REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 2565** *(CTA Case No.9397)*
	Present:
-*versus*-	**DEL ROSARIO**, *PJ*, **UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO**, **CUI-DAVID**, *and* **FERRER-FLORES**, *JJ.*
SM SYNERGY PROPERTIES HOLDINGS CORPORATION, *Respondent.*	Promulgated: FEB 15 2023 4:30pm

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JUDGMENT BASED ON COMPROMISE AGREEMENT

Before this Court is the parties' *Joint Motion for Approval of Compromise Agreement (Joint Motion)*[1] filed on March 28, 2022, praying that the instant *Joint Motion* be granted, the *Judicial Compromise Agreement*[2] be approved, and that a decision be issued based on the said Compromise Agreement.

To recall, on June 23, 2016, petitioner issued a Final Decision on Disputed Assessment[3] (FDDA), finding respondent liable for Income Tax (IT), Value-Added Tax (VAT), Expanded Withholding Tax (EWT), and Documentary Stamp Tax (DST) in the aggregate amount of Php512,759,896.05 for the taxable year 2009.

[1] *En Banc* docket, pp. 67 to 71.
[2] *Id.*, pp. 72-77.
[3] Exhibit P-46, Division docket, pp. 1189 to 1196.

Believing that the deficiency tax assessments imposed upon it should be declared null and void for having been arbitrarily made and lacking factual and legal basis, respondent sought the reversal and cancellation of the Formal Letter of Demand and Final Assessment Notice (FLD/FAN) and the FDDA before this Court's Third Division (Court in Division) *via* a *Petition for Review*[4] filed on July 27, 2016, entitled "*SM Synergy Properties Holdings Corporation vs. Commissioner of Internal Revenue,*" and docketed as CTA Case No. 9397.

After the trial, or on May 28, 2021, the Court in Division rendered the assailed Decision[5] ordering the cancellation and setting aside of the assessments mentioned above issued against respondent for IT, VAT, EWT, and DST in the aggregate amount of Php512,759,896.05, for the taxable year 2009.

Unable to agree, petitioner moved for reconsideration on June 25, 2021, but the Court in Division denied the same in the equally assailed Resolution[6] promulgated on December 11, 2021.

Thus, on February 2, 2022, and within the extension period granted, petitioner filed the present *Petition for Review*[7] before the Court *En Banc*, praying that the May 28, 2021 Decision and the December 11, 2021 Resolution be set aside; and a new one be issued ordering respondent to pay the aggregate amount of Php512,759,896.05 as deficiency IT, VAT, EWT and DST for the taxable year 2009, plus surcharge and deficiency and delinquency interests.

On March 24, 2022, the Court *En Banc* issued a Resolution[8] ordering respondent to file its *Comment* to the Petition for Review within ten (10) days from notice.

Pending the filing of respondent's *Comment*, the parties filed the instant *Joint Motion*, alleging that they have agreed to amicably settle the above-captioned case to avoid and put an end to protracted, expensive, and mutually prejudicial litigation. Attached to the parties' *Joint Motion* are the following:

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[4] Division docket, pp. 10 to 46.
[5] *En Banc* docket, pp. 27 to 55.
[6] *En Banc* docket, pp. 56 to 61.
[7] *En Banc* docket, pp. 7 to 19.
[8] *En Banc* docket, pp. 64 to 66.

1. Original copy of the parties' *Judicial Compromise Agreement*;[9]

2. Sally S. So's authority to sign and execute the *Judicial Compromise Agreement*;[10]

3. BIR Form No. 0605, showing that respondent paid the compromise amount;[11] and

4. BIR Electronic Filing and Payment System (*e*FPS) payment confirmations.[12]

However, upon perusal of the parties' *Joint Motion*, as well as its attachments, the Court *En Banc* noted that while the *Judicial Compromise Agreement* was signed by the Commissioner of Internal Revenue (CIR), there is nothing in the record that would indicate that the same was approved by a majority of the members of the National Evaluation Board (NEB), as required under Section 204 of the National Internal Revenue Code (NIRC) of 1997, as amended, and its implementing rules and regulations. Thus, on May 5, 2022, the Court *En Banc* issued a Resolution[13] requiring the parties to submit within thirty (30) days from notice the following:

1. The Certificate of Availment; and

2. The NEB approval of the Compromise Agreement.

On July 12, 2022, petitioner filed his *Compliance with Submission and Offer of Profuse Apologies*,[14] which the Court *En Banc* admitted and deemed sufficient compliance with the Court *En Banc's* directive as stated in the Resolution of May 5, 2022.

Thus, on August 1, 2022, the parties' *Joint Motion* was submitted for resolution of the Court.[15]

However, on October 13, 2022, the Court *En Banc* issued a Resolution[16] directing the parties to submit, within fifteen (15) days from notice, the "proposal" containing the legal and/or factual basis as to why the prescribed minimum percentage of

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[9] See Note 2, *Supra*.
[10] *En Banc* docket, p. 78.
[11] *En Banc* docket, pp. 79, 82, 85, and 88.
[12] *En Banc* docket, pp. 81, 84, 87, and 90.
[13] *En Banc* docket, pp. 139 to 142.
[14] *En Banc* docket, pp. 147 to 149.
[15] *En Banc* docket, pp. 154 to 155.
[16] *En Banc* docket, pp. 157 to 169.

compromise settlement for doubtful validity was not applied, as well as the legal and/or factual basis as to why the compromise agreement also covers withholding tax. For the Court *En Banc*, there is a need to require the parties to submit the "proposal" submitted by respondent to petitioner to verify whether the said proposal contains the reason, legal and/or factual, why respondent should be entitled to such a lower rate of compromise settlement. Hence, the resolution of the parties' *Joint Motion* was deferred pending compliance.

In compliance thereof, respondent filed its *Submission*[17] on November 4, 2022, submitting the attached *Offer of Compromise*[18] dated September 27, 2021 with stamped "RECEIVED" by petitioner on October 1, 2021.

Likewise on November 4, 2022, petitioner filed his *Manifestation and Compliance (Re: Resolution dated 13 October 2022)*,[19] stating that considering the trend of cases decided by the courts on issues involving Letters of Authority (LOAs) and Memorandum of Assignments (MOAs) issued to Revenue Officers of the Bureau of Internal Revenue (BIR), he deemed it best to compromise the case wherein the Government will benefit rather than have nothing. Hence, he prays that the instant *Manifestation* be noted and considered for the approval of the Judicial Compromise Agreement executed by the parties and be regarded as substantial compliance with the Resolution dated October 13, 2022 issued by the Court.

Respondent's *Submission* and petitioner's *Manifestation and Compliance (Re: Resolution dated 13 October 2022)* are **NOTED**.

Considering the submission of the aforesaid document, the Court shall now resolve the parties' *Joint Motion for Approval of Compromise Agreement*. The subject *Judicial Compromise Agreement* reads as follows:

<u>JUDICIAL COMPROMISE AGREEMENT</u>

KNOWN ALL MEN BY THESE PRESENTS:

This **JUDICIAL COMPROMISE AGREEMENT ("Agreement")** made and executed, by and between:

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[17] *En Banc* docket, pp. 170 to 172.
[18] *En Banc* docket, pp. 173 to 182.
[19] *En Banc* docket, pp. 184 to 190.

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SM Synergy Properties Holdings Corporation ("TAXPAYER"), a limited partnership duly organized and existing under the laws of the Republic of the Philippines, with principal office at Chateau Elysee, Dona Soledad Avenue, Bicutan Extension, Paranaque City, represented by its Authorized Representative, **SALLY S. SO**;

-and-

The **BUREAU OF INTERNAL REVENUE ("BIR")**, with principal office at Bureau of Internal Revenue, National Office Building, Agham Road, Diliman, Quezon City, represented by the **Commissioner, HON. CAESAR R. DULAY** (collectively, the "**PARTIES**");

- Witnesseth That –

WHEREAS, the **BIR** issued to the **TAXPAYER** a Formal Letter of Demand ("**FLD**") dated February 11, 2015 for the taxable year 2009 assessing the **TAXPAYER** deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT) and documentary stamp tax (DST);

WHEREAS, the **TAXPAYER** then filed with the BIR its Protest dated March 18, 2015, disputing the **FLD** dated February 11, 2015;

WHEREAS, the **BIR** issued to the **TAXPAYER** a Final Decision on Disputed Assessment ("**FDDA**") dated June 23, 2016, which denied the protest filed by the **TAXPAYER**, for taxable year 2009 assessing the **TAXPAYER** basic deficiency income tax, value-added (VAT), expanded withholding tax (EWT) and documentary stamp tax (DST) in the aggregate amount of **Php512,759,896.05**;

WHEREAS, the **TAXPAYER** instituted an action against the **BIR** entitled "**SM Synergy Properties Holdings Corporation vs. Commissioner of Internal Revenue**", docketed as CTA Case No. 9397, pending before the Honorable Third Division of the Court of Tax Appeals ("**CTA**"), seeking the reversal and the cancellation of the **FDDA**;

WHEREAS, the **TAXPAYER** has submitted to the **BIR** a **Proposal for Amicable Settlement** dated October 01, 2021, for the alleged deficiency income tax assessment contained in the **FDDA**;

WHEREAS, the **BIR** has evaluated the **TAXPAYER'S** proposal for amicable settlement and believes that a judicial compromise to allow immediate tax collection and also put an end to litigation as provided in the Civil Code of the Philippines, serves the interest of the Government;

WHEREAS, the **PARTIES** have agreed to enter into an amicable settlement pursuant to the provisions of the Civil Code of the Philippines, jurisprudence, relevant decisions of the Honorable CTA, and relevant laws on judicial compromise without contravening law, morals, public order and public policy;

WHEREAS, the Honorable CTA has issued rulings allowing judicial compromises similar to the instant case;

WHEREAS, the **PARTIES**, for the purpose of avoiding and putting an end to a protracted, expensive and mutually prejudicial litigation, have agreed to amicably settle the above-mentioned case, upon terms and conditions hereinafter set forth;

NOW, THEREFORE, for and in consideration of the foregoing premises, the **PARTIES** hereto have agreed as follows:

Section 1. Judicial Compromise Amount. In order to settle the above-mentioned case, the **TAXPAYER** has offered and the **BIR** has accepted the total payment of **Php23,000,000.00 ("Judicial Compromise Amount")**.

Section 2. Submission to the Honorable CTA. This Agreement fully signed by the **PARTIES** shall be submitted for the approval of the Honorable Court of Tax Appeals in CTA Case No. 9397. The **PARTIES** undertake to perform any and all acts, and submit any and all documents required by the Honorable CTA to be able to render a **Judgment by Compromise Agreement** in the said case.

Section 3. Effectivity of the Agreement. This Agreement shall take effect and bind the **PARTIES** upon approval by the Honorable CTA. This **Agreement** shall thereafter remain in force and effect until completion and fulfillment of the covenants and undertaking of the **PARTIES** hereto.

Section 4. Deliverables of the PARTIES upon approval of this Agreement by the Honorable CTA. Upon final approval by the Honorable CTA of this Agreement the **BIR** undertakes to execute and deliver to the **TAXPAYER** any and all documents as may be required to effectively and fully implement the provisions of this Agreement, withdrawing and cancelling the **FDDA** dated June 23, 2016.

Section 5. Authority to Enter Compromise Agreement. The **BIR**, through Commissioner Caesar R. Dulay warrants that he has the necessary authority and capacity under the law to enter, sign, and execute this Agreement, and to deliver its implementing documents upon its approval of the Honorable CTA.

The **TAXPAYER** warrants that, **SALLY S. SO**, is duly authorized by the Board of Directors of the **TAXPAYER** and has full legal capacity to enter, sign, and execute this Agreement, and to deliver payment of the above-agreed additional amount.

Section 6. Full and Final Settlement. This Agreement is executed by the **PARTIES** for the purpose of amicably settling and ending CTA Case No. 9397. Upon approval by the court, the BIR recognizes the full satisfaction of the supposed tax liability of the **TAXPAYER** in connection with CTA Case No. 9397 and acknowledges that the **TAXPAYER** no longer has any tax liability whatsoever based upon, arising from or in connection with the particular subject of CTA Case No. 9397.

Section 7. Disapproval of this Agreement by the Honorable CTA. In the event that this **Agreement** is disapproved by the Honorable CTA, the **PARTIES** agree to a curing period of sixty (60) days from receipt of the Order/Resolution disapproving this Agreement. During such curing period, the **PARTIES** mutually agree to perform any and all acts necessary to rectify or correct the deficiency, defect or imperfection which caused its disapproval, and re-submit the rectified or corrected Agreement for approval of the Honorable CTA. However, in case the deficiency, defect or imperfection is not or cannot be rectified or corrected within the said curing period, or still not approved by the Honorable CTA after it is rectified or corrected by the parties:

1. The amount already paid by the **TAXPAYER** to the BIR shall be deemed a tax credit which may be applied against internal revenue taxes for which the **TAXPAYER** may be directly liable, as allowed under existing rules and regulations; and

2. The proceedings of CTA Case No. 9397 shall continue and the discussions pursuant to the disapproved Agreement cannot be used by the **PARTIES** in said proceedings unless consent of the other party be obtained.

Section 8. Admission of Liability. The execution of this **Agreement** shall not constitute or be interpreted in any way as an admission or acknowledgment of error or liability by the **PARTIES**.

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Section 9. Non-Performance. The **PARTIES** agree that the failure of any **PARTY** to comply with any of the terms and conditions of this Agreement shall entitle the aggrieved **PARTY** to file an appropriate motion with the Honorable CTA for the immediate implementation and execution of the terms and conditions of this Agreement or the judgment or order of the Honorable CTA approving the same.

Section 10. Signatures and Counterparts. This Agreement may be signed in counterparts, each of which when executed and delivered shall constitute a duplicate original, but all of which shall be taken together as a single instrument. Until and unless each party has received a counterpart hereof signed by the other party hereto, the Agreement shall have no effect and no party shall have any right or obligation hereunder.

IN WITNESS WHEREOF, the **PARTIES** hereto have mutually and voluntarily agreed to the foregoing stipulations and have hereunto signed these presents at the date and place indicated above.

SM SYNERGY PROPERTIES HOLDINGS CORPORATION	**BUREAU OF INTERNAL REVENUE**
By:	By:
(Sgd) **SALLY S. SO** *Authorized Representative*	*(Sgd)* **CAESAR R. DULAY** *Commissioner*

Witnesses:

(Sgd)	*(Sgd)*

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Section 204(A) of the NIRC of 1997, as amended, provides:

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

Based on the above-cited provision, the requisites for a valid compromise agreement are:

1. The application for compromise is based on either the doubtful validity of BIR's assessment or taxpayer's financial incapacity to pay such assessment;

2. In case the basis of the compromise offer is doubtful validity, the minimum payment of compromise settlement shall be at the rate equivalent to forty percent (40%) of the basic assessed tax, while if the ground is financial incapacity, the minimum payment should be at the rate equivalent to ten percent (10%) of the basic assessed tax; and

3. The approval of the NEB which is composed of the CIR and his four (4) Deputy Commissioners if the subject assessment exceeds One Million Pesos (Php1,000,000.00) or where the settlement offered is less than the prescribed minimum rates.

Implementing the foregoing section of the NIRC, Revenue Regulations (RR) No. 30-2002, as amended by RR No. 8-2004, or the "*Revenue Regulation Implementing Sections 7(c), 204(A) and 290 of the National Internal Revenue Code of 1997 on Compromise Settlement of Internal Revenue Tax Liabilities Superseding Revenue Regulations Nos. 6-2000 and 7-2001*", provides for those cases that can be compromised, as follows:

> SEC. 2. *Cases which may be Compromised.* — The following cases may, upon taxpayer's compliance with the basis set forth under Section 3 of these Regulations, be the subject matter of compromise settlement, viz.:
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> 1. Delinquent accounts;
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> 2. Cases under administrative protest after issuance of the Final Assessment Notice to the taxpayer which are still pending in the Regional Offices, Revenue District Offices, Legal Service, Large Taxpayer Service (LTS), Collection Service, Enforcement Service and other offices in the National Office;
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> 3. **Civil tax cases being disputed before the courts**;
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> 4. Collection cases filed in courts;
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> 5. Criminal violations, other than those already filed in court or those involving criminal tax fraud.
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> EXCEPTIONS:
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> 1. **Withholding tax cases**, **<u>unless the applicant-taxpayer invokes provisions of law that cast doubt on the taxpayer's obligation to withhold</u>**;
>
> xxx xxx xxx
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> *(Emphasis and underscoring supplied)*

Respondent sought to amicably settle the alleged deficiency IT, VAT, EWT, and DST for taxable year 2009.

Generally, withholding taxes may not be compromised, unless the taxpayer invokes provisions of law that cast doubt

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on the taxpayer's obligation to withhold. Considering that one of the taxes sought to be compromised is EWT, the Court *En Banc* finds it necessary to determine whether respondent has invoked provisions of law that cast doubt on its obligation to withhold EWT, which would make the said deficiency assessment appropriate subject to a compromise.

A perusal of the undated Preliminary Assessment Notice[20] (PAN) and the Formal Letter of Demand[21] (FLD) dated February 11, 2015, shows that the assessment for deficiency EWT arose from respondent's alleged failure to withhold EWT in some of its income payments in violation of various provisions of RR No. 2-98, as amended.

In its *Petition for Review*[22] filed before the Court in Division, respondent, citing the statute of limitations on assessment provided under the NIRC, argues that petitioner failed to timely assess respondent with the alleged deficiency EWT for taxable year 2009 considering the petitioner issued the FAN belatedly on February 11, 2015. Further, in its *Offer of Compromise*[23] dated September 27, 2021, respondent submits that based on the Independent Certified Public Accountant's verification of its books and supporting documents, the following were found:

a. Construction-in-Progress (CIP) not subject to EWT amounts to Php1,076,315,376.32 instead of Php655,107,233.87 recognized by the BIR in its comparison of Expense per ITR/AFS against income payments per *Alphalist*. These exempt transactions are as follows:

Inventory Accounts Adjustments	Php 192,739,292.76
POC Adjustments	95,286,529.58
Profit Center Adjustments	6,846,610.70
Reversal	688,846,948.67
Sales cancellation adjustments	37,163,390.33
Unallocated Input VAT	25,680,699.02
Other Adjustments	688,294.53
Reimbursement of Employees	25,000.00
GR/IR Clearing	3,658,573.83
Capitalized Borrowing Cost	19,942,446.25
Permits and Clearance	5,437,590.65
Total	**Php 1,076,315,376.32**

[20] Exhibit P-41, Division docket, pp. 1085 to 1089.
[21] Exhibit P-43, Division docket, pp. 1137 to 1147.
[22] See Note 4, *Supra*.
[23] See Note 18, *Supra*.

b. Medical Expense in the amount of Php10,689.72 was assessed with 1% EWT. These expenses pertain to payment to HMOs which were subjected by SM Synergy to 2% EWT.

c. Purchase of goods subject to 1% EWT was assessed by the BIR at different rates as follows:

Account	**Amount**	**Rate**	**FDDA**
Stationaries Printing and Supplier	Php37,746.10	1%	Not part of FDDA
Marketing Expenses	19,121.86	1%	2% or 5%
Repairs and Maintenance (Common Areas)	120,633.93	1%	2%
Repairs and Maintenance (Others)	62,234.38	1%	2%

d. EWT in the amount of Php94,676.77 pertains to adjustments in the books that were not properly effected in the EWT Returns which resulted to an over-remittance of EWT.

e. Janitorial and Messengerial Services includes salaries to Security Guards in the amount of Php1,788,053.86 which is exempted from EWT.

f. EWT in the amount of Php14,306.67 was over remitted on behalf of All Around Services and Merchandising Corporation.

g. Marketing Expense in the amount of Php29,411.76 was given to employees and was subjected to WTC.

h. Selling Expense in the amount of Php71,000.00 pertains to commissions given to agents and were subjected to 10%.

i. CIP subjected by SM Synergy to 2% amount to Php213,877,949.51 while BIR's FDDA only provides Php208,089,045.31 resulting to a discrepancy of Php4,018,904.20.

j. Representation & Entertainment amounting to Php23,381.42 pertains to reimbursement to employees for casual purchases incurred in the name of SM Synergy.

k. Additions to PPE in the amount of Php3,312,500.00 actually pertains to reclassification for CIP. This was properly subjected to EWT.

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l. Professional Fees in the amount of Php105,000.00 was assessed with 10% EWT. However, this pertains to services rendered by a contractor, Core Application Services, subjected by SM Synergy to 2% EWT.

m. Income Payments in the amount of Php1,692,333.59 subjected to 2% EWT was not considered by the BIR in the computation of the assessment.

n. Sales Commission to unlicensed brokers was assessed with 15% EWT instead of 10%. The application of 15% EWT on real estate service practitioners pursuant to RR No. 10-2013 only took effect on June 1, 2013.

o. Professional Fees in the amount of Php80,000.00 and Php107,550.00 were income payments made to Sycip Gorres Velayo & Co. and Andres Padernal & Paras, respectively. These were identified as general professional partnerships, hence, income payments made were exempt from EWT.

Also, respondent asserts that it has already paid basic deficiency tax amounting to Php802,247.84, plus corresponding interest and compromise penalty in the amount of Php1,370,203.03, for a total amount of Php2,172,450.87, during the pendency of the assessment.

The foregoing findings/explanations and assertion of respondent, as well as its invocation of prescription, certainly cast doubt as to respondent's obligation to withhold. Moreover, respondent's invocation of the assailed Decision dated May 28, 2021 (declaring as null and void the assessment issued against respondent due to lack of authority of the Revenue Officer who conducted the examination and assessment of respondent's books of accounts for the taxable year 2009) in its *Offer of Compromise,* definitely cast doubt as to the imposition of the alleged deficiency EWT.

In view thereof, the Court *En Banc* finds that respondent sufficiently invoked provisions of the law that cast doubt on its obligation to withhold EWT on the alleged income payments.

The Court will now proceed to determine whether the requisites for a valid compromise agreement are complied with.

Based on respondent's letter-application for compromise, the offer of compromise was based on doubtful validity of the assessments. Further, the Court Division, in its Decision dated

May 28, 2021, had already ordered the cancellation and setting aside of the subject FLD/FAN dated February 11, 2015, and the FDDA dated June 23, 2016, due to the lack of authority of the revenue officers who conducted the examination and assessment.

Thus, the first requisite under Section 204(A) of the NIRC of 1997, as amended, pertaining to the ground of doubtful validity is complied with.

Moving on to the second requisite, that is, the amount of compromise payment. Records reveal that the basic deficiency tax assessments have an aggregate amount of Php227,567,108.88 and respondent's settlement offer is only Php23,000,000.00 or 10.107% of the basic tax assessed. Note that the settlement offer is *less* than the prescribed minimum rate of 40% for cases grounded on doubtful validity.

Relevantly, Section 4(2) of RR No. 30-2002, as amended, states:

> For cases of "doubtful validity" — A minimum compromise rate equivalent to forty percent (40%) of the basic assessed tax.
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> **The taxpayer may, nevertheless, request for a compromise rate lower than forty percent (40%): Provided, however, that he shall be required to submit his request in writing stating therein the reasons, legal and/or factual, why he should be entitled to such lower rate**: Provided, further, that for applications of compromise settlement based on doubtful validity of the assessment involving an offer lower than the minimum forty percent (40%) compromise rate, the same shall be subject to the prior approval by the NEB. *(Emphasis supplied)*

In compliance with the above-quoted provision, respondent submitted proof of its prior written offer of Php23,000,000.00 with the aim of putting an end to protracted, expensive, and mutually prejudicial litigation. Respondent likewise cited the May 28, 2021 Decision of the Court in Division to justify the use of a lower rate of 10.107%.

Thus, considering that respondent made a prior written offer of compromise of Php23,000,000.00 (which is equivalent to a rate lower than 40%), coupled with the fact that such *Judicial Compromise Agreement* was arrived at only after the promulgation of the assailed Decision declaring the deficiency

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tax assessments null and void for lack of authority of the Revenue Officers who conducted the audit/examination of respondent's books of accounts and other accounting records for the taxable year 2009, the Court *En Banc* deems the same substantial compliance with the requirements of the above-cited Section 4(2) of RR No. 30-2002, as amended.

As to the third requirement of having the same approved by the NEB, records show that the parties submitted certified true copies of the Certificate of Availment and its signature page showing the unanimous approval of the *Judicial Compromise Agreement* by the members of the NEB.

Thus, considering the faithful observance by the parties of all the requisites under Section 204(A) of the NIRC of 1997, as amended, the Court *En Banc* hereby grants the parties' *Joint Motion.*

The parties are reminded that a compromise agreement, once approved by the courts, becomes more than a mere contract; it has the force and effect of a judgment that is subject to execution and attains the effect and authority of *res judicata*, as discussed by the Supreme Court in the case of *Viesca vs. Gilinsky*,[24] to wit:

> A compromise agreement has been described as a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced. A compromise agreement that is intended to resolve a matter already under litigation is normally called a judicial compromise. **Once it is stamped with judicial *imprimatur*, it becomes more than a mere contract binding upon the parties. Having the sanction of the court and entered as its determination of the controversy, it has the force and effect of any other judgment. Such agreement has the force of law and is conclusive between the parties. It transcends its identity as a mere contract binding only upon the parties thereto, for it becomes a judgment that is subject to execution in accordance with the Rules. Thus, a compromise agreement that has been made and duly approved by the court attains the effect and authority of res judicata**, although no execution may be issued unless the agreement receives the approval of the court where the litigation is pending and compliance with the terms of the agreement is decreed. (*Boldfacing supplied*)

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[24] G.R. No. 171698, July 4, 2007.

WHEREFORE, premises considered, the parties' *Joint Motion for Approval of Compromise Agreement* is **GRANTED**. The *Judicial Compromise Agreement* entered into by the parties is **APPROVED** and this *Judgment on Compromise Agreement* is rendered in accordance therewith. The parties are hereby enjoined to faithfully comply with all the terms and conditions of the aforesaid Compromise Agreement.

Accordingly, this case is now deemed **CLOSED** and **TERMINATED**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Judgment Based on Compromise Agreement were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice