

FIRST DIVISION

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

**KEPCO PHILIPPINES CORPORATION, PETITIONER,
COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.**

R E S O L U T I O N

PERALTA, C.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] 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 P159,640,750.79 and for deficiency FWT in the amount of P124,286,821.11.^[6] Kepco filed its protest to the FLD on November 26, 2009.^[7]

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,
- 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 P134,193,534.12.^[22] As proof, 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 (RR) No. 30-2002;^[27] *second*, the CTA did not yet issue any adverse Decision against Kepco, hence, there is no "doubtful 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. 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 P16,661,759.20 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 P343,248,516.65 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 P17,162,425.83 or 5% of the P343,248,516.65 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 the OSG's claim, Kepco paid 40% of the basic tax assessed for TYs 2006, 2007 and 2009 in the amount of P143,891,831.90. 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 P260,848,425.80. 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.

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:

(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 lacking 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.

Kepeco's case falls under paragraph e – the assessment became final because Kepeco failed to appeal the inaction or "deemed denial" of the CIR to the CTA within 30 days after 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 Kepeco 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, Kepeco 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 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 Kepeco 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 Kepeco'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. Kepeco 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 Kepeco did not pay the full amount offered for compromise upon filing of its application, records show that Kepeco paid P143,891,831.90^[46] representing 40% of the basic tax assessed for TYs 2006, 2007