REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

ACE HARDWARE PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9313

Members:

DEL ROSARIO, *PJ, Chairperson,*
MANAHAN, and
REYES-FAJARDO, *JJ.*

Promulgated:

MAR 01 2023 ; 2:05 P.M.

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JUDGMENT BY COMPROMISE AGREEMENT

REYES-FAJARDO, ***J.*:**

A duly notarized Judicial Compromise Agreement (JCA),[1] was executed by and between petitioner's Director Elizabeth Anne C. Uychaco, and respondent, which is hereby reproduced in *verbatim*:

JUDICIAL COMPROMISE AGREEMENT

KNOWN ALL MEN BY THESE PRESENTS:

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

> **ACE HARDWARE PHILIPPINES, INC. ("TAXPAYER"),** a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office at SM Megamall Bldg. Corner Edsa Wack-Wack Greenhills, Mandaluyong City, represented by its Director, **ELIZABETH ANNE C. UYCHACO;**

- and -

1 Docket, pp. 2485-2491. Footnotes omitted.

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. LILIA CATRIS GUILLERMO** (collectively, the "**PARTIES**");

- Witnesseth That -

WHEREAS, the **BIR** issued to the **TAXPAYER** an undated Formal Letter of Demand ("**FLD**") for the year 2010, received by the TAXPAYER on 3 June 2014, assessing the **TAXPAYER** alleged deficiency taxes, as follows:

	Income Tax	Value Added Tax	Expanded Withholding Tax	Withholding Tax on Compensation	TOTAL
Basic Tax	718,843,318.69	667,944,822.27	2,814,833.16	887,757.19	1,390,490,731.31
Add: Interest & penalties	461,291,384.21	459,692,436.59	2,068,591.80	1,027,406.31	560,840,513.81
	1,180,134,702.90	**1,127,737,258.36**	**4,883,424.96**	**1,915,163.50**	**1,209,714,000.71**

WHEREAS, the **TAXPAYER** filed on 3 July 2014 with the **BIR** its protest letter of even date disputing the **FLD**;

WHEREAS, the **BIR** issued a FINAL DECISION ON DISPUTED ASSESSMENT ("**FDDA**") received by the TAXPAYER on 3 November 2015, which denied the Protest filed by the **TAXPAYER** with the aggregate assessment as follows[:]

	Income Tax	Value Added Tax	Expanded Withholding Tax	Withholding Tax on Compensation	TOTAL
Basic Tax	102,521,086.72	543,145,997.47	2,814,833.16	391,569.55	648,873,486.90
Add: Interest & penalties	84,650,962.52	473,604,254.09	2,585,287.20		560,840,513.81
	187,172,049.25	**1,016,750,261.56**	**5,400,120.36**	**391,569.55**	**1,209,714,000.71**

WHEREAS, the **TAXPAYER** filed its request for reconsideration of the FDDA by letter dated 3 December 2015, which was received by the BIR on the same date;

WHEREAS, the **BIR** denied the TAXPAYER's request for reconsideration by letter dated 4 February 2015;

WHEREAS, the **TAXPAYER** instituted an action against the **BIR** entitled ***"Ace Hardware Philippines, Inc. vs. Commissioner of Internal Revenue"***, docketed as CTA Case No. 9313, pending before the Honorable First Division of the Court of Tax Appeals ("**CTA**"), seeking the reversal of the **FDDA,** and the cancellation of the **FLD**;

WHEREAS, the **TAXPAYER** has submitted to the BIR a **Proposal for Amicable Settlement** for the alleged deficiency tax assessment contained in the **FLD** and **FDDA**;

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

WHEREAS, the Honorable CTA has issued rulings, allowing judicial compromise of tax assessment cases similar to the instant case;

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 compromise amount of **One Hundred Nineteen Million Four Hundred Twenty-Six Thousand Four Hundred Seventy-Seven and 86/100 (Php119,426,477.86) ("Judicial Compromise Amount"),** composed of the following payments:

TAX TYPE	PAID ON 3-2016	PAID ON 12-29-2016	PAID ON 9-28-2022	TOTAL
Income Tax		4,916,520	13,129,787.46	18,046,307.46
VAT		333,487	94,499,947.58	94,833,434.58
EWT	5,750,293			5,750,293
WTC	796,442			796,442
TOTAL PAYMENTS	**6,546,735**	**5,250,007**	**107,629,735.04**	**119,426,477.86**

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. 9313. 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 the **FAN** and **FDDA** litigated in CTA Case No. 9313.

Section 5. Authority to Enter Compromise Agreement. The **BIR**, through Commissioner Lilia 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 of the Honorable CTA.

The **TAXPAYER** warrants that, **ELIZABETH ANNE C. UYCHACO**, 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 and ending CTA Case No. 9313. 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. 9313 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. 9313.

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 the internal revenue taxes for which the **TAXPAYER** may be directly liable, and subject to refund proceedings if adjudged not to be liable, as allowed under existing rules and regulations; and

2. The proceedings of CTA Case No. 9313 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 or the judgment or order of the Honorable CTA approving the same.

Section 10. Signature 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 and obligations 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.

ACE HARDWARE PHILIPPINES, INC.	**BUREAU OF INTERNAL REVENUE**
By:	By:
(Sgd.)	(Sgd.)
ELIZABETH ANNE C. UYCHACO	**HON. LILIA CATRIS GUILLERMO**
Director	Commissioner

Witnesses:

(Sgd.) (Sgd.)

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By their Joint Motion for Judgment Based on Compromise Agreement, filed on October 28, 2022, the parties move for the approval of said JCA, render a decision based on the approved JCA, and declare CTA Case No. 9313 closed and terminated.

OUR RULING

We find merit on the parties' Joint Motion.

Republic of the Philippines v. Heirs of Cruz, et al.[2] decreed that "[b]efore approving a compromise, courts are bound to strictly scrutinize the same to ensure that the compromise *and* its execution are compliant with the law and consistent with procedural rules." In this regard, Section 204(A) of the National Internal Revenue Code of 1997, as amended (NIRC, as amended), reads:

> **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.

[2] G.R. No. 208956, October 17, 2018.

> 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.

To secure approval of said JCA, the following requisites must be present: *one,* the authority of the parties' themselves, or their representatives to enter into compromise agreement; [3] *two,* the compromise must be based on doubtful validity of the government's claim against the taxpayer (doubtful validity); or financial incapacity of the latter (financial incapacity); *three,* the subject matter being compromised is *not* prohibited by law, or by its implementing rules and regulations;[4] *four,* payment of the compromise amount, *i.e.*, at least 40% of the basic tax/es for doubtful validity; or at least 10% of the basic tax/es for financial incapacity; *five,* approval [5] of the National Evaluation Board (NEB) if: a) the amount offered is less than the prescribed rates; or b) if the total basic tax/es exceeds ₱1,000,000.00; and *six,* presentation of the pertinent Certificate of Availment. These requisites were met. Consider:

First. The persons who executed said JCA were properly clothed with authority to do so. To be precise, Elizabeth Anne C. Uychaco's authority to compromise, on petitioner's behalf, is based on the notarized Board Resolution dated April 28, 2022,[6] whereas respondent's authority to compromise internal revenue taxes is conferred by Section 204(A), in relation to Section 7(c)[7] of the NIRC, as amended.

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3 Article 1317 of Republic Act No. 386, or the Civil Code, states that no one may contract in the name of another without being authorized by the latter.

4 Article 1409 of the Civil Code provides that contracts contrary to law are void.

5 See Section 6, RR No. 30-2002.

6 Docket, p. 2492.

7 SEC. 7. *Authority of the Commissioner to Delegate Power.* - The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the rank equivalent to a division chief or higher, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner: Provided, however, That the following powers of the Commissioner shall not be delegated:

...

(c) The power to compromise or abate, under Sec. 204 (A) and (B) of this Code, any tax liability: Provided, however, That assessments issued by the regional offices involving basic deficiency taxes of Five hundred thousand pesos (P500,000) or less, and minor criminal violations, as may be determined by rules and regulations to be promulgated by

Second and *Third*. Section 6(A)[8] of the NIRC, as amended provides that taxes must be paid only upon notice and demand by respondent or his duly authorized representative, which is wanting in this case. Specifically, respondent's undated FLD alluded the period to pay in the FAN.[9] Yet, the FAN issued against petitioner covering taxable year (TY) 2010 for income tax,[10] value-added tax,[11] withholding tax on compensation,[12] expanded withholding tax,[13] failed to contain due dates for their payment.[14] Undeniably, this casts uncertainty on respondent's claim against petitioner.[15]

Fourth, Fifth, and Sixth. In respondent's FDDA, petitioner was assessed for the total basic taxes for TY 2010 amounting to ₱648,873,486.90, broken down as follows:

	Income Tax	Value Added Tax	Expanded Withholding Tax	Withholding Tax on Compensation	TOTAL
Basic Tax	102,521,086.72	543,145,997.47	2,814,833.16	391,569.55	₱648,873,486.90

Meanwhile, petitioner paid[16] the total amount of ₱119,426,477.86, as the compromise amount, broken down as follows:

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the Secretary of finance, upon recommendation of the Commissioner, discovered by regional and district officials, may be compromised by a regional evaluation board which shall be composed of the Regional Director as Chairman, the Assistant Regional Director, the heads of the Legal, Assessment and Collection Divisions and the Revenue District Officer having jurisdiction over the taxpayer, as members; ...

8 SEC. 6. *Power of the Commissioner to Make and Prescribe Additional Requirements for Tax Administration and Enforcement.* –

(A) Examination of Return and Determination of Tax Due. ...

The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative.

... (Boldfacing supplied)

9 Exhibit "R-9." Folder 1, BIR Records, pp. 746-753.

10 Exhibit "R-10." *Id.* at p. 745.

11 Exhibit "R-11." *Id.* at p. 744.

12 Exhibit "R-12." *Id.* at p. 743.

13 Exhibit "R-13." *Id.* at p. 742.

14 Paragraphs 3 and 11, respondent's Compliance dated January 19, 2023. Docket, pp. 2505 and 2509, respectively.

15 In *Republic of the Philippines v. First Gas Power Corporation*, G.R. No. 214933, February 15, 2022, among the reasons for the invalidation of the deficiency tax assessments therein is the lack of due dates in the respective final assessment notices.

16 In *Commissioner of Internal Revenue v. Iconic Beverages, Inc.*, G.R. Nos. 240651 and 240665, Resolution dated July 6, 2021, the Supreme Court recognized a duly notarized Compromise Agreement as basis for determining the taxpayer's payment of the compromise amount, as well as the acceptance thereof by the BIR.

TAX TYPE	PAID ON 3-2016	PAID ON 12-29-2016	PAID ON 9-28-2022	TOTAL
Income Tax		4,916,520	13,129,787.46	18,046,307.46
VAT		333,487	94,499,947.58	94,833,434.58
EWT	5,750,293			5,750,293
WTC	796,442			796,442
TOTAL PAYMENTS	**6,546,735**	**5,250,007**	**107,629,735.04**	**₱119,426,477.86**

Since the ground for compromise is based on doubtful validity, at least 40% of ₱648,873,486.90, or ₱259,549,394.76 is the minimum prescribed compromise amount. Considering that petitioner only paid ₱119,426,477.86, or below the prescribed minimum compromise amount, Section 204(A) of the NIRC, as amended, commands that petitioner must obtain approval from the NEB. Said NEB Approval was obtained, as recognized in the Certificate of Availment dated November 22, 2022.[17]

In conclusion, we note that there is nothing in the NIRC, as amended or its implementing rules which provides for the parameters or clear-cut guidelines on when a compromise rate lower than the prescribed rates provided for by law may be allowed or approved by the NEB. *Sans* such parameters or guidelines in the law that the NEB must adhere to, the unfettered discretion conferred to the NEB becomes susceptible to abuse, at the very least, or invites corruption, at its worse, to the detriment of both the taxpayer and the government. Illustratively, a ₱100.00 compromise amount involving a ₱1 Billion deficiency tax assessment would be considered lawful because the NEB approved the same.

The deficiency just mentioned is one that must be addressed by legislation, through amendments on Section 204(A) of the NIRC, as amended.[18]

WHEREFORE, respondent's Compliance, filed on January 20, 2023, providing the legal ground for the parties' compromise, and submission of the Certificate of Availment dated November 22, 2022,

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17 Docket, p. 2513.

18 In *Commissioner of Internal Revenue v. Carrier Air Conditioning Philippines, Inc.*, G.R. No. 226592, July 27, 2021, the Supreme Court noted the silence or insufficiency on the reasonable period for respondent to decide an administrative claim for refund of excessive, erroneous, or illegal taxes under Section 204(C) of the NIRC, as amended. The Supreme Court then furnished the Senate of the Philippines and the House of Representatives a copy of said decision for their information and appropriate action.

is **NOTED**, and deemed sufficient compliance of the Resolution dated December 13, 2022.

Further, the parties' Joint Motion for Judgment Based on Compromise Agreement, filed on October 28, 2022, is **GRANTED**. The duly notarized Judicial Compromise Agreement executed by and between Ace Hardware Philippines, Inc.'s Director Elizabeth Anne C. Uychaco, and the Commissioner of Internal Revenue is **APPROVED**. Accordingly, CTA Case No. 9313 is **DECLARED CLOSED** and **TERMINATED**.

Let a copy of this Decision be furnished to the Senate of the Philippines and the House of Representatives for their information and appropriate action.

SO ORDERED.

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

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

ON LEAVE
CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the Judgment by Compromise Agreement 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