REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

SEMEXCO MARKETING CORPORATION *Petitioner,*	**CTA CASE NO. 10304**
	Members:
-versus-	**RINGPIS-LIBAN,** *Chairperson* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: APR 27 2023 3:16 p.m.

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JUDGMENT ON COMPROMISE AGREEMENT

MODESTO-SAN PEDRO, J.:

For the Court's resolution are the Mediator's Report ("Report") filed by the Philippine Mediation Center – Court of Tax Appeals ("PMC-CTA")[1] and petitioner's Compliance, filed on 20 September 2022.[2]

This Court hereby **NOTES** petitioner's Compliance. Ms. Carolyn S. Yao is deemed to be properly authorized to sign the Compromise Agreement, dated 16 September 2021, executed between petitioner and respondent.

This Court shall now resolve the Report and the Compromise Agreement, dated 16 September 2021, contained therein.

On 6 July 2020, petitioner filed a Petition for Review ("Petition")[3] asking this Court to set aside the Final Decision on Disputed Assessment ("FDDA") issued by respondent. In the said issuance, petitioner was found liable for deficiency income tax ("IT"), value added tax ("VAT"), expanded withholding tax ("EWT"), withholding tax on compensation ("WTC"), improperly accumulated earnings tax ("IAET"), and compromise penalties for the calendar year ("CY") 2014 in the aggregate amount of Ninety Two Million

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1 Records.
2 *Ibid.*
3 *Id.*, pp. 6-367.

Eight Hundred Sixty Nine Thousand Two Hundred Seventy Nine and 64/100 Pesos (Php92,869,279.64).

On 5 October 2020, Summons was issued to respondent,[4] who then filed his Answer on 9 December 2020.[5]

In a Resolution, dated 18 December 2020, this Court referred the instant case to mediation before the PMC-CTA.[6]

On 28 July 2022, the PMC-CTA issued the Report, indicating that there was a successful settlement between the parties and that a Compromise Agreement has been completed. The following documents were attached to the Report: (a) the Compromise Agreement, dated 16 September 2021; (b) the Certificate of Availment (Bureau of Internal Revenue ("BIR") Form No. 2342) confirming that the Compromise Agreement was approved by the National Evaluation Board ("NEB"); and (c) BIR Payment Form No. 0605 and BIR tax payment deposit slips showing that petitioner paid the compromise amount of Thirty Two Million Ten Thousand Nine Hundred Fifty Two and 23/100 Pesos (Php32,010,952.23).[7]

In a Resolution, dated 13 September 2022, this Court required petitioner to submit proof that Ms. Carolyn S. Yao is duly authorized to sign the Compromise Agreement, dated 16 September 2021, on behalf of petitioner,[8] which was complied with by petitioner through the above stated Compliance.[9]

In the Compromise Agreement, dated 16 September 2021, the parties agreed on the following terms and conditions:

> "WHEREAS, on 16 July 2020, Petitioner Semexco marketing Corporation filed a Petition for Review challenging the validity of the Final decision on Disputed Assessment issued by respondent Commissioner of Internal Revenue in connection with deficiency tax assessments for taxable year 2014. Under the Final Decision on Disputed Assessment, petitioner was required to pay basic tax due in the amount of **Forty-Five Million, Ninety-Nine Thousand eight Hundred Sixty-Two Pesos and 16/100 (PHP 45,099,862.16)** representing deficiency taxes; and
>
> WHEREAS, during mediation proceedings before the Philippine mediation center – Court of Tax Appeals, petitioner has offered to amicably settle the case for **Thirty-Two Million Ten Thousand Nine Hundred Fifty-Two Pesos and 23/00 (PHP 32,010, 952.23)** to avoid prolonged litigation as authorized by A.M. No. 11-1-05-SC-PHILJA.

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4 *Id.*, pp. 380-381.
5 *Id.*, pp. 388-406.
6 *Id.*, pp. 408-409.
7 Records.
8 *Ibid.*
9 *Ibid.*

> NOW THEREFORE, Petitioner has paid, and Respondent has accepted the amount of **Thirty-Two Million Ten Thousand Nine Hundred Fifty-Two Pesos and 23/00 (PHP 32, 010, 952.23)**, representing 84.44% of the basic income tax, 40% of the basic VAT and IAET, and 100.00% of the basic EWT and WTC, as full satisfaction of the 2014 tax assessment subject to the approval of the Honorable Court of Tax Appeals.
>
> 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."

Considering the foregoing developments, and having found the submissions of the parties to be in accordance with ***En Banc Resolution No. 7-2021***,[10] the Court now resolves the Report.

Section 204(A) of the National Internal Revenue Code, as amended, ("NIRC") provides for the authority of the Commissioner of Internal Revenue ("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) **<u>A reasonable doubt as to the validity of the claim against the taxpayer exists</u>**; or
>
> (2) The financial position of the taxpayer demonstrates a clear inability to pay the assessed tax.
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> The compromise settlement of any tax liability shall be subject to the following minimum amounts:
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> 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.**
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> **Where the basic tax involved exceeds One million pesos (₱1,000.000) 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.** xxx"
> (Emphasis and underscoring, Ours.)

Based on the foregoing, a compromise settlement is deemed valid if the following requirements are met:

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[10] 22 June 2021.

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 settlement is **approved by the NEB** which is composed of respondent and his four (4) Deputy Commissioners **if the subject assessment exceeds One Million pesos (₱1,000,000.00)** or **where the settlement offered is less than the prescribed minimum rates**.

In the Approval Sheet of the Certificate of Availment (BIR Form No. 2342) attached to the Report, the basis for the present compromise is the doubtful validity of the subject assessment.[11]

In order to determine whether the assessment's validity is indeed doubtful, the Court refers to ***Section 3 of Revenue Regulations ("RR") No. 30-2002, as amended,***[12] which enumerates the instances on when the assessment's propriety is considered doubtful, to wit:

> "SECTION 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:
>
> (a) The delinquent account or disputed assessment is one resulting from a jeopardy assessment (For this purpose, "jeopardy assessment" shall refer to a tax assessment which was assessed without the benefit of complete or partial audit by an authorized revenue officer, who has reason to believe that the assessment and collection of a deficiency tax will be jeopardized by delay because of the taxpayer's failure to comply with the audit and investigation requirements to present his books of accounts and/or pertinent records, or to substantiate all or any of the deductions, exemptions, or credits claimed in his return); or

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[11] Records.

[12] 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, 16 December 2002; Revenue Regulations No. 08-04, 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, 19 May 2004.

> **(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; or**
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> (c) The taxpayer failed to file an administrative protest on account of the alleged failure to receive notice of assessment and there is reason to believe that the assessment is lacking in legal and/or factual basis; or
>
> (d) The taxpayer failed to file a request for reinvestigation/reconsideration within 30 days from receipt of final assessment notice and there is reason to believe that the assessment is lacking in legal and/or factual basis; or
>
> (e) The taxpayer failed to elevate to the Court of Tax Appeals (CTA) an adverse decision of the Commissioner, or his authorized representative, in some cases, within 30 days from receipt thereof and there is reason to believe that the assessment is lacking in legal and/or factual basis; or
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> (f) The assessments were issued on or after January 1, 1998, where the demand notice allegedly failed to comply with the formalities prescribed under Sec. 228 of the National Internal Revenue Code of 1997; or
>
> (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; or
>
> (h) The assessment was issued within the prescriptive period for assessment as extended by the taxpayer's execution of Waiver of the Statute of Limitations the validity or authenticity of which is being questioned or at issue and there is strong reason to believe and evidence to prove that it is not authentic; or
>
> (i) The assessment is based on an issue where a court of competent jurisdiction made an adverse decision against the Bureau, but for which the Supreme Court has not decided upon with finality."
> (Emphasis and underscoring supplied)

Clearly, the scenario under ***Section 3.b of RR No. 30-2002, as amended*** is present in this case. Based on the Petition,[13] the main ground advanced to prove the invalidity of each of the deficiency tax assessments is that the same were issued based solely on false presumptions and that each assessment lacks legal and factual basis. These allegations qualify under the ground of doubtful validity of respondent's assessment. The first requisite, that 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, is thus satisfied in this case.

As for the second requisite, the judicial compromise amount paid by petitioner totalling to Thirty-Two Million Ten Thousand Nine Hundred Fifty-Two Pesos and 23/00 (PHP 32, 010, 952.23) is above the 40% minimum payment required under ***Section 204(A) of the NIRC***, computed as follows:

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[13] Records, pp. 6-367.

Tax Type	Basic Tax per FDDA[14]	Amount Paid[15]	Percentage of the Amount Paid vis-à-vis the Basic Tax per FDDA
IT	Php31,287,424.07	Php26,418,503.36	84.40%
VAT	Php12,202,444.14	Php4,880,977.66	40.00%
EWT	Php37,337.96	Php37,337.96	100.00%
WTC	Php75,118.09	Php75,118.09	100.00%
IAET	Php1,497,537.90	Php599,015.16	40.00%
Total	Php45,099,862.16	Php32,010,952.23	

With respect to the third requisite, all of the members of the NEB approved the instant Compromise Agreement, as shown by the signatories in the Approval Sheet of the Certificate of Availment (BIR Form No. 2342).[16]

Accordingly, the second and third requisites for compromise settlements based on doubtful validity of the assessment under ***Section 204 (A) of the NIRC*** have been duly complied with, considering that the parties adduced proof: a) that the settlement amount paid by petitioner for the instant compromise is above the 40% minimum payment required under ***Section 204 (A) of the NIRC***; and b) that the NEB approved of the instant compromise.

Considering the faithful observance by the parties of all the requisites under ***Section 204(A) of the NIRC***, the Court hereby **NOTES** the Report, the Certificate of Availment (BIR Form No. 2342), and BIR Payment Form No. 0605 and BIR tax payment deposit slips contained therein, and **APPROVES** the instant Compromise Agreement, dated 16 September 2021, which is similarly attached to the Report by the PMC-CTA.

The parties are reminded that a Compromise Agreement, once approved by the courts, becomes more than a mere contract; it has the force and effect of a judgment that is subject to execution and attains the effect and authority of *res judicata*, as discussed by the Supreme Court in the case of ***Viesca vs. Gilinsky***,[17] to wit:

> "A compromise agreement has been described as a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced. A compromise agreement that is intended to resolve a matter already under litigation is normally called a judicial compromise. **Once it is stamped with judicial imprimatur, it becomes more than a mere 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 other judgment. Such agreement has the force of law and is conclusive between the parties. It transcends its identity as a mere contract binding only upon the parties**

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[14] Approval Sheet of the Certificate of Availment (BIR Form No. 2342) attached to the Report.
[15] BIR Payment Form No. 0605 and BIR tax payment deposit slips attached to the Report.
[16] Records.
[17] G.R. No. 171698, 4 July 2007.

> **thereto, for it becomes a judgment that is subject to execution in accordance with the Rules. Thus, a compromise agreement that has been made and duly approved by the court attains the effect and authority of *res judicata*,** although no execution may be issued unless the agreement receives the approval of the court where the litigation is pending and compliance with the terms of the agreement is decreed."
> (Emphasis and underscoring supplied)

WHEREFORE, premises considered, the PMC-CTA's Report, the Certificate of Availment (BIR Form No. 2342), and BIR Payment Form No. 0605 and BIR tax payment deposit slips contained therein are hereby **NOTED**.

The Compromise Agreement, dated 16 September 2021, entered into by the parties is hereby **APPROVED**. This **Judgment on Compromise Agreement** is rendered in accordance therewith. The parties are 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.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

(On leave.)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

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.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Acting Chairperson's Attestation, it is 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