REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

MINDANAO SANITARIUM AND HOSPITAL, INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9783

Members:

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

Promulgated:
MAY 11 2022 2:30pm

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JUDGMENT BY COMPROMISE AGREEMENT

On July 22, 2020, the Court noted petitioner's *Manifestation* that on that on July 2, 2020, it paid the aggregate amount of Php2,261,837.00 as compromise settlement for income tax, value-added tax (VAT), and expanded withholding tax (EWT) for the tax assessments for taxable year 2008. Petitioner paid the said amounts using its present name: Adventist Medical Center-Iligan City, Inc.

On September 7, 2020, the Court received the *Mediator's Report* of successful mediation, together with, among others, the original signed copy of the Compromise Agreement, Special Power of Attorney and Secretary's Certificate showing the authority of respondent's and petitioner's representatives, respectively.

On September 17, 20202, the Court received petitioner's *Manifestation and Motion to Defer Initial Presentation of Evidence* praying that the petitioner's initial presentation of evidence be deferred until the merits of the Compromise Agreement is resolved.

After various motions for extension and partial submissions, the required documents were completed, and are summarized below:

Document Submitted	Date Filed
1) Original Compromise Agreement	September 7, 2020
2) Payment Forms (BIR Form No. 0605) and BIR eFPS Payment Confirmation, of: (a) Php887,421.57 for deficiency income tax; (b) Php475,007.98 for deficiency VAT; and (c) Php899,408.21 for deficiency EWT	July 7, 2020
3) Letter and Applications for Compromise Settlement (BIR Form No. 2107) dated September 12, 2019: (a) Php899,408.21 for 100% of basic deficiency EWT (b) Php887,421.57 for 40% basic deficiency income tax; and (c) Php475,007.98 for 40% basic deficiency VAT	November 16, 2020
4) Certified true copy of the Certificate of Availment dated March 2, 2022	March 17, 2022
5) Certified true copy of the National Evaluation Board (NEB) approval of the compromise	March 17, 2022

In view of the submission of the required documents, we now proceed to analyze the Compromise Agreement and supporting documents.

The Compromise Agreement partly states:

> Undersigned parties, assisted by their respective counsels, Petitioner **MINDANAO SANITARIUM HOSPITAL, INC.** with office address at National Highway, San Miguel, Iligan City, Philippines, represented herein by EDGAR CLAUDE A. NADAL, MD and Respondent **COMMISSIONER OF INTERNAL REVENUE**, with address at Room 703 BIR Building, Bureau of Internal Revenue, Diliman, Quezon City, Philippines, represented by the Litigation Division.
>
> **AGREE as follows:**
>
> WHEREAS, on 18 March 2018, Petitioner Mindanao Sanitarium and Hospital, Inc. filed a Petition for Review challenging the validity of the Final Decision on Disputed Assessment issued by Respondent Commissioner of Internal Revenue in connection with deficiency tax assessments for taxable year 2008. Under the Final Decision on Disputed Assessment, petitioner was required to pay basic tax due in the amount of **Four Million Three Hundred Five Thousand Four Hundred Eighty-Two Pesos and 08/100 Pesos (Php4,305,482.08)** representing deficiency taxes; and
>
> WHEREAS, during mediation proceedings before the Philippine Mediation Center – Court of Tax Appeals,

Petitioner has offered to amicably settle the case for **Two Million Two Hundred Sixty-One Thousand Eight Hundred Thirty-Seven Pesos and 76/100 (Php2,261,837.76)** to avoid prolonged litigation, as authorized by A.M. No. 11-1-05-SC-PHILJA.

NOW THEREFORE, Petitioner has paid and Respondent has accepted the amount of **Two Million Two Hundred Sixty-One Thousand Eight Hundred Thirty-Seven Pesos and 76/100 (Php2,261,837.76)**, representing 40.00% of the basic income tax and VAT assessed, and 100.00% of the basic EWT, as full satisfaction of the 2008 tax assessment subject to the approval of the Honorable Court of Tax Appeals.

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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 –

(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.

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 respondent and his four (4) Deputy Commissioners if the subject assessment exceeds One Million Pesos (Php1,000,000) or where the settlement offered is less than the prescribed minimum rates.

Implementing the foregoing section of the 1997 NIRC, as amended, Revenue Regulations (RR) No. 30-2002 dated December 16, 2002, as amended by RR No. 8-2004, or the "Revenue Regulations Implementing Section 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," provides for those cases that may be compromised, *to wit*:

> 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;

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;

3. Civil tax cases being disputed before the courts;

4. Collection cases filed in courts;

5. Criminal violations, other than those already filed in court or those involving criminal tax fraud.

EXCEPTIONS:

1. Withholding tax cases, unless the applicant-taxpayer involves provisions of law that cast doubt on the taxpayer's obligation to withhold;

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The application for compromise settlement of the instant case was grounded on the doubtful validity of respondent's tax assessment, as shown by the use of the 40% compromise rate.

In the Amended Petition for Review,[1] petitioner argues that prescription on collection of taxes[2] has already set in, and, that a revenue officer has to be equipped with the requisite Letter of Authority to examine or investigate taxpayers.

A perusal of the allegations shows that Formal Letter of Demand (FLD) together with the assessment notices were received on January 6, 2011.[3] The Final Decision on Disputed Assessment (FDDA) was received on January 10, 2013. Petitioner received the Preliminary Collection Notice on

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[1] Docket, pp. 103-110, admitted per Resolution dated July 30, 2018, pp. 172-173.

[2] Sec. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –
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(c) Any internal revenue tax which has been assessed within the period of limitation as prescribed in paragraph (a) hereof may be collected by distraint or levy or by a proceeding in court within five (5) years following the assessment of the tax.
(d) Any internal revenue tax, which has been assessed within the period agreed upon as provided in paragraph (b) hereinabove, may be collected by distraint and or levy or by a proceeding in court within the period agreed upon in writing before the expiration of the five (5)-year period. The period so agreed upon may be extended by subsequent written agreements made before the expiration of the period previously agreed upon.

[3] Amended Petition for Review, par. 5, p. 104.

February 6, 2018 and the Final Notice Before Seizure on February 14, 2018. Based on the foregoing dates, there is a *prima facie* showing that the collection of the assessed taxes has already prescribed for having been issued beyond the five (5)-year prescriptive period from the date of assessment, i.e. from January 6, 2011 to February 6, 2018. Even if we subtract the period covered by the reinvestigation which was granted by the CIR, the collection efforts are still prescribed for having been issued more than five (5) years from the date of resolution of the reinvestigation, or from the receipt of the FDDA – January 10, 2013 to February 6, 2018.

Based on the foregoing, petitioner has sufficiently established the doubtful validity of the claim against it.

For EWT, Section 2 of RR No. 30-2002 also states that withholding tax cases are exempted from the cases which may be compromised unless the applicant-taxpayer invokes provisions of law that cast doubt on its obligation to withhold.

A perusal of the Formal Letter of Demand dated December 30, 2010, shows that the assessment for deficiency EWT was based on Section 3(M), of RR No. 17-2003,[4] which provides for income payments made by top 10,000 private corporation subject to creditable withholding tax, pertinent portions are quoted below:

> **(M)** **<u>Income payments made by top ten thousand (10,000) private corporations to their local/resident supplier of goods and local/resident supplier of services other than those covered by other rates of withholding tax.</u>** – Income payments made by any of the top <u>ten thousand (10,000) private corporations</u>, as determined by the Commissioner, to their local/<u>resident</u> supplier of goods <u>and local/resident supplier of services, including non-resident alien engaged in trade or business in the Philippines</u>.
>
> <u>Supplier of goods</u> - <u>One Percent (1%)</u>
>
> <u>Supplier of services</u> - <u>Two percent (2%)</u>

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[4] Subject: Amending Further Pertinent Provisions of Revenue Regulations No. 2-98, as Amended, Providing for Additional Transactions Subject to Creditable Withholding Tax; Re-Establishing the Policy that the Capital Gains Tax on the Sale, Exchange or Other Disposition of Real Property Classified as Capital Assets Shall be Collected as a Final Withholding Tax, Thereby Further Amending Revenue Regulations Nos. 8-98 and 13-99, As Amended by Revenue Regulations No. 14-2000; and for Other Purposes, March 31, 2003.

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The term "local/resident supplier of goods" pertains to a supplier from whom any of the top ten thousand (10,000) private corporations, as determined by the Commissioner, regularly makes its purchases of goods. As a general rule, this term does not include a casual purchase of goods, that is, purchases made from non-regular suppliers and oftentimes involving single purchases. However, a single purchase which involves ten thousand pesos (P10,000.00) or more shall be subject to a withholding tax. The term "regular suppliers" refers to suppliers who are engaged in business or exercise of profession/calling with whom the taxpayer-buyer has transacted at least six (6) transactions, regardless of amount per transaction, either in the previous year or current year. The same rules apply to local/resident supplier of services other than those covered by separate rates of withholding tax.

A corporation shall not be considered a withholding agent for purposes of this Section, unless such corporation has been determined and duly notified, in writing, by the Commissioner that it has been selected as one of the top ten thousand (10,000) private corporations.

xxx xxx xxx *(emphasis and underscoring in the original)*

In petitioner's Motion for Re-Investigation[5] dated January 18, 2011, petitioner argues that the obligation to deduct withholding tax under Section 3(M) of RR No. 17-2003 only arises when a disbursement is Php10,000.00 or more, and on recurrent transactions, not isolated ones, to wit:

Section 3, paragraph M of Revenue Regulations No. 17-2003 is clear and needs no further disquisition that the obligation to deduct the expanded withholding tax arises only when a disbursement is P10,000 and above and on recurrent transactions, not isolated ones. A substantial portion of these disbursements were below the P10,000 threshold amount. So the assessment, without doubt, is not correct. For example, purchases of materials and supplies account includes purchases of vegetables, fruits, and other food materials used in the Dietary Department which are sold at the public market and mostly by marginal farmers coming from the remote barangays. How can we deduct withholding tax from them? As such, it is imperative on the part of the BIR to examine the source documents, a reconciliation of the examiner's findings against the entries

[5] Docket, pp. 302-306.

> recorded in the inter-related books of accounts and most importantly, to identify exactly those payees that can be subjected to expanded withholding taxes.[6]

Based on the foregoing, petitioner has sufficiently put in question its obligation to withhold the EWT.

As to the second requisite pertaining to the amount of compromise payment, the basic amount of deficiency tax as contained in the Preliminary Collection Notice,[7] and the amounts paid are stated below:

Tax Type	Basic Tax	Compromise Rate	Compromise Amount	Payment Reference Number
IT	P2,218,553.92	40%	887,421.57	292000036635327[8]
VAT	1,187,519.95	40%	475,007.98	292000036635204[9]
EWT	899,408.21	100%	899,408.21	292000036635114[10]
TOTAL	**P4,305,482.08**	**40%**	**P2,261,837.76**	

As to the last requisite, the approval of the NEB is necessary considering that the amount involved in this case is more than One Million Pesos (P1,000,000.00). The parties submitted a certified true copy of the Certificate of Availment[11] stating that the application for compromise settlement of deficiency income tax, VAT, and EWT has been approved by the NEB. The parties also submitted a certified true copy of the signature page showing the votes of the members of the NEB.[12]

Considering the faithful observance by the parties of all the requisites under Section 204(A) of the 1997 NIRC, as amended, 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.*,[13] 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

[6] Docket, p. 306.
[7] Docket, p. 315.
[8] Docket, Manifestation dated July 7, 2020, Annex "A" and "A-1".
[9] Docket, Manifestation dated July 7, 2020, Annex "B" and "B-1".
[10] Docket, Manifestation dated July 7, 2020, Annex "C" and "C-1".
[11] Docket, attached to the Compliance filed on March 17, 2022.
[12] *Id.*
[13] G.R. No. 154716, September 16, 2008.

> 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*,[14] 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.

WHEREFORE, the Compromise Agreement entered into by the parties is hereby **APPROVED** and this **Judgment by 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.

Accordingly, this case is now **CLOSED** and **TERMINATED**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
Associate Justice

[14] G.R. No. 205623, August 10, 2016.

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice