REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

RUEL E. ORDUÑA, doing business under the name and style, GRUPO ENTABLADO STAGE BUILDERS,	**CTA CASE NO. 9560**
Petitioner,	*Members:*
- versus -	**UY,** *Chairperson,* **BACORRO-VILLENA,** *and* **CUI-DAVID,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: DEC 06 2022 1:11 p.m.

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JUDGMENT ON COMPROMISE AGREEMENT

CUI-DAVID, J.:

Submitted for resolution is the parties' *Compliance with Joint Motion for the Approval of the Compromise Agreement and Issuance of Judgment Based Thereon*, filed on October 25, 2022.

To recall, on May 15, 2019, the instant case was referred for mediation to the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA), to which the parties were directed to appear on June 20, 2019.[1]

After the termination of the mediation proceeding, the PMC-CTA forwarded on November 5, 2020 the *Mediator's Report*,[2] signed by (Ret.) Judge Leticia E. Sablan, *Mediator*, stating that there has been a successful settlement in this case. Attached to the said *Mediator's Report* are the following documents, to wit:

[1] Resolution dated May 15, 2019, Docket, p. 454.
[2] Docket, p. 555.

1. *Agreement to Mediate and Selection of Mediator*[3] dated June 26, 2019 (original copy);

2. *Selection of Mediator*[4] dated June 26, 2019, whereby the parties selected (Ret.) Judge Leticia E. Sablan to be the Mediator in the instant case (original copy);

3. *Special Power of Attorney*[5] dated July 11, 2019, signed by Romulo L. Aguila, Regional Director, Bureau of Internal Revenue (BIR), Revenue Region No. 7 - Quezon City, appointing Atty. Victor Rico P. Lopez of the Legal Division of the BIR to appear for and on behalf of respondent at the mediation of the instant case (original copy);

4. *Appearance of Parties*[6] in the Mediation Conferences on July 12, 2019, July 17, 2019, and August 14, 2019 (original copy);

5. *Compromise Agreement*[7] signed by petitioner Ruel Orduña and respondent Commissioner of Internal Revenue Caesar R. Dulay, and attested by (Ret.) Judge Leticia E. Sablan (original copy);

6. Various BIR Payment Forms (BIR Form No. 0605) and their corresponding Bank Deposit Slips,[8] representing the payment of compromise amount in full settlement of petitioner's 2011 internal revenue tax liabilities (*photocopies only*).

On even date, the parties filed their *Joint Motion to Render Judgment on the Compromise Agreement (Joint Motion),*[9] praying that judgment be rendered based on the *Compromise Agreement* entered by them before the PMC-CTA. Attached to the said motion is a copy of the *Compromise Agreement.*

On December 11, 2020, noting that certain documents were not attached to the *Mediator's Report* as required under the CTA *En Banc* Resolution No. 7-2021, the Court issued a

[3] Docket, p. 556.
[4] Docket, p. 557.
[5] Docket, p. 558.
[6] Docket, p. 559.
[7] Docket, pp. 560-566.
[8] Docket, pp. 567-574.
[9] Docket, pp. 537-539.

Resolution directing the parties to submit to the Court the original or certified true copies of the relevant documents, *i.e.*, BIR Form No. 0605 and proof of payment of the compromise amount; and Certificate of Availment confirming that the compromise agreement was approved by the National Evaluation Board (NEB) of the BIR, within fifteen (15) days from notice thereof. Consequently, the resolution of the parties *Joint Motion* and *Mediator's Report* was held in abeyance.[10]

After a series of extensions of time, or on November 5, 2021, petitioner filed his *Explanation with Compliance (Re: Resolution promulgated on 30 September 2021)*,[11] explaining his failure to comply with the directive of the Court and submitting the original copies of BIR Form No. 0605 as proof of payment of the compromise amount.

Respondent, on the other hand, filed his *Manifestation (Re: Resolution dated September 30, 2021)*[12] stating that the Accounts Receivable Monitoring Division of the BIR has not yet forwarded the original or certified true copy of the NEB Approval due to the heavy backlog of cases they are handling (caused by the implemented alternative work schedule). As such, respondent seeks additional time to submit the said document.

On December 14, 2021, the Court issued a Resolution noting petitioner's *Explanation with Compliance* and respondent's *Manifestation (Re: Resolution dated September 30, 2021)*. In addition, respondent was given another fifteen (15) days from notice, within which to submit the original or certified true copy of the proof of approval of the Compromise Agreement by the majority of the members of the NEB.

Two (2) more extensions of time followed.

On June 20, 2022, respondent's counsel filed a *Manifestation (Re: Resolution dated June 07, 2022)*, stating that the Accounts Receivable Monitoring Division of the BIR informed him that there was a mistake in the payments made by petitioner. According to respondent's counsel, he is still waiting for petitioner to rectify the error so that his payments will be correctly applied to his tax liabilities subject to the *Compromise Agreement*. Hence, he asks for additional time to

[10] Resolution dated December 11, 2020, Docket, pp. 556-559.
[11] Docket, pp. 578-583.
[12] Docket, pp. 616-618.

submit the original or certified true copy of the proof of approval of the *Compromise Agreement* by the majority of the members of the NEB.

In the Resolution issued on July 26, 2022, the Court noted respondent's *Manifestation (Re: Resolution dated June 07, 2022)* and deemed sufficient compliance with the Court's Resolution dated June 7, 2022. However, respondent's prayer for additional time to submit the required document was denied. For the Court, respondent's failure to submit the required document despite the extensions given left it with no choice but to lift the suspension of court proceedings and proceed to resolve the case on the merits.

Thus, in the Resolution dated September 12, 2022, the instant case was set for hearing on October 20, 2022, for the presentation of respondent's remaining witnesses.

However, during the hearing on October 20, 2022, respondent's counsel manifested that he would no longer present evidence considering that on October 19, 2022, he received a copy of the *Certificate of Availment* and *Approval of Compromise Agreement* from the NEB of the BIR. Petitioner, on the other hand, confirmed respondent's statement. Thus, as prayed for, the parties were granted five (5) days, or until October 25, 2022, to file an appropriate joint motion and submit the aforesaid document.

In compliance thereof, the parties filed the instant *Compliance with Joint Motion for the Approval of the Compromise Agreement and Issuance of Judgment Based Thereon,* submitting the certified true copies of the Certificate of Availment issued by the Assistant Commissioner of Internal Revenue (ACIR) for Enforcement and Advocacy Service, ACIR James H. Roldan, dated October 13, 2022, and the *Written Approval* of the NEB, duly signed by all members. And in line with the submission of the foregoing documents, the parties reiterate their motion for the approval of their *Compromise Agreement* submitted before the Court on November 5, 2020, and the issuance of a judgment based thereon.

Acting on the foregoing, the parties' *Compliance* with the Court's directive given in open court on October 20, 2022, is **NOTED**.

Hence, the Court shall now act on the parties' *Joint Motion to Render Judgment on the Compromise Agreement* filed on November 5, 2020.

The *Compromise Agreement* partly reads:

> **WHEREAS**, a dispute arose out of the Formal Letter of Demand and Assessment Notices (**"FLD/FAN"**) dated December 16, 2014 issued by the **RESPONDENT** to the **PETITIONER** for taxable year 2011 assessing the **PETITIONER** deficiency for an aggregate amount of P5,018,642.57 inclusive of interests and surcharges;
>
> **WHEREAS**, such dispute resulted in the filing of the above-entitled Petition for Review with motion for suspension of collection;
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> **WHEREAS**, during the course of the proceedings, the parties have agreed to accept mediation to avoid prolonged litigation, as authorized by A.M. No. 11-1-05-SC-PHILJA;
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> **WHEREAS**, the assistance of the assigned mediator resulted in making the parties realize the advantage of ending their dispute by agreeing upon a compromise;
>
> **WHEREAS**, in line thereof, the **PETITIONER** submitted to the **RESPONDENT**, an **Offer for a Compromise Agreement** dated 17 July 2019 for the alleged deficiency tax assessment contained in the **FAN/FLD** for taxable year 2011;
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> **WHEREAS**, **RESPONDENT** has evaluated **PETITIONER'S** proposal 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, serves the interest of the Government;
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> **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 issue rulings allowing judicial compromises similar to the instant case;
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> **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;

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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, **PETITIONER** has offered and the **RESPONDENT** has accepted the total payment of **Php626,429.83 ("Judicial Compromise Amount")** (15% of the basic deficiency Income Tax **P2,780,178.38**, Value Added Tax **P257,351.26** and Documentary Stamp Tax **P4,092.00**, 100% f the basic deficiency Expanded Withholding Tax **P170,186.58**).

Section 2. Submission to the Honorable CTA. This Agreement fully signed by the **PARTIES** shall be submitted for the approval of the Honorable CTA, Second Division thereof, in the above-entitled case, docketed as CTA Case No. 9560. 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, **RESPONDENT** undertakes to execute and deliver to the **PETITIONER** any and all documents as may be required to effectively and fully implement the provisions of this Agreement, withdrawing and cancelling the **FLD/FAN** dated December 16, 2014 for taxable year 2011, and the consequent withdrawal and lifting of the Writ of Garnishment issued n line thereof, especially the one being implemented on the following Accounts of **PETITIONER** with Chinabank:

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Section 5. Authority to Enter Compromise Agreement. The **RESPONDENT** 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.

Section 6. Full and Final Settlement. This Agreement is executed by the **PARTIES** for the purpose of amicably settling and ending CTA Case No. 9560. Upon approval by the

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Court, **RESPONDENT** recognizes the full satisfaction of the supposed tax liability of the **PETITIONER** in connection with CTA Case No. 9560 and acknowledges that the **PETITIONER** no longer has any tax liability whatsoever based upon, arising from or in connection with the particular subject of CTA Case No. 9560.

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 **PETITIONER** to the **RESPONDENT** shall be deemed a tax credit which may be applied against internal revenue taxes for which the **PETITIONER** may be directly liable, as allowed under existing rules and regulations; and

2. The proceedings of the CTA Case No. 9560 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 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.

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In *Republic of the Philippines vs. Heirs of Cruz, et al.*,[13] the Supreme Court ordains 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 (NIRC) of 1997, as amended, reads:

> SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may –
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> (A) Compromise the Payment of any Internal Revenue Tax, when:
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> (1) A reasonable doubt as to the validity of the claim against the taxpayer exists; or
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> (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:
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> For cases of financial incapacity, a minimum compromise rate equivalent to ten percent (10%) of the basic assessed tax; and
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> For other cases, a minimum compromise rate equivalent to forty percent (40%) of the basic assessed tax.
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> Where the basic tax involved exceeds One million pesos (Php1,000,000) 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;

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

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 tax assessed and, if the ground is financial incapacity, the minimum payment should be at the rate equivalent to ten percent (10%) of the basic tax assessed; and

3. The approval of the NEB which is composed of the respondent and his four (4) Deputy Commissioners if the subject assessment exceeds One Million Pesos (Php1,000,000.00) 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 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," 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;
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> 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;
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> 3. **Civil tax cases being disputed before the courts**;
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> 4. Collection cases filed in courts;
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> 5. Criminal violations, other than those already filed in court or those involving criminal tax fraud.

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EXCEPTIONS:

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

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In the case at bar, record reveals that the application for compromise settlement was grounded on the financial incapacity of petitioner due to business losses which led to the permanent cessation of his business. This is supported by the parties' *Joint Manifestation and Motion (Re: Compliance to the Honorable Court's Resolution promulgated on 22 October 2019)* where the parties attached therein petitioner's offer of compromise *via* a letter dated July 17, 2019, which partly reads:

> In line with our talks last 11 July 2019, and considering that my client has no longer the capacity to pay the assessed taxes against him due to business losses which led to its closure, we are hereby formally making the following offer for a compromise agreement, where my client, RUEL E. ORDUÑA offers to pay 15% of the Basic Taxes that are assessed and being demanded against him, except the Withholding Tax which he is willing to pay 100% thereof, to wit:

TAX	AMOUNT	COMPROMISE OFFER
IT	P2,780,178.38	P417,026.76
VT	257,351.26	38,602.69
DST	4,092.00	613.80
CP	0.00	0.00
EWT	170,186.58	170,186.58
	P3,211,808.22	**P626,429.83**

Records also show that attached to the said Letter dated July 11, 2019, are the following:

1. *Cancellation Certification* dated September 5, 2016, issued by the Department of Trade and Industry, certifying that the Business Name Registration of GRUPO ENTABLADO STAGE BUILDERS has been cancelled as of September 5, 2016;

2. *Certification* dated March 22, 2018, issued by the Office of the City Treasurer of Pasig City, certifying that the Business Account of GRUPO ENTABLADO STAGE BUILDERS appears retired as of March 22, 2018; and

3. *Certification* dated August 8, 2018, issued by the Sangguniang Barangay ng Pinagbuhatan, Lungsod ng Pasig, certifying that GRUPO ENTABLADO STAGE BUILDERS with business address located at No. 40 M. H. del Pilar St., Barangay Pinagbuhatan, Pasig City, owned and operated by Mr. Ruel E. Orduña hereby disclosed the CANCELLATION of their BUSINESS OPERATION at the given business address as documented by the signed and approved Certificate of Business Retirement dated March 22, 2018.

Indeed, as to the first requisite, petitioner's financial incapacity has been sufficiently shown.

As to the amount of compromise payment, petitioner paid 100% of the basic deficiency Expanded Withholding Tax (EWT), and 15% of the basic deficiency assessments for Income Tax (IT), Value-Added Tax (VAT), and Documentary Stamp Tax (DST) as shown in the table above. The amounts paid were duly supported by Payment Forms (BIR Form No. 0605) and BIR Payment Slip with Teller's Validation.

The computation of the compromise settlement amount, using 15% as compromise rate, is in accordance with Section 204(A) of the 1997 NIRC, as amended, which requires that for financial incapacity, the **minimum compromise rate is 10% of the basic tax assessed**.

Thus, the correct computation of the compromise amount at the rates of 15% for IT, VAT, and DST and 100% for EWT, and the payment thereof by petitioner, constitute compliance with the second requisite.

As to the last requisite, petitioner submitted the certified true copies of the *Certificate of Availment* dated October 13, 2022, stating that the application for compromise settlement of deficiency IT, VAT, EWT, and DST amounting to Php626,429.83 under Assessment No. FLD 043B-B056-11 dated December 16, 2014 covering taxable year 2011 has been approved by the NEB. In addition, the parties submitted the signature page showing the NEB's unanimous approval of the said application for compromise.

Let it be emphasized that a compromise agreement is a contract whereby the parties make reciprocal concessions to resolve their differences and, thus, avoid or put an end to a lawsuit. They adjust their difficulties in the manner they have agreed upon, disregarding the possible gain in litigation and keeping in mind that the danger of losing balances such gain. It must not be contrary to law, morals, good customs, and public policy, and must have been freely and intelligently executed by and between the parties. A compromise agreement may be executed in and out of court. Once a compromise agreement is given judicial approval, however, it becomes more than a contract binding upon the parties. Having been sanctioned by the court, it is entered as a determination of controversy and has the force and effect of a judgment.[14]

With the faithful observance of the parties of all the requisites under Section 204(A) of the 1997 NIRC, as amended, the Court approves the *Compromise Agreement* submitted by the parties.

WHEREFORE, the *Compromise Agreement* entered into by the parties is **APPROVED,** and this *Judgment on Compromise Agreement* is rendered in accordance therewith. The parties are enjoined to faithfully comply with all the terms and conditions of the aforesaid *Compromise Agreement.*

This case is now deemed **CLOSED** and **TERMINATED**.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

We Concur:

ERLINDA P. UY
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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[14] *David M. David vs. Federico M. Paragas, Jr.*, G.R. No. 176973, February 25, 2015.

ATTESTATION

I attest 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.

ERLINDA P. UY
Associate Justice
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 were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice