be recalled or set aside by the mere filing of a motion to withdraw the petition for review. **Truth to tell, the withdrawal of a petition for review is not among the remedies available to Nippon after a judgment has been rendered, but before it becomes final and executory.**

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In *Pacific Mills, Inc. and George U. Lim v. Hon. Manuel S. Padolina, et al.*, the Supreme Court elucidated the courses of action that can be taken in the event that new facts occur after a judgment or decision has been rendered by the courts, *viz.*:

‘Petitioners, however, asseverate that the instant case falls under one of the exceptions to the rule on immutability of judgments, claiming that the fact of condonation constitutes a supervening event which, in the higher interest of justice, calls for the modification of our previous judgment. It bears reiteration that the condonation allegedly took place as early as January 12, 1987, while the instant case was still pending with the Court of Appeals. In *Baclayon vs. CA (182 SCRA 762 [1990])*, we stated:

‘[A]ttempts to frustrate or put off enforcement of an executory judgment on the basis of facts or events

¹ Concurring and Dissenting Opinion, CTA EB No. 924, December 18, 2013.

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occurring before the judgment became final cannot meet with success. Facts or events bearing on the substance of the obligation subject of the action should ordinarily be alleged during the issue-formulation stage or otherwise by proper amendment, and proved at the trial; if discovered after the case has been submitted but before the decision is rendered, proved after obtaining a reopening of the case; and if discovered after judgment has been rendered but before it becomes final, substantiated at a new trial which the court in its discretion may grant on the ground of newly discovered evidence, pursuant to Rule 37, Rules of Court. Once the judgment becomes executory, the only other remedy left to attempt a material alteration thereof is that provided for in Rule 38 of the Rules of Court (governing petitions for relief from judgments), or an action to set aside the judgment on account of extrinsic, collateral fraud.

There is no other permissible mode of preventing or delaying execution on equitable grounds predicated on facts occurring before finality of judgment.' (Boldfacing and underscoring supplied)

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By granting Nippon's Motion to Withdraw Petition for Review filed on August 12, 2011, or two (2) days after the promulgation of the assailed Decision on August 10, 2011, the Court in Division has recalled or set aside its own decision (rendered after considering evidentiary facts and applicable laws) in a manner that is contrary to the procedures stated in the RRCTA and the 1997 Rules of Civil Procedure." (Boldfacing supplied)

Truth to tell, in ***Commissioner of Internal Revenue vs. Nippon Express (Phils.) Corporation***,² the appeal by the Commissioner of Internal Revenue questioning the withdrawal of Nippon Express (Phils.) Corporation's Petition for Review was granted by the Supreme Court, viz.:

"Impelled by the BIR's supervening issuance of the July 27, 2011 Tax Credit Certificate, Nippon filed a motion to withdraw the case, proffering that:

'Having arrived at a reasonable settlement of the issues with the [CIR]/BIR, and to avoid incurring further legal

² G.R. No. 212920, September 16, 2015.



and related costs, not to mention the time and resources of [the CTA], [Nippon] most respectfully moves for the withdrawal of its Petition for Review.'

Finding the aforementioned grounds to be justified, the CTA Division allowed the withdrawal of Nippon's appeal thereby ordering the case closed and terminated, **notwithstanding the fact that the said motion was filed after the promulgation of its August 10, 2011 Decision.**

While it is true that the CTA Division has the prerogative to grant a motion to withdraw under the authority of the foregoing legal provisions, the attendant circumstances in this case should have incited it to act otherwise.

First, **it should be pointed out that the August 10, 2011 Decision was rendered by the CTA Division after a full-blown hearing in which the parties had already ventilated their claims.** Thus, the findings contained therein were the results of an exhaustive study of the pleadings and a judicious evaluation of the evidence submitted by the parties, as well as the report of the commissioned certified public accountant. In *Reyes v. Commission on Elections*, the Court only noted, and did not grant, a motion to withdraw the petition filed after it had already acted on said petition, ratiocinating in the following wise:

'It may well be in order to remind petitioner that jurisdiction, once acquired, is not lost upon the instance of the parties, but continues until the case is terminated. When petitioner filed her Petition for Certiorari, jurisdiction vested in the Court and, in fact, the Court exercised such jurisdiction when it acted on the petition. Such jurisdiction cannot be lost by the unilateral withdrawal of the petition by petitioner.'"
(Boldfacing supplied)

I am not unaware that a compromise may be effected even after a judgment has been rendered.³ There is a whale of difference, however, between termination of a case as a consequence of compromise and termination of a case pursuant to a corresponding motion to withdraw. Despite substantial variance between the two (2) concepts, what remains significant is that in compromise - - the parties simply enter into an agreement to put an end to an ongoing litigation under such terms and conditions that are not contrary to law, morals, good customs,

³ Article 2040, Civil Code of the Philippines.

Concurring Opinion

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public policy, and public order.⁴ In contrast, a motion to withdraw a petition is governed by specific provisions of the Rules of Court *vis-à-vis* the stage of the case when the motion is filed. As afore-stated, if a petition has already been decided, its withdrawal cannot result in the modification or recall of the judgment.

Finally, as extensively expounded in the *ponencia*, the compromise entered into by petitioner and respondent fails to comply with the specific requirement of the law, that is, that petitioner's offer of compromise must be approved by the National Evaluation Board (NEB) as the basic tax involved exceeds ₱1,000,000.00. In the absence of an NEB approval, I submit that the Court cannot grant petitioner's Motion to Withdraw Petition for Review on the basis of the compromise *vis-a-vis* petitioner's payment of the offer, for to do so would indirectly stamp an imprimatur of validity and binding effect on the compromise which appears to have been entered into *sans* compliance with the requirements of the law.

All told, I VOTE to DENY petitioner's Motion for Reconsideration (of the Court *En Banc*'s Decision dated October 14, 2016) and its Motion to Withdraw Petition for Review for lack of merit.


ROMAN G. DEL ROSARIO
Presiding Justice

⁴ Article 1306, Civil Code of the Philippines.