REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 1759** (CTA Case No. 8483)
	Present:
-versus-	**DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
SPLASH CORPORATION, *Respondent.*	Promulgated: JAN 02 2020 3:02 p.m.

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JUDGMENT BY COMPROMISE AGREEMENT

MANAHAN, J.:

On May 29, 2019, the parties filed their *Joint Motion For Approval of Judicial Compromise Agreement* submitting therewith the original Judicial Compromise Agreement[1] and praying that a judgment by compromise agreement be rendered.

On July 1, 2019, the Court directed the parties to submit the following:

1. Document evidencing the authority of the Chief Financial Officer of respondent to enter into the Compromise Agreement with BIR;

2. Certified true copies of BIR Form Nos. 0605 and Filing Reference Forms; and

[1] *Rollo*, pp. 149-155.

3. Proof of NEB's approval of the compromise, to include but not limited to the original or certified true copies of the following documents:

    a. Application for compromise citing the factual and legal compliance with the provisions of Sec. 204(a) of the 1997 National Internal Revenue Code, as amended, and implemented by relevant BIR rules and regulations;

    b. Proof of approval of the compromise settlement by the majority of the members of the NEB, as well as the concurrence thereon by the Commissioner of Internal Revenue (CIR); and

    c. Certificate of Availment (BIR Form No. 2342) signed by the CIR pursuant to Revenue Memorandum Order No. (RMO) 003-17 dated February 1, 2017.

On October 1, 2019, after several extensions, the parties filed their *Joint Compliance (with Motion to Set Commissioner's Hearing)*. The Court denied the motion to set the case for commissioner's hearing and granted the parties an additional five (5) days to fully comply with the Resolution dated July 1, 2019.

On November 12, 2019, the parties filed their *Joint Compliance.*

In the October 1, 2019 *Joint Compliance*, the parties submitted the following:

1. Certified true copy of the Secretary's Certificate dated April 2, 2019 evidencing the authority of Mr. Fernando M. Manotok to sign the Judicial Compromise Agreement to be entered between the respondent and the petitioner;[2]

2. Certified true copies of BIR Form No. 0605 and eFPS payment confirmations:

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[2] *Rollo*, pp. 224-225.

Tax Type	Amount Paid	Payment Reference Number
IT[3]	60,965,390.80	291900030527345
VAT[4]	5,865,001.78	291900030527635
EWT[5]	2,611,947.89	291900030527949
TOTAL	**69,442,340.47**	

3. Proof of NEB's approval of the compromise, to include but not limited to the original or certified true copies of the following documents:

   a. Proof of approval of the compromise settlement by the majority of the members of the NEB, as well as the concurrence thereon by the CIR;[6] and

   b. Certificate of Availment (BIR Form No. 2342) signed by the CIR pursuant to RMO 003-17 dated February 1, 2017.[7]

In the November 12, 2019 *Joint Compliance*, the parties submitted the original "Application for compromise citing the factual and legal compliance with the provisions of Section 204(a) of the NIRC as implemented by relevant BIR rules and regulations."[8]

Thus, the foregoing submissions are **NOTED**.

Considering the submission of the foregoing documents, the Court shall now act on the parties' *Joint Motion for Approval of Judicial Compromise Agreement*. The parties' Judicial Compromise Agreement (JCA) reads as follows:

JUDICIAL COMPROMISE AGREEMENT

KNOWN ALL MEN BY THESE PRESENTS:

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

SPLASH CORPORATION (**"TAXPAYER"**), a domestic corporation duly organized and existing under the laws of the Republic of the

[3] *Rollo*, pp. 212-215.
[4] *Rollo*, pp. 216-219.
[5] *Rollo*, pp. 220-223.
[6] *Rollo*, p. 211, certified true copy.
[7] *Rollo*, p. 210, certified true copy.
[8] *Rollo*, pp. 235-248.

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Philippines, with principal office at 5th Floor, W Office Building, 11th Avenue corner 28th Street, Bonifacio Global City, Taguig City, 1634 Metro Manila, represented by its Chief Financial Officer **FERNANDO M. MANOTOK**;

- and –

The **BUREAU OF INTERNAL REVENUE** ("**BIR**"), with principal office at Bureau of Internal Revenue, National Office Building, Agham Road, Diliman, Quezon City, represented by the Commissioner, **HON. CAESAR R. DULAY** (collectively, the "**PARTIES**");

- Witnesseth That-

WHEREAS, the **BIR** issued to the **TAXPAYER** a **Formal Letter of Demand** ("**FLD**") dated 18 August 2011 for the table (*sic*) year 2008, for the alleged deficiency income tax, value added tax, and expanded withholding tax in the aggregate amount of P256,946,058.68, inclusive of interest and compromise penalty, which was received it received (*sic*) on 07 September 2011.

WHEREAS, the **TAXPAYER** then filed with the **BIR** its Letter of Protest dated 07 October 2011 denying the merit of the FLD dated 18 August 2011;

WHEREAS, without waiting for the decision of the BIR and within 30 days after the expiration of the 180-day period, the **TAXPAYER** instituted an action against the **BIR** entitled "Splash Corporation vs. Commissioner of Internal Revenue", docketed as CTA Case No. 8483, with the Honorable First Division of the Court of Tax Appeals ("CTA"), seeking the reversal of the FDDA, and the cancellation of the FLD;

WHEREAS, on 6 April 2017, the Honorable First Division of the CTA rendered a Decision reducing the amount of taxes to be paid by the **TAXPAYER** to P142,333,221.15, inclusive of increments. After the **TAXPAYER** filed a Motion for Reconsideration, the CTA reversed its earlier decision and nullified the entire assessment of the BIR.

WHEREAS, on 5 January 2018, the BIR appealed the Amended Decision dated 18 August 2017 of the CTA First Division to the CTA En Banc, docketed as CTA EB Case no. 1759. After the filing of the respective memoranda of the **PARTIES**, the case is considered submitted for decision. To date, no decision has been rendered by the CTA En Banc.

WHEREAS, the **TAXPAYER** has submitted on February 27, 2019 its proposal to the **BIR** with the intention to enter into a judicial compromise pursuant to the provisions of the Civil Code of the Philippines, jurisprudence, relevant decisions of the Honorable CTA and relevant laws on judicial compromise;

WHEREAS, the **BIR** has evaluated the **TAXPAYER'S** proposal for amicable settlement and believes that a judicial compromise to allow immediate tax collection and also to put an end to litigation as provided in the Civil Code of the Philippines[9], serves the interest of the Government;

WHEREAS, the **PARTIES** wish to and 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 compromises similar to the instant case.

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;

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 accepted, subject to the adjustment of the compromise amount for the deficiency expanded withholding tax from 40% to 100% of the basic tax assessed, the total payment of **Sixty Nine Million Four Hundred Forty Two Thousand Three Hundred Forty and 47/100 Pesos (69,442,340.47) ("Judicial Compromise Amount")**.

This amount is broken down as follows:

Tax Type	Basic Tax	Compromise Rate	Compromise Amount
IT	P152,413,477.00	40%	P60,965,390.80
VAT	14,662,504.45	40%	5,865,001.078
EWT	2,611,947.89	100%	2,611,947.89
TOTAL	**P169,687,929.34**	**40%**	**P69,442,340.47**

Section 2. Submission to the Honorable CTA En Banc. This Agreement fully signed by the **PARTIES** shall be submitted for approval of the Honorable CTA En Banc in CTA EB Case No. 1759 (CTA Case No. 8483). The **PARTIES** undertake to perform any and all acts and submit any and all documents required by the Honorable CTA En Banc to be

[9] Art. 2028. A compromise is a contract whereby the parties, by making reciprocal concessions, avoid litigation or put an end to one already commenced.

able to render a **judgment by Compromise Agreement** in the said case.

Section 3. Effectivity of the Agreement. This **Agreement** shall only take effect and bind the **PARTIES** upon final approval and termination by the Honorable CTA En Banc. 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 Court En Banc. Upon final approval by the Honorable CTA En Banc 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** dated 18 August 2011.

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 En Banc.

The **TAXPAYER** through its Chief Financial Officer, Fernando M. Manotok, similarly warrants that he 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 EB Case No. 1759 (CTA Case No. 8483). Upon approval by the court, the **BIR** recognizes the full satisfaction of the supposed tax liability of the **TAXPAYER** in connection with CTA EB Case No. 1759 (CTA Case No. 8483) and acknowledges that the **TAXPAYER** no longer has any tax liability whatsoever based upon, arising from or in connection with the particular subject of CTA EB Case No. 1759 (CTA Case No. 8483).

Section 7. Disapproval of this Agreement by the Honorable CTA En Banc. In the event that this **Agreement** is disapproved by the Honorable CTA En Banc, 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 En Banc. 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 En Banc after it is rectified or corrected by the parties:

1. The amount insofar 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 EB Case No. 1759 (CTA Case No. 8483) 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 is 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 acknowledgement 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 En Banc for the immediate implementation and execution of the terms and conditions of this Agreement or the judgment or order of the Honorable CTA En Banc approving the same.

Section 10. Signature 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.

SPLASH CORPORATION	**BUREAU OF INTERNAL REVENUE**
By:	By:
(Signed) **MR. FERNANDO M. MANOTOK** Chief Financial Officer	(Signed) **HON. CAESAR R. DULAY** Commissioner

Witnesses:

(Signed)	(Signed)

Section 204(A) of the 1997 National Internal Revenue Code, as amended (NIRC), 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:
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> > (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.
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> 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.
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> 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.

Thus, the requisites for a valid compromise are:

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, while 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 CIR and his four (4) Deputy Commissioners if the subject assessment exceeds One Million Pesos (P1,000,000.00) or where the settlement offered is less than the prescribed minimum rates.

Implementing the foregoing section of the NIRC, Revenue Regulations No. (RR) 30-2002 dated December 16, 2002, as amended by RR 8-2004, or the "Revenue Regulation 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 can be compromised, as follows:

> 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:
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> 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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> xxx xxx xxx

Based on respondent's Application for Compromise,[10] the offer of compromise was based on doubtful validity of the assessments. Further, the CTA First Division, in its Amended Decision,[11] dated August 18, 2017, had already declared the

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[10] *Rollo*, pp. 235-248.
[11] *Rollo*, pp. 21-34

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assessments void, cancelled, and withdrawn due to the lack of authority of the revenue officers who conducted the investigation and assessment. This was affirmed in the Resolution[12] dated December 6, 2017.

Thus, the first requisite under Section 204(A) of the NIRC pertaining to the ground of doubtful validity is complied with.

As to the second requisite pertaining to the amount of compromise payment, the JCA summarized the basic tax assessed and compromise amounts, as follows:

Tax Type	**Basic Tax**	**Compromise Rate**	**Compromise Amount**
IT	P152,413,477.00	40%	P60,965,390.80
VAT	14,662,504.45	40%	5,865,001.078
EWT	2,611,947.89	100%	2,611,947.89
TOTAL	**P169,687,929.34**	**40%**	**P69,442,340.47**

As can be seen from the foregoing, only the basic tax deficiencies for income tax (IT) and value-added tax (VAT) were compromised. The basic deficiency tax for expanded withholding tax (EWT) was not compromised. Thus, the computation of the compromise amount for settlement is in accordance with Section 204(A) and RR 30-02.

The foregoing amounts were likewise paid, as follows:

Tax Type	Amount Paid	Payment Reference Number
IT[13]	60,965,390.80	291900030527345
VAT[14]	5,865,001.78	291900030527635
EWT[15]	2,611,947.89	291900030527949
TOTAL	**69,442,340.47**	

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). In the instant case, the parties submitted a certified true copy of a document entitled "Judicial Compromise Agreement" [16] showing the approval of the four (4) deputy Commissioners, and the CIR. Thus, the third requisite was complied with.

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[12] *Rollo*, pp. 35-45.
[13] *Rollo*, pp. 212-215.
[14] *Rollo*, pp. 216-219.
[15] *Rollo*, pp. 220-223.
[16] *Rollo*, p. 211.

Considering the faithful observance by the parties of all the requisites under Section 204(A) of the NIRC, the Court grants their *Joint Motion For Approval of Judicial Compromise Agreement.*

In the case of *Far East Bank and Trust Co. et al. v. Trust Union Shipping Corp. et al.*,[17] 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 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*,[18] 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 parties' *Joint Motion for Approval of Judicial Compromise Agreement* filed on May 29, 2019 is **GRANTED**, and their *Joint Compliance (with Motion to Set Commissioner's Hearing)* filed on October 1, 2019 and *Joint Compliance* filed on November 12, 2019 are **NOTED**. The parties' submissions are deemed sufficient compliance with the resolutions of the Court.

The **Judicial Compromise Agreement** entered into by the parties is hereby **APPROVED** and this **Judgment on**

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[17] G.R. No. 154716, September 16, 2008.
[18] G.R. No. 205623, August 10, 2016.

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.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla

CIELITO N. MINDARO-GRULLA
Associate Justice

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(On Leave)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

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