REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB NO. 2024
(CTA CASE NO. 9342)

-versus-

Present:
Del Rosario, *P.J.,*
Castañeda, Jr.,
Uy,
Ringpis-Liban,
Manahan,
Bacorro-Villena,
Modesto-San Pedro,
Reyes-Fajardo, *and*
Cui-David, *JJ.*

GARDEN BY SANDERS, INC.,
Respondent.

Promulgated:
JUN 09 2022 2:43PM

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JUDGMENT ON COMPROMISE AGREEMENT

RINGPIS-LIBAN, J.:

Before this Court is the parties' "Joint Motion for Judgment Based on Compromise Agreement,"[1] filed on February 17, 2021 praying that the Compromise Agreement be approved by the Court.

On April 5, 2016, Garden by Sanders, Inc. received the Final Decision on Disputed Assessment (FDDA) dated April 4, 2016 issued by former Bureau of Internal Revenue (BIR) Commissioner Kim S. Jacinto-Henares, finding it liable for deficiency income tax and VAT, inclusive of interest and penalties, in the aggregate amount of P59,513,350.74 for taxable years 1999, 2000, 2001, 2002 and 2004.

On May 4, 2016, Garden by Sanders, Inc. filed a Petition for Review before the Court in Division.

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[1] Rollo, CTA EB No. 2024, pages 348-350.

During trial, Garden by Sanders, Inc. presented evidence to substantiate its availment of the Tax Amnesty Program under Republic Act (R.A.) No. 9480, otherwise known as *An Act Enhancing Revenue Administration and Collection by Granting an Amnesty on All Unpaid Internal Revenue Taxes Imposed by the National Government for Taxable Year 2005 and Prior Years.*

The Court in Division found that Garden by Sanders, Inc. satisfactorily complied with the provisions of the Tax Amnesty Law. Considering that the completion of the requirements shall be deemed full compliance with the Tax Amnesty Program, Garden by Sanders, Inc. should be immune from the payment of taxes, as well as the appurtenant civil, criminal or administrative penalties, as well as the appurtenant civil, criminal or administrative penalties under the NIRC of 1997, as amended, arising from the failure to pay any and all internal revenue taxes for taxable year 2005 and prior years. Hence, the Court in Division granted the Petition for Review. The FDDA and the assessment notices are cancelled in view of the availment of the Tax Amnesty Program under R.A. No. 9480.

The Commissioner of Internal Revenue (CIR) filed a Motion for Reconsideration on the ground that the Court in Division gravely erred when it considered the protest of Garden by Sanders, Inc. as a valid protest under Section 228 of the NIRC of 1997 and in ruling that it is entitled to tax amnesty under R.A. No. 9480.

The Court in Division denied for lack of merit the CIR's Motion for Reconsideration.

On March 21, 2019, the CIR filed a Petition for Review before the Court *En Banc* restating his previous arguments raised before the Court in Division.

On July 11, 2019, the Court issued a Resolution referring the case to mediation in the Philippine Mediation Center- Court of Tax Appeals (PMC-CTA for initial appearance on August 14, 2019 at 1:30 p.m.

On January 15, 2020, the parties filed a "Joint Motion to Suspend Proceedings" pending approval of the Compromise Agreement by the CIR. But since the parties failed to attach the alleged Compromise Agreement, the Court *En Banc* issued a Resolution on January 30, 2020, ordering the parties to submit a copy of the Compromise Agreement within five (5) days from notice. Hence, the resolution of the "Joint Motion to Suspend Proceedings" was held in abeyance.

On February 18, 2020, the parties filed before the Court *En Banc* a "Joint Manifestation with Compliance" stating that Garden by Sanders, Inc. submitted its Formal Offer of Compromise Settlement to the appropriate office of the BIR on October 15, 2019 for review.

On July 2, 2020, the Court *En Banc* granted the parties' "Joint Motion to Suspend Proceedings."

On February 8, 2021, the Court *En Banc* received the PMC-CTA Form 5 (Mediator's Report) stating that there was successful mediation between the parties. Attached to the said Report are the original copy of the Compromise Agreement, print out of BIR Form No. 0605 and eFPS Payment Form. The Compromise Agreement was signed by the authorized representative of both parties and attested by Ret. Justice Eduardo G. Montenegro (Mediator).

In the Resolution dated May 24, 2021, the Court required the parties to submit the original or certified true copies of proof of taxpayer's offer of compromise approved by the National Evaluation Board (NEB), proof that a majority of all the members of the NEB approved the compromise agreement, proof that the NEB authorized the signatory of the Certificate of Availment to sign on their behalf the Certificate of Availment, and other documents proving that respondent has availed of the provisions of Revenue Regulations (RR) No. 30-2002.

On June 29, 2021, petitioner filed an "Ex-Parte Manifestation," stating that on June 28, 2021, petitioner filed an "Ex-Parte Motion for Extension of Time to Submit Required Documents" through registered mail instead.

In the Resolution dated July 30, 2021, the Court *En Banc* noted the "Ex-Parte Manifestation," and granted the Ex-Parte Motion for Extension of Time to Submit Required Documents." Hence, petitioner was given until July 26, 2021 within which to comply with the Resolution dated May 24, 2021.

On November 5, 2021, the Court *En Banc* received petitioner's "Motion for Extension of Time to Submit Required Documents" filed by registered mail on October 27, 2021.

In the Resolution dated January 4, 2022, the Court *En Banc* granted petitioner's "Motion for Extension of Time to Submit Required Documents." Hence, petitioner was given until November 26, 2021 within which to submit the documents in compliance with the Court's Resolution dated May 24, 2021.

On March 3, 2022, the Court *En Banc* received petitioner's "Ex-Parte Compliance with Apologies," submitting the following:

a. Certified true copy of the Certificate of Availment issued on 8th November 2021;[2] and

b. Certified true copy of the proof of approval of the National Evaluation Board.[3]

Hence, the Court *En Banc* shall now resolve "Joint Motion for Judgment Based on Compromise Agreement."

Garden by Sanders, Inc. has previously availed the Tax Amnesty Program under R.A. No. 9480. During trial of the case before the Court in Division, Garden by Sanders, Inc. was able to prove its entitlement to the Tax Amnesty Program. Hence, in the Decision of the Court in Division dated November 27, 2018, the Court cancelled the Final Decision on Disputed Assessment (FDDA) and the assessment notices in view of Garden by Sanders, Inc.'s availment of the Tax Amnesty Program. During the mediation proceedings in the Court *En Banc*, the parties mutually agreed to settle the case and thus the Compromise Agreement was executed.

Records show that the NEB approved the Compromise offered by Garden by Sanders, Inc.[4] The NEB approved the Compromise Agreement pursuant to the provisions of Section 204 of the NIRC of 1997, as amended, which states that "*Where the basic tax involved exceeds One million pesos (P1,000,000.00) or <u>where the settlement offered is less than the prescribed minimum rates,</u> 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.*" Hence, on November 8, 2021, the BIR issued the Certificate of Availment.[5]

Section 6 of RR No. 30-2002, as amended by RR No. 9-2013, provides, to wit –

> "SEC. 6. APPROVAL OF OFFER OF COMPROMISE.- Except for offers of compromise where the approval is delegated to the REB[6] 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**[7] composed of the Commissioner and the four (4) Deputy Commissioners. All decisions of the NEB, **granting the**

[2] Rollo, CTA EB No. 2024, page 402.
[3] Ibid., page 403.
[4] Ibid., page 403.
[5] Ibid., 402.
[6] Regional Evaluation Board.
[7] National Evaluation Board.

request of the taxpayer or favorable **to the taxpayer,** shall have the concurrence of the Commissioner.

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."

The "Compromise Agreement"[8] dated December 23, 2020 states as follows:

"Undersigned parties, assisted by their respective counsel, **Petitioner Commissioner of Internal Revenue,** with postal address at 5th Floor, BIR National Office Bldg., BIR Road, Diliman, Quezon City, Philippines, and **Respondent Garden by Sanders, Inc.,** with postal address at 61 RBR Laguna Gardens, Bagong Kalsada, Calamba, Laguna. Respondent may be served with pleadings, notices, and other legal processes by the Honorable Court at Unit 309, 5880 Enriquez St., Makati City, Metro Manila.

AGREE as follows:

WHEREAS, a dispute arose out of the assessment for deficiency income tax and value added-tax, inclusive of surcharge and interest, for taxable years 1999, 2000, 2001, 2002, and 2004;

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 assistance of the undersigned mediator resulted in making the parties realize the advantage of ending their dispute by agreeing upon a compromise;

NOW THEREFORE, the parties have agreed to the following terms and conditions:

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[8] Ibid., pages 341-342.

1. Respondent shall pay the amount of ONE HUNDRED THOUSAND PESOS (Php100,000) as full and final settlement of the income tax and value-added tax due; inclusive of surcharge and interest, as a result of the assessment for taxable years 1999, 2000, 2001, 2002, and 2004;"

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 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.[9]

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 Agreement" is **GRANTED**.

The Compromise Agreement is **APPROVED** and judgment is hereby rendered in accordance therewith. Accordingly, the proceedings in the instant case is considered **CLOSED and TERMINATED**.

SO ORDERED.

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

With due respect – see D.O.
ROMAN G. DEL ROSARIO
Presiding Justice

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

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

With due respect, I join PJ's D.O.
CATHERINE T. MANAHAN
Associate Justice

With due respect, I join PJ's D.O.
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

(Inhibited)
LANEE S. CUI-DAVID
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, it is hereby certified that the conclusions in the above Judgment on Compromise Agreement have been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
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EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 2024** *(CTA Case No. 9342)*
	PRESENT:
-versus-	**DEL ROSARIO**, *P.J.,* **CASTAÑEDA, JR.**, **UY**, **RINGPIS-LIBAN**, **MANAHAN**, **BACORRO-VILLENA**, **MODESTO-SAN PEDRO**, **REYES-FAJARDO**, *and* **CUI-DAVID**, *JJ.*
GARDEN BY SANDERS, INC., *Respondent.*	**PROMULGATED:** JUN 09 2022 2:43 pm

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DISSENTING OPINION

DEL ROSARIO, P.J.:

With due respect, I am constrained to withhold my assent on the *ponencia*.

Section 204(A) of the National Internal Revenue Code (NIRC) of 1997, 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.

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." *(Boldfacing and underscoring supplied)*

Relatedly, Sections 4 and 6 of Revenue Regulations (RR) No. 30-02 state:

"**SECTION 4.** ***Prescribed Minimum Percentages of Compromise Settlement.*** — The compromise settlement of the internal revenue tax liabilities of taxpayers, reckoned on a per tax type assessment basis, shall be subject to the following minimum rates based on the basic assessed tax:

1. For cases of 'financial incapacity' —

1.1. If taxpayer is an individual whose only source of income is from employment and whose monthly salary, if single, is P10,500 or less, or if married, whose salary together with his spouse is P21,000 per month, or less, and it appears that the taxpayer possesses no other leviable/distrainable assets, other than his family home — 10%

1.2. If taxpayer is an individual without any source of income — 10%

1.3. Where the taxpayer is under any of the following conditions:

1.3.1. Zero networth computed in accordance with Sec. 3.2(c) hereof — 10%

1.3.2. Negative networth computed in accordance with Sec. 3.2(c) hereof — 10%

1.3.3. Dissolved corporations —20%

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1.3.4. Already non-operating companies for a period of:

(a) three (3) years or more as of the date of application for compromise settlement — 10%,

(b) Less than 3 years — 20%

1.3.5. Surplus or earnings deficit resulting to impairment in the original capital by at least 50% — 40%

1.3.6 Declared insolvent or bankrupt, — 20%

unless taxpayer falls squarely under any situation as discussed above, thus resulting to the application of the appropriate rate.

2. For cases of "doubtful validity" — A minimum compromise rate equivalent to forty percent (40%) of the basic assessed tax.

The taxpayer may, nevertheless, request for a compromise rate lower than forty percent (40%): *Provided, however*, that **<u>he shall be required to submit his request in writing stating therein the reasons, legal and/or factual, why he should be entitled to such lower rate</u>**: *Provided, further,* that for applications of compromise settlement based on doubtful validity of the assessment involving an offer lower than the minimum forty percent (40%) compromise rate, the same shall be subject to the prior approval by the NEB." *(Boldfacing and underscoring supplied)*

A perusal of the Compromise Agreement dated December 23, 2020 reveals that the parties agreed that respondent shall pay the amount of **<u>Php100,000.00</u>** as **full and final settlement** of the income tax and value-added tax due, inclusive of surcharge and interest, as a result of the **assessments for taxable years 1999, 2000, 2001, 2002 and 2004. Note that the basic tax involved in the present controversy is <u>Php13,019,988.35</u>**.

<u>There is, however, nothing in said Compromise Agreement which states the basis</u> for the settlement offered, albeit records of the case reveal that the compromise amount paid by respondent was lower than the prescribed minimum percentages of compromise settlement, that is, 10% of the basic assessed tax for financial incapacity, and 40% of the basic assessed tax for doubtful validity.

Moreover, records are bereft of any evidence indicating that respondent submitted a request in writing stating therein the reasons, legal and/or factual, why it should be entitled to such lower rate, as prescribed in RR No. 30-02.

In fact, even no less than the Supreme Court requires the submission of documents or evidence showing the basis of compromise settlement before acting thereon, *viz.*:

> "xxx. The Court resolves to require the petitioner to SUBMIT, within ten (10) days from notice hereof, the following: (1) original or certified true copy of the Certificate of Availment of Compromise; (2) original or certified true copy of Availment of Penalties; (3) original or certified true copy of the NEB approval of the compromise; **(5) basis of respondent's acceptance of the Compromise Settlement [Doubtful Validity or Financial Incapacity]; (6) basis of respondent's acceptance of abatement of penalties; and (7) other relevant documents in support of items [5] and [6]**."[1]

Under Article 1409 of the Civil Code, contracts whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy are inexistent and void from the beginning. No court can ratify or approve a compromise agreement that is considered inexistent and void from the beginning.[2]

While compromise settlements are highly encouraged, this Court is not, and should not be, a mere rubber stamp[3] that mechanically or automatically approves compromise agreements, without validating whether the same are not contrary to law, public order, public policy, morals and good customs.

In the present case, I submit that *sans* the required justification for accepting a compromise amount lower than the minimum rates prescribed by law, it is injudicious for the Court to effectively conclude that the parties' Compromise Agreement is "not contrary to law or public policy."

All told, I VOTE to: (a) DEFER the resolution of the parties' Joint Motion for Judgment Based on Compromise Agreement filed on February 17, 2021; and, (ii) REQUIRE the parties to submit the legal basis as to why the prescribed minimum percentages of compromise settlement, that is, 10% of the basic assessed tax for financial

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[1] Resolution, Asia Renal Care Philippines, Inc. vs. Commissioner of Internal Revenue, G.R. No. 240180, June 23, 2021.
[2] Strategic Alliance Development Corporation vs. Radstock Securities Limited, *et al.* G.R. No. 178158, December 4, 2009 and Luis Sison vs. Philippine National Construction Corporation and Radstock Securities Limited, G.R. No. 180428, December 4, 2009.
[3] *Id.*

incapacity and 40% of the basic assessed tax for doubtful validity, were not applied.

ROMAN G. DEL ROSARIO
Presiding Justice