REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 2432** (CTA Case No. 9204)
	Present:
-versus-	**DEL ROSARIO,** *P.J.,* **UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID,** *and* **FERRER-FLORES,** *JJ.*
KARINA, INC., *Respondent.*	Promulgated: MAY 12 2023 11:15am

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JUDGMENT BASED ON COMPROMISE AGREEMENT

MANAHAN, J.:

On November 10, 2022, the parties filed their *Joint Motion for the Approval of the Compromise Agreement and Issuance of Judgment Based Thereon,*[1] submitting therewith the following:

1. Original Compromise Agreement;[2]

2. Photocopy of the Secretary's Certificate showing the authority of Karina, Inc.'s President, Ma. Lourdes M. Domogalla, to sign the Compromise Agreement;[3]

3. Photocopies of Payment Forms (BIR Form No. 0605) and Metrobank Payment Slips for the payments of

[1] EB Docket, pp. 102-105.
[2] EB Docket, pp. 106-112.
[3] EB Docket, p. 113.

Php243,843.11, Php158,740.62, and Php108,278.58;[4] and

4. Certified true copy of the Certificate of Availment, with Judicial Compromise Offer signed by the National Evaluation Board (NEB).[5]

On February 27, 2023, the parties filed their *Compliance (Re: Resolution dated January 27, 2023)*,[6] submitting therewith the following:

1. Certified true copy of the Secretary's Certificate showing the authority of Karina, Inc.'s President, Ma. Lourdes M. Domogalla, to sign the Compromise Agreement;[7] and

2. Certified true copies of the Payment Forms (BIR Form No. 0605) and Metrobank Payment Slips for the payments of Php243,843.11, Php158,740.62, and Php108,278.58.[8]

The parties also stated in their *Compliance* that the CTA Division, in CTA Case No. 9204, outrightly cancelled and set aside the entire deficiency tax assessments for income tax, value-added tax (VAT), improperly accumulated earnings tax (IAET), and compromise penalty, inclusive of surcharge and interests, in the aggregate amount of Php4,127,445.92. CTA Case No. 9204 is the subject of appeal in the present CTA EB No. 2432.

In view of the foregoing, we now proceed to analyze the Compromise Agreement and submitted documents.

The Compromise Agreement partly states:

> This COMPROMISE AGREEMENT ("Agreement"), entered this 29th day of SEPTEMBER 2022, made and executed, by and between:
>
> > **KARINA, INC.**, a domestic corporation duly organized and existing under the laws of the

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[4] EB Docket, pp. 114-119.
[5] EB Docket, pp. 120-121.
[6] EB Docket, pp. 129-145.
[7] EB Docket, p. 137.
[8] EB Docket, pp. 138-143.

Republic of the Philippines, with principal office located at No. 33 Shaw Boulevard, Barangay San Antonio, Pasig City, herein referred to as "TAXPAYER" and represented by its President, **MA. LOURDES M. DOMOGALLA**;

- and -

The **BUREAU OF INTERNAL REVENUE**, with principal office at Bureau of Internal Revenue National Office Building, Agham Road, Diliman, Quezon City, herein referred to as the "BIR" and represented by the Commissioner, **LILIA CATRIS GUILLERMO**;

(collectively referred to as, the "PARTIES").

WITNESSETH: That-

WHEREAS, the BIR issued to the TAXPAYER Final Assessment Notices ("FANs") all dated January 23, 2015 finding the TAXPAYER liable to pay the alleged deficiency Income Tax, Value-Added Tax (VAT), Improperly Accumulated Earnings Tax (IAET), and Compromise Penalty for taxable year 2011 in the aggregate amount of Four Million One Hundred Twenty Seven Thousand Four Hundred Forty Five Pesos and 92/100, inclusive of surcharge and interests (P4,127,445.92);

WHEREAS, the TAXPAYER then filed with the BIR its Administrative Protest dated February 22, 2015 denying the merit of the said FANs;

WHEREAS, the TAXPAYER instituted a case before the Court of Tax Appeals entitled "Karina, Inc. vs. Commissioner of Internal Revenue" which was docketed as CTA Case No. 9204 seeking for the cancellation of the said FANs;

WHEREAS, in its Decision dated September 20, 2020 (*sic*),[9] the 2nd Division of the Honorable CTA, CANCELLED and SET ASIDE the entire deficiency Income Tax, VAT, IAET, and Compromise Penalty, inclusive of surcharge and interests in the aggregate amount of P4,127,445.92;

WHEREAS, the BIR filed a Motion for Reconsideration ("Motion") with the 2nd Division of the Honorable CTA in relation to said Decision and said Motion was denied by the Honorable CTA in its Resolution dated January 13, 2021 for lack of merit;

WHEREAS, after the denial of its Motion, the BIR filed a Petition for Review before the Honorable Court En Banc docketed as CTA Case En Banc No. 2432 (CTA No. 9204) entitled "Commissioner of Internal Revenue vs. Karina, Inc."

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[9] The Division Decision in CTA Case No. 9204 was dated September 10, 2020.

seeking the reversal of the said September 10, 2020 Decision of the 2nd Division of the Honorable CTA;

WHEREAS, said case is still pending before the Honorable Court En Banc;

WHEREAS, despite the grant of a favorable ruling, the TAXPAYER has submitted its proposal to the BIR with the intention to enter into a judicial compromise pursuant to the provisions of the Civil Code of the Philippines, jurisprudence, and other relevant provisions on judicial compromise in order to buy its peace and put an end to costly litigation;

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

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

WHEREAS, the PARTIES, ensure that the terms of the amicable settlement as contained in this Agreement do not circumvent the limitations provided in Section 204 of the National Internal Revenue Code on administrative proceedings;

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. <u>Judicial Compromise Amount</u>. In order to settle the above-mentioned case, the TAXPAYER has offered and the BIR has accepted the total compromise amount of Five Hundred Ten Thousand Eight Hundred Sixty Two Pesos and 31/100 (P510,862.31) ("Judicial Compromise Amount"). Said amount is broken down as follows:

	Basic Tax Due	**Compromise Rate**	**Approved Settlement Fee**
Income Tax	P 1,219,215.57	20%	P 243,843.11
VAT	793,703.08	20%	158,740.62
IAET	541,392.92	20%	108,278.58
Total	**P 2,554,311.57**		**P 510,862.31**

Section 2. <u>Submission to the Honorable CTA En Banc</u>. This Agreement fully signed by the PARTIES shall be submitted for the approval of the Honorable CTA En Banc in CTA Case E.B. No. 2432 (CTA Case No. 9204). The PARTIES undertake to perform any and all acts, and submit any and all documents required by the Honorable CTA En Banc to be able to render a Judgment by Compromise Agreement in the said case.

Section 3. <u>Effectivity of the Agreement</u>. This Agreement shall only take effect and bind the PARTIES upon final approval by the Honorable CTA En Banc. This Agreement shall thereafter remain in force and effect until completion and fulfillment of the covenants and undertaking of the PARTIES hereto.

Section 4. <u>Deliverables of the PARTIES upon approval of this Agreement by the Honorable CTA En Banc</u>. Upon final approval by the Honorable CTA En Banc of this Agreement, the TAXPAYER undertakes to submit to the BIR the Judicial Compromise Amount. Upon receipt of the Judicial Compromise Amount, the BIR undertakes to execute and deliver to the TAXPAYER any and all documents as may be required to effectively withdraw and cancel the FANs dated January 23, 2015.

Section 5. <u>Authority to Enter Compromise Agreement</u>. The BIR, through Commissioner Lila Catris Guillermo, warrants that she 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 by the Honorable CTA En Banc.

The TAXPAYER through its President, Ma. Lourdes M. Domogalla, similarly warrants that she 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. A copy of the Secretary's Certificate is hereto attached for reference.

Section 6. <u>Full and Final Settlement</u>. This Agreement is executed by the PARTIES for the purpose of amicably settling and ending CTA Case E.B. No. 2432 (CTA Case No. 9204). Upon performance by the TAXPAYER of its obligations under Section 4 hereof, the BIR recognizes the full satisfaction of the supposed tax liability of the TAXPAYER in connection with CTA Case E.B. No. 2432 (CTA Case No. 9204) 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 E.B. No. 2432 (CTA Case No. 9204).

Section 7. <u>Disapproval of this Agreement by the Honorable CTA En Banc</u>. In the event that this Agreement is disapproved by the Honorable CTA En Banc, 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 En Banc. 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 En Banc after it is rectified or corrected by the parties:

1. The amount insofar 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 E.B. No. 2432 (CTA Case No. 9204) 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 is 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 acknowledgement 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 En Banc for the immediate implementation and execution of the terms and conditions of this Agreement or the judgment or order of the Honorable CTA En Banc approving the same.

xxx[10] *(citations omitted)*

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 –

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[10] EB Docket, pp. 106-110.

> (A) Compromise the payment of any internal revenue tax when:
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> > (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 minim 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.
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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 CIR and his four (4) deputy commissioners if the subject assessment exceeds One Million Pesos (P1,000,000) or where the settlement offered is less than the prescribed minimum rates.

Implementing Section 204(A) of the 1997 NIRC, as amended, Revenue Regulations (RR) No. 30-2002,[11] dated December 16, 2002, as amended by RR No. 8-2004,[12] 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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> 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;
>
> 5. Criminal violations, other than those already filed in court or those involving criminal tax fraud.

Clearly, the instant case is still being disputed before the CTA, docketed as CTA EB No. 2432, and may be the proper subject of a compromise.

As to the basis of the compromise and payment of the compromise settlement, the Court notes that the rate used was only 20% of the basic tax assessed, which is less than the 40% rate required on cases involving doubtful validity of assessments.

Thus, despite the approval of the compromise by the NEB, the Court still ordered the parties to submit the basis for the use of the 20% compromise rate. This finds support in the Supreme Court Resolution in *Asia Renal Care Philippines, Inc. v. Commissioner of Internal Revenue*,[13] which required the

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[11] 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.

[12] 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. 7-2001 and 30-2002, dated May 19, 2004.

[13] G.R. No. 240180, June 23, 2021.

submission of documents or evidence showing the basis of the compromise settlement, before acting thereon, to wit:

> xxx. The Court resolves to require the petitioner to SUBMIT, within ten (10) days from notice hereof, the following: (1) original or certified true copy of the Certificate of Availment of Compromise; (2) original or certified true copy of Availment of Abatement of Penalties; (3) original or certified true copy of the NEB approval of compromise; (4) original or certified true copy of the NEB approval of abatement; (5) basis of respondent's acceptance of Compromise Settlement [Doubtful Validity or Financial Incapacity]; (6) basis of respondent's acceptance of abatement of penalties; and (7) other relevant documents in support of items [5] and [6].

Further, under Article 1409 of the Civil Code, contracts whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy are inexistent and void from the beginning. No court can ratify or approve a compromise agreement which is considered inexistent and void from the beginning.[14]

While compromise settlements are highly encouraged, this Court is not, and should not be, a mere rubber stamp[15] that mechanically or automatically approves compromise agreements, without validating whether the same are contrary to law, public order, public policy, morals and good customs.

To recall, under Section 204 of the 1997 NIRC, as amended, a lower compromise amount may be accepted, subject to the approval of the NEB, as follows:

> "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*)

The minimum percentages for compromise settlement are also prescribed in Section 4 of RR No. 30-02, which also

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[14] *Strategic Alliance Development Corporation v. Radstock Securities Limited, et al.*, G.R. No. 178158, December 4, 2009 and *Luis Sison v. Philippine National Construction Corporation and Radstock Securities Limited*, G.R. No. 180428, December 4, 2009.

[15] *Strategic Alliance Development Corporation v. Radstock Securities Limited, et al.*, G.R. No. 178158, December 4, 2009 and *Luis Sison v. Philippine National Construction Corporation and Radstock Securities Limited*, G.R. No. 180428, December 4, 2009.

provides for the situation of accepting compromise rates lower than the prescribed rates, as follows:

> SECTION 4. *Prescribed Minimum Percentages of Compromise Settlement.* – The compromise settlement of the internal revenue tax liabilities of taxpayers, reckoned on a per tax type assessment basis, shall be subject to the following minimum rates based on the basic assessed tax:
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> 1. For cases of "financial incapacity" –
>
> xxx
>
> 2. For cases of "doubtful validity" – A minimum compromise rate equivalent to forty percent (40%) of the basic assessed tax.
>
> 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 would 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)*

The parties, in their *Compliance* filed on February 27, 2023, stated that in CTA Case No. 9204, the CTA Division outrightly cancelled and set aside the entire deficiency tax assessments for income tax, VAT, IAET, and compromise penalty, inclusive of surcharge and interests, in the aggregate amount of Php4,127,445.92. The parties' Compromise Agreement also sets out the foregoing circumstances in its "Whereas" clauses and adds that despite the total cancellation of the assessments, Karina, Inc. offered a compromise to buy its peace and put an end to costly litigation.

The Court also notes that the CTA Division cancelled the subject assessments due to violation of Karina, Inc.'s right to due process, when the FLD/FAN was prematurely issued prior to the lapse of the 15-day period given to the taxpayer to reply to the PAN.

Based on the foregoing, the doubtful validity of the subject assessments was established, as well as the reason for accepting a compromise rate lower than 40%.

While the parties did not submit any document showing Karina, Inc.'s request for a lower compromise rate stating the factual and legal reasons for such lower rate, the Court finds that the parties' *Compliance*, together with the Compromise Agreement stating the circumstances of the cancellation of the subject assessments, sufficiently comply with Section 4 of RR No. 30-2002.

The subject compromise was also approved by the NEB, as evidenced by the Certificate of Availment dated October 14, 2022, together with the Judicial Compromise Offer sheet showing the approval of the NEB.[16]

Thus, the Court approves the Compromise Agreement.

In the case of *Far East Bank and Trust Co. et al. v. Trust Union Shipping Corp. et al.*,[17] 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*,[18] 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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[16] EB Docket, pp.120-121.
[17] G.R. No. 154716, September 16, 2008.
[18] G.R. No. 205623, August 10, 2016.

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

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

(On Official Business)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
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 case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice