REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

First Division

KARGAMINE TOO, INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9853

Members:

DEL ROSARIO, *P.J., Chairperson,*
and
MANAHAN, *JJ.*

Promulgated:

JUL 05 2021 2:25 pm

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JUDGMENT BY COMPROMISE AGREEMENT

MANAHAN, J.:

This resolves the **Joint Motion to Render Judgment on Compromise**[1] filed by petitioner and respondent on May 31, 2019. In support of said motion, the parties attached the Compromise Agreement[2] dated May 23, 2019. It reads as follow:

> **COMPROMISE AGREEMENT**
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> Undersigned parties, assisted by their respective counsels, Petitioner KARGAMINE TOO, INC. a domestic corporation duly organized and existing under the laws of the Philippines with principal office at G-2 Las Buenas Bldg., 37 Industrial Avenue, Potrero, Malabon City and Respondent COMMISSIONER OF INTERNAL REVENUE, holding office at the BIR National Office Building, Agham Road, Diliman, Quezon City;
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> AGREE AS FOLLOWS:
>
> **WHEREAS**, a dispute arose out of deficiency internal revenue tax assessments arising from a Formal Assessment Notice issued by Respondent to Petitioner in connection with Petitioner's 2014 taxable year, which dispute is the subject

[1] Docket, CTA Case No. 9853, pp. 153-156.
[2] *Id.*, pp. 157-160.

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of a Petition for Review filed by Petitioner under CTA Case No. 9853 (the "Captioned Case") pending before this Honourable (sic) Court;

WHEREAS, the parties have agreed to accept mediation to avoid prolonged litigation, as authorized by A.M. No. 11-1-05-SC-PHILJA;

WHEREAS, the assistance of the assigned mediator resulted in making the parties realize the advantage of ending their dispute by agreeing to a compromise;

NOW THEREFORE, the parties hereto have agreed to the following terms and conditions:

1. Not later than fifteen (15) days from approval of the Compromise Agreement by the Court of Tax Appeals, Petitioner agrees to give and Respondent agrees to receive, the total sum of ONE MILLION FIFTY-TWO THOUSAND EIGHT HUNDRED TEN PESOS AND FIFTY-SIX CENTAVOS (PHP1,052,810.56). In accordance with Section 204(a) of the National Internal Revenue Code of 1997, as amended, which provides for the minimum compromise rate equivalent to forty percent (40%) of the basic assessed tax.

2. Respondent acknowledges that the receipt by the Bureau of Internal Revenue of the total sum of ONE MILLION FIFTY-TWO THOUSAND EIGHT HUNDRED TEN PESOS AND FIFTY-SIX CENTAVOS (PHP1,052,810.56) shall serve as complete and full settlement of any and all claims for taxable year 2014 arising directly or indirectly, from the facts and circumstances giving rise to, surrounding or arising from eLA No. 026-2015-00000306 dated 20 August 2015, Formal Assessment Notices Nos. 37084/22242 (the "FAN"), all dated December 18, 2017 covering the following;

• **IT-Assessment No. 37084**		
Basic Deficiency Income Tax ("IT")	Php	2,105,414.96
Interest (no period indicated)		1,104,921.77
		3,210,336.73
• **VT-Assessment No. 37084**		
Basic Deficiency Value Added Tax ("VAT")		196,226.45
Interest (no period indicated)		111,711.71
		307,938.16
• **EWT-Assessment No. 37084**		
Basic Deficiency Expanded Withholding ("WTE")		132,154.00
Interest (no period indicated)		75,962.11
		208,116.11
• **MC-Assessment No. 22242**		
Suggested Compromise		105,000.00
		105,000.00

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and the subsequent Preliminary Collection Letter ("PCL") and Final Notice before Seizure ("FNBS"), all of which claims or causes of action by these presents are hereby irrevocably abandoned and waived by the Respondent.

3. Each Party undertakes and covenants not to institute, commence or continue any steps, actions or proceedings against the other party, in relation to the FAN, PCL and FNBS (the "Settled Claims") and shall take steps as are necessary to ensure that no such steps, action, proceedings are instituted, commenced or continued, but rather immediately terminated.

4. The Parties acknowledge that this Agreement does not constitute an admission or confession of any liability or fault on their respective parts.

5. The parties shall cause the immediate, permanent, and complete dismissal of the above-captioned case by filing the necessary pleadings and documents and shall perform such acts as may be necessary to attain such objective upon the final approval of the National Evaluation Board. The dismissal of the captioned case shall be with prejudice and the same shall not be refiled by the Parties.

6. The parties jointly and severally represent, warrant and undertake that:

6.1 This Compromise Agreement does not offend, nor is it violative of any law, rule or regulation;

6.2 The Parties have the full and absolute power; authority and right to enter into, execute, deliver and perform their obligations under this Agreement, which shall constitute their valid and legally binding obligation and enforceable against them in accordance with the terms hereof;

6.3 The Parties have taken or obtained all necessary legal and corporate actions, consents and approvals to authorize this Agreement;

6.4 The Parties shall (i) sign and execute all necessary documents, deeds, instruments and agreements to ensure that all provisions of this Agreement are fully fulfilled and respected;

6.5 The Parties hereby warrant that their respective representatives who have signed this Agreement have been duly authorized to enter into the same;

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6.6 This Agreement is not executed in fraud of third persons.

IN WITNESS WHEREOF, the parties hereto mutually and voluntarily accept the above stipulations and, signed this Agreement at Quezon City on this 23rd day of May 2019 for the consideration and approval of the Honorable Court.

Respectfully submitted.

KARGAMINE TOO, INC.	**COMMISSIONER OF INTERNAL REVENUE**

However, the parties failed to submit supporting documents to said agreement, hence, the Court directed the parties to submit proof as to the approval of the National Evaluation Board (NEB) as well as other documents relative thereto.[3]

Several requests[4] for extension of time to file the required documents were granted[5] by this Court. Petitioner also submitted photocopies of BIR Form No. 0605 as proof of payment of the compromise amount for the following deficiency taxes, to wit:

Type of Tax	**Basic Tax Assessed**	**Compromised Amount**
Income Tax	Php 2,105,414.96	Php 842,165.98
Value-Added Tax	196,226.45	78,490.58
Expanded Withholding Tax	132,154.00	132,154.00
Total		**Php 1,052,810.56**

However, on March 12, 2020, this Court denied petitioner's *Manifestation with Motion for Extension of Time*[6] filed on February 21, 2020 as well as the instant *Joint Motion*

[3] Docket, Resolution dated July 12, 2019, pp. 164-166.
[4] *Id.*, *Motion for Extension to Submit NEB's Approval of Compromise* dated July 29, 2019, pp. 167-169; *Manifestation* dated September 3, 2019, pp. 173-176; *Manifestation* dated September 25, 2019, pp. 193-196; *Manifestation* dated October 25, 2019, pp. 209-212; *Manifestation* dated December 20, 2019, pp. 228-231.
[5] *Id.*, Resolution dated August 6, 2019, p. 172; Resolution dated September 10, 2019, p. 180; Resolution dated October 22, 2019, pp. 206-208; Resolution dated November 12, 2019, p. 218; Resolution dated January 31, 2020, pp. 254-255.
[6] *Id.*, pp. 256-259.

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to Render Judgment on Compromise. Hence, the Pre-Trial Conference was set on April 30, 2020.[7]

The parties then moved for the reconsideration of such denial and prayed for the suspension of the case proceedings pending the receipt of the proof of NEB approval of said compromise agreement.[8]

On July 28, 2020, this Court partially granted such motion and the parties were given a final chance to submit the authenticated or certified true copies of the required documents under Resolution dated July 12, 2019 within thirty (30) days from notice, otherwise, the proceedings of the case shall proceed.[9]

On March 22, 2021, the parties filed a *Joint Manifestation and Compliance*[10] submitting to this Court a scanned copy of Application for Compromise Settlement for Income Tax (IT)[11], Value-Added Tax (VAT)[12], and Expanded Withholding Tax (EWT) [13] as well as the original Certificate of Availment (Compromise Settlement)[14].

On May 31, 2021, this Court noted the submission of the aforementioned documents and submitted the parties' *Joint Motion to Render Judgment on Compromise* for resolution.[15]

Given the preceding averments, the Court is set to rule.

Section 204(A) of the 1997 National Internal Revenue Code (NIRC), as amended, provides:

> 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:

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[7] *Id.*, Resolution dated March 12, 2020, pp. 264-265.
[8] Docket, *Amended Joint Motion for Reconsideration and to Hold Proceedings in Abeyance* dated July 8, 2020, pp. 270-278.
[9] *Id.*, Resolution dated July 28, 2020, pp. 331-332.
[10] *Id.*, pp. 581-584.
[11] *Id.*, p. 587.
[12] *Id.*, p. 588.
[13] *Id.*, p. 589.
[14] *Id.*, p. 590.
[15] *Id.*, Resolution dated May 31, 2021, pp. 592-593.

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> (1) A reasonable doubt as to the validity of the claim against the taxpayer exists; or
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> (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
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> 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.

As culled in the above-cited provision, the requisites for a valid compromise agreement are the following:

1. The application for compromise is 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 approval of 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) or where the settlement offered is less than the prescribed minimum rates.

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Implementing the foregoing section of the 1997 NIRC, as amended, Revenue Regulations (RR) No. 30-2002 dated December 16, 2002, as amended by RR No. 8-2004, or the "**Revenue Regulation 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**," provides for those cases that can be compromised or not, 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;
>
> 3. Civil tax cases being disputed before the courts;
>
> 4. Collection cases filed in courts;
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> 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**;
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> xxx xxx xxx.

Based on the records of this case, particularly the submitted copies of Application for Compromise Settlement, the compromise was grounded on doubtful validity of respondent's assessment.

Section 3 of RR No. 30-2002, as amended, provides the instances when the ground of doubtful validity of assessment exists which include, *inter alia*, when "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" or "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."

In respondent's Formal Letter of Demand (FLD)[16], which was attached to his *Answer with Special and Affirmative Defenses* [17] marked as Annex "R-14", the deficiency assessment for IT arose from matching or comparing the difference between the Withholding Tax assessed from petitioner's Financial Statements and the Withholding Tax remitted without any explanation as to its integral relation to the said assessment. As to the deficiency VAT and EWT assessments, it was mentioned only in the said FLD that the former were based on gross receipts derived from the sale or exchange of services while the EWT deficiency was derived from petitioner's failure to withhold and remit correct EWT on income payments. Such alleged findings were not properly explained in the said FLD.

It is in this aspect that the doubtful validity of respondent's tax assessments is circumscribed considering that the latter failed to show empirical proof that petitioner indeed received a taxable income from any property, activity, or service equivalent to such alleged deficiency taxes. Absent any sufficient evidence that the alleged differences in the matching were indeed taxable income received by the petitioner, said deficiency assessments were mere presumptions.

In the case of *Commissioner of Internal Revenue v. Hantex Trading Co., Inc.*,[18] the Supreme Court ruled that the presumption of the correctness of an assessment, being a mere presumption, cannot be based on another presumption, to wit:

> The rule is that in the absence of the accounting records of a taxpayer, his tax liability may be determined by estimation. The petitioner is not required to compute such tax liabilities with mathematical exactness. Approximation in the calculation of the taxes due is justified. To hold otherwise would be tantamount to holding that skillful concealment is an invincible barrier to proof. However, the rule does not apply where the estimation is arrived at arbitrarily and capriciously.

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[16] Docket, pp. 67-77.
[17] *Id.*, pp. 92-94.
[18] G.R. NO. 136975, March 31, 2005.

> We agree with the contention of the petitioner that, as a general rule, tax assessments by tax examiners are presumed correct and made in good faith. All presumptions are in favor of the correctness of a tax assessment. It is to be presumed, however, that such assessment was based on sufficient evidence. Upon the introduction of the assessment in evidence, a *prima facie* case of liability on the part of the taxpayer is made. If a taxpayer files a petition for review in the CTA and assails the assessment, the *prima facie* presumption is that the assessment made by the BIR is correct, and that in preparing the same, the BIR personnel regularly performed their duties. This rule for tax initiated suits is premised on several factors other than the normal evidentiary rule imposing proof obligation on the petitioner-taxpayer: the presumption of administrative regularity; the likelihood that the taxpayer will have access to the relevant information; and the desirability of bolstering the record-keeping requirements of the NIRC.
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> However, the *prima facie* correctness of a tax assessment does not apply upon proof that an assessment is utterly without foundation, meaning it is arbitrary and capricious. Where the BIR has come out with a "naked assessment," i.e., without any foundation character, the determination of the tax due is without rational basis. In such a situation, the U.S. Court of Appeals ruled that the determination of the Commissioner contained in a deficiency notice disappears. *Hence, the determination by the CTA must rest on all the evidence introduced and its ultimate determination must find support in credible evidence.*

In the case of *Commissioner of Internal Revenue v. Island Garment Manufacturing Corporation et al.*[19], citing the case of *Collector of Internal Revenue v. Alberto D. Benipayo*[20], the Supreme Court ruled that:

> An assessment fixes and determines the tax liability of a taxpayer. As soon as it is served, an obligation arises on the part of the taxpayer concerned to pay the amount assessed and demanded. Hence, assessments should not be based on mere presumptions no matter how reasonable or logical said presumptions may be ... ."
>
> In order to stand the test of judicial scrutiny, the assessment must be based on actual facts. The presumption of correctness of assessment being a mere presumption cannot be made to rest on another presumption ...

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[19] G.R. No. L-46644, September 11, 1987.
[20] G.R. No. L-13656. January 31, 1962.

In the instant petition,[21] petitioner questioned the legal and factual basis of said alleged deficiency taxes by presenting its protest letter[22] dated February 1, 2018 assailing the respondent's findings.

Thus, the first requisite under Section 204(A) of the 1997 NIRC, as amended, pertaining to the ground of doubtful validity is complied with.

As to the second requisite pertaining to the amount of compromise payment, based on the submitted Compromise Agreement, respondent's FLD comprised of the following internal revenue taxes and their corresponding basic tax assessments, to wit:

Type of Tax	Basic Tax Assessed
Income Tax	Php 2,105,414.96
Value-Added Tax	196,226.45
Expanded Withholding Tax	132,154.00

From the foregoing deficiency tax assessments, the amounts of compromise settlement to be paid by the petitioner were computed as follows:

Tax Type	Basic Tax	Compromise Rate	Compromise Amount
Income Tax	Php 2,105,414.96	40%	Php 842,165.98
Value-Added Tax	196,226.45	40%	78,490.58
Expanded Withholding Tax	132,154.00	100%	132,154.00

As earlier quoted, Section 2 of RR No. 30-2002 provides those cases which may be compromised and the exceptions. One instance that cannot be compromised is withholding tax cases, except, when the applicant-taxpayer invokes provisions of law that cast doubt on the taxpayer's obligation to withhold.

Applying the 40% compromise amount under Section 204(A) of the 1997 NIRC, as amended, in the instant case, except for EWT, the computation for the compromise amount of settlement for the deficiency IT and VAT assessments, as shown above, is in accordance with the said provision of the 1997 NIRC, as amended.

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[21] Docket, Petition for Review, pp. 12-17.
[22] *Id.*, Annex "C" to "C-7", pp. 24-31.

On the other hand, petitioner paid the following amounts through respondent's eFPS, to wit:

Tax Type	Payment Transaction No.	Amount Paid
Income Tax	191911007[23]	Php 842,165.98
Value-Added Tax	191911184[24]	78,490.58
Expanded Withholding Tax	191911333[25]	132,154.00

Thus, the correct computation of the amounts of compromise settlement payable and their subsequent payment by petitioner constitute compliance with the second requisite. Notably, the compromise settlement of the EWT deficiency assessment was 100% of the basic tax which is more than the minimum amount prescribed by law.

As to the last requisite, the approval of the NEB was necessary considering that the amount involved in this case was more than one million pesos. Section 6, first paragraph, of RR No. 30-2002 provides:

> **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

In the instant case, the Certificate of Availment (Compromise Settlement) dated January 21, 2021 shows the NEB approval and the submission of such document is sufficient enough to prove its action thereof as held in *Lifebank Foundation, Inc. v. Commissioner of Internal Revenue*,[26] *viz.*:

> "Upon review of the supporting documents submitted by the parties, the Court finds that the Judicial Compromise Agreement has complied with the minimum amounts for compromise settlement prescribed in Section 204(A) of the

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[23] Docket, pp. 235-236.
[24] *Id.*, pp. 237-238.
[25] *Id.*, pp. 240-241.
[26] CTA EB No. 1727, March 2, 2021.

> NIRC. Specifically, the total compromise payment of 75% of the basic tax assessed was paid by the taxpayer.
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> More importantly, in compliance with the Court's order, the parties have **submitted the proof of approval by the NEB through the *Certificate of Availment* dated October 26, 2020**. The *Certificate of Availment* states that petitioner's 'applications for the compromise settlement of deficiency Income, Value-Added and Miscellaneous taxes amounting to Two Hundred Eighty Two Million Fifty Five Thousand Nine Hundred Fifty One & 22/100 Pesos Only (P282,055,951.22)' under Formal Letter of Demand dated April 25, 2013 covering taxable period 2009 has been approved by the National Evaluation Board." *(Boldfacing supplied)*

Considering the faithful observance by the parties of all the requisites under Section 204(A) of the 1997 NIRC, as amended, the Court hereby grants the Joint Motion for Approval of the Compromise Agreement.

In the case of *Far East Bank and Trust Co., et al. v. Trust Union Shipping Corp., et al.*,[27] the Supreme Court explains the effect of a compromise agreement, to wit:

> **A compromise is a contract whereby the parties**, by making reciprocal concessions, **avoid litigation or put an end to one already commenced.** It is an accepted and desirable practice in courts of law and administrative tribunals. Settlement of disputes brought before the courts is, in fact, encouraged.
>
> It is settled that contracting parties may establish such stipulations, clauses, terms and conditions as they deem convenient, provided that these are not contrary to law, morals, good customs, public order, or public policy. (*Emphasis supplied*)

Further, in the case of *Conchita A. Sonley v. Anchor Savings Bank/Equicom Savings Bank*,[28] the Supreme Court ruled that once the compromise agreement is submitted to the Court and the latter has given its imprimatur thereof, it has the force and effect of a judgment, to wit:

> Corollary thereto, once submitted to the court and stamped with judicial approval, a compromise agreement becomes more than a mere private contract binding upon the

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[27] G.R. No. 154716, September 16, 2008.
[28] G.R. No. 205623, August 10, 2016.

> parties. Having the sanction of the court and entered as its determination of the controversy, it has the force and effect of any judgment.

WHEREFORE, in the light of the foregoing, the parties' *Joint Motion to Render Judgment on Compromise* is **GRANTED** and the submission of the Application for Compromise Settlement for Income Tax, Value-Added Tax, and Expanded Withholding Tax and the Certificate of Availment (Compromise Settlement) is **DEEMED SUFFICIENT COMPLIANCE** with the Resolution dated July 12, 2019.

The **Compromise Agreement** dated May 23, 2019 entered into by the parties is hereby **APPROVED** and this **Judgment by Compromise Agreement** is hereby rendered in accordance therewith. The parties are hereby enjoined to faithfully comply with all the terms and conditions of the aforesaid Compromise Agreement.

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

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Judgment by 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