REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

COBEE CNS RETAIL CORPORATION,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10526

Members:

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

Promulgated:
AUG 18 2022 3:53 pm

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JUDGMENT BY COMPROMISE AGREEMENT

On February 22, 2022, the parties filed a Joint Motion to Render Judgment Based on Compromise Agreement.

On March 24, 2022, the Court issued a Resolution directing the parties to submit proof of the approval by the Regional Evaluation Board (REB) of their Compromise Agreement relative to their Joint Motion to Render Judgment Based on Compromise Agreement as the basic tax does not exceed the amount of Php500,000.00.

On April 29, 2022, petitioner filed a Motion for Extension of Time requesting for an additional period to file an appropriate pleading relative to the Court's directive to submit proof of the approval of the Compromise Agreement executed by both parties.

On May 6, 2022, respondent posted a Motion for Extension of Time to Submit the Certificate of Availment.

On May 31, 2022, the Court issued a Resolution granting petitioner's Motion for Extension of Time to file an appropriate pleading and/or to submit the approval of the REB and granted an extension until May 16, 2022 to submit the same to the Court.

On June 3, 2022, the parties filed a Joint Motion for Extension of Time to submit the Certificate of Availment.

On June 14, 2022, the Court issued a Resolution granting the parties until June 5, 2022 within which to submit the Certificate of Availment which was further extended to July 5, 2022 in a Resolution dated June 28, 2022.

On July 12, 2022, the parties filed the instant *Joint Compliance* attaching therewith a certified true copy of the Certificate of Availment signed by the OIC-Assistant Commissioner, Head of the Technical Working Group on Compromise, Ms. Clavelina S. Nacar, in compliance with the Resolution of the Court dated March 24, 2022.

Finding the same to be sufficient, the *Joint Compliance* filed by both parties and the attached certified true copy of the Certificate of Availment are hereby **NOTED** and **ADMITTED.**

The Court shall now proceed to analyze the Judicial Compromise Agreement filed by the parties on February 22, 2022 and the documents submitted in support thereof.

The Judicial Compromise Agreement partly reads as follows:

"**WHEREAS,** the **BIR** issued to the **TAXPAYER** a Formal Letter of Demand **("FLD")** dated 23 October 2020 for taxable year 2016, which was received on 2 December 2020, assessing the **TAXPAYER** deficiency taxes amounting to Four Hundred Ninety-Four Thousand Four Hundred Thirty-Six & 72/100 Pesos (Php494,436.72);

WHEREAS, the **TAXPAYER** then filed with the **BIR** its Protest dated 31 December 2020 disputing the **FLD** dated 23 October 2020;

WHEREAS, the **TAXPAYER** instituted an action against the **BIR** entitled **"Cobee CNS Retail Corporation vs. Commissioner of Internal Revenue"** docketed as CTA Case No. 10526, pending before the Honorable First Division of the Court of Tax Appeals **("CTA"),** seeking the nullity of the deficiency tax assessments for taxable year 2016;

WHEREAS, the **TAXPAYER** has submitted to the **BIR** an **Offer of Compromise Settlement** dated 19 August 2021 for the alleged deficiency tax assessment contained in the **FLD**;

WHEREAS, the **BIR** has evaluated the **TAXPAYER'S** proposal for amicable settlement and believes that a judicial compromise to allow immediate 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 relevant laws on judicial compromise without contravening law, morals, public order and public policy;

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

WHEREAS, the **PARTIES** for the purpose of avoiding and putting and 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 approved and accepted the total payment of One Hundred Twenty-Seven Thousand Five Hundred Seven & 23/100 Pesos (Php127,507.23) **("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 CTA in CTA Case No. 10526. 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 **FLD** and/or Final Assessment Notice **("FAN")** dated 23 October 2020.

Section 5. **Authority to Enter Compromise Agreement**. The **BIR**, through Commissioner Caesar 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** warrants that its Corporate Secretary, Atty. Rochelle Ann F. Brillantes, 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 and ending CTA Case No. 10526. Upon approval by the Honorable CTA, the **BIR** recognizes the full satisfaction of the supposed tax liability of the **TAXPAYER** as set forth in the **FLD/FAN** dated 23 October 20220 for the taxable year ending 31 December 2016 which is the subject of CTA Case No. 10526 and whatsoever based upon, arising from or in connection with the said particular subject of CTA Case No. 10526.

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 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. 10526 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.

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.

COBEE CNS RETAIL CORPORATION	**BUREAU OF INTERNAL REVENUE**
By:	By:
Atty. Rochelle Ann F. Brillantes Corporate Secretary	**CAESAR R. DULAY** Commissioner

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. *m*

> 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.**" (emphasis supplied)

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 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 (P1,000,000) 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 or not, 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;
>
> 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 invokes provisions of law that cast doubt on the taxpayer's obligation to withhold;
>
> xxx xxx xxx.

The records of this case show, particularly the Judicial Compromise Agreement submitted by the parties, that the application for compromise settlement was grounded on doubtful validity of respondent's tax assessment.[1]

Section 3 of RR No. 30-2002, as amended, provides the instances when the ground of doubtful validity of assessment exists which include, *inter alia*, when "the assessment seems to be arbitrary in nature, appearing to be based on presumptions and there is reason to believe that it is lacking in legal and/or factual basis" or "assessments made based on the Best Evidence Obtainable Rule and there is reason to believe that the same can be disputed by sufficient and competent evidence."

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[1] Judicial Compromise Agreement as an attachment to the Joint Motion to Render Judgment Based on Compromise Agreement signed by both parties.

In the Petition for Review filed with this Court on May 21, 2021, petitioner assailed the validity of the deficiency tax assessment pertaining to taxable year 2016 and averred that the revenue officers who conducted the examination of its books of accounts and other accounting records had no authority to do so as the Letter of Authority (LOA) was not revalidated in accordance with Revenue Memorandum Circular (RMC) No. 36-99.

Petitioner also challenged the factual and legal bases of the income tax assessment and maintained that it has no undeclared sales contrary to respondent's assertions in the FLD. Likewise, petitioner disputes the VAT assessment for TY 2016 as it is anchored on the same findings that it had undeclared sales for that same period.

As regards the deficiency tax assessment for expanded withholding taxes (EWT), petitioner questions the legal and factual bases of such findings and maintains that it is not liable for any EWT deficiency for TY 2016.

It is clear from the allegations and arguments propounded by the petitioner, that the validity of the deficiency tax assessments was clearly put in issue.

Based on the foregoing, the first requisite under Section 204(A) of the 1997 NIRC, as amended, pertaining to the ground of doubtful validity is complied with.

As to the second requisite pertaining to the amount of compromise payment, the submitted Compromise Agreement which reflected the amount indicated in the FLD signed by the Regional Director of Revenue Region No. 14, Aynie E. Mandajoyan-Dizon, dated October 23, 2020 requesting petitioner to pay its alleged deficiency taxes, summarized as follows:

Tax Type	**Basic Tax**	**Surcharge**	**Interest**	**Compromise**	**Total**
Income Tax	P221,638.20	1,034.63	P111,224.85	Php1,000.00	334,897.68
Value-Added Tax	91,088.63	0.00	49,693.91		140,782.54
Expanded Withholding Tax (EWT)	2,416.50		1,340.00		3,756.50
Compromise Penalty				15,000	15,000
Total	**315,143.33**	**1,034.63**	**162,258.76**	**16,000.00**	**494,436.72**

Based on the Judicial Compromise Agreement [2] prepared by the parties, the amount of compromise settlement to be paid by the petitioner is **Php127,507.23**.

Applying the 40% compromise amount under Section 204(A) of the 1997 NIRC, as amended, in the instant case, the computation for the compromise amount of settlement as shown above is in accordance with the said provision of the 1997 NIRC, as amended.

Thus, the correct computation of the amounts of compromise settlement payable and their subsequent payment by petitioner constitute compliance with the second requisite.

As to the last requisite, the Court notes that there is sufficient compliance with the law by respondent's submission of a certified true copy of the Certificate of Availment dated June 27, 2020 which states that petitioner's application of compromise settlement has been approved by the NEB which is superior than the approval of the REB as the latter is secured only if the basic deficiency taxes is Php500,000.00 or less.

With the faithful observance by the parties of all the requisites under Section 204(A) of the 1997 NIRC, as amended, and the payment of the compromise amount,[3] the Court hereby grants the Judicial Compromise Agreement submitted by the parties.

In the case of *Far East Bank and Trust Co. et al. v. Trust Union Shipping Corp. et al.*,[4] the Supreme Court explains 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 desirable practice in courts of law and administrative tribunals. Settlement of disputes brought before the courts is, in fact, encouraged.

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[2] Judicial Compromise Agreement as an attachment to the Joint Motion for Judgement Based on Compromise Agreement signed by both parties, Volume II, Court Docket.
[3] Annexes "B-2"; "B-3";"B-5";"B-6".
[4] G.R. No. 154716, September 16, 2008.

> 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,*[5] 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, in light of the foregoing considerations, the parties' *Joint Motion to Render Judgment Based on Compromise Agreement* is hereby **GRANTED**.

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

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

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
Presiding Justice

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[5] 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