**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

***FIRST DIVISION***

**RELIV PHILIPPINES, INC.,**
*Petitioner,*

*-versus-*

**COMMISSIONER OF INTERNAL REVENUE,**
*Respondent.*

**CTA Case No. 9894**

Members:

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

Promulgated:

JUL 07 2021 2:41pm

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# JUDGMENT BY COMPROMISE AGREEMENT

**MANAHAN, *J.*:**

On December 15, 2020, the Court issued a Resolution directing the parties to submit documentary proof of approval of their compromise settlement by the National Evaluation Board (NEB) as well as their concurrence thereon by the Commissioner of Internal Revenue (CIR) relative to their Joint Motion for Approval of Judicial Compromise Agreement.

On April 28, 2021, respondent submitted his Compliance with the said Resolution by attaching therewith a certified true copy of the Certificate of Availment and the approval by the NEB of the parties' Compromise Agreement.

On May 31, 2021, the Court issued a Resolution finding the aforementioned documents sufficient compliance with the Resolution of the Court dated December 11, 2020.

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In view of the submission of the required documents, we now proceed to analyze the *Judicial Compromise Agreement* filed by the parties on September 25, 2020 and the documents submitted in support thereof.

The Judicial Compromise Agreement partly reads as follows:

> "**WHEREAS,** when the **BIR** issued a *Letter of Authority* No. 0016831 dated 26 September 2005 (*"Letter of Authority"),* wherein **BIR** officers, Revenue Officer Magdalena Ventura and Group Supervisor Marilou Sapungan, where *(sic)* authorized to examine the **TAXPAYER's** books of accounts and other accounting records for the taxable year 2004;
>
> **WHEREAS,** after the examination of the **TAXPAYER's** books of accounts and other accounting records for the taxable year 2004, the **BIR** issued, among others, a *Preliminary Assessment Notice* dated 9 April 2008 *("PAN")* and *Formal Assessment Notice* (*"FAN")* unto which the **TAXPAYER** timely filed its replies;
>
> **WHEREAS,** upon consideration of the **TAXPAYER's** replies to the PAN and FAN, the **BIR** purportedly found deficiency tax that led to the **BIR's** issuance of a *Final Decision on Disputed Assessment ("FDDA")* on February 16, 2009, demanding payment on alleged tax deficiencies in the aggregate amount of Ten Million Three Hundred Seventy Three Thousand Three Hundred Thirty Nine Pesos and 86/100 (Php10,373,339.86) for the taxable year 2004;
>
> **WHEREAS**, the **TAXPAYER** timely filed its administrative appeal and position paper against the *FDDA* through a *Letter dated 17 March 2009.* On June 27, 2018, the **TAXPAYER** received the Decision of the **BIR,** affirming the *FDDA;*
>
> **WHEREAS,** the **TAXPAYER** questioned the validity of the issuances of the **BIR** by aptly filing a Petition for Review before the Court of Tax Appeals ("CTA") which was docketed as *(**CTA Case No. 9894**)* and currently pending before the First Division of the CTA;
>
> **WHEREAS**, the **TAXPAYER**, without admission of guilt or responsibility, declared its intention to explore the possibility of amicably settling the case and submitted to the **BIR** a *Request for Tax Compromise* dated 02 September 2019 in ***CTA Case No. 9894***;

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**WHEREAS,** the **BIR** has thoroughly evaluated the **TAXPAYER'S** proposal for amicable settlement and thereafter arrived at the expert opinion that the acceptance and approval of the **TAXPAYER's** *Request for Tax Compromise* will promote the best interest of the Government considering that it will result *(sic)* the immediate collection of taxes and will further put an end to protracted and unwarranted litigation as provided in the ***Civil Code of the Philippines*;**

**WHEREAS**, the **PARTIES** have agreed to enter into an amicable settlement pursuant to the provisions of the ***Civil Code of the Philippines,*** settled jurisprudence laid down by the Honorable Supreme Court, pertinent decisions of the Honorable CTA, and relevant laws on judicial compromise without contravening law, morals, public order and public policy;

**WHEREAS**, the Honorable CTA has issued rulings allowing judicial compromise similar to the instant case;

**WHEREAS,** the **PARTIES,** for purposes of avoiding and putting an end to a protracted, expensive and mutually prejudicial litigation, have agreed to enter into an amicable settlement in ***CTA Case No. 9894***, 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 amicably settle the purported deficiency tax and all other claims that the Government may have in relation to ***CTA Case No. 9894,*** the **TAXPAYER** has offered and the BIR has accepted the total payment of Four Million Two Hundred Fifty Four Thousand Two Hundred Nineteen Pesos and 72/100 **(Php4,254,219.72)** as and by way of compromises **("Judicial Compromise Amount").**

**Section 2. Submission to the Honorable CTA.** Upon signing of this **Agreement** by the **PARTIES**, it shall be submitted for approval and confirmation of the Honorable CTA in ***CTA Case No. 9894.*** The **PARTIES** undertake to perform any and all acts that are necessary, 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 signing thereof and shall be enforceable upon approval and confirmation thereof by the Honorable CTA. This **Agreement** shall thereafter remain in

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full 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, and 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, and withdraw and cancel the entire tax assessments covering **TAXPAYER'S** taxable year 2004 as reflected in the ***Decision dated June 14, 2018*** and in the **FDDA dated February 13, 2009.**

**Section 5. Authority to Enter Compromise Agreement.** The **BIR** hereby warrants that is *(sic)* its duly represented herein by its Commissioner, Hon. Caesar R. Dulay, who is vested with ample authority and full legal capacity under the law to enter, sign, and execute this Agreement for an on behalf of the Government, and to deliver its implementing documents upon its approval of the Honorable CTA.

The **TAXPAYER** represented herein by its Finance and Accounting Manager, **GENEBEL REYES,** is duly authorized by its Board of Directors and has full legal capacity under the law to enter, sign, and execute this Agreement, and to deliver payment of the above-agreed amount.

**Section 6. Full and Final Settlement.** This Agreement is executed by the **PARTIES** for purposes of amicably settling and ending ***CTA Case No. 9894***. The **BIR** recognizes the FULL SATISFACTION of the supposed tax liability of the **TAXPAYER** in connection with ***CTA Case No. 9894*** and further 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. 9894.***

**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**:

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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. 9894*** 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 of 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.

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|---|---|
| **RELIV PHILIPPINES, INC.** | **BUREAU OF INTERNAL REVENUE** |
| By: | By: |
| **GENEBEL REYES**<br>***Finance and Accounting Manager*** | **CAESAR R. DULAY**<br>***Commissioner*** |

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## RULING OF THE COURT

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:
>
> (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."** (emphasis supplied)

Based on 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 and, 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 (Php1,000,000.00) or where the settlement offered is less than the prescribed minimum rates.

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 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 Regulation (RR) Nos. 6-2000 and 7-2001**," provides for those cases that may 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;
>
> 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;
>
> 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;
>
> xxx xxx xxx.

The records of this case show, particularly the Judicial Compromise Agreement submitted by the parties, that the

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application for compromise settlement was grounded on doubtful validity of respondent's tax assessment.[1]

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 the Petition for Review filed with this Court on July 27, 2018, petitioner assailed the deficiency tax assessment pertaining to taxable year 2004 for being void because the revenue officer who conducted the audit was not duly authorized in the Letter of Authority (LOA) issued by the Bureau of Internal Revenue (BIR). Petitioner also challenged the validity of the Waivers of the Defense of Prescription ("waivers") executed by the parties as not having extended the government's right to assess its tax liabilities for taxable year 2004. Even assuming that the deficiency tax assessment is valid, petitioner asserts that it lacks legal and factual basis to support the conclusions contained therein.

In respondent's Answer to the Petition for Review, he maintains that the revenue officer who conducted the audit investigation was armed with the requisite authority provided under the Re-Assignment Notice originating from the original LOA, which is allowed under Revenue Memorandum Order (RMO) No. 08-06. He also contends that the waivers executed are valid in accordance with the requirements laid down under Revenue Delegation Authority Order No. 15-01 issued on August 2, 2001.

The disquisitions and arguments propounded by the parties relative to the deficiency tax assessments for taxable year 2004 show that the validity thereof was clearly put in issue.

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[1] Fourth Paragraph of the parties' Judicial Compromise Agreement as an attachment to the Joint Motion for Judgement Based on Compromise Agreement signed by both parties.

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Based on the foregoing, 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, the submitted Judicial Compromise Agreement reflected the amount indicated in the Decision signed by the CIR, Caesar R. Dulay, dated June 14, 2018[2] denying petitioner's request for reconsideration of the FDDA and demanding the payment of Php10,373,339.86 representing petitioner's alleged tax liabilities for income tax, expanded withholding tax (EWT) and final withholding tax (FWT) for taxable year 2004.

Based on the Judicial Compromise Agreement prepared by the parties, the amount of compromise settlement to be paid by the petitioner is Php4,254,219.72, detailed as follows:[3]

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|---|---|
| Income Tax | Php972,700.28 |
| EWT | 324,290.81 |
| FWT | 2,945,520.21 |
| Increments due to late payment | 11,708.42 |
| **Total Payment** | Php4,254,219.72 |

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

Thus, the payment of the aforesaid amount of compromise settlement constitutes compliance with the second requisite as implemented by Section 6 of RR No. 30-2002, as amended by RR No. 9-2013.

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[2] Court Docket, Volume I, pp. 54-78.

[3] See Section 1 of the Judicial Compromise Agreement; Certificate of Availment dated February 24, 2021.

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As to the last requisite, the Court notes that there is sufficient compliance with the law by respondent's submission of the original of the *Certificate of Availment (Compromise Settlement)* dated February 24, 2021, which states that petitioner's application of compromise settlement has been approved by the NEB which is more than the required majority vote under Section 204 (A) of the 1997 NIRC, as amended.

With the faithful observance by the parties of all the requisites under Section 204 (A) of the 1997 NIRC, as amended, the Court hereby approves the Judicial Compromise Agreement submitted by the parties.

In the case of *Far East Bank and Trust Co. et al. v. Trust Union Shipping Corp. et al.*,[4] 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,*[5] 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 parties. Having the sanction of the court and entered as its determination of the controversy, it has the force and effect of any judgment."

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[4] G.R. No. 154716, September 16, 2008.
[5] G.R. No. 205623, August 10, 2016.

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**WHEREFORE**, in light of the foregoing considerations, the parties' *Joint Motion for Approval of Judicial Compromise Agreement* is hereby **GRANTED.**

Accordingly, the *Judicial Compromise Agreement* entered into by the parties is **APPROVED** and this Judgment on 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 Judicial Compromise Agreement.

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