21-000405-0051

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10651

ANCHETA GALANG CERVANTES HOLDINGS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF JUDGMENT BASED ON COMPROMISE AGREEMENT

To:

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

ATTY. OSCAR A. AGUILAR
ATTY. ROSE ANN O. TOLENTINO
Bureau of Internal Revenue-Revenue Region No. 7B
25th Floor, Legal Division, The Podium West Tower
ADB Avenue, Ortigas Center, Mandaluyong City

AGAN MONTENEGRO MALASAGA & CO
7th Floor, Electra House Building
115-117 Esteban Street, Legazpi Village
Makati City 1229

GREETINGS:

You are hereby notified by these presents that on **October 15, 2024,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **October 15, 2024.**

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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

ANCHETA GALANG CERVANTES HOLDINGS, INC., Petitioner,	CTA CASE NO. **10651**
	Members:
- versus -	**DEL ROSARIO**, *P.J., Chairperson,* **BACORRO-VILLENA**, *and* **CUI-DAVID**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: OCT 15 2024; 1:30PM

x - x

JUDGMENT BASED ON COMPROMISE AGREEMENT

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

On 19 June 2024, the Court received a "Joint Motion to Render Judgment Based on Compromise Agreement"[1] (**Joint Motion**) from the parties, petitioner Ancheta Galang Cervantes Holdings, Inc. (**petitioner**) and respondent Commissioner of Internal Revenue (**respondent/CIR**), stating that the National Evaluation Board (**NEB**) has approved petitioner's compromise offer to settle the income tax (**IT**) and value-added tax (**VAT**) deficiencies for taxable year (**TY**) 2012.

The parties attached the following documents to their Joint Motion: (1) Original copy of the Certificate of Availment (Compromise Settlement) (**CA**) issued on 11 June 2024;[2] (2) Original copy of the Judicial Compromise Agreement[3] notarized on 17 April 2024 signed by Gracitas P. Sta Cruz (**Sta Cruz**), as petitioner's authorized representative, and by CIR Romeo D. Lumagui, Jr. (**CIR Lumagui**); (3) Original copy of the

[1] Division Docket, pp. 414-434, with annexes.
[2] Annex **"A"** to the parties Joint Motion, id., p. 418.
[3] Annex **"B"** to the parties Joint Motion, id., pp. 419-423.

Notarized Secretary's Certificate[4] notarized on 18 April 2024 executed by petitioner's Corporate Secretary Gideon Dante T. Galang, authorizing Sta Cruz to sign the Judicial Compromise Agreement and other necessary documents on petitioner's behalf; (4) Original copy of the Landbank Bureau of Internal Revenue (**BIR**) Payment Slip[5] dated 16 April 2024 indicating payment of ₱513,886.87 and BIR Form No. 0605[6] (Payment Form) for IT approved for the payment of compromise amount of ₱513,886.87 filed on 16 April 2024; (5) Original copy of the Landbank BIR Payment Slip[7] dated 16 April 2024 indicating payment of ₱205,554.75 and BIR Form No. 0605[8] (Payment Form) for VAT approved for the payment of compromise amount of ₱205,554.75 filed on 16 April 2024; and, (6) Certified True Copy of the NEB's signature page[9] for the Judicial Compromise Offer.

In compliance with the Court's Resolution dated 14 August 2024[10], the parties filed their "Joint Manifestation"[11] on 27 August 2024, where the parties manifested that the basis for their compromise settlement is the doubtful validity of the subject assessments pursuant to Section 204[12] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, in relation to Section 3(1)(b) and (g)[13] of Revenue Regulations (**RR**) No. 30-2002[14], as amended by RR No. 8-2004.[15]

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4 Annex **"C"** to the parties Joint Motion, id., pp. 425-426.
5 Annex **"D"** to the parties Joint Motion.
6 Division Docket, p. 431.
7 Annex **"E"** to the parties Joint Motion, id., p. 432
8 Id., p. 433.
9 Id., p. 438.
10 Id., pp. 441-446.
11 Id., pp. 447-450.
12 **Sec. 204.** *Authority of the Commissioner to Compromise, Abate, and Refund or Credit Taxes.*
13 **SEC. 3.** *Basis For Acceptance of Compromise Settlement.* – The Commissioner may compromise the payment of any internal revenue tax on the following grounds:

1. *Doubtful validity of the assessment.* –– The offer to compromise a delinquent account or disputed assessment under these Regulations on the ground of reasonable doubt as to the validity of the assessment may be accepted when it is shown that:

...

(b) 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[.]

...

(g) 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[.]

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.

The parties went on to explain that the deficiency assessments were the result of matching data based on Third Party Information (**TPI**). However, the TPI was not supported and verified with sworn statements as required by Revenue Memorandum Order (**RMO**) Nos. 32-2007[16] and 46-2004.[17] Thus, it appears that the assessments lack factual basis and concrete documentary evidence.

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.[18] Moreover, the subject Judicial Compromise Agreement dated 17 April 2024[19] likewise states that the same is subject to the approval of this Court; hence, this Judgment Based on Compromise Agreement (**JBCA**).

The subject Compromise Agreement reads as follows:

...

JUDICIAL COMPROMISE AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

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

ANCHETA GALANG CERVANTES HOLDINGS INC. (**"TAXPAYER"**), a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at 9th Floor, Unit 99 Columbia Tower, Ortigas Avenue, Wackwack, Mandaluyong City, represented by its Administrative Officer, **GRACITAS P. STA CRUZ**;

-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

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16 Prescribing Guidelines and Procedures in Handling 2006 Letter Notices Generated Thru Reconciliation of Listing for Enforcement System (RELIEF) and Third Party Matching-Bureau of Customs (TPM-BOC) Data Program.

17 Additional Supplement and Guidelines in Handling Letter Notices with Discrepancies Arising from Data Matching Processes as defined in Revenue Memorandum Order (RMO) Nos. 34-2004 and 30-2003, as amended by RMO Nos. 42-2003 and 24-2004, which remain Unserved, have been Served but are Without Response, or are Under Protest by Taxpayers.

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

19 Supra at note 3.

Commissioner of Internal Revenue, HON. ROMEO D. LUMAGUI JR. (collectively, the "**PARTIES**");

-Witnesseth That-

WHEREAS, the **BIR** issued to the **TAXPAYER** a Final Decision on Disputed Assessment (FDDA) on August 04, 2017, finding the latter liable for deficiency income tax and value added tax in the aggregate amount of ₱4,296,023.85, inclusive of increments, for fiscal year 2012, *viz*:

Tax Type	Basic Tax Due	Surcharge	Interest	Compromise Penalty	Total Amount Due
IT	₱1,284,717.18	₱642,358.59	₱1,125,623.43		₱3,052,699.20
VAT	₱513,886.87	₱256,943.44	₱472,494.34		₱1,243,324.65
TOTAL	**₱1,798,604.05**				**₱4,296,023.85**

WHEREAS, on August 04, 2017, the **TAXPAYER** received the FDDA demanding the payment for the assessed deficiency taxes for fiscal year 2012;

WHEREAS, on August 03, 2021, the **TAXPAYER** filed a Petition for Review questioning the validity of the assessments issued against it for fiscal year 2012 and seeking the cancellation of FDDA dated August 04, 2017, issued by the Commissioner of Internal Revenue, entitled "**ANCHETA GALANG CERVANTES HOLDINGS, INC. vs. COMMISSIONER OF INTERNAL REVENUE**", docketed as CTA Case No. 10651, pending before the Honorable First Division of the Court of Tax Appeals ("**CTA**");

WHEREAS, the Honorable First Division of the CTA in its Resolution dated March 28, 2022, referred the case to mediation and directed the **PARTIES** to appear before the Philippine Mediation Center - CTA for possible amicable settlement of the case;

WHEREAS, on June 16, 2022, the PARTIES agreed to have their case mediated for settlement through judicial compromise settlement;

WHEREAS, on June 01, 2022, the **TAXPAYER** submitted to the **BIR** its **Letter Intent to Compromise** the deficiency tax assessment reflected in the **FDDA** dated September 17, 2021 and offered to pay 40% of the basic tax for income tax and value added tax;

WHEREAS, the **BIR** has evaluated the **TAXPAYER's** proposal for amicable settement and believes that a judicial compromise, allowing immediate tax collection and putting 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 pertinent and relevant provisions of the Civil Code of the Philippines, jurisprudence, decisions of the Honorable CTA, and applicable laws and rules on judicial compromise without contravening laws, morals, public order and public policy;

WHEREAS, the Honorable CTA has issued rulings allowing judicial compromise of tax assessment cases 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 amount equivalent to 40% of the basic tax for income tax and value added tax in the total amount of P1,798,604.05;

This amount is broken down as follows:

TAX TYPE	BASIC TAX	OFFER	RATE
IT	₱1,284,717.18	₱513,886.87	40%
VAT	513,886.87	205,554.75	40%
TOTAL	**₱1,798,604.05**	**₱719,441.62**	

As proof of payment of the above-mentioned offer, attached herein as **Annexes "A", and "B"**, are Payment Forms (BIR Form 0605) for each tax type.

Section 2. Submission to the Honorable CTA. This Agreement fully signed by the **PARTIES** shall be submitted for the approval of the Honorable Court of Tax Appeals in CTA Case No. 10651. 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 based on compromise agreement**.

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 FDDA dated August 04, 2017.

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 by the Honorable CTA.

On the other hand, **Ms. Gracitas P. Sta Cruz** 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 amount as evidenced by Secretary's Certificate dated April 11, 2024, attached herein as **Annex "C"**.

Section 6. Full and Final Settlement. This **Agreement** is executed by the **PARTIES** for the purpose of amicably settling and ending CTA Case No. 10651. Upon approval of the Honorable CTA, the **BIR** recognizes the full satisfaction of the supposed tax liability of the **TAXPAYER** in connection with CTA Case No. 10651 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. 10651.

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 the 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. 10651 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 this Agreement on ____________ in ____________, Philippines.

ANCHETA GALANG CERVANTES HOLDINGS, INC.	**BUREAU OF INTERNAL REVENUE**
By:	By:
(signed) **GRACITAS P. STA CRUZ** Administrative Officer	(signed) **HON. ROMEO D. LIMAGUI JR.** Commissioner of Internal Revenue

Witnesses:

(signed)	(signed)

...

We resolve.

In *Commissioner of Internal Revenue v. Iconic Beverages, Inc.*[20], 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 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[21], as amended by RR No. 9-2013[22], 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

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

21 Supra at note 14.

22 Amending Certain Provisions of Revenue Regulations No. 30-2002.

> <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>[23]
>
> xxx xxx xxx
>
> ...

Furthermore, RMO No. 3-2017[24] 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".[25]
>
> ...

Consequently, a compromise settlement of any tax liability where the basic tax involved exceeds ₱1,000,000.00, 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 original CA[26] and certified true copy of its signature page[27] (showing the unanimous approval of the NEB members).

Furthermore, the parties' Judicial Compromise Agreement[28] likewise reveals that their true intention is to settle 40% of the basic tax assessed (for IT and VAT) in the aggregate amount of ₱1,798,604.05; thus, paying a total of ₱719,441.62, summarized as follows:

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[23] Emphasis and underscoring in the original text.
[24] 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.
[25] Emphasis supplied.
[26] Supra at note 2.
[27] Supra at note 9.
[28] Supra at note 3.

TAX TYPE	BASIC TAX ASSESSMENT[29]	OFFER	RATE	PAYMENT DATE
IT	₱1,284,717.18	₱513,886.87	40%	16 April 2024[30]
VAT	513,886.87	205,554.75	40%	16 April 2024[31]
TOTAL	**₱1,798,604.05**	**₱719,441.62**		

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.
>
> ...

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29 See Final Decision on Disputed Assessment, Annex "C" to the Petition for Review, Division Docket, pp. 33-34.
30 Supra at note 5.
31 Supra at note 7.
32 Supra at note 3.
33 G.R. No. 161003, 06 May 2005; Citations omitted and italics in the original text.

> 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.
>
> *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, petitioner Ancheta Galang Cervantes Holdings, 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.

Consequently, petitioner Ancheta Galang Cervantes Holdings, Inc.'s pending Petition for Review, filed on 14 October 2021, is hereby rendered **MOOT AND ACADEMIC**. 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