REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

HOLIDAY INNS (PHILIPPINES), INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10396

Members:

UY, *Chairperson,*
BACORRO-VILLENA, *and*
CUI-DAVID, *JJ.*

Promulgated:
OCT 13 2022
2:40 pm.

x - x

JUDGMENT BASED ON COMPROMISE AGREEMENT

BACORRO-VILLENA, J.:

On 15 March 2022, the Court received a "Joint Manifestation (Re: Compromise Agreement)"[1] from the parties, petitioner Holiday Inns (Philippines), Inc. (**petitioner**) and respondent Commissioner of Internal Revenue (**respondent**), stating that they have successfully reached a compromise agreement before the Philippine Mediation Center – Court of Tax Appeals (**PMC-CTA**), pursuant to A.M. No. 11-1-05-SC-PHILJA or otherwise known as the Interim Guidelines for Implementing Mediation in the Court of Tax Appeals (**Interim Guidelines**).

Under the Interim Guidelines, upon approval of the compromise agreement, the Court shall render judgment based thereon.[2] Moreover, the subject Compromise Agreement (**CA**) likewise states that the same

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1 Division Docket, pp. 408-409.
2 *See* Part IX(A) of the Interim Guidelines.

shall be submitted for the approval of this Court[3]; hence this Judgment Based on Compromise Agreement (**JBCA**), notwithstanding the lack of any motion from the parties for the approval thereof.

Relative to the above JBCA, the parties transmitted the duly executed CA[4] and the Bureau of Internal Revenue (**BIR**) Payment Form No. 0605[5], as well as the proof of payment[6] thereof, to the PMC-CTA.

In compliance with the Court's Resolution dated 14 July 2022[7], petitioner further submitted on 25 July 2022 the original Special Power of Attorney[8] authorizing Hazel Kiok Tin to execute the subject CA on petitioner's behalf. On the other hand, respondent submitted on 22 July 2022[9] the certified true copies of Certificate of Availment[10] and the signature page[11] thereof, both dated 30 June 2022.

Moreover, in their "Joint Manifestation (Re: Resolution dated 31 August 2022)"[12] filed on 09 September 2022, the parties manifested that the basis for acceptance of compromise is doubtful validity of the assessment; particularly, that the assessment seems to be arbitrary in nature, appearing to be based on presumptions and there is a reason to believe that it is lacking in legal and/or factual basis.

The subject CA, which Mediator (Ret.) Justice Amelia R. Cotangco-Manalastas has duly attested, reads as follows:

...

COMPROMISE AGREEMENT

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

HOLIDAY INNS (PHILIPPINES) INC., (the **"TAXPAYER"**), a domestic corporation duly organized and existing under the laws of the Republic of the

3 *See* Section 2, Compromise Agreement, Division Docket, pp. 426-427.
4 Id., pp. 424-431.
5 Id., p. 432.
6 Id., p. 433.
7 Id., pp. 448-449.
8 Id., pp. 455-457.
9 Received by the Court on 02 August 2022.
10 Division Docket, p. 460.
11 Id., p. 461.
12 Id., pp. 470-472.

Philippines, with principal office address at 29th Floor Tower II, RCBC Plaza, 6819 Ayala Avenue corner Gil Puyat Avenue, Makati, represented by Hazel [K]iok Tin, Resident Agent;.

-and-

The **COMMISSIONER OF INTERNAL REVENUE** (the "**CIR**"), with principal office at Bureau of Internal Revenue, 511 National Office Building, Agham Road, Diliman, Quezon City, represented by the **Commissioner of Internal Revenue, Hon. Cesar R. Dulay** (collectively, the "PARTIES");

-Witnesseth That-

WHEREAS, on February 21,2013, the **TAXPAYER** received the Bureau of Internal Revenue (BIR), Revenue Region No.8's Formal Assessment Notice (FAN) with attached Details of Discrepancies in which the Regional Director demanded the **TAXPAYER** to pay its alleged deficiency Income Tax (IT) for taxable year (TY) 2019 in the total amount of ₱10,554,286.65, inclusive of interest.

WHEREAS, on March 20, 2013, the **TAXPAYER** filed with the BIR, R.R. No. 8 its request for reinvestigation of the FAN (the "Protest") in which it prayed for the annulment of the FAN.

WHEREAS, on August 17, 2015, the **TAXPAYER received the** BIR R.R. No. 8's Final Decision on Disputed Assessment (FDDA) dated August 11, 2015. In his FDDA, the **CIR**, through the Regional Director of BIR, R.R. No. 8 denied the Protest and ordered the **TAXPAYER** to pay the alleged deficiency Income Tax liabilities for TY 2009 in the aggregate amount of ₱13,889,908.37, which was computed as follows:

I. INCOME TAX (Assessment Notice No. IT-LA23049/ELA12213-09-13-0139		
Taxable Income (Loss) per ITR		₱15,731,706.00
Add: Adjustments/Disallowance		
a. Disallowed Share in Head Office expenses		22,200,984.00
Adjusted Taxable Income		₱37,932,690.00
Income Tax Due:		₱11,379, 807.00
Less: Tax Credits/Tax Payments		
Prior Year's Excess Credits	₱ 1,493,391.00	
Creditable Tax Withheld Per BIR Form 2307	7,185,811.00	
Total	₱ 8,679,202.00	
Less: Excess Credits Carried Over To The Succeeding Quarter/Year	3,959,690.00	4,719,512.00
Basic Tax Due		₱ 6,660,295.00
Add: Interest (4.16.10 to 9.18.15)		7,229,613.37
TOTAL AMOUNT DUE		**₱ 13,889,908.37**

WHEREAS, on September 10, 2015, the **TAXPAYER** filed a request for reconsideration of the FDDA (the "Administrative Appeal") with the **CIR**. In its Administrative Appeal, the **TAXPAYER** prayed for the reversal of the FDDA and the cancellation of the CIR's deficiency tax assessments for TY 2009.

WHEREAS, on September 16, 2020, the CIR issued a Final Decision confirming the income tax deficiency of the **TAXPAYER** in the amount of ₱13,889,908.37.

WHEREAS, on November 9, 2020, the **TAXPAYER** instituted an action against the **CIR** entitled "**HOLIDAY INNS (PHILIPPINES), INC. VS. COMMISSIONER OF INTERNAL REVENUE**", docketed as CTA Case No. 10396, before the Second Division of the Court of Tax Appeals ("**CTA**"), seeking the cancellation and nullification of the assessment for deficiency income tax for TY 2009 in the amount of ₱13,889,908.37.

WHEREAS, on March 15, 2021, the CTA referred the case to Mediation before the Philippine Mediation Center-Court of Tax Appeals (PMC-CTA).

WHEREAS, in the course of the mediation proceedings before the PMC-CTA, the **PARTIES** have agreed to amicably settle this case upon the **TAXPAYER's** payment of ₱2,664,118.00.

WHEREAS, on 10 November 2021, the **TAXPAYER** has remitted and paid to the BIR R.R. No. 8A (pursuant to Revenue Administrative Order No. 4-2019) the total amount of ₱2,664,118.00, as evidenced by:

> Payment Form (BIR Form No. 0605) filed on 9 November 2021, with EFPS Filing Reference No. 292100044523379, covering the **TAXPAYER's** payment of ₱2,664,118.00, representing 40% of the deficiency IT assessment for TY 2009.

WHEREAS, the **CIR** has evaluated the **TAXPAYER's** proposal for amicable settlement and believes that a compromise would allow immediate tax collection and also put an end to litigation as provided in the Civil Code of the Philippines, 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 the Supreme Court, and pertinent laws and issuance on judicial compromise without contravening laws, morals, public order, and public policy.

WHEREAS, the **PARTIES** have agreed to accept mediation to avoid prolonged litigation, as authorized by A.M. No.11-1-05-SC-PHILJA.

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.

WHEREAS, the assistance of the assigned mediator resulted in making the parties realize the advantage of ending their dispute by agreeing upon compromise.

NOW, THEREFORE, for and in consideration of the foregoing premises, the **PARTIES** hereto agreed as follows:

Section 1. Judicial Compromise Amount. In order to settle the above-mentioned case, the **TAXPAYER** has offered and paid to the BIR, R.R. No. 8A on __________, and that the **CIR** has accepted the total payment of **₱2,664,118.00** (the "**Judicial Compromise Amount**").

Section 2. Submission to the Honorable CTA. This Agreement fully signed by the **PARTIES** shall be submitted for the approval of the Honorable Court of Tax Appeals in CTA Case No. 10396. 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 of this Agreement by the Honorable CTA. Upon final approval by the Honorable CTA of this **Agreement**, the **CIR** 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**.

Section 5. Authority to Enter Compromise Agreement. The BIR, through Commissioner Cesar 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**, through Hazel Kiok Tin, Resident Agent, 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 the pending CTA Case No. 10396. Upon approval by the Honorable CTA, the **CIR** recognizes the full satisfaction of the supposed tax liability of the **TAXPAYER** in connection with CTA Case No. 10396 and acknowledges that the **TAXPAYER** no longer has any tax liability whatsoever based upon, arising from, or in connection with the TY 2009 Assessment.

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, subject to extension, 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 Bureau of Internal Revenue 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. 10396 shall continue and the discussions pursuant 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 acknowledgment 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. 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, for the consideration and approval of the Honorable Court.

HOLIDAY INNS PHILIPPINES, INC. *Petitioner/TAXPAYER*	**COMMISSIONER OF INTERNAL REVENUE** *Respondent/CIR*
By:	By:
(Sgd.) **HAZEL KIOK TIN** *Authorized Representative*	(Sgd.) **HON. CAESAR R. DULAY** *Commissioner of Internal Revenue*

Witnesses:

(Sgd.) Reichelle Alingasa	(Sgd.)

ATTESTED:

(RET.) JUSTICE AMELIA R. COTANGCO-MANALASTAS
Mediator

...[13]

From the foregoing, it appears that a Final Decision on Disputed Assessment (**FDDA**) was issued to petitioner dated 11 August 2015[14] containing an assessment for deficiency income tax (**IT**) with basic tax due of ₱6,660,295.00. The parties then agreed to amicably settle the case upon petitioner's payment of ₱2,664,118.00 or equivalent to forty percent (40%) of the basic IT due, on the ground of doubtful validity of the assessment.

13 Citations omitted and emphasis, italics and underscoring in the original text.

14 Pre-marked as petitioner's Exhibit "P-24" and respondent's Exhibit "R-10", Division Docket, pp. 228-229 and 320-321.

The Court rules in favor of the compromise.

In *Commissioner of Internal Revenue v. Iconic Beverages, Inc.*[15], the Supreme Court held that the authority of respondent to compromise is purely discretionary, and the courts cannot interfere with the exercise of discretionary functions, absent grave abuse of discretion, to wit:

> ...
>
> The power of the CIR to enter into compromise agreements for deficiency taxes is explicit in Section 204 (A) of the Tax Code, as amended. The CIR may compromise an assessment when a reasonable doubt as to the validity of the claim against the taxpayer exists, as in this case, or the financial position of the taxpayer demonstrates a clear inability to pay the tax. It is settled that the authority of the CIR to compromise is purely discretionary, and the courts cannot interfere with his exercise of discretionary functions, absent grave abuse of discretion. Here, no grave abuse of discretion exists.
>
> In this regard, a compromise agreement has the effect of *res judicata* on the parties. Compromises are generally to be favored and those entered into in good faith cannot be set aside, except when there is mistake, fraud, violence, intimidation, undue influence, or falsity of documents. None of these exceptions obtain in the present case.
>
> ...

With respect to the necessary approval of the CA, Section 6 of Revenue Regulations (**RR**) No. 30-2002[16], as amended by RR No. 9-2013[17], 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

15 G.R. Nos. 240651 & 240665, 06 July 2021 (Notice of Resolution); Citations omitted and italics in the original text.

16 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.

17 Amending Certain Provisions of Revenue Regulations No. 30-2002.

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.[18]

xxx xxx xxx

...

Furthermore, Revenue Memorandum Order (**RMO**) No. 3-2017[19] likewise provides:

...

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".[20]

...

Consequently, a compromise settlement of any tax liability where the basic tax involved exceeds ₱1,000,000.00, such as in this case, must bear the approval of the majority of all National Evaluation Board (**NEB**) members. Such approval shall be evidenced by a Certificate of Availment following the prescribed format.

To show proof of the necessary approval, respondent submitted certified true copies of the Certificate of Availment[21] and its signature page[22] (showing the unanimous approval of members of the NEB). It is noted that the CA bears no date of payment, *per* Section 1 thereof,

[18] Emphasis and underscoring in the original text.
[19] 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.
[20] Emphasis supplied.
[21] Supra at note 10.
[22] Supra at note 11.

nevertheless, considering the Certificate of Availment issued, the Court finds no ground to not approve the same.

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

WHEREFORE, in view of the foregoing, petitioner Holiday Inns (Philippines), Inc. and respondent Commissioner of Internal Revenue's 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 Compromise Agreement.

Consequently, petitioner Holiday Inns (Philippines), Inc.'s pending Petition for Review filed on 09 November 2020 is rendered **MOOT AND ACADEMIC.** Accordingly, this case is now deemed **CLOSED AND TERMINATED.**

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

ATTESTATION

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

ERLINDA P. UY
Associate Justice
2nd Division Chairperson

CERTIFICATION

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