REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

GREAT EARTH MARKETING & DEVELOPMENT CORP., *Petitioner,*	**CTA CASE NO. 10314**
	Members:
- versus -	**DEL ROSARIO,** *P.J., Chairperson,* **MANAHAN,** and **REYES-FAJARDO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAY 23 2023; 10:40 AM

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JUDGMENT BASED ON COMPROMISE AGREEMENT

REYES-FAJARDO, *J.*:

For the Court's resolution are the following:

1. the parties' *Joint Motion for Judgment Based on Compromise Agreement with Compliance,* filed on November 14, 2022;

2. petitioner's *Compliance,* filed on February 2, 2023;

3. respondent's *Manifestation and Compliance (Re: Resolution dated 24 January 2023),* filed on February 9, 2023; and

4. petitioner's *Urgent Motion to Resolve the Joint Motion for Judgment Based on the Compromise Agreement,* filed on March 23, 2023.

On November 14, 2022, the parties filed a *Joint Motion for Judgment Based on Compromise Agreement with Compliance,*[1] with attached supporting documents, stating that they have executed a Judicial Compromise Agreement for an amicable settlement of the tax assessment subject of this case. They pray that a judgment based on the JCA be issued and approved.

On January 24, 2023, the Court issued a Resolution directing the parties to submit the original or certified true copy of the proof of payment of the compromise amount.[2]

On February 2, 2023, petitioner filed its *Compliance*, submitting the certified true copy of the proof of payment of the compromise amount issued by BPI Davao Laurel Branch[3] and the Original BIR Form 0605[4] filed by petitioner on October 25, 2022. On February 9, 2023, respondent filed his *Manifestation and Compliance (Re: Resolution dated 24 January 2023),* submitting the certified true copy of the signature page showing the approval signatures of majority of the members of the National Evaluation Board (NEB).

Considering the submission of the required documents in support of the parties' JCA, the Court shall now act on the parties' Joint Motion for Judgment Based on Compromise Agreement.

A duly notarized JCA,[5] was executed by Ms. Sharlene Faye A. Lim, authorized representative of petitioner Great Earth Marketing & Development Corp. (GEMDC) and then Commissioner of Internal Revenue (CIR) Lilia Catris Guillermo, which is hereby reproduced in *verbatim*:

<u>JUDICIAL COMPROMISE AGREEMENT</u>

KNOWN ALL MEN BY THESE PRESENTS:

This Judicial Compromise Agreement ("Agreement"), made and executed, by and between:

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1 Docket, Vol. II, pp.620 to 634.
2 *Id.* at pp.636 to 638.
3 *Id.* at Vol. II, p. 645.
4 *Id.* at p. 646.
5 *Id.* at pp. 625-628. Footnotes omitted.

GREAT EARTH MARKETING & DEVELOPMENT CORP., (GEMDC), a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office at Gempesaw Extension, Davao City, represented herein by its President, **MS. SHARLENE FAYE A. LIM,** per Secretary's Certificate dated October 24, 2022, attached hereto and hereinafter referred to as the **"TAXPAYER"**;

- and -

The **BUREAU OF INTERNAL REVENUE,** with office address at Bureau of Internal Revenue, National Office Building, BIR Road, Diliman, Quezon City, Metro Manila, represented by the **Commissioner, HON. LILIA CATRIS GUILLERMO**, and hereinafter referred to as the **"BIR."**

The TAXPAYER and the BIR shall hereafter be jointly referred to as the PARTIES.

- WITNESSETH That -

WHEREAS, the **BIR** issued to the **TAXPAYER** a Final Decision on Disputed Assessment ("**FDDA**") dated July 14, 2020 for the year 2019 assessing the **Taxpayer** deficiency taxes [tax] for an aggregate amount of Five Hundred Six Million Three Hundred Eighty Seven Thousand Five Hundred Thirty Four and Twenty Five Centavos (Php506,387,534.25);

WHEREAS, the **TAXPAYER** instituted an action against the **BIR** entitled *"Great Earth Marketing and Development Corp. vs. Commissioner of Internal Revenue,"* docketed as CTA Case No. 10314, pending before the Honorable First Division of the Court of Tax Appeals (**"CTA"**), seeking for the revocation and cancellation of the Final Decision on Disputed Assessment of the BIR for the alleged tax deficiency for the year 2019;

WHEREAS, the **TAXPAYER** has submitted to the **BIR** a Letter Offer of Compromise dated 18 July 2022 for the alleged deficiency tax assessment contained in the FDDA and offered to pay the amount of Php105,000,000.00 as settlement;

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, jurisprudence, relevant decisions of the Supreme Court, 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 its tax liability for taxable year 2019, the subject matter in CTA Case No. 10314, the TAXPAYER has offered and paid and the BIR has accepted the total amount of One Hundred Five Million Pesos (P105,000,000.00).

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. 10314. The PARTIES undertake to perform any and all acts, and submit any and all documents necessary to terminate the instant case and as may be required by the Honorable CTA.

Section 3. Effectivity of the Agreement. This Agreement shall only take effect and bind the PARTIES upon approval and termination of proceedings 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 July 14, 2020.

Section 5. Authority to Enter Compromise Agreement. The BIR, through Commissioner Lilia Catris Guillermo warrants that she 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.

The TAXPAYER similarly warrants that he [it] has full legal capacity to enter, sign and execute this Agreement, and to deliver payment of the above-agreed 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. 10314 and the Petitions and Motions filed related thereto. Upon performance by the TAXPAYER of its obligations under Section 1 hereof, the BIR recognizes the full satisfaction of the supposed tax liability of the TAXPAYER in connection with CTA Case No. 10314 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. 10314.

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. 10314 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 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 accepted the above stipulations, and sign this Agreement, at Davao City on Oct 24, 2022 and in Quezon City on 02 Nov 2022 of _______ for the consideration and approval of the Honorable Court.

GREAT EARTH MARKETING & DEVELOPMENT CORP	**COMMISSIONER OF INTERNAL REVENUE**
By:	
(Signed)	(Signed)
SHARLENE FAYE A. LIM Authorized Representative of the GEMDC TIN: 153-103-251	**LILIA CATRIS GUILLERMO** Commissioner

Witnesses:

(Signed)	(Signed)

OUR RULING

We find merit on the parties' Joint Motion.

Republic of the Philippines v. Heirs of Cruz, et al. [6] decreed that "[b]efore approving a compromise, courts are bound to strictly scrutinize the same to ensure that the compromise *and* its execution are compliant with the law and consistent with procedural rules." In this regard, Section 204(A) of the National Internal Revenue Code

6 G.R. No. 208956, October 17, 2018.

(NIRC), as amended, authorizes the CIR to compromise the payment of any internal 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) 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.**[7]

Relative to the foregoing provision, Revenue Regulations (RR) No. 30-2002[8] dated December 16, 2002, as amended by RR No. 8-2004, provides for those cases that may or may not be compromised, to wit:

> SEC. 2. CASES WHICH MAY BE COMPROMISED. - The following cases may, upon taxpayer's compliance with the basis set forth under Section 3 of these Regulations, be the subject matter of compromise settlement, viz:
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> 1. Delinquent accounts;
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> 2. Cases under administrative protest after issuance of the Final Assessment Notice to the taxpayer which are still pending in the Regional Offices, Revenue District Offices, Legal Service, Large Taxpayer Service (LTS), Collection Service, Enforcement Service and other offices in the National Office;

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7 Boldfacing supplied.
8 Subject: Revenue Regulations Implementing Section 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.

3. Civil tax cases being disputed before the courts;

4. Collection cases filed in courts;

5. Criminal violations, other than those already filed in court or those involving criminal tax fraud.

EXCEPTIONS:

1. Withholding tax cases, unless the applicant-taxpayer invokes provisions of law that cast doubt on the taxpayer's obligation to withhold;

...

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:

...

To secure approval of said JCA, the following requisites must be present: *one*, the authority of the parties' themselves, or their representatives to enter into compromise agreement;[9] *two*, the compromise must be based on doubtful validity of the government's claim against the taxpayer (doubtful validity); or financial incapacity of the latter (financial incapacity); *three*, the subject matter being compromised is *not* prohibited by law, or by its implementing rules and regulations;[10] *four*, payment of the compromise amount, *i.e.*, at least 40% of the basic tax/es for doubtful validity; or at least 10% of the basic tax/es for financial incapacity; *five*, approval[11] of the NEB if: a) the amount offered is less than the prescribed rates; or b) if the total basic tax/es exceeds ₱1,000,000.00; and *six*, presentation of the pertinent Certificate of Availment. These requisites were met. Consider:

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9 Article 1317 of Republic Act No. 386, or the Civil Code, states that no one may contract in the name of another without being authorized by the latter.

10 Article 1409 of the Civil Code provides that contracts contrary to law are void.

11 See Section 6, RR No. 30-2002.

First. The persons who executed said JCA were properly clothed with authority to do so. To be precise, Sharlene Faye A. Lim's authority to compromise, on petitioner's behalf, is based on the notarized Secretary's Certificate dated October 24, 2022,[12] whereas respondent's authority to compromise internal revenue taxes is conferred by Section 204(A), in relation to Section 7(c)[13] of the NIRC, as amended.

Second and *Third.* In the Petition for Review filed with the Court on August 20, 2020, petitioner assails the validity of the deficiency Expanded Withholding Tax (EWT) assessment, inclusive of penalties on the Deed of Absolute Sale dated March 12, 2019, executed between petitioner and Philippine National Bank (PNB).

To recall, on June 29, 2018, PNB, as seller and Mr. Robin Chua Sy, as original buyer entered into a Contract to Sell[14] involving four (4) parcels of land and the commercial buildings erected thereon located at J.P. Laurel Ave., Bajada, Davao City in the amount of ₱6,000,000,000.00 (contract price). Mr. Sy. made a downpayment in the amount of ₱1,560,000,000.00 which exceeded 25% of the contract price. The parties being aware that the transaction is taxable in the year when more than 25% of the contract price was paid, Mr. Sy withheld 6% EWT on the entire contract price[15] and remitted[16] the tax in the amount of ₱360,000,000.00 to the BIR, through PNB-Obrero Branch in Davao City. On the other hand, PNB, filed its Income Tax Return for taxable year

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12 Docket, Vol. II, p.633.

13 SEC. 7. *Authority of the Commissioner to Delegate Power.* - The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the rank equivalent to a division chief or higher, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner: Provided, however, That the following powers of the Commissioner shall not be delegated:

...

(c) The power to compromise or abate, under Sec. 204 (A) and (B) of this Code, any tax liability: Provided, however, That assessments issued by the regional offices involving basic deficiency taxes of Five hundred thousand pesos (P500,000) or less, and minor criminal violations, as may be determined by rules and regulations to be promulgated by the Secretary of finance, upon recommendation of the Commissioner, discovered by regional and district officials, may be compromised by a regional evaluation board which shall be composed of the Regional Director as Chairman, the Assistant Regional Director, the heads of the Legal, Assessment and Collection Divisions and the Revenue District Officer having jurisdiction over the taxpayer, as members; ...

14 Exhibit "P-3." Docket, Vol. I, p. 365.

15 Exhibit "P-4." *Id.* at p. 371.

16 Exhibit "P-4a." *Id.* at p. 372.

2018[17] and declared the entire gain realized from the sale[18] and claimed as tax credit the tax withheld and remitted by Mr. Robin Sy.

On March 11, 2019, Mr. Sy assigned all his rights, title and interest in the Contract to Sell to petitioner through the execution of the Deed of Assignment.[19]

Petitioner claims that since the sale was already taxed in 2018 when the first installment was paid, no further tax is due in 2019 when the Deed of Assignment was executed between Mr. Sy and petitioner. Respondent counters that petitioner has the obligation to deduct, withhold, and remit tax as the Contract to Sell and Deed of Absolute Sale, involving the same properties with different buyers, are treated as two separate and distinct taxable transactions.

Article 1303 of the Civil Code[20] explicitly provides that subrogation transfers to the person subrogated the credit with all the rights thereto appertaining, either against the debtor or against third persons, be they guarantors or possessors of mortgages, subject to stipulation in a conventional subrogation.

In *Spouses Michelle M. Noynay and Noel S. Noynay v. Citihomes Builder and Development, Inc (CBDI)*,[21] the Supreme Court expounded the consequences arising from subrogation and held that by virtue of the deed of assignment, the assignee is deemed subrogated to the rights and obligations of the assignor and is bound by exactly the same conditions as those which bound the assignor.

Further, in *Project Builders, Inc., Galicano A. Calapatia, Jr., and Leandro Enriquez v. The Court of Appeals and Industrial Finance Corporation (IFC)*,[22] the Supreme Court pronounced that upon an assignment of a contract to sell, the assignee is effectively subrogated in place of the assignor and in a position to enforce the contract to sell to the same extent as the assignor could.

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17 Exhibit "P-5." *Id.* at pp. 373-382.
18 Part IV, line item 45 of BIR Form 1702-RT." *Id.*
19 Exhibit "P-6." Docket, *Id.* at pp. 383-384.
20 Republic Act No. 386.
21 G.R. No. 204160, September 22, 2014.
22 G.R. No. 99433, June 19, 2001

Consistent with *CBD* and *IFC*, Mr. Sy's assignment to petitioner of all his rights, interests, and obligations under the Contract to Sell includes the payment of the EWT to the BIR. Therefore, it would appear that petitioner has no further obligation to withhold and remit EWT from the contract price because said obligation was complied with by the original buyer, Mr. Sy. Undeniably, this casts doubts on respondent's claim against petitioner.

Fourth, Fifth, and Sixth. In respondent's Final Decision on Disputed Assessment (FDDA) dated July 14, 2020, petitioner was assessed for basic deficiency EWT in the amount of ₱360,000,000.00, computed as follows:

Taxable Basis per Return		0.00
Add: Consideration/Selling Price on the Deed of Sale		P6,000,000,000.00
Taxable Basis per Audit		P6,000,000,000.00
Expanded Withholding Tax Due		P360,000,000.00
Less: Tax Withheld/Paid per Return		0.00
Basic Expanded Withholding Tax Deficiency		P360,000,000.00
Add: Surcharge	P90,000,000.00	
12% Interest 3.12.2019 to 6.30.2020	56,337,534.25	
Compromise Penalty	50,000.00	146,387,534.25
Total Amount Due		P506,387,534.25
Grand Total		P506,387,534.25

Meanwhile, petitioner paid[23] the total amount of ₱105,000,000.00, as the compromise amount.

Since the ground for compromise is based on doubtful validity, at least 40% of ₱360,000,000.00, or ₱144,000,000.00 is the minimum prescribed compromise amount. Considering that petitioner only paid ₱105,000,000.00, or below the prescribed minimum compromise amount, Section 204(A) of the NIRC, as amended, commands that petitioner must obtain approval from the NEB. Said NEB Approval was obtained, as recognized in the Certificate of Availment dated November 8, 2022[24] and signature page evidencing approval by the

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[23] In *Commissioner of Internal Revenue v. Iconic Beverages, Inc.*, G.R. Nos. 240651 and 240665, Resolution dated July 6, 2021, the Supreme Court recognized a duly notarized Compromise Agreement as basis for determining the taxpayer's payment of the compromise amount, as well as the acceptance thereof by the BIR.

[24] Docket, Vol. II, p. 634.

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majority of the NEB of the compromise settlement, with the concurrence of the respondent.[25]

With the confluence of the *six* conditions, we stamp our imprimatur on the parties' JCA.

WHEREFORE, petitioner's *Compliance* and respondent's *Manifestation and Compliance (Re: Resolution dated 24 January 2023)* are **NOTED**.

In view of the foregoing considerations, the parties' *Joint Motion for Judgment Based on Compromise Agreement with Compliance* is **GRANTED**. The *Judicial Compromise Agreement* executed by and between Great Earth Marketing & Development Corp's President Sharlene Faye A. Lim, and the Commissioner of Internal Revenue is **APPROVED** and judgment is hereby rendered in accordance therewith. The parties are **ENJOINED** to faithfully comply will all the terms and conditions of the aforesaid *Judicial Compromise Agreement*.

Petitioner's *Urgent Motion to Resolve the Joint Motion for Judgment Based on the Compromise Agreement* is **NOTED** and considered **MOOT** in view of this Court's resolution of the parties' *Joint Motion for Judgment Based on Compromise Agreement.*

Accordingly, CTA Case No. 10314 is **DECLARED CLOSED** and **TERMINATED**.

SO ORDERED.

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

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[25] Annex "1," Respondent's Manifestation and Compliance (Re: Resolution dated 24 January 2023).

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
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