REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

HARDWARE WORKSHOP, INC.,
Petitioner,

CTA CASE NO. 9312

-versus-

Members:
RINGPIS-LIBAN, *Chairperson,*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
NOV 02 2022
1:40 p.m.

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JUDGMENT ON COMPROMISE AGREEMENT

RINGPIS-LIBAN, J.:

Before this Court is the parties' "Joint Manifestation with Motion for Approval of Compromise Agreement,"[1] filed on April 5, 2022, praying that the Court approve the Compromise Agreement executed jointly by the parties, render judgment in accordance with the terms set forth in the Compromise Agreement, and declare the instant case closed and terminated.

On November 3, 2015, petitioner received the Final Decision on Disputed Assessment (FDDA) issued by Mr. Nestor S. Valeroso, OIC–Assistant Commissioner for Large Taxpayers Service, finding it liable for deficiency Income Tax (IT), Value-Added Tax (VAT), Withholding Tax on Compensation (WTC), and Expanded Withholding Tax (EWT).

On March 18, 2016, petitioner filed a Petition for Review before the Court in Division.

[1] Docket, CTA CASE NO. 9312, pages 1079-1083.

While pending trial, petitioner filed an "Urgent Ex Parte Motion for Suspension of Proceedings"[2] stating that it intends to enter into discussions and negotiations with respondent for the possible settlement of the case pursuant to Section 204 of the National Internal Revenue Code (NIRC) OF 1997, as amended, and Section 2(3) of Revenue Regulation (RR) No. 30-2002 on the compromise of civil tax cases being disputed before the courts; that petitioner moves for the suspension of the proceedings of the case to give the parties reasonable time within which to discuss and reach an amicable settlement of the case.

On January 24, 2020, the Court issued a Resolution[3] granting petitioner's "Urgent Ex Parte Motion for Suspension of Proceedings."

On September 25, 2020, petitioner filed a "Manifestation"[4] stating that the negotiations between petitioner and respondent for the possible compromise and settlement of the instant case are still on-going.

On October 7, 2020, the Court issued a Resolution[5] granting the parties a non-extensible period of thirty (30) days from notice, to continue or conclude the settlement negotiations.

On December 9, 2020, petitioner filed a "Compliance with Manifestation and Motion for Time,"[6] stating that petitioner decided to change its principal representative for the on-going settlement negotiation; that due to its change of representative, petitioner asks the Court to grant it a fresh period within which to commence and conclude the negotiations. Hence, petitioner prayed that it be given an opportunity to continue the negotiation for the settlement of the instant case until January 31, 2021.

On January 21, 2021, the Court issued a Resolution[7] granting petitioner's "Compliance with Manifestation and Motion for Time."

On February 10, 2021, petitioner filed a "Compliance" stating that petitioner has formally submitted its offer of compromise to respondent for the latter's consideration. Attached to the said "Compliance" is the Letter dateD February 4, 2021.

On February 24, 2021, the Court issued a Resolution[8] noting the said "Compliance."

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[2] Ibid., pp. 1047-1053.
[3] Ibid., p. 1055.
[4] Ibid., pp. 1060-1061.
[5] Ibid., p. 1065.
[6] Ibid., pp. 1066-1066.
[7] Ibid., pp. 1071-1072.
[8] Ibid., p. 1078.

On April 5, 2022, the Court received petitioner's "Joint Manifestation with Motion for Approval of Compromise Agreement."[9] Attached as Annex "A" to the said motion is the parties' Compromise Agreement[10] dated December 29, 2021.

On April 19, 2022, the Court issued a Resolution[11] ordering the parties to submit the original or certified true copy of the National Evaluation Board (NEB) Approval or the Certificate of Availment, within fifteen (15) days from notice.

On July 14, 2022, the Court received respondent's "Compliance with Apologies,"[12] transmitting to the Court the Certified True Copy of the Certificate of Availment and Proof of Approval by the NEB.

On August 4, 2022, the Court issued a Resolution[13] noting the "Compliance with Apologies." In the same Resolution, the Court ordered the parties to submit the original or certified true copy of the Certificate of Availment, within five (5) days from notice.

On September 8, 2022, respondent filed a "Manifestation" stating that the Certified True Copy of the Certificate of Availment and Proof of Approval by the NEB were already attached to the "Compliance with Apologies." Said "Manifestation was noted in the Court's Resolution dated September 23, 2022.

Hence, the Court shall now resolve the "Joint Manifestation with Motion for Approval of Compromise Agreement."

The following are the terms and conditions stated in the "Judicial Compromise Agreement:"

> **WHEREAS,** the TAXPAYER is a domestic corporation duly organized and existing under the laws of the Philippines which is primarily engaged in the business of trading such as, but not limited to hardware materials and supplies, electrical parts, car accessories and various tools and equipment on a wholesale and retail basis.
>
> **WHEREAS,** the BIR through Nestor R. Valeroso, Officer in Charge- Assistant Commissioner for Large Taxpayer

[9] Ibid., pp. 1079-1083.
[10] Ibid., pp. 1084-1091.
[11] Ibid., p. 1119.
[12] Ibid., p. 1120-1124.
[13] Ibid., p. 1126-1127.

Service; issued a Formal Letter of Demand/Assessment Notice ("Assessment Notice") against Petitioner for alleged deficiency taxes, penalties and interests for taxable year 2010; where the assessments therein are administratively protested but nevertheless were sustained by Assistant Commissioner Valeroso through a Final Decision on Disputed Assessment (the "FDDA"), received by Petitioner on November 3, 2015 which found TAXPAYER liable for alleged deficiency income tax, improperly accumulated earning tax, value added tax, expanded withholding tax, withholding tax on compensation and documentary stamp tax plus penalties and interests, in the total amount of P236,514,831.94, as follows:

	Income Tax	**Value Added Tax**	**Withholding Tax on Compensation**	**Expanded Withholding Tax**	**TOTAL**
Basic Tax	35,371,005.21	90,197,289.22	38,738.47	1,482,304.52	127,089,337.42
Interest and Compromise Penalty	29,238,347.32	78,732,266.93	129,511.53	1,325,367.74	109,425,493.52
Totals	**64,609,352.53**	**168,929,556.15**	**168,250.00**	**2,807,672.26**	**236,514,830.94**

WHEREAS, TAXPAYER filed its Motion for Reconsideration on the FDDA on December 3, 2015. However, on February 17, 2016, the Commissioner of Internal Revenue rendered a denial of the motion for reconsideration and reiterated its assessment in the FDDA.

WHEREAS, the TAXPAYER instituted an action against the BIR entitled *"Hardware Workshop, Inc. vs. Commissioner of Internal Revenue"*, docketed as CTA Case No. 9312, before the Honorable Court of Tax Appeals ("CTA"), seeking a review of the denial by Commissioner of Internal Revenue of the Motion for Reconsideration.

WHEREAS, the TAXPAYER has in the interim submitted to the BIR a Proposal for Amicable Settlement dated October 22, 2021, for the settlement of the alleged deficiency tax assessments contained in the FDDA.

WHEREAS, subsequent meetings and discussions pertinent to the proposal for settlement were held between the TAXPAYER and the BIR.

WHEREAS, the BIR has evaluated the TAXPAYER'S proposal for amicable settlement 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.

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 **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 has actually paid the total amount of P20,356,288.15, composed of the following payments:

i) Paid March 2016:

Tax Type	EWT	WTC	TOTAL
Basic Tax Due	1,482,306	38,738	1,521,044
Interest	1,532,663	40,055	1,572,718
Penalty		85,528	85,528
Compromise	25,000	10,000	35,000
TOTAL	**3,039,969**	**174,321**	**3,214,290**

ii) Paid December 29, 2016:

Tax Type	IT	VAT	TOTAL
Basic Tax Due	1, 351,269	967,122	2,318,391
Interest			
Penalty			
Compromise			
TOTAL	**1,351,269**	**967,122**	**2,318,391**

iii) Paid December 2021:

Tax Type	IT	VAT	TOTAL
Basic Tax Due	3,548,993.76	11,274,613.96	14,823,607.72
Interest			
Penalty			

Compromise			
TOTAL	**3,548,993.76**	**11,274,613.96**	**14,823,607.72**

and the BIR has accepted the total payment ("**Judicial Compromise Amount**").

Section 2. Submission to the Honorable CTA and/or appellate court. This Agreement fully signed by the PARTIES shall be submitted for the approval of the Honorable CTA in CTA Case No. 9312, or in case of appeal, to the CTA *En Banc* or to the Supreme Court, as the case may be. The PARTIES undertake to perform any and all acts and submit any and all documents required by the Court 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 fulfilment 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 all assessments per FDDA, pertaining to the period January 1, December 31, 2010.

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 the above-named representative has full legal capacity to enter, sign, and execute this Agreement.

Section 6. Full and Final Settlement. This Agreement is executed by the PARTIES for the purpose of amicably settling the assessment arising for the aforesaid FDDA and the ensuing Court of Tax Appeals' cases derived from said assessment. Upon approval by the Honorable Court, the BIR recognizes the full satisfaction of the supposed tax liability of the TAXPAYER in connection with the aforesaid FDDA and acknowledges that the TAXPAYER no longer has any tax liability whatsoever based upon, arising from or in connection with the foregoing assessment.

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. 9312 or the proceedings before the CTA En Banc in case of appeal 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 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 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."

Section 204(A) of the NIRC of 1997, as amended, provides for the authority of the CIR to compromise the 0ayment of any revenue tax, to wit:

> **"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 P1,000,000.00) <u>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</u>. xxx"** *(Emphasis supplied)*

A compromise settlement is thus deemed valid when the following requirements are present:

1. The application for compromise should be 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 compromise agreement should be approved by the NEB, which is composed of the respondent 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.

To prove that the offer of compromise was approved by the CIR, the parties presented the Certificate of Availment dated June 29, 2022 and the Approval Sheet of the Judicial Compromise, which shows the signature of all the members of the NEB approving the Judicial Compromise Amount. It was stated in the Approval Sheet of the Judicial Compromise Agreement that the "*Total Payment is equivalent of the 15% of the basic IT/VT and 100% of the basic WC/WE." It appears that the amount paid with regard to income tax and VAT is below the 40% minimum rate required by the Tax Code. Nevertheless, the NEB approved the same.

Having found the documents in order, the Court finds the Approval Sheet of the NEB and the Certificate of Availment sufficient evidence of the parties' compliance with the second and third requisites, respectively, and the mandate of Section 6 of RR No. 30-2002, as amended, to wit: -

> "SEC. 6. APPROVAL OF OFFER OF COMPROMISE.- Except for offers of compromise where the approval is delegated to the REB[14] 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**[15] composed of the Commissioner and the four (4) Deputy Commissioners. All decisions of the NEB, **granting the request of the taxpayer or** favorable **to the taxpayer**, shall have the concurrence of the Commissioner.

xxx xxx xxx

[14] Regional Evaluation Board.
[15] National Evaluation Board.

> Provided, however, that if the offer of compromise is less than the prescribed rates set forth in Sec. 4 hereof, the same shall always be subject to the approval of the NEB.
>
> 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. xxx"

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.

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 Manifestation with Motion for Approval of 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 M. RINGPIS-LIBAN
Associate Justice

I CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

(On Official Business)
CORAZON G. FERRER-FLORES
Associate Justice

ATTESTATION

I attest 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's Division.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, is it 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