REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PHILIPPINE BASKETBALL ASSOCIATION, Petitioner,	**CTA CASE NO. 9414**
	Members:
-versus-	Castañeda, Jr., *Chairperson, and* Bacorro-Villena, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** SEP 21 2020 4:10 p.m.

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JUDGEMENT BASED ON COMPROMISE AGREEMENT

CASTAÑEDA, JR., *J.*:

For the Court's resolution are the parties':

1. Joint Motion for Judgment Based on Compromise Agreement filed on September 11, 2019 praying for the approval of the attached *original* copy of the Judicial Compromise Agreement dated July 22, 2019;[1] and,

2. Joint Verified Compliance filed on July 30, 2020.[2]

To facilitate reference, the terms of the Judicial Compromise Agreement are reproduced below:

[1] Docket, Vol. II, pp. 625-634.
[2] Docket, Vol. II, pp. 693-698.

"JUDICIAL COMPROMISE AGREEMENT

KNOWN ALL MEN BY THESE PRESENTS:

This **JUDICIAL COMPROMISE AGREEMENT ("Agreement")** is made and executed this **22nd day of July, 2019** in **Quezon City, Philippines**, by and between:

> **PHILIPPINE BASKETBALL ASSOCIATION ("TAXPAYER")**, is an unincorporated association composed of professional basketball clubs, and is under the supervision and regulation of the Games and Amusements Board pursuant to Presidential Decree No. 871, with principal office at 186 E. Rodriguez, Jr. Avenue, Bagumbayan, Quezon City, represented by its Commissioner, **WILLIE O. MARCIAL**;

-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 **TAXPAYER** is an association of basketball clubs owned and operated by the following companies: **Alaska Milk Corporation, Asian Coatings Philippines, Inc. Columbian Autocar Corporation, Ever Bilena Cosmetics, Inc., Ginebra San Miguel, Inc., Manila Electric Company, Metro Pacific Tollways Corporation, Philippine Long Distance & Telephone Company, Phoenix Petroleum Corporation, San Miguel Corporation, San Miguel Pure Foods Co. Inc.,** and **Sultan 900 Capital, Inc.**;

WHEREAS, the **BIR** issued to the **TAXPAYER** Formal Assessment Notices (**FANs**) and Formal Letters of Demand ("**FLDs**") all dated January 10, 2003 for the periods 1988-1998, 1999 and 2000 assessing the **TAXPAYER** deficiency for an aggregate amount of P532,769,072.10, inclusive of interests and surcharges;

WHEREAS, the **TAXPAYER** then availed of the Voluntary Assessment and Abatement Program in 2002 and paid an advance payment amounting to P3,000,000.00 and offered a compromise settlement of 15% of the basic deficiency percentage taxes in 2003 and paid the amount P20,277,842.11;

WHEREAS, the **BIR** issued a Notice of Denial of Petitioner's offer of compromise. Petitioner's request for consideration was likewise denied by the BIR;

WHEREAS, the **TAXPAYER** instituted an action against the **BIR** entitled "***Philippine Basketball Association vs. Commissioner of Internal Revenue***", docketed as CTA Case No. 9414, pending before the Honorable Second Division of the Court of Tax Appeals ("**CTA**"), seeking the cancellation of the Warrant of Distraint and/or Levy issued on July 4, 2016 due to prescription of collection;

WHEREAS, the **TAXPAYER** has submitted to the BIR a **Proposal for Amicable Settlement** dated July 13, 2017 for the alleged deficiency tax assessments contained in the **FANs/FLDs** for the periods 1988-1998, 1999 and 2000;

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[3], and that this 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;[4]

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

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[3] Art. 2028. A compromise is a contract whereby the parties, by making reciprocal concessions, avoid litigation or put an end to one already commenced.

[4] Examples are *Union Carbide Philippines (Far East), Inc., (Formerly Dow Chemical Philippines, Inc.) vs. Commissioner of Internal Revenue,* CTA Case No. 6768 (23 May 2005); and The Philippine American Life and General Insurance Company vs *Commissioner of Internal Revenue,* CTA Case No. 8894 (27 April 2018).

the **BIR** has accepted the total payment of **P48,550,786.73 ("Judicial Compromise Amount")** (net amount of 40% of all deficiency percentage taxes and 100% of all withholding taxes less P3,000,000.00 and 20,277,842.11 previously paid by the taxpayer in 2002 and 2003). The **Judicial Compromise Amount** has already been paid via electronic filing and payment system (eFPS) last July 3, 2019[5].

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. 9414. 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 **FANs** dated January 10, 2003 for the periods 1988-1998, 1999 and 2000.

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 **WILLIE O. MARCIAL** 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. 9414. 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. 9414 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. 9414.

Section 7. Disapproval of this Agreement by the Honorable CTA. In the event that this **Agreement** is disapproved

[5] Payment Forms and BIR eFPS payment confirmation are attached as *Annexes "A" and series.*

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. 9414 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 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 for the immediate implementation and execution of the terms and conditions of this Agreement of 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.

PHILIPPINE BASKETBALL ASSOCIATION	**BUREAU OF INTERNAL REVENUE**
By:	By:
[signed]	[signed]

WILLIE O. MARCIAL Commissioner	**HON. CAESAR R. DULAY** Commissioner

In a September 24, 2019 Resolution,[6] the Court summarized the relevant facts *prior* the filing of the joint motion and called the attention of the parties to the deficiencies noted in the same. Specifically:

1. The Court noted that the BIR Payment Forms No. 0605 and the Electronic Filing and Payment System (eFPS) payment confirmation[7] were *not* readable. The parties were, thus, ordered to file clear and readable certified true copies of said documents for the proper evaluation of the Court;

2. No original or certified true copy of the written approval by the Evaluation Board was filed, which is a requirement under Section 204(A) of the NIRC, as amended;

3. No original or certified true copy of the Certificates of Availment under RMO 3-2017 was filed with the joint motion, assuming the compromise settlements were duly approved as alleged in the joint motion;

4. Although Section 1 of the Judicial Compromise Agreement stated that there was a payment of "40% of all deficiency percentage taxes and 100% of all withholding taxes less P3,000,000.00 and 20,277,842.11", there was *no* manifestation of the legal grounds used as basis for the compromise, whether financial incapacity or other cases/doubtful validity; and,

5. Although Section 5 of the Judicial Compromise Agreement warrants that Mr. Willie O. Marcial, Commissioner, is duly authorized to sign and execute the agreement by the PBA's Board of Directors, the parties did *not* file an original or certified true copy of said authority from the board.

Subsequently, after extensions were granted by the Court, the parties filed the July 30, 2020 Joint Verified Compliance,[8] which submitted for the Court's review the following documents in compliance with the Court's order:

[6] Docket, Vol. II, pp. 654-668.
[7] Annexes A to A-17 of the Judicial Compromise Agreement, Docket, Vol. II, pp. 635-652.
[8] Docket, Vol. II, pp. 693-698.

1. Original copy of the Philippine Basketball Association (PBA) *Secretary's Certificate* showing the appointment of PBA Commissioner, Willie O. Marcial, as its Attorney-in-Fact to execute and conclude the compromise agreement with the respondent Commissioner of Internal Revenue (CIR).[9]

2. Readable copies of the payment forms filed in connection with the compromise agreement.[10]

3. Certified true copy of a document showing the unanimous approval and the signatures of all the members of the National Evaluation Board consisting of the following:[11]

   a. Caesar R. Dulay, CIR;

   b. Marissa O. Cabreros, Deputy Commissioner Legal Group;

   c. Arnel SD Guballa, Deputy Commissioner Operations Group;

   d. Celia C. King, Deputy Commissioner Resource Management Group; and,

   e. Lanee Cui-David, Deputy Commissioner Information Systems Group.

4. Finally, a certified true copy of the *Certificate of Availment* dated February 12, 2020, which states that PBA's applications of compromise settlement of deficiency Percentage, Expanded Withholding, Final Withholding, Fringe Benefits and Miscellaneous taxes have been approved by the National Evaluation Board.[12]

As discussed in the September 24, 2019 Resolution,[13] Section 204(A) of the National Internal Revenue Code of 1997 (1997 NIRC) provides that for cases other than financial incapacity, the minimum compromise rate is forty percent (40%) of the basic assessed tax. And in case the basic tax exceeds ₱1,000,000.00 or where the settlement offered is less than the said prescribed minimum rates, the

[9] Annex A, Joint Verified Compliance, Docket, Vol. II, p. 699.
[10] Annexes B to B-8, Joint Verified Compliance, Docket, Vol. II, pp. 700-735.
[11] Annex C, Joint Verified Compliance, Docket, Vol. II, p. 736.
[12] Annex D, Joint Verified Compliance, Docket, Vol. II, p. 737.
[13] Docket, Vol. II, pp. 654-668.

compromise must be approved by the Evaluation Board, which is composed of respondent and the four (4) Deputy Commissioners of the BIR.

Relative to Section 204(A) of the 1997 NIRC, Section 6 of Revenue Regulations (RR) No. 30-2002, as last amended by RR No. 9-2013, provides:

> "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.
>
> 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."

Accordingly, in order for a compromise settlement falling within the jurisdiction of the National Evaluation Board (NEB) to be valid, it must be shown that the same was approved by a *majority of all the members of the NEB*, and that there was a full settlement of the offered amount.

Upon review of the supporting documents attached to the joint motion and the Joint Verified Compliance, the Court finds that petitioner PBA has fully settled the legally required minimum amounts for compromise settlement, as shown in the BIR Payment Forms, eFPS Payment Details and Filing Reference Nos. representing payments for deficiency Percentage, Expanded Withholding, Final Withholding, Fringe Benefits and Miscellaneous taxes summarized below:

Tax Type	Basic Tax	Compromise Rate	Compromise Amount	Previously Paid	Paid per Judicial Compromise Agreement[14]
TY 1988-1998 - FLD No. 43518[15]					
Percentage Tax	₱ 114,328,931.96	40%	₱ 45,731,572.78	₱ 17,149,339.80[16]	₱ 28,582,232.98
TY 1999 - FLD No. 43519[17]					
EWT	₱ 1,068,402.36	100%	₱ 1,068,402.36		₱ 1,068,402.36
Final Tax	118,000.00	100%	118,000.00		118,000.00
FBT	3,783,603.52	100%	3,783,603.52		3,783,603.52
Percentage Tax	28,147,865.45	40%	11,259,146.18	3,825,058.23[18]	7,434,087.95
Total for 1999	*₱ 33,117,871.33*		*₱ 16,229,152.06*		*₱ 12,404,093.83*
TY 2000 - FLD No. 43520[19]					
EWT	₱ 1,239,057.76	100%	₱ 1,239,057.76		₱ 1,239,057.76
FWT	111,100.00	100%	111,100.00		111,100.00
FBT	3,434,216.94	100%	3,434,216.94		3,434,216.94
Percentage Tax	12,708,823.25	40%	5,083,529.30	2,303,444.08[20]	2,780,085.22
Total for 2000	*₱ 17,493,197.95*		*₱ 9,867,904.00*		*₱ 7,564,459.92*
TOTAL	**₱164,940,001.24**		**₱71,828,628.84**	**₱23,277,842.11**	**₱48,550,786.73**[21]

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[14] Annex A, Joint Motion for Judgment Based on Compromise Agreement, Docket, Vol. II, pp. 628-634.
[15] Exhibit "R-4-1-1", Docket, Vol. II, pp. 438-439.
[16] Exhibits "P-18-a" and "P-18-b", Docket, Vol. I, pp. 190-191 and Exhibit "R-5-1", BIR Records, pp. 982-984.
[17] Exhibit "R-4-2-1", Docket, Vol. II, pp. 445-446.
[18] Broken down as follows:

Exhibit	Reference	Amount Paid
"P-17-a" and "P-17-b"	Docket, Vol. I, pp. 187-188	₱ 2,422,178.82
"P-6" and "P-6-a"	Docket, Vol. I, pp. 348 & 155	1,000,000.00
"P-9" and "P-9-a"	Docket, Vol. I, pp. 351 & 161	402,879.41
TOTAL		**₱ 3,825,058.23**

[19] Exhibit "R-4-3-1", Docket, Vol. II, pp. 453-454.
[20] Broken down as follows:

Exhibit	Reference	Amount Paid
"P-16-a" and "P-16-b"	Docket, Vol. I, pp. 184-185	₱ 706,323.49
"P-7" and "P-7-a"	Docket, Vol. I, pp. 349 & 157	397,120.59
"P-8" and "P-8-a"	Docket, Vol. I, pp. 350 & 159	1,000,000.00
"P-10" and "P-10-a"	Docket, Vol. I, pp. 352 & 163	200,000.00
TOTAL		**₱ 2,303,444.08**

[21] Docket, Vol. II, p. 630, broken down as follows:

Joint Verified Compliance Annexes and series	Reference	Amount Paid
B	Docket, Vol. II, pp. 700-703	₱ 28,582,232.98
B-1	Docket, Vol. II, pp. 704-707	665,522.95
B-2	Docket, Vol. II, pp. 708-711	118,000.00
B-3	Docket, Vol. II, pp. 712-715	3,783,603.52
B-4	Docket, Vol. II, pp. 716-719	7,439,846.77
B-5	Docket, Vol. II, pp. 720-723	1,039,057.76
B-6	Docket, Vol. II, pp. 724-727	3,434,216.94
B-7	Docket, Vol. II, pp. 728-731	111,100.00
B-[8]	Docket, Vol. II, pp. 732-735	3,377,205.81
TOTAL		**₱48,550,786.73**

More importantly, the Court notes that there is sufficient compliance with the law through the submission of the *Certificate of Availment* dated February 12, 2020, which states that PBA's applications of compromise settlement have been approved by the NEB[22] together with the Certified true copy of a document showing the *unanimous* approval by the members of the NEB,[23] which is more than the required majority vote under Section 204(A) of the 1997 NIRC.

A compromise is a contract whereby the parties, by making reciprocal concessions, avoid litigation or put an end to one already commenced.[24] It is an accepted and desirable practice in courts of law and administrative tribunals, thus, in *Far East Bank and Trust Co., et al. v. Trust Union Shipping Corp., et al.*,[25] the Supreme Court explains 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." (*Underscoring supplied*)

It is settled that contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided that these are not contrary to law, morals, good customs, public order, or policy.[26] Once submitted to the court and stamped with judicial approval, a compromise agreement becomes more than a mere private contract binding upon the parties. It has the force and effect of any judgment.

As a final point, in *Conchita A. Sonley v. Anchor Savings Bank/Equicom Savings Bank*,[27] the Supreme Court ruled that once the compromise agreement is submitted to the Court and the latter has

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[22] Annex D, Joint Verified Compliance, Docket, Vol. II, p. 737.
[23] Annex C, Joint Verified Compliance, Docket, Vol. II, p. 736.
[24] Article 2028, Civil Code.
[25] G.R. No. 154716, September 16, 2008.
[26] Article 1306, Civil Code.
[27] G.R. No. 205623, August 10, 2016.

given its imprimatur thereof, the agreement 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." (*Underscoring supplied*)

WHEREFORE, in light of the foregoing considerations, the parties':

1. Joint Motion for Judgment Based on Compromise Agreement filed on September 11, 2019 is hereby **GRANTED**.

2. Joint Verified Compliance is **NOTED** and **APPROVED**; and,

3. Judicial Compromise Agreement is hereby **APPROVED** and this Judgement Based on Compromise Agreement is hereby rendered in accordance therewith. The parties are hereby enjoined to faithfully comply with all the terms and conditions of the aforesaid Judicial Compromise Agreement.

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

SO ORDERED.

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

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Judgement Based on Compromise Agreement were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

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

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Judgement 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