REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

SURPLUS MARKETING CORPORATION,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA *EB* NO. 2444
(CTA Case No. 9290)

x- -x

COMMISIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

SURPLUS MARKETING CORPORATION,
Respondent.

CTA *EB* NO. 2539
(CTA Case No. 9290)

Present:

DEL ROSARIO, *P.J.,*
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID, *and*
FERRER-FLORES, *JJ.*

Promulgated:

DEC 09 2022 4:24pm

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JUDGMENT BY COMPROMISE AGREEMENT

On July 7, 2021, the Court referred the parties to mediation, pursuant to Section II of the *Interim Guidelines for Implementing Mediation in the Court of Tax Appeals.*[1]

On October 20, 2021, the parties filed their *Joint Manifestation with Motion (To the Resolution dated July 7, 2021)* stating that: (i) on March 5, 2021, petitioner submitted its

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[1] EB Docket, CTA EB No. 2444, pp. 135-136.

Offer of Compromise to respondent for the payment of 100% of the basic tax assessed as found by the CTA Third Division in the Amended Decision dated February 3, 2021, or the total amount of Php25,413,456.18; (ii) on July 13, 2021, petitioner was informed of the acceptance of its offer of compromise; (iii) petitioner paid the compromise amounts on August 3, 2021; and, (iv) the Judicial Compromise Agreement was executed by petitioner on August 23, 2021 and the same was signed by respondent on October 4, 2021. The parties also submitted therewith the following:

1. original Judicial Compromise Agreement;[2]

2. Photocopy of Revised Offer of Compromise;[3]

3. Printouts of eFPS Payment Details, for the amounts paid: Php4,926,636.87 for income tax, Php19,597,339.02 for value-added tax (VAT), Php563,347.80 for withholding tax on compensation (WTC), and Php298,468.39 for expanded withholding tax (EWT); [4] and

4. BIR Form No. 0605 in the amount of Php27,664.10 for documentary stamp tax (DST).[5]

Upon order of the Court, [6] the parties submitted the original Secretary's Certificate[7] showing the authority of Ms. Vicky Cua to sign the compromise agreement, and, the certified true copy of the Certificate of Availment,[8] with proof of approval by the National Evaluation Board (NEB).

In view of the submission of the foregoing documents, we now proceed to analyze the Judicial Compromise Agreement, which partly states:

> This **JUDICIAL COMPROMISE AGREEMENT ("Agreement")**, made and executed on July 14, 2021 in Quezon City, Philippines, by and between:

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[2] EB Docket, pp. 142-149.
[3] EB Docket, pp. 150-168.
[4] EB Docket, pp. 169-172.
[5] EB Docket, p. 173.
[6] Resolution dated November 26, 2021, EB Docket, pp. 179-180.
[7] EB Docket, p. 185.
[8] EB Docket, pp. 199-200.

SURPLUS MARKETING CORPORATION ("TAXPAYER"), with office address at SM Corporate Office Building D, J.W. Diokno Blvd., CBP-1A, Pasay City, 1300, Philippines, represented herein by its president, **MS. VICKY CUA**;

- 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**")

- Withnesseth That -

WHEREAS, the **TAXPAYER** is a domestic corporation duly organized and existing under the laws of the Philippines which is primarily engaged in the business of trading, such as, but not limited to garments on a wholesale and retail basis.

WHEREAS, the **BIR** through Nestor S. Valeroso, Assistant Commissioner for Large Taxpayer Service; issued on February 5, 2015 a Formal Letter of Demand/Assessment Notice ("Assessment Notice") against Petitioner for alleged deficiency taxes, penalties and interests for taxable year 2010; where the assessments therein were administratively protested but nevertheless sustained by Assistant Commissioner Valeroso on October 16, 2015 through a Final Decision on Disputed Assessment (the "FDDA"), which found **TAXPAYER** liable for alleged deficiency income tax, improperly accumulated earning tax, value added tax, expanded withholding tax, withholding tax on compensation and documentary stamp tax plus penalties and interests, in the total amount of P401,137,002.24, as follows:

xxx xxx xxx

WHEREAS, TAXPAYER filed its Motion for Reconsideration on the FDDA on November 16, 2015. However, on February 12, 2016, then BIR Commissioner Kim S. Jacinto-Henares rendered a denial of the motion for reconsideration and reiterated its assessment in the FDDA.

WHEREAS, the **TAXPAYER** instituted an action against the **BIR** entitled "***Surplus Marketing Corporation***

vs. Commissioner of Internal Revenue", docketed as CTA Case No. 9290 before the Honorable Court of Tax Appeals ("**CTA**"), seeking review of the denial by the Commissioner Henares of the Motion for Reconsideration.

WHEREAS, after trial, the Honorable Court through the Third Division rendered a Decision on June 30, 2020, partially granting the Petition but likewise sustaining some portions of the assessments.

WHEREAS, upon motions for partial reconsideration filed by the **PARTIES**, the Honorable Third Division rendered an Amended Decision on February 3, 2021 where the remaining tax liability of **TAXPAYER** as of December 31, 2017 was determined as follows:

	Basic Tax	25% Surcharge	20% Deficiency Interest (04-16-11 to 09-30-2015)	20% Delinquency Interest (10-1-15 to 12-31-17)	**TOTAL**
Income Tax	4,926,636.87	1,231,659.22	6,619,240.33	4,760,243.57	17,537,779.99
Value-Added Tax	19,597,339.02	4,899,334.76	27,028,220.44	19,250,217.89	70,775,112.11
Expanded Withholding Tax	298,468.39	74,617.10	413,276.50	293,919.24	1,080,281.23
Withholding Tax on Compensation	563,347.80	140,836.95	780,352.46	554,900.65	2,039,437.86
Documentary Stamp Tax	27,664.10	6,916.03	38,305.30	27,242.45	100,127.88
Total	25,413,456.18	6,353,364.04	34,879,395.03	24,886,523.80	91,532,739.07

WHEREAS, the **TAXPAYER** has submitted to the BIR a **Proposal for Amicable Settlement** dated March 3, 2021 for the alleged deficiency tax assessments contained in the FDDA which eventually was reduced in the Amended Decision.

WHEREAS, subsequent meetings and discussions pertinent to the proposal for settlement were held between the **TAXPAYER** and the **BIR** through the Office of the Commissioner.

WHEREAS, the **BIR** has evaluated the **TAXPAYER'S** proposal for amicable settlement and submits that a judicial compromise be approved 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 **P25,413,456.00** ("**Judicial Compromise Amount**"), representing 100% of the basic assessed tax as found by the CTA-Third Division in its Amended Decision.

Section 2. Submission to the Honorable CTA. This Agreement fully signed by the **PARTIES** shall be submitted for the approval of the Honorable CTA in CTA Case No. 9290/EB No. 2444. 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 all the assessments per FDDA dated October 16, 2015 pertaining to the period January 1- December 31, 2010.

Section 5. Authority to Enter Compromise Agreement. The **BIR**, through Commissioner Caesar R. Dulay warrants that he has the necessary authority ad 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 **MS. VICKY CUA** 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 amount.

Section 6. Full and Final Settlement. This Agreement is executed by the **PARTIES** for the purpose of amicably settling the assessment arising from the aforesaid FDDA and the ensuing Court of Tax Appeals' cases derived from said assessment. Upon approval by the Honorable Court, the BIR recognizes the full satisfaction of the supposed tax liability of the **TAXPAYER** in connection with the aforesaid FDDA and acknowledges that the **TAXPAYER** no longer has any tax liability whatsoever based upon, arising from or in connection with the foregoing assessment.

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 in CTA Case No. 9290/CTA EB 2444 shall continue and the discussions pursuant to the disapproved Agreement cannot be used by the **PARTIES** in said proceeding unless consent of the other party be obtained.

Section 8. No 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**.

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.

xxx xxx xxx

RULING OF THE COURT

Section 204(A) of the 1997 National Internal Revenue Code (NIRC), as amended, 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.

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

1. The application for compromise is based on either the doubtful validity of respondent's assessment or the 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 and, 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 National Evaluation Board (NEB) which is composed of the respondent and his four (4) Deputy Commissioners if the subject assessment exceeds One Million Pesos (Php1,000,000) or where the settlement offered is less than the prescribed minimum rates.

Implementing the foregoing section of the 1997 NIRC, as amended, Revenue Regulations (RR) No. 30-2002 dated December 16, 2002, as amended by RR No. 8-2004,[9] provides for the cases that may 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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> xxx xxx xxx

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[9] Revenue Regulations Implementing Section 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. Civil tax cases being disputed before the courts;

xxx xxx xxx

RR No. 30-2002, as amended by RR No. 8-2004, provides the basis for acceptance of compromise settlement, specifically:

> Sec. 3. BASIS FOR ACCEPTANCE OF COMPROMISE SETTLEMENT. – The Commissioner may compromise the payment of any internal revenue tax on the following grounds:
>
> 1. Doubtful validity of the assessment. – x x x
>
> xxx xxx xxx
>
> (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.

The instant case involves the assessment for deficiency taxes for taxable year 2010, the basic amounts of which are presented below, per the Formal Letter of Demand (FLD):

Tax Type	Basic Deficiency Tax
Income	Php 81,936,096.59
IAET	8,966,929.30
VAT	132,254,361.69
EWT	372,503.68
WTC	3,037,955.58
DST	109,136.10
	Php 226,676,962.94

The above assessments were reduced by the CIR in the Final Decision on Disputed Assessment (FDDA), as follows:

Tax Type	Basic Deficiency Tax
Income	Php 75,518,239.06
IAET	8,966,929.30
VAT	118,319,180.24
EWT	372,503.68
WTC	3,037,955.58
DST	109,067.10
	Php 206,323,874.97

On appeal before the CTA Third Division, the assessments were reduced as discussed in the Decision dated

June 30, 2020. The basic deficiency taxes are summarized, as follows:

Tax Type	Basic Deficiency Tax
Income	Php 6,596,532.77
IAET	cancelled and set aside
VAT	6,624,930.70
EWT	298,468.39
WTC	563,347.80
DST	27,664.10
	Php 14,110,943.76

The foregoing amounts were further modified in the Amended Decision dated February 3, 2021, resulting to a finding of basic deficiency taxes in the total amount of Php25,413,456.18,[10] broken down as follows:

Tax Type	Basic Deficiency Tax
Income	Php 4,926,636.87
VAT	19,597,339.02
EWT	298,468.39
WTC	563,347.80
DST	27,664.10
	Php 25,413,456.18

In ruling as such, the CTA Third Division found that some items of the assessment were based merely on supposed third-party information, without the sworn statements of said third-party sources or merely based on presumption. Other items of assessment did not fully inform the taxpayer of the calculation or basis of the assessment, while still others were cancelled upon findings of the Court in Division that the taxpayer was able to sufficiently refute the same.

On March 5, 2021, petitioner Surplus Marketing Corporation submitted its Revised Offer of Compromise Settlement to respondent, offering to pay 100% of the basic Php25,413,456.18 deficiency tax as found by the CTA Third Division in its Amended Decision.

After having been informed of the acceptance of its offer, petitioner paid the abovestated amounts on August 3, 2021.[11] The parties executed their Judicial Compromise Agreement,[12]

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[10] Amended Decision (CTA Case No. 9290) dated February 3, 2021, EB Docket, p. 116.
[11] EB Docket, pp. 169-173.
[12] EB Docket, pp. 142-149.

and subsequently, the Certificate of Approval,[13] with proof of NEB approval, was issued.

Based on the foregoing, the parties have sufficiently shown that the assessments are of doubtful validity, that there has been payment of 100% of the basic deficiency tax as determined by the CTA Third Division, and, that the compromise has been approved by the NEB.

Considering the faithful observance by the parties of all the requisites under Section 204(A) of the 1997 NIRC, as amended, the Court approves the Judicial Compromise Agreement.

In the case of *Far East Bank and Trust Co. et al. v. Trust Union Shipping Corp. et al.*,[14] the Supreme Court explained the effect of a compromise agreement, *to wit*:

> **A compromise is a contract whereby the parties**, by making reciprocal concessions, **avoid litigation or put an end to one already commenced**. It is an accepted and desirable practice in courts of law and administrative tribunals. Settlement of disputes brought before the courts is, in fact, encouraged.
>
> It is settled that contracting parties may establish such stipulations, clauses, terms and conditions as they deem convenient, provided that these are not contrary to law, morals, good customs, public order, or public policy. (*Emphasis supplied*)

Further, in the case of *Conchita A. Sonley v. Anchor Savings Bank/Equicom Savings Bank*,[15] the Supreme Court ruled that once the compromise agreement is submitted to the Court and the latter has given its imprimatur thereof, it has the force and effect of a judgment, *to wit*:

> Corollary thereto, once submitted to the court and stamped with judicial approval, a compromise agreement becomes more than a mere private 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 judgment.

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[13] Eb Docket, p. 199.
[14] G.R. No. 154716, September 16, 2008.
[15] G.R. No. 205623, August 10, 2016.

WHEREFORE, the Judicial Compromise Agreement entered into by the parties is **APPROVED** and this **Judgment by Compromise Agreement** is hereby rendered in accordance therewith. The parties are enjoined to faithfully comply with all the terms and conditions of the aforesaid Judicial Compromise Agreement.

Accordingly, these cases are now **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

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 were reached in consultation before the consolidated cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice