REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

PSC DIVERSIFIED FRUITS, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10032

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

Promulgated:
JAN 27 2023 3:06 p.m.

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JUDGMENT ON COMPROMISE AGREEMENT

RINGPIS-LIBAN, J.:

Before this Court is the parties' "Joint Manifestation Motion for Approval of Compromise Agreement,"[1] filed on June 14, 2022, praying that Court defer proceedings in view of the compromise settlement between the parties, approve the Compromise Agreement executed jointly by the parties, render judgment in accordance with the terms set forth therein in the Compromise Agreement, and declare the instant case closed and terminated.

On June 22, 2022, the Court issued a Resolution[2] noting the "Joint Manifestation Motion for Approval of Compromise Agreement," and ordering the parties to submit the original or certified true copy of the Certificate of Availment and the duly notarized Judicial Compromise Agreement within fifteen (15) days from notice.

On July 21, 2021, the Court received the parties' "Joint Partial Compliance with Motion for Extension of Time to Submit the Certificate of Availment and Approval of the National Evaluation Board,"[3] submitting the original copy of the "Judicial Compromise Agreement."

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[1] Docket, CTA Case No. 10032, pp. 1356-1359.
[2] Ibid., pp. 1378-1379.
[3] Ibid., pp. 1380-1383.

On August 3, 2022, the Court issued a Resolution[4] noting the "Compliance" and granting the parties an additional period of sixty (60) days from July 21, 2022 or until September 19, 2022 within which to submit the Certificate of Availment (Compromise Settlement) and Proof of NEB Approval.

On September 19, 2022, the Court received the parties' "Joint Motion for Extension of Time to Submit the Certificate of Availment and Approval of the National Evaluation Board.[5]

On September 27, 2022, the Court issued a Resolution granting the parties an additional period of thirty (30) days from September 19, 2022 or until October 19, 2022 within which to submit the Certificate of Availment."

On October 19, 2022, the Court received the parties' "Joint Compliance with Motion," submitting the certified true copy of the Certificate of Availment (Compromise Settlement) dated October 13, 2022 certifying that the application for the compromise settlement of deficiency income tax and expanded withholding tax amounting to Php27,997,593.63 under Assessment Nos. IT/WE-ELA56362-13-0232 dated September 7, 2016 covering fiscal year ended March 31, 2013 has been approved by the NEB.

On November 23, 2022, the Court issued a Resolution noting the "Joint Compliance with Motion," and ordering the parties to submit the original or certified true copy of the duly signed and notarized Compromise Agreement within five (5) days from notice.

On December 21, 2022, the Court received the parties' "Joint Compliance," submitting the original copy of the duly signed and notarized Compromise Agreement signed by petitioner and respondent on January 19, 2022 and March 17, 2022, respectively.

In view of the filing of the original copy of the duly signed and notarized Compromise Agreement, the Court shall now resolve the "Joint Manifestation Motion for Approval of Compromise Agreement."

The "Compromise Agreement" states as follows:

> "**WHEREAS**, the **BIR** issued a Formal Assessment Notice and Formal Letter of Demand dated September 7, 2016 ("FAN/FLD") requiring **PSCDFI** to pay deficiency IT and EWT in the aggregate amount of P103,895,568.62, inclusive of

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[4] Ibid., pp. 1402-1403.
[5] Ibid., pp. 121-130.

interest and compromise penalty. Subsequently, Preliminary Collection Letter ("PCL"), Final Notice Before Siezure ("FNBS"), and Warrant of Distraint and/or Levy ("WDL") were also issued.

WHEREAS, on February 22, 2019, **PSCDFI** filed a Petition for Review with the Honorable Court of Tax Appeals ("CTA"), docketed as CTA Case No. 10031, appealing and questioning the validity and/or legality of the WDL and seeking the cancellation of the FAN/FLD, PCL, FNBS, and DWL for lack of factual and legal basis.

WHEREAS, in a letter dated November 11, 2021, **PSCDFI** submitted an Offer of Compromise signifying its intention to enter into an amicable settlement with the **BIR** for the alleged tax deficiency in the FAN/FLD.

WHEREAS, **BIR** has evaluated PSCDFI's proposal for amicable settlement and offer of compromise and believes that a judicial compromise to allow immediate tax collection and put an end to protracted, expensive and mutually prejudicial 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, 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 cases.

NOW, THEREFORE, for and in consideration of the foregoing premises, the PARTIES hereto have agreed as follows:

Section 1. Compromise Amount. In order to settle the above-mentioned case, **PSCDFI** has offered, and the **BIR** has accepted, the total compromise amount of Twenty-Seven Million Nine Hundred Ninety-Seven Thousand Five Hundred Ninety-Three and 63/100 Pesos (P27,997,593.63) comprising 40% of the basic assessed tax for IT and 100% of the basic tax assessed for EWT (Judicial Compromise Amount").

Section 2. Submission to the Honorable CTA. This Agreement fully signed by the PARTIES shall be submitted to the Honorable CTA in CTA Case No. 10032 entitled "PSC Diversified Fruits, Inc. v. Commissioner of Internal Revenue" and the **PARTIES** undertake to perform any and all acts, and to submit any and all documents required by the Honorable CTA 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 of the Honorable CTA. This Agreement shall thereafter remain in force and effect until completion and fulfilment of the covenants and undertaking of the **PARTIES** thereto.

Section 4. Deliverables of the PARTIES upon Approval of this Agreement. Upon final approval by the Honorable CTA, of the terms of this Agreement, **BIR** undertakes to execute and deliver to **PSCDFI** any and all documents as may be required to implement the provisions of this Agreement, and thereafter withdraw and cancel the WDL, FNBS, PCL, and FAN/FLD.

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 into, sign, and execute this Agreement, and to deliver its implementing documents upon its approval by the Honorable CTA.

PSCDFI warrants that Florence C. Fernandez and Christopher Karl W. Cuyegkeng are duly authorized by its Board of Directors and have full legal capacity to enter into, sign, and execute this Agreement, and to deliver payment of the Compromise 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. 10032. Upon approval by the Honorable CTA, the **BIR** recognizes the full satisfaction of the alleged tax liabilities of **PSCDFI**, including any alleged deficiency interest, surcharge, and other penalties thereon, in connection with CTA Case No. 10032 and acknowledges that **PSCDFI** no longer has any tax liability whatsoever based upon, arising from, or in connection with the particular subject of CTA Case No. 10032.

Section 7. Disapproval of this Agreement by the Honorable Court of Tax Appeals. In the event that the 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 all acts necessary to rectify or correct the deficiency, defect or imperfection. However, in case the deficiency, defect or imperfection is not or cannot be rectified or corrected:

1. The amount insofar already paid by **PSCDFI** to the **BIR** shall be deemed a tax credit which may be applied against internal revenue taxes for which **PSCDFI** may be directly liable, as allowed under existing rules and regulations; and

2. The proceedings of the CTA Case No. 10032 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 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/action 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 Honorabale 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 payment 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 dated November 11, 2021[6] was approved by the CIR, the parties presented the Certificate of Availment dated October 13, 2022, signed by James H. Roldan, ACIR, Enforcement and Advocacy Service.

Having found the documents in order, the Court finds 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[7] 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**[8] 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.
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> xxx xxx xxx
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> 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.
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> 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

[6] Ibid., pp. 1368-1372.
[7] Regional Evaluation Board.
[8] National Evaluation Board.

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 Manifestation 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

WE CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

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

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