REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

ENERGY DEVELOPMENT CORPORATION,
Petitioner,

- versus -

THE CITY TREASURER OF ORMOC,
Respondent.

CTA EB NO. 2845
(CBAA Case No. V-45-2020, LBAA Case No. 005)

Present:
DEL ROSARIO, *P.J.,*
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:
AUG 20 2024 11:26 a.m.

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JUDGMENT ON COMPROMISE AGREEMENT

RINGPIS-LIBAN, *J.*:

For resolution are the following:

1) The parties' "Joint Motion for Judgment Based on Compromise"[1], filed on February 16, 2024; and

2) Petitioner's "Compliance/Submission"[2], filed on June 19, 2024.

"Compliance/Submission" filed on June 19, 2024

[1] Rollo, pp. 234-240.
[2] *Id.*, pp. 273-278.

On May 31, 2024, a Resolution[3] was issued ordering the parties to submit the original or certified true copy of the following documents within fifteen (15) days from notice:

1) Sangguniang Panlungsod Lungsod ng Ormoc Resolution No. 2023-239; and

2) Secretary's Certificate dated December 12, 2023.

On June 19, 2024, Petitioner filed a "Compliance/Submission", attaching the original copy of Secretary's Certificate dated December 12, 2023 and a certified true copy of Sangguniang Panlungsod Lungsod ng Ormoc Resolution No. 2023-239.

The Court **NOTES** said "Compliance/Submission".

We now proceed to resolve the "Joint Motion for Judgment Based on Compromise".

"Joint Motion for Judgment Based on Compromise" filed on February 16, 2024

On December 11, 2023, a "Petition for Review"[4] was filed in the instant case *via* registered mail, seeking for the reversal and setting aside of the Decision dated May 18, 2023 and Resolution dated October 18, 2023 issued by the Central Board of Assessment Appeals ("CBAA") in CBAA Case No. V-45-2020, in relation to Petitioner's claim for refund of overpaid real property tax for calendar year 2012 on its properties located in Ormoc City.

On February 16, 2024, the parties filed their "Joint Motion for Judgment Based on Compromise", praying for the Court *En Banc* to approve the parties' Compromise Agreement and issue a judgment on the basis thereof.

In support thereto, the parties submitted the following documents:

1) photocopy of Lungsod ng Ormoc Tax Ordinance No. 015 Series of 2023;

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[3] *Id.*, pp. 270-272.
[4] *Id.*, pp. 3-60.

2) photocopy of Certification dated December 22, 2023 issued by the Secretary to the Sangguniang Panlungsod Lungsod ng Ormoc to attest to the publication and posting of Tax Ordinance No. 015 Series of 2023;

3) notarized "Compromise Agreement" dated December 13, 2023;

4) certified true copy of Sangguniang Panlungsod Lungsod ng Ormoc Resolution No. 2023-239 granting authority to the Mayor of Ormoc City, Mayor Lucy Torres Gomez, to enter into and sign the "Compromise Agreement";

5) original Secretary's Certificate dated December 12, 2023 granting authority to Petitioner's Vice Chairman and Chief Executive Officer, Francis Giles B. Puno, and President and Chief Operating Officer, Jerome H. Cainglet, to sign the "Compromise Agreement";

6) photocopy of draft "Joint Motion for Judgment Based on Compromise" to be filed with the Central Board of Assessment Appeals; and

7) photocopy of draft "Joint Motion for Judgment Based on Compromise" to be filed with the Local Board of Assessment Appeals.

Section 22 of Republic Act No. 7160 or the Local Government Code of 1991 allows a local government unit to be a party to contracts or agreements, the mayor as signatory therein, provided that there is an authorization from the Sanggunian to enter into said contract or agreement, to wit:

> "SECTION 22. Corporate Powers. —
>
> (a) **Every local government unit, as a corporation, shall have the following powers**:
>
> xxx xxx xxx
>
> (5) **To enter into contracts**; and
>
> (6) To exercise such other powers as are granted to corporations, subject to the limitations provided in this Code and other laws.

xxx xxx xxx

(c) Unless otherwise provided in this Code, **no contract may be entered into by the local chief executive in behalf of the local government unit without prior authorization by the sanggunian concerned.** A legible copy of such contract shall be posted at a conspicuous place in the provincial capitol or the city, municipal or barangay hall.

(d) Local government units shall enjoy full autonomy in the exercise of their proprietary functions and in the management of their economic enterprises, subject to the limitations provided in this Code and other applicable laws."[5]

The "Compromise Agreement" reads, as follows:

"**<u>RECITALS</u>**

WHEREAS, the LGU ORMOC is empowered by the Local Government Code ('LGC') to collect Real Property Tax ('RPT'), thus: '*A province or city xxx shall fix a uniform rate of basic real property tax applicable to their respective localities as follows: xxx (b) In the case of a city xxx, at the rate not exceeding two percent (2%) of the assessed at the real property*';

WHEREAS, the LGU ORMOC implements real property taxation in the City through Tax Ordinance No. 93-03 enacted on June 17, 1993, Section 38 of which states: '*There is hereby levied annual 'Ad Valorem' tax on real properties such as land, building, machinery and other improvement not herein after specifically exempted, an 'Ad Valorem' tax of 1% of the assessed value of such properties except on all commercial and industrial properties in the City, machines, machineries, mechanical contrivances, instruments, tools, implements, appliances, apparatus paraphernalia used for industrial, agricultural or commercial purposes, plants, electrical poles, railways and fences; which are taxed at 1 1/2% of the annual value*';

WHEREAS, Section 235 of the LGC further states, that: '*A province or city, or a municipality within the Metropolitan Manila Area, may levy and collect an annual tax of one percent (1%) on the assessed value of real property which shall be in addition to the basic real property tax The proceeds thereof shall exclusively accrue to the special Education Fund (SEF)*'.

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[5] *Emphasis supplied.*

WHEREAS, Section 32 of Ordinance No. 93-03 also states, that: '*For purposes of assessment, a depreciation allowance shall be made for machinery at a rate percent of five percent (5%) of its original cost or its replacement or reproduction cost, as the case maybe, for each year of use provided that the remaining value for all kinds of machinery shall be fixed at twenty percent (20%) of such original, replacement, or reproduction cost for so long as machinery is useful and in operation*'.

WHEREAS, Section 53 of Ordinance No. 93-03, as amended by Ordinance No. 001-98, states that: '*If the basic Real Property Tax and the additional Tax accruing to special education fund are paid on time or in advance in accordance with the prescribed schedule of payment as provided for in [Section 52 of] this ordinance, a discount of 10% for prompt payments, and a discount of 20% for advance payments, shall be given to the taxpayer concerned, provided however that there is no tax delinquency due on the same property*';

WHEREAS, on 16 December 2008, Republic Act No. 9513 or the Renewable Energy Act of 2008 (the 'RE Law') was signed into law;

WHEREAS, the RE Law granted Registered Renewable Energy (RE) Developers certain incentives, including a Special Realty Tax Rate on civil works, equipment, machinery, and other improvements, and provides-

> **Section 15. *Incentives for Renewable Energy Projects and Activities.*** - RE developers of renewable energy facilities, including hybrid systems, in proportion to and to the extent of the RE component, for both power and non-power applications, as duly certified by the DOE, in consultation with the BOI, shall be entitled to the following incentives:
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> ...
>
> (c) Special Realty Tax Rates on Equipment and Machinery. - Any law to the contrary notwithstanding, realty and other taxes on civil works, equipment, machinery, and other improvements of a Registered RE Developer actually and exclusively used for RE facilities shall not exceed one and a half percent (1.5%) of their original cost less accumulated normal depreciation or net book value: *Provided*, That in case of an integrated resource development and generation facility as provided under Republic Act No. 9136, the

real property tax shall only be imposed on the power plant;

WHEREAS, EDC is a Philippine corporation engaged in the exploration, development, and utilization of energy from RE sources;

WHEREAS, EDC is a Registered RE Developer of geothermal energy resources in Leyte pursuant to the RE Law and is duly registered with the Department of Energy;

WHEREAS, EDC owns and/or operates civil works, machineries, equipment, and improvements used for geothermal power plant operations in Ormoc City (the 'Power Plant Assets');

WHEREAS, the LGU ORMOC had assessed EDC with realty taxes for taxable years 2012 to 2023 with respect to the Power Plant Assets at the total rate of 2.5%, consisting of 1.5% basic RPT and 1% levy for the Special Education Fund ('SEF') pursuant to Ormoc Ordinance No. 93-03 and the LGC (basic RPT and SEF shall be collectively referred to as 'Realty Taxes');

WHEREAS, EDC, as a Registered RE Developer, is of the view that it is liable only for Realty Taxes on civil works, equipment machinery, and other improvements under Section 15(c) of the RE Law on all its Power Plant Assets at a rate not exceeding 1.5%;

WHEREAS, from taxable year 2012 to 2023, EDC paid under protest the aggregate amount of Php366,121,230.97 representing the additional Realty Taxes over and above the Special Realty Tax Rate of 1.5%, and the application of less than 5% depreciation allowance on machineries for taxable years 2022 and 2023;

WHEREAS, EDC filed separate Petitions with the Local Board of Assessment Appeals ('LBAA') to assail the LGU ORMOC's inaction or adverse decision on its protest letters for taxable years 2012-2015 and the LBAA ultimately upheld the LGU ORMOC's imposition of Realty Taxes at the total rate of 2.5%;

WHEREAS, as a result of the denial of its LBAA Petitions, EDC instituted the following cases before the Central Board of Assessment Appeals ('CBAA') (the 'CBAA Cases');

1. *Energy Development Corporation v. Local Board of Assessment Appeals of the City of Ormoc and The City Treasurer of Ormoc (CBAA Case No. V-45-2020; LBAA Case No. 005)* covering taxable year 2012;

2. *Energy Development Corporation v. Local Board of Assessment Appeals of the City of Ormoc and The City Treasurer of Ormoc (CBAA Case No. V-43-2020; LBAA Case No. 006)* covering taxable year 2013;

3. *Energy Development Corporation v. Local Board of Assessment Appeals of the City of Ormoc and The City Treasurer of Ormoc (CBAA Case No. V-44-2020; LBAA Case No. 007)* covering taxable year 2014; and

4. *Energy Development Corporation v. Local Board of Assessment Appeals of the City of Ormoc and The City Treasurer of Ormoc (CBAA Case No. V-46-2020; LBAA Case No. 008)* covering taxable year 2015;

WHEREAS, to date, the CBAA Cases are still pending with the CBAA;

xxx xxx xxx

WHEREAS, the Parties have come to a mutual agreement to amicably settle their claims in the CBAA Cases and LBAA Cases in order to avoid the inconvenience and expense of further proceedings;

NOW, THEREFORE, for and in consideration of the foregoing premises and all the conditions and covenants herein, the Parties have agreed as follows:

Section One
LGU ORMOC's Obligations

1.1. **Recognition of Special Realty Tax Rate**. Consistent with the principles set forth in the aforequoted cases and DOJ opinion, the LGU ORMOC recognizes and affirms that a Registered RE Developer under the RE Law shall be entitled to the 1.5% Special Realty Tax Rate on civil works, equipment, machinery, and other improvements under Section 15(c) of the RE Law.

The LGU ORMOC recognizes and affirms that EDC as well as its subsidiaries that are Registered RE Developers under the RE Law are, and will be, entitled to the Special Realty Tax Rate under this provision, unless and until a final and executory decision, inconsistent thereto, is rendered by a court of competent jurisdiction, and/or until later national legislation is passed and enacted which supersedes and/or revokes Section 15(c) of the RE Law.

1.2. **Extent of Special Realty Tax Rate.** Since EDC operates an integrated resource development and generation facility in Ormoc City, the LGU ORMOC shall apply the Special Realty Tax Rate to the Power Plant Assets, consisting of EDC's power plants and other real properties used for power plant operations, as well as to power plants and other real properties used for power plant operations which EDC may herafter own or acquire. Land owned and/or used by EDC in its operations and properties utilized for resource development or steamfield operations are likewise not subject to Realty Taxes.

1.3. **Entitlement to Depreciation Allowance.** The LGU ORMOC further recognizes and affirms that EDC and its subsidiaries are entitled to full depreciation allowance for machinery under Section 32 of Ordinance No. 93-03 as above quoted.

The full depreciation allowance shall be applied per year on the machineries that are being used for power plant operations, as well as for future machineries that will be used for its power plant operations, and declared by EDC and its subsidiaries for tax purposes, provided that the remaining varies for all kinds of machinery shall be fixed at twenty percent (20%) of such original, replacement, or reproduction cost for so long as the machinery is useful and in operation.

1.4. Beginning taxable year 2024 onwards, the LGU ORMOC shall:

a. Assess and collect Realty Taxes from EDC only for the Power Plant Assets and based on the Special Realty Tax Rate under Section 15(c) of the RE Law, at a maximum rate of 1.5%. Consistent with the RE Law, the Special Realty Tax Rate shall apply in lieu of all 'realty and other taxes', including both the basic RPT and the SEF, 'any law to the contrary notwithstanding';

b. Not impose and collect Realty Taxes on land owned and/or used by EDC for its operations and properties utilized in the resource development or steamfield operations of EDC; and
c. Apply the 5% depreciation allowance per year to all the machineries forming part of the Power Plant Assets, consistent with the provisions of Ordinance No. 93-03.

This obligation is without prejudice to subsequent jurisprudence and/or national legislation that is/are inconsistent with the above undertakings.

1.5. **Discounts for Prompt Payment and Advance Payment of Realty Taxes.** LGU Ormoc shall grant EDC and its subsidiaries discounts on payments of Realty Taxes of (i) 10% for prompt payments, and (ii) 20% for advance payments in accordance with the LGC and its implementing rules and regulations, provided that there are no Realty Tax delinquencies due on the properties subject to tax.

Section Two
EDC's Obligations

In consideration of the foregoing covenants by the **LGU ORMOC**, and by way of concession:

(a) EDC agrees not to pursue its claims for refund of its overpaid Realty Taxes for taxable years 2012 to 2023, which are the subject of the CBAA Cases and the LBAA Cases, in the total aggregate amount of Php366,121,230.97.

(b) Subject to the conditions set out below, EDC waives its right to receive a cash refund or a tax credit certificate ('TCC') for its overpayments of Realty Taxes for taxable years 2012 to 2023 in the amount of Php366,121,230.97. This amount shall instead constitute a donation by EDC in favor of the LGU ORMOC to finance the LGU ORMOC's local government programs, especially those on education, such donation being subject to the following conditions:

(i) The LGU ORMOC shall fulfill its obligations under this Agreement, including its obligations as set out in Section 1, unless the preferential tax incentives under Section 15(c) of the RE Law are invalidated by virtue

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of a final judgment of a court of competent jurisdiction or superseded or revoked by a national legislation; and

(ii) There is no local ordinance passed that adversely affects the preferential tax incentives of EDC of the same nature as the ones made subject of this Agreement.

Should any of the conditions set forth above not be fulfilled or met, the donation herein shall be deemed automatically cancelled and EDC shall be entitled to receive from the LGU ORMOC, and the LGU ORMOC undertakes to immediately remit to EDC, a cash refund or issue TCC in EDC's favor equivalent to its overpayment of Realty Taxes for taxable years 2012 to 2023 in the total amount of Php366,121,230.97, or treat such overpayment of Realty Taxes as tax credits against EDC's future Realty Tax liabilities.

Consistent with the foregoing, the Parties agree to execute the corresponding Deed of Conditional Donation and such other documents as may be required to give effect to this conditional donation.

(c) EDC shall comply with the obligation of persons acquiring real property or making improvements thereon by filing sworn statements declaring the value of the property, as set forth in Ordinance No. 93-03, the LGC, or subsequent national legislation and/or regulation/s by competent office/s and/or agency/ies.

Section Three
Joint Motion for Judgment based on Compromise

Immediately after the execution of this Agreement, the Parties undertake to file, with the CBAA and LBAA, or the CTA, as the case may be, a Joint Motion for Judgment based on Compromise (substantially in the form of Annex 'C') in order to cause the termination of the CBAA Cases, the LBAA Cases, or the CTA Cases, as the case may be.

Section Four
Release of Claims

4.1 In consideration of the foregoing covenants, each of the Parties, their agents, successors, and assigns, shall irrevocably discharge and release the other Party, its agents, successors, and assigns from all claims, demands, damages, actions or suits at law or in equity, of any nature, now pending or which may arise, directly or indirectly, in connection with the CBAA Cases, the LBAA Cases, or the CTA Cases, as the case may be.

In addition, the LGU ORMOC irrevocably discharges and releases EDC, its agents, successors, and assigns from any claims that it may have against EDC relating to Realty taxes over all real properties located in Ormoc City used and/or registered in the name of EDC or their predecessos for their RE operations.

xxx xxx xxx

IN WITNESS HEREOF, the Parties have hereunto affixed their signatures on the date and place indicated above.

THE CITY OF ORMOC	**ENERGY DEVELOPMENT CORPORATION**
By:	**By:**
LUCY TORRES GOMEZ **City Mayor**	**FRANCIS GILES B. PUNO** **Vice Chairman and Chief Executive Officer**
	JEROME H. CAINGLET **President and Chief Operating Officer"**

A compromise agreement is a contract whereby the parties make reciprocal concessions in order 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 such gain is balanced by the danger of losing. 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 a controversy and has the force and effect of a judgment.[6]

Finding the subject compromise agreement to be in order and in compliance with established laws, rules and regulations, taking into consideration the documents submitted by the parties in support thereof, the same is approved.

WHEREFORE, in view of the foregoing, the parties' "Joint Motion for Judgment Based on Compromise" is **GRANTED**.

The Compromise Agreement between the City of Ormoc and Energy Development Corporation dated December 13, 2023 is **APPROVED** and judgment is hereby rendered in accordance therewith. Accordingly, the proceedings in the instant case are considered **CLOSED** and **TERMINATED**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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

(On Leave)
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice

CERTIFICATION

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