REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

BENCHMARK MARKETING CORP.,
Petitioner,

CTA EB NO. 2021
(CTA Case No. 9224)

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x - - - - - - - - - - - - - - - - - - - x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB NO. 2023
(CTA Case No. 9224)

- versus -

Present:

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

BENCHMARK MARKETING CORP.,
Respondent.

Promulgated:
JUN 09 2022 3:18 pm

x - x

JUDGMENT BASED ON COMPROMISE AGREEMENT

BACORRO-VILLENA, J.:

On 20 November 2020, the Court *En Banc* received a "Joint Manifestation and Motion"[1] stating that the parties, Benchmark Marketing Corp. (**BMC**) and the Commissioner of Internal Revenue (**CIR**), have already agreed to settle the cases by way of compromise on the ground of doubtful validity of the assessments. At that time, they have moved for a suspension of the proceedings.

On 23 December 2020, the parties submitted the Judicial Compromise Agreement (**JCA**).[2]

To recap, the Special Second Division previously promulgated the 17 October 2018 Decision[3] which cancelled the compromise penalties (**CP/MC**) imposed against BMC in the total amount of ₱128,000.00 but partially upheld the deficiency income tax (**IT**), value-added tax (**VAT**), expanded withholding tax (**EWT**) and fringe benefits tax (**FBT**) assessments. Finding no reason to grant the parties' separate motions for partial reconsideration (**MPR**), the Special Second Division promulgated the 12 February 2019 Resolution.[4]

As a result, the parties then filed their separate petitions for review[5] before the Court *En Banc*. Thereafter, both the CIR and BMC filed their Opposition[6] and Comment[7], respectively.

On 08 July 2019, the parties were subsequently referred to mediation before the Philippine Mediation Center-Court of Tax Appeals (**PMC-CTA**).[8]

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1 *Rollo* (CTA EB No. 2021), pp. 168-172.
2 Id., pp. 200-204.
3 Id., pp. 33-90.
4 Id., pp. 91-107.
5 Id., pp. 1-31; *Rollo* (CTA EB No. 2023), pp. 6-22.
6 Id., pp. 118-129.
7 Id., pp. 130-139.
8 See Resolution dated 08 July 2019, id., pp. 141-142.

On 28 October 2019, BMC filed a "Motion for Suspension of Proceedings"[9] containing a manifestation that it submitted its written offer of compromise with the CIR on 20 September 2019.

As aforementioned, the parties submitted their "Joint Manifestation and Motion"[10] stating that they have already agreed to settle by way of compromise and that BMC paid the agreed compromise amounts equivalent to forty percent (40%) of the basic tax assessed for taxable year (TY) 2010. In support thereof, the parties submitted photocopies of the following:

Tax Type	Supporting Documents	Date Filed	Amount
IT	BIR Form No. 0605[11]	23 December 2019	₱11,390,289.10
	Filing Reference No. 291900033698761[12]		
	eFPS Payment Details[13]		
VAT	BIR Form No. 0605[14]	23 December 2019	₱8,102,452.33
	Filing Reference No. 291900033698913[15]		
	eFPS Payment Details[16]		

Thereafter, on 03 December 2020, BMC filed a "Supplement (To the Joint Manifestation and Motion submitted on November 20, 2020)"[17] submitting photocopies of other proof of payments for the settlement of BMC's offer of compromise of its deficiency taxes, to wit:

Tax Type	Supporting Documents	Date Filed	Amount
EWT	BIR Form No. 0605[18]	23 December 2019	₱357,795.39
	Filing Reference No. 291900033698980[19]		
	eFPS Payment Details[20]		
FBT	BIR Form No. 0605[21]	23 December 2019	₱93,654.97
	Filing Reference No. 291900033699035[22]		

9 Id., pp. 150-151.
10 Supra at note 1.
11 *Rollo* (CTA EB No. 2021), pp. 173-174.
12 Id., p. 175.
13 Id., pp. 176-177.
14 Id., pp. 178-179.
15 Id., p. 180.
16 Id., p. 181.
17 Id., pp. 182-184.
18 Id., pp. 185-186.
19 Id., p. 187.
20 Id., p. 188.
21 Id., pp. 189-190.
22 Id., p. 191.

	eFPS Payment Details[23]		
MC	BIR Form No. 0605[24]	23 December 2019	₱128,000.00
	Filing Reference No. 291900033699073[25]		
	eFPS Payment Details[26]		

On 23 December 2020, BMC filed a "Manifestation and Motion"[27] submitting therewith the original JCA[28] signed by the CIR and BMC's President, Charlie Ngo (**Ngo**), as well as a notarized certification dated 25 November 2020[29] executed by BMC's Corporate Secretary attesting to a resolution adopted by its Board of Directors (on 16 December 2019) authorizing Ngo to enter and sign a JCA with the CIR. The contents of the said JCA are as follows:

...

JUDICIAL COMPROMISE AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

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

BENCHMARK MARKETING CORP. ("TAXPAYER"), a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office address at [at] Doña Natividad Bldg., 10 Quezon Avenue, Quezon City, represented by its President, **CHARLIE NGO;**

- 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 of Internal Revenue, HON. CAESAR R. DULAY** (collectively, the **"PARTIES"**);

- Witnesseth That-

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23 Id., p. 192.
24 Id., pp. 193-194.
25 Id., p. 195.
26 Id., p. 196.
27 Id., pp. 197-199.
28 Id., pp. 200-204.
29 Id., p. 205.

WHEREAS, a dispute arose out of the deficiency tax assessments issued to Benchmark Marketing Corp. by the Bureau of Internal Revenue for taxable year 2010, which is currently the subject of the consolidated cases pending with the Honorable Court of Tax Appeals En Banc, docketed as CTA EB Case Nos. 2021 and 2023 (CTA Case No. 9224);

WHEREAS, the parties have agreed to accept mediation to avoid prolonged litigation, as authorized by A.M. No. 11-1-05-SC-PHILJA; and as a result of which the parties realize the advantage of ending their dispute by agreeing upon a compromise;

NOW THEREFORE, the parties have agreed to the following terms and conditions:

1. Benchmark Marketing Corp. ("BMC") has offered and the Bureau of Internal Revenue ("BIR"), through the Commissioner of Internal Revenue ("CIR"), has accepted the amount of Php20,072,191.79 as the Judicial Compromise Amount.

2. This Agreement shall take effect and bind the parties upon approval by the Honorable Court of Tax Appeals ("CTA"). This Agreement shall thereafter remain in force and effect until completion and fulfillment of the covenants and undertaking of the parties hereto.

3. Upon final approval by the Honorable CTA of this Agreement, the BIR undertakes to execute and deliver to BMC any and all documents as may be required to effectively and fully implement the provisions of this Agreement, withdrawing and cancelling all the final assessment notice/s for all deficiency taxes for taxable year 2010, which is the subject of the present consolidated cases pending before the Honorable CTA En Banc.

4. This Agreement is executed by the parties for the purpose of amicably settling and ending CTA EB Case Nos. 2021 and 2023 (CTA Case No. 9224). Upon approval by the Honorable CTA, the BIR recognizes the full satisfaction of the supposed tax liability of BMC in connection with CTA EB Case Nos. 2021 and 2023 (CTA Case No. 9224) and as a final settlement acknowledges that BMC no longer has any tax liability whatsoever based upon, arising from or in connection with the particular subject of CTA EB Case Nos. 2021 and 2023 (CTA Case No. 9224).

5. 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:

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

b. The proceedings of CTA EB Case Nos. 2021 and 2023 (CTA Case No. 9224) 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.

6. 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.

7. 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.

IN WITNESS WHEREOF, the **PARTIES** hereto have mutually and voluntarily agreed to the foregoing stipulations and have hereunto signed these presents at the Quezon City, on ____________________ 2020.

BENCHMARK MARKETING CORP	BUREAU OF INTERNAL REVENUE
By:	By:
(Sgd.) **CHARLIE NGO**	(Sgd.) **HON. CAESAR R. DULAY**

...

After two (2) motions of extension[30], the CIR filed a Compliance[31] on 15 February 2022 supposedly submitting the certified true copy of the Certificate of Availment (**CA**). However, upon scrutiny thereof, the Court *En Banc* noted that the CA submitted pertains to another taxpayer and not BMC. Thus, in its Resolution dated 29 March 2022[32], the Court *En Banc* directed the CIR to submit the CA issued to BMC. In the same Resolution, the Court *En Banc* also directed BMC to clarify the specific rates actually agreed upon and paid relative to the subject JCA and to submit the originals or certified true copies of its proof of payments.

On 07 April 2022, the CIR submitted the certified true copies of the CA issued to BMC dated 26 January 2022[33] as well as the signature page[34] showing the approval of the members of the National Evaluation Board (**NEB**).

On 08 April 2022, BMC filed a Compliance submitting the certified true copies[35] of the previously submitted proof of payments and confirming that the following rates were applied and used in computing the compromise offer:

Tax Type	Tax Type Code	Basic Tax Due	Compromise Amount Paid	Compromise Rate
IT	IT	₱18,983,815.16	₱11,390,289.10	60%
VAT	VT	16,204,904.66	8,102,452.33	50%
EWT	WE	357,795.39	357,795.39	100%
FBT	WR	93,654.97	93,654.97	100%
CP	MC		128,000.00	100%
TOTAL		₱35,640,170.18	**₱20,072,191.79**	

We resolve.

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

30 Id., pp. 234-244.
31 Id., pp. 250-253.
32 Id., pp. 256-258.
33 Id., p. 262.
34 Id., p. 263.
35 Id., pp. 265-283.

> ...
>
> **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.
>
> ...

In connection thereto, Section 6 of Revenue Regulations (**RR**) No. 30-2002[36], as amended by RR No. 9-2013[37], states:

> ...
>
> **SEC. 6. APPROVAL OF OFFER OF COMPROMISE.** - Except for offers of compromise where the approval is delegated to the REB 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** NEB 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.[38]

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[36] 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.

[37] Amending Certain Provisions of Revenue Regulations No. 30-2002.

[38] Emphasis supplied.

xxx xxx xxx

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 tax liabilities.[39]

xxx xxx xxx

...

Furthermore, Revenue Memorandum Order (**RMO**) No. 3-2017[40] also provides, as follows:

...

All approved applications for compromise settlement and/or abatement of penalties shall be issued Certificate of Availment (CA) following the prescribed format as per attached Annexes "A" and "B", while denied applications shall be issued Notice of Denial (ND) following prescribed format as per attached annexes "C" and "D".[41]

...

From the foregoing, a compromise settlement of any tax liability grounded on doubtful validity of the assessments is subject to a minimum compromise rate of 40%. Furthermore, when the same involves a basic tax exceeding ₱1,000,000.00, it must bear the approval of the majority of all NEB members, which shall be evidenced by a CA following the prescribed format.

Records show that the parties utilized compromise rates more than the prescribed minimum rate of 40% as follows:

Tax Type	Compromise Rate
IT	60%
VAT	50%
EWT	100%
FBT	100%
CP	100%

39 Underscoring in the original text.
40 Amending Further the Prescribed Format for the Certificate of Availment/Approval and Notice of Denial Relative to Application for Compromise Settlement and/or Abatement of Penalties Pursuant to Section 204 of the Tax Code, as Amended.
41 Emphasis supplied.

Furthermore, such compromise was also evidenced by certified true copies of the CA[42] and its signature page[43] showing that four (4) out of five (5) members of the NEB approved the JCA.

Thus, after careful scrutiny of the parties' documents, submitted in support of the JCA, the Court *En Banc* finds the same in order and in compliance with the established laws, rules and regulations. Hence, the Court *En Banc* approves the same and judgment is hereby rendered based thereon.

Under the Interim Guidelines for Implementing Mediation in the Court of Tax Appeals[44], upon approval of the compromise agreement, the Court shall render judgment based on the compromise agreement. Moreover, the subject JCA in herein cases likewise states that the same shall take effect and bind the parties upon the Court's approval; notwithstanding the lack of any motion from the parties for the approval thereof.

In *Felipe O. Magbanua, et al. v. Rizalino Uy*[45], the Supreme Court ruled as follows:

> ...
> A compromise agreement is a contract whereby the parties make reciprocal concessions in order to resolve their differences and thus avoid or put an end to a lawsuit. They adjust their difficulties in the manner they have agreed upon, disregarding the possible gain in litigation and keeping in mind that such gain is balanced by the danger of losing. Verily, the compromise may be either extrajudicial (to prevent litigation) or judicial (to end a litigation).
>
> A compromise must not be contrary to law, morals, good customs and public policy; and must have been freely and intelligently executed by and between the parties. To have the force of law between the parties, it must comply with the requisites and principles of contracts. Upon the parties, it has the effect and the authority of *res judicata*, once entered into.
>
> When a compromise agreement is given judicial approval, it becomes more than a contract binding upon the parties. Having been sanctioned by the court, it is entered as a determination of a

42 Supra at note 33.
43 Supra at note 34.
44 A.M. No. 11-1-5-SC-PHILJA dated 18 January 2011.
45 G.R. No. 161003, 06 May 2005; Citations omitted.

> controversy and has the force and effect of a judgment. It is immediately executory and not appealable, except for vices of consent or forgery. The nonfulfillment of its terms and conditions justifies the issuance of a writ of execution; in such an instance, execution becomes a ministerial duty of the court.
>
> ...
>
> The issue involving the validity of a compromise agreement notwithstanding a final judgment is not novel. *Jesalva v. Bautista* upheld a compromise agreement that covered cases pending trial, on appeal, and with final judgment. The Court noted that Article 2040 impliedly allowed such agreements; there was no limitation as to when these should be entered into. *Palanca v. Court of Industrial Relations* sustained a compromise agreement, notwithstanding a final judgment in which only the amount of back wages was left to be determined. The Court found no evidence of fraud or of any showing that the agreement was contrary to law, morals, good customs, public order, or public policy.
>
> *Gatchalian v. Arlegui* upheld the right to compromise prior to the execution of a final judgment. The Court ruled that the final judgment had been novated and superseded by a compromise agreement. Also, *Northern Lines, Inc. v. Court of Tax Appeals* recognized the right to compromise final and executory judgments, as long as such right was exercised by the proper party litigants.
>
> ...
>
> There is no justification to disallow a compromise agreement, solely because it was entered into after final judgment. The validity of the agreement is determined by compliance with the requisites and principles of contracts, not by when it was entered into. As provided by the law on contracts, a valid compromise must have the following elements: (1) the consent of the parties to the compromise, (2) an object certain that is the subject matter of the compromise, and (3) the cause of the obligation that is established.
>
> ...

WHEREFORE, in view of the foregoing, Benchmark Marketing Corp. and Commissioner of Internal Revenue's Judicial Compromise Agreement is hereby **APPROVED.** Having been impressed with judicial imprimatur, the parties are hereby **ENJOINED** to faithfully comply with all the terms and conditions of the aforesaid Judicial Compromise Agreement.

The parties' pending petitions for review are now considered **MOOT AND ACADEMIC**. Accordingly, they are now deemed **CLOSED AND TERMINATED.**

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

INHIBITED
LANEE S. CUI-DAVID
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 cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice