REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

KEPCO ILIJAN CORPORATION,
Petitioner,

CTA CASE NO. 9182

Members:

- versus -

DEL ROSARIO, PJ, *Chairperson*
FABON-VICTORINO, *and*
MANAHAN, *JJ.*

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
OCT 22 2019 2:49pm

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JUDGMENT ON COMPROMISE SETTLEMENT

Fabon-Victorino, J.:

For Court action is petitioner's *Manifestation and Motion to Render Judgment Based on the Parties' Compromise Settlement Under Section 204(A) of the NIRC* filed on January 17, 2019, with respondent's *Manifestation* thereto filed on March 8, 2019.

Petitioner avers that during the pendency of this case, it availed of the Bureau of Internal Revenue's (BIR) compromise settlement program under Section 204(A)[1] of the National Internal Revenue Code (NIRC), as implemented by Revenue Regulations (RR) No. 30-2002[2], as amended. On April 27, 2018, it paid the BIR the total amount of Php168,341,048.00 as monetary offer for the compromise settlement of its 2009, 2011 and 2012 tax assessments, the year 2011 being the subject of the instant case. The assessments for the three (3) taxable years refer to its alleged failure to withhold the Final Withholding Tax (WF) and Final Withholding Value-

[1] *Infra.*
[2] 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.

Added Tax (WG) due from its payments to Korea Electric Power Corporation (KEPCO), under the belief that said payments were tax exempt under the RP-Korea Tax Treaty, and under the tax principle that compensation for services rendered offshore are not subject to value-added tax. The basic tax component for each tax type for taxable years 2009, 2011 and 2012, are as follows:

Taxable Year	Tax Type	Amount of Basic Tax
2009	WF	Php 49,698,634.91
	WG	19,879,453.97
2011	WF	81,857,132.30
	WG	32,420,070.50
2012	WF	89,308,175.54
	WG	35,368,417.41
Total Basic Tax Assessment		**Php 308,531,884.63**

Petitioner submits that under Section 204(A) of the NIRC of 1997, as amended, the minimum compromise rate for assessments that have doubtful validity is forty percent (40%) of the basic tax assessed. Hence, in compliance with the said requirement, it paid the total amount of Php168,341,048.00, broken down, as follows:

Taxable Year	Tax Type	Basic Tax	Amount Paid	Percentage
2009	WF	Php 49,698,634.91	Php25,707,058.84	51.73%
	WG	19,879,453.97	10,282,823.53	51.73%
2011	WF	81,857,132.30	45,092,483.96	55.09%
	WG	32,420,070.50	17,907,880.61	55.24%
2012	WF	89,308,175.54	49,637,672.98	55.58%
	WG	35,368,417.41	19,713,128.08	55.74%
Total		Php 308,531,884.63	**Php168,341,048.00**	

Petitioner further states that its compromise settlement offer and subsequent payment of its tax assessments for the taxable years 2009, 2011 and 2012 were approved by the National Evaluation Board (NEB), whose members are the Commissioner of Internal Revenue and four (4) Deputy Commissioners. As proof of such approval, the BIR issued on December 18, 2018 a Certificate of Availment certifying that the NEB approved its application for compromise settlement of its deficiency Final Withholding Tax and Final Withholding Value-Added Tax, in the total amount of Php550,647,219.83 for taxable years 2009, 2011 and 2012.

In view of the foregoing, petitioner prays for a judgment based on the parties' compromise settlement pursuant to with Section 204(A) of the NIRC of 1997, as amended, and consider the instant case as closed and terminated.

In his *Manifestation [Re: Petitioner's Manifestation and Motion to Render Judgment Based on the Parties' Compromise Settlement under Section 204(A) of the NIRC]* filed on March 8, 2019, respondent states that the Compromise Settlement of the deficiency tax assessment for taxable year 2011 which is the subject of the instant case has already been confirmed by the BIR's Accounts Receivable Monitoring Division (ARMD) as evidenced by the Certificate of Availment dated December 18, 2018 duly signed by Assistant Commissioner Alfredo V. Misajon, Head of the Technical Working Group (TWG) on Compromise. As such, he submits petitioner's *motion* to the sound discretion of the Court.

THE COURT'S RULING

Section 204(A) of the National Internal Revenue Code (NIRC) of 1997, 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.
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> The compromise settlement of any tax liability shall be subject to the following minimum amounts:

> (a) For cases of financial incapacity, a minimum compromise rate equivalent to ten percent (10%) of the basic assessed tax; and
>
> (b) **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**. (*Boldfacing and underscoring supplied*)

Relative to the foregoing provisions, Section 6 of RR No. 30-2002, as amended by RR No. 9-2013, states:

> SECTION 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.**
>
> 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 liabilities. (*Boldfacing supplied*)

Thus, respondent Commissioner of Internal Revenue (CIR) is vested with power to compromise the payment of any internal revenue tax. However, where the basic tax involved exceeds Php1,000,000.00 or where the settlement offered is less than the prescribed minimum rates, the compromise settlement is subject to the approval by a majority of all the members of the NEB [*composed of respondent and the four (4) Deputy Commissioners*], with respondent having concurred with the same.

The record reveals that petitioner filed an *Application for Compromise Settlement* of its disputed tax deficiency assessments for taxable years 2009, 2011 and 2012 amounting to Php550,647,219.83, on the ground of doubtful validity of the subject assessments. Record also shows that petitioner paid the amount of Php168,341,048.00 as offer for compromise settlement of the said deficiency tax assessments. The breakdown of the Php550,647,219.83 deficiency tax assessments and the corresponding monetary offer is, as follows:

Taxable Year	Tax Type	Basic Tax	Interest	Compromise Penalty	Total	Monetary Offer	%age
2009	WF	49,698,634.91	65,438,803.87	50,000.00	115,187,438.78	25,707,058.84	51.73%
	WG	19,879,453.97	26,175,522.16	50,000.00	46,104,976.13	10,282,823.53	51.73%
2011	WF	81,857,132.30	56,559,914.09	25,000.00	138,442,046.39	45,092,483.96	55.09%
	WG	32,420,070.50	22,400,936.38	25,000.00	54,846,006.88	17,907,880.61	55.24%
2012	WF	89,308,175.54	51,138,105.99	-	140,446,281.53	49,637,672.98	55.58%
	WG	35,368,417.41	20,252,052.71	-	55,620,470.12	19,713,128.08	55.74%
Total		**308,531,884.63**			**550,647,219.83**	**168,341,048.00**	

Since the basic tax involved amounts to Php308,531,884.63, the subject application for compromise settlement must be approved by a majority of the members of the NEB, with the concurrence of respondent.

Upon review of the supporting documents attached to petitioner's *Manifestation and Motion to Render Judgment Based on the Parties' Compromise Settlement Under Section*

204(A) of the NIRC, it appears that petitioner fully settled the legally required minimum amounts for compromise settlement, as shown in the computerized print-outs of BIR Form No. 0605 (Payment Form) and confirmed by no less than respondent himself in his *Manifestation* dated March 8, 2019.

The Court also notes petitioner's submission of a Certified True Copy of the *Certificate of Availment* (Compromise Settlement) dated December 18, 2018, certifying that petitioner's application for the compromise settlement of deficiency Final Withholding and Withholding on Value Added Taxes amounting to Php550,647,219.83 has been approved by the NEB, as sufficient compliance with the established laws, rules and regulations.

It is well to emphasize that under the Civil Code and in the Revised Rules of Court, courts are directed to persuade litigants in civil cases to agree upon some fair compromise. Such agreement has the force of law and is conclusive between the parties.[3]

WHEREFORE, finding the compromise settlement entered into by the parties pursuant to Section 204(A) of the National Internal Revenue Code of 1997, as amended, as compliant with established laws, rules and regulations, the same is **APPROVED** and judgment is hereby rendered in accordance with the Compromise Agreement entered into by herein parties. Accordingly, this case is now deemed **CLOSED** and **TERMINATED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[3] *Viesca vs. Gilinsky*, G.R. No. 171698, July 4, 2007.

We concur:

ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice