REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10838

DONG SEUNG, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF JUDGMENT BASED ON COMPROMISE AGREEMENT

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. AYESHA HANIA B. GUILING-MATANOG
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Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Bldg.
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Ortigas Center, Pasig City 1605

GREETINGS:

You are hereby notified by these presents that on **January 22, 2025,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **January 24, 2025.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
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DONG SEUNG, INC.,
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- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. **10838**

Members:

DEL ROSARIO, *P.J., Chairperson,*
BACORRO-VILLENA, *and*
CUI-DAVID, *JJ.*

Promulgated:
JAN 2 2 2025 3:59 PM

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JUDGMENT BASED ON COMPROMISE AGREEMENT

***BACORRO-VILLENA, J.*:**

On 11 July 2024, the Court received a "Joint Motion to Render Judgment Based on Compromise Agreement"[1] (**Joint Motion**) from the parties, petitioner Dong Seung, Inc. (**petitioner**) and respondent Commissioner of Internal Revenue (**respondent/CIR**), stating that the Bureau of Internal Revenue (**BIR**) has approved and accepted petitioner's compromise offer to settle the income tax (**IT**), expanded withholding tax (**WE**) and final withholding tax (**WF**) deficiencies for taxable year (**TY**) 2015.

The parties attached the following documents in the Joint Motion:

1. Original Judicial Compromise Agreement signed by Rowena S. Pacris (**Pacris**), as petitioner's authorized representative, and by respondent, BIR Commissioner Romeo D. Lumagui

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[1] Division Docket, pp. 222-225.

(**Commissioner Lumagui**), also with signatures of witnesses Atty. Desiree Balolong and Atty. Sylvia R. Alma Jose;[2]

2. Original Notarized Secretary's Certificate dated 08 May 2024 executed by petitioner's Corporate Secretary, Maria Ana Belle R. Trivino, authorizing Pacris to represent petitioner in the signing, execution and filing of the Judicial Compromise Agreement and all other documents related to the instant case;[3] and,

3. Photocopies of (*i*) the BIR Form No. 0605 (Payment Form) for IT in the amount of ₱3,221,242.53, filed on 20 March 2024;[4] (*ii*) BIR Form No. 0605 (Payment Form) for WE in the amount of ₱3,000,000.00, filed on 20 March 2024;[5] (*iii*) BIR Form No. 0605 (Payment Form) for WF in the amount of ₱256,872.33, filed on 20 March 2024;[6] (*iv*) RCBC BTR-BIR Deposit Slip dated 20 March 2024 in the amount of ₱3,000,000.00;[7] (*v*) RCBC BTR-BIR Deposit Slip dated 20 March 2024 in the amount of ₱256,872.33;[8] and, (*vi*) RCBC BTR-BIR Deposit Slip dated 20 March 2024 in the amount of ₱3,221,242.53.[9]

In compliance with the Court's Resolution dated 21 August 2024[10], the parties filed their "Joint Written Manifestation with Partial Compliance (Re: Resolution dated 21 August 2024) and Joint Motion for Extension of Time to Submit Certificate of Availment"[11] (**Joint Written Manifestation and Motion**) on 05 September 2024, where the parties manifested that the basis for their compromise settlement is the petitioner's financial incapacity to pay the assessed tax pursuant to Section 204(A)(2)[12] of the National Internal Revenue Code (**NIRC**) of

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2 Id., pp. 226-231.
3 Id., pp. 232-233.
4 Id., p. 240.
5 Id., p. 241.
6 Id., p. 242.
7 Id., p. 243.
8 Id., p. 244.
9 Id., p. 245.
10 Id., pp. 248-254.
11 Id., pp. 255-259.
12 **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:
...
(2) The financial position of the taxpayer demonstrates a clear inability to pay the assessed tax.

1997, as amended, in relation to Section 3(2)(b) and (c)[13] of Revenue Regulations (**RR**) No. 30-2002[14], as amended by RR No. 8-2004.[15]

On 04 October 2024, respondent filed a "Manifestation and Compliance"[16] and submitted the certified true copy of the Certificate of Availment (Compromise Settlement) (**CA**) dated 25 September 2024[17], and the signature page thereof which shows the unanimous approval of the National Evaluation Board (**NEB**) members of the total compromised amount of ₱6,478,114.86, or equivalent to thirty percent (30%) of the basic deficiency taxes of ₱21,593,716.21.[18]

Thereafter, on 16 December 2024, petitioner filed the originals of the payment forms[19] and the RCBC BTR-BIR deposit slips[20] through its "Compliance (Re: Resolution dated 25 November 2024)".[21]

Under A.M. No. 11-1-05-SC-PHILJA or otherwise known as the Interim Guidelines for Implementing Mediation in the Court of Tax Appeals (**Interim Guidelines**), upon approval of the compromise agreement, the Court shall render judgment based thereon.[22] Moreover,

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13 **SEC. 3. BASIS FOR ACCEPTANCE OF COMPROMISE AGREEMENT.** – The Commissioner may compromise the payment of any internal revenue tax on the following grounds:

...

2. **Financial incapacity**. - The offer to compromise based on financial incapacity may be accepted upon showing that:

...

(b) The taxpayer, **as reflected in its latest Balance Sheet supposed to be filed with the Bureau of Internal Revenue,** is suffering from surplus or earnings deficit resulting to impairment in the original capital by at least 50%, **provided that amounts payable or due to stockholders other than business-related transactions which are properly includible in the regular "accounts payable" are by fiction of law considered as part of capital and not liability, and provided further that the taxpayer has no sufficient liquid asset to satisfy the tax liability**; or

(c) The taxpayer is suffering from a networth deficit **(total liabilities exceed total assets)** computed by deducting total liabilities (net of deferred credits **and amounts payable to stockholders/owners reflected as liabilities, except business related transactions**) from total assets (net of prepaid expenses, deferred charges, pre-operating expenses, as well as appraisal increases in fixed assets), taken from the latest audited financial statements, **provided that in the case of an individual taxpayer, he has no other leviable properties under the law other than his family home**[.]

14 Revenue Regulations 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.

15 Revenue Regulations 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. 7-2001 and 30-2002.

16 Id., pp. 292-294.

17 Id., p. 297.

18 Id., p. 298.

19 Id., pp. 309-311.

20 Id., pp. 312-314.

21 Id., pp. 305-317.

22 *See* Part IX(A) of the Interim Guidelines.

the subject Judicial Compromise Agreement[23] likewise states that the same is subject to the approval of this Court; hence, this Judgment Based on Compromise Agreement (**JBCA**).

The subject Judicial Compromise Agreement reads as follows:

...

JUDICIAL COMPROMISE AGREEMENT

KNOWN ALL MEN BY THESE PRESENTS:

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

DONG SEUNG, INC. ("**TAXPAYER**"), a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office at Panorama Bldg. 1 & 2 cor. South Avenue & 10th St., PIV, CEZ, Rosario, Cavite, represented by its **External Auditor, ROWENA S. PACRIS**;

- 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. ROMEO D. LUMAGUI, JR.** (collectively, the "**PARTIES**");

- Witnesseth That -

WHEREAS, the **TAXPAYER** instituted an action against the **BIR** entitled "***Dong Seung, Inc. vs. Commissioner of Internal Revenue***", docketed as CTA Case No. 10838, pending before the Honorable First Division of the Court of Tax Appeals ("**CTA**"), seeking for the revocation and cancellation of Warrant of Garnishment of the BIR for the alleged tax deficiency for the year 2015;

WHEREAS, the **TAXPAYER** has submitted to the BIR a **Proposal for Amicable Settlement** to pay 30% of the basic Tax of the alleged deficiency for 2015;

WHEREAS, the **TAXPAYER** has applied/availed of Compromise Settlement for its alleged Tax Deficiency for 2015 and paid 30% of the basic taxes assessed against it;

[23] Supra at note 2.

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 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 and relevant laws on 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 the total payment of **SIX MILLION FOUR HUNDRED SEVENTY-EIGHT THOUSAND ONE HUNDRED FOURTEEN AND 86/100 PESOS (Php6,478,114.86) ("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. 10838**. 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 Warrant of Garnishment of the BIR for the alleged tax deficiency for the year 2015.

Section 5. Authority to Enter Compromise Agreement. The **BIR**, through Commissioner Romeo D. Lumagui, Jr. 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, ROWENA S. PACRIS, 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. 10838. Upon approval by the court, the BIR recognizes the full satisfaction of the supposed tax liability of the **TAXPAYER** in connection with CTA Case No. 10838 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 Case No. 10838.

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. 10838 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.

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.

DONG SEUNG, INC.	**BUREAU OF INTERNAL REVENUE**
By:	By:
signed	signed and sealed
ROWENA S. PACRIS	**HON.ROMEO D. LUMAGUI, JR.**
External Auditor	*010469*
	Commissioner

Witnesses:

signed	signed
Atty. Desiree Balolong	SYLVIA R. ALMA JOSE
Counsel for Petitioner	Chief, Litigation Division

...

We resolve.

In *Commissioner of Internal Revenue v. Iconic Beverages, Inc.*[24], the Supreme Court held that respondent's authority to compromise is purely discretionary, and the courts cannot interfere with the exercise of discretionary functions, absent grave abuse of discretion, to wit:

...

The power of the CIR to enter into compromise agreements for deficiency taxes is explicit in Section 204 (A) of the Tax Code, as amended. The CIR may compromise an assessment when a reasonable doubt as to the validity of the claim against the taxpayer exists, as in

[24] G.R. Nos. 240651 & 240665 (Notice of Resolution), 06 July 2021; Citations omitted and italics in the original text.

> this case, or the financial position of the taxpayer demonstrates a clear inability to pay the tax. It is settled that the authority of the CIR to compromise is purely discretionary, and the courts cannot interfere with his exercise of discretionary functions, absent grave abuse of discretion. Here, no grave abuse of discretion exists.
>
> In this regard, a compromise agreement has the effect of *res judicata* on the parties. Compromises are generally to be favored and those entered into in good faith cannot be set aside, except when there is mistake, fraud, violence, intimidation, undue influence, or falsity of documents. None of these exceptions obtain in the present case.
>
> ...

With respect to the required approval of the Compromise Agreement, Section 6 of RR No. 30-2002, as amended by RR No. 9-2013[25], states:

> ...
>
> **SEC. 6. APPROVAL OF OFFER OF COMPROMISE.** - Except for offers of compromise where the approval is delegated to the REB 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 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
>
> <u>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.</u>[26]
>
> xxx xxx xxx
>
> ...

[25] Amending Certain Provisions of Revenue Regulations No. 30-2002.

[26] Emphasis and underscoring in the original text.

Furthermore, Revenue Memorandum Order (**RMO**) No. 3-2017[27] likewise provides:

> ...
>
> **All approved applications for compromise settlement and/or abatement of penalties shall be issued Certificate of Availment (CA)** following the prescribed format as per attached Annexes "A" and "B", while denied applications shall be issued Notice of Denial (ND) following prescribed format as per attached annexes "C" and "D".[28]
>
> ...

Consequently, a compromise settlement of any tax liability where the basic tax involved exceeds ₱1 million, such as in this case, must bear the approval of the majority of all NEB members. Such approval shall be evidenced by a CA following the prescribed format.

The records show that the parties were able to submit the certified true copy of the CA[29] and the signature page thereof[30] (bearing the unanimous approval of the NEB members).

Furthermore, the parties' Judicial Compromise Agreement likewise reveals that their true intention is to settle 30% of the basic tax assessed (for IT, WE and WF) in the aggregate amount of ₱21,593,716.21; thus, paying a total of ₱6,478,114.86, summarized as follows:

TAX TYPE	BASIC TAX ASSESSMENT[31]	OFFER	RATE	PAYMENT DATE
IT	₱10,737,475.12	₱3,221,242.53	30%	20 March 2024
WE	856,241.09	256,872.33	30%	20 March 2024
WF	10,000,000.00	3,000,000.00	30%	20 March 2024
TOTAL	**₱21,593,716.21**	**₱6,478,114.86**		

27 Amending Further the Prescribed Format for the Certificate of Availment/Approval and Notice of Denial Relative to Application for Compromise Settlement and/or Abatement of Penalties Pursuant to Section 204 of the Tax Code, as Amended.
28 Emphasis supplied.
29 Supra at note 17.
30 Supra at note 18.
31 Amounts lifted from the Final Decision on Disputed Assessment dated 28 September 2020, BIR Records, pp. 535-538.

After a careful scrutiny of the parties' documents submitted in support of the subject Judicial Compromise Agreement[32], the Court finds the same in order and in compliance with the established laws, rules and regulations.

In *Felipe O. Magbanua, et al. v. Rizalino Uy*[33], the Supreme Court ruled as follows:

> ...
>
> 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. Verily, the compromise may be either extrajudicial (to prevent litigation) or judicial (to end a litigation).
>
> A compromise 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. To have the force of law between the parties, it must comply with the requisites and principles of contracts. Upon the parties, it has the effect and the authority of *res judicata*, once entered into.
>
> When a compromise agreement is given judicial approval, 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. It is immediately executory and not appealable, except for vices of consent or forgery. The nonfulfillment of its terms and conditions justifies the issuance of a writ of execution; in such an instance, execution becomes a ministerial duty of the court.
>
> ...
>
> The issue involving the validity of a compromise agreement notwithstanding a final judgment is not novel. *Jesalva v. Bautista* upheld a compromise agreement that covered cases pending trial, on appeal, and with final judgment. The Court noted that Article 2040 impliedly allowed such agreements; there was no limitation as to when these should be entered into. *Palanca v. Court of Industrial Relations* sustained a compromise agreement, notwithstanding a final judgment in which only the amount of back wages was left to be determined. The Court found no evidence of fraud or of any showing that the agreement was contrary to law, morals, good customs, public order, or public policy.

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32 Supra at note 2.

33 G.R. No. 161003, 06 May 2005; Citations omitted and italics in the original text.

Gatchalian v. Arlegui upheld the right to compromise prior to the execution of a final judgment. The Court ruled that the final judgment had been novated and superseded by a compromise agreement. Also, *Northern Lines, Inc. v. Court of Tax Appeals* recognized the right to compromise final and executory judgments, as long as such right was exercised by the proper party litigants.

...

There is no justification to disallow a compromise agreement, solely because it was entered into after final judgment. The validity of the agreement is determined by compliance with the requisites and principles of contracts, not by when it was entered into. As provided by the law on contracts, a valid compromise must have the following elements: (1) the consent of the parties to the compromise, (2) an object certain that is the subject matter of the compromise, and (3) the cause of the obligation that is established.

...

WHEREFORE, in view of the foregoing, the parties' Joint Motion to Render Judgment Based on Compromise Agreement is **GRANTED.** Accordingly, petitioner Dong Seung, Inc. and respondent Commissioner of Internal Revenue's Judicial Compromise Agreement is hereby **APPROVED.** Having been impressed with judicial imprimatur, the parties are hereby **ENJOINED** to faithfully comply with all the terms and conditions of the aforesaid Compromise Agreement, which similarly constitutes the Court's judgment in herein case.

Accordingly, this case is now deemed **CLOSED AND TERMINATED.**

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

LANEE S. CUI-DAVID
Associate Justice

CERTIFICATION

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