REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

SM DEVELOPMENT CORPORATION, Petitioner,	**CTA CASE NO. 9396**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson, and* **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUN 09 2021 3:19 PM

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JUDGMENT BASED ON COMPROMISE AGREEMENT

CASTAÑEDA, JR., *J.:*

Before the Court are the following:

1. petitioner's **Motion for Reconsideration**, filed on April 25, 2019;

2. respondent's **Motion for Partial Reconsideration Re: Decision dated 8 April 2019**, filed on April 25, 2019;

3. parties **Joint Motion for Approval of Compromise Agreement**, filed on January 22, 2020; and

4. respondent's **Ex-Parte Compliance**, filed on March 22, 2021;

On April 8, 2019, the Court has promulgated its Decision on this case, to wit:

> "**WHEREFORE**, premises considered, the Petition for Review is **PARTIALLY GRANTED**. Accordingly, the assessment issued by respondent against petitioner for taxable year 2009 covering deficiency VAT is **CANCELLED** and **SET ASIDE** for lack of merit. Likewise, the deficiency DST assessment for taxable year 2009 is **CANCELLED and SET ASIDE** in view of petitioner's payment on July 26, 2016 and January 12, 2017.
>
> On the other hand, the deficiency income tax, WTC, EWT, and FBT assessments for taxable year 2009 are **AFFIRMED but with MODIFICATIONS**. Accordingly, petitioner is **ORDERED TO PAY** respondent the amount of **FIVE HUNDRED SEVENTY-SIX MILLION ONE HUNDRED SEVEN THOUSAND SIX HUNDRED EIGHTY-EIGHT PESOS AND THIRTY-ONE CENTAVOS (₱576,107,688.31)**, representing basic deficiency tax, twenty-five percent (25%) surcharge, twenty percent (20%) deficiency interest and 20% delinquency interest imposed on the basic deficiency income tax, WTC, EWT, and FBT, pursuant to Sections 248(A)(3), 249(B) and (C) of the NIRC of 1997, respectively, computed until December 31, 2017 xxx.
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> xxx.
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> In addition, petitioner is **ORDERED TO PAY** delinquency interest at the rate of twelve percent (12%) computed from January 1, 2018 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN) and as implemented by RR No. 21-2018, on the following amounts due as of June 30, 2016 xxx.
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> xxx.
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> **SO ORDERED**."

Subsequently, on April 25, 2019, petitioner filed its **Motion for Reconsideration** of the Decision dated April 8, 2019. Likewise, respondent filed on even date a **Motion for Partial Reconsideration Re: Decision dated 8 April 2019**.

Meanwhile, on April 22, 2019, the parties informed the Court that they were exploring the possibility of entering into a judicial compromise and, thus, prayed for the suspension of the proceedings.

On May 31, 2019, the Court granted the parties' Joint Manifestation and Motion to suspend proceedings for a period of thirty (30) days and directed the parties to file a report on the status of the compromise at least ten (10) days before the lapse of the thirty-day period. Consequently, the filing of the respective comment to petitioner's Motion for Reconsideration and respondent's Motion for Partial Reconsideration was held in abeyance.

After filing additional manifestations and motions for suspension of the proceedings[1], the parties filed their **Joint Motion for Approval of Compromise Agreement** on January 22, 2020.

On February 14, 2020, the parties were given 15 days to submit to the Court the originals or certified true copies of the following:

1. Certificate of Availment showing the approval of the National Evaluation Board (NEB);

2. Authority of petitioner's signatory to enter into compromise;

3. BIR Payment Form(s) No. 0605 and Payment Confirmation attached to the Motion, and

4. Any other document not mentioned supporting the approval of the subject compromise.

On March 10, 2020, petitioner filed its Compliance stating among others that on December 20, 2019, the parties entered into a Judicial Compromise Agreement as the petitioner offered to pay and respondent accepted the total compromise amount of Eighty Million Pesos (₱80,000,000.00). On November 28, 2019, petitioner paid ₱78,158,521.80 and ₱1,841,478.20 representing the compromise amounts for the assessed deficiency Income Tax, and withholding Tax on Compensation, respectively, for taxable year 2009. In compliance with the Court's Resolution, petitioner submitted the original copies of the notarized Secretary's Certificate as proof of the authority of Ms. Cecilia R. Patricio to enter into a compromise agreement and the BIR Payment Forms No. 0605 and Payment

[1] Filed on July 1, 2019, On August 15, 2019 and November 27, 2019.

Confirmation. As to the Certificate of Availment showing the approval of the NEB, petitioner stated that respondent will submit the same within the period allowed by the Court.

On June 4, 2020, the Court noted petitioner's compliance and gave respondent a period of 30 days within which to submit the Certificate of Availment showing the approval of the NEB. In the meantime, the resolution of the parties Joint Motion for Approval of Compromise Agreement was held in abeyance.

After several motions for extension filed by respondent which were granted by the Court, respondent filed his Compliance on February 9, 2021, submitting a certified true copy of the Certificate of Availment dated January 21, 2021 showing the fact that the compromise agreement on the deficiency tax assessments covering taxable year 2009 of petitioner was approved by the NEB.

However, upon examination of Certificate of Availment, the Court observed that respondent failed to attach the signature page showing the approval signatures of the majority of all members of the NEB composed of the Commissioner and the four Deputy Commissioners, as required under Section 6 of the Revenue Regulations No. 30-2002. Thus, in the Resolution dated March 9, 2021, respondent was given five (5) days within which to submit the signature page showing the approval signatures of the members of the NEB.

In compliance with the March 9, 2021 Resolution of the Court, respondent submitted on March 22, 2021 a certified true copy of the approval/signature page showing that all the members of the NEB approved the compromise agreement between the parties.

Considering the submission of the required documents in support of the parties' compromise agreement, the Court shall now act on the parties' *Joint Motion for Approval of Compromise Agreement.*

The Compromise Agreement partly reads:

"xxx

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

Section 1. Judicial Compromised Amount. In order to settle the above-mentioned case, the **TAXPAYER** has offered and the BIR has accepted the total payment of **P80,000,000.00 (Eighty Million Pesos) ("Judicial Compromise Amount"),** or 49.6% of the basic tax assessed per Honorable CTA's Decision.

Section 2. Submission to the Honorable CTA. This Agreement fully signed by the **PARTIES** shall be submitted for the approval of the Honorable CTA in CTA Case No. 9396. The **PARTIES** undertake to perform any and all acts, 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 approval 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. Deliverable of the PARTIES upon approval of this Agreement by the Honorable CTA. Upon final approval of 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 **FLD** dated 13 March 2015 and **FDDA** dated 23 June 2016.

Section 5. Authority to Enter Compromise Agreement. The **BIR**, through Commissioner Cesar R. Dulay warrants that he has the necessary authority and capacity to enter, sign, and execute this Agreement, and to deliver its implementing documents upon its approval of the Honorable CTA.

The **TAXPAYER** warrants that, Ms. Cecilia R. Patricio, is duly authorized by the Board of Directors of the **TAXPAYER** and has full legal capacity to enter, sign, and execute this Agreement, and to deliver payment of the above-agreed additional 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. 9396. Upon approval by the court, the BIR recognizes the full satisfaction of the supposed tax liability of the TAXPAYER in connection with CTA Case No. 9396 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. 9396.

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 causes 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 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 regulation; and

2. The proceedings of CTA Case No. 9396 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** will 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 thereof signed by the other party hereto, the Agreement shall have no effect and no party shall have the right or 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.

SM DEVELOPMENT CORP. **BUREAU OF INTERNAL REVENUE"**

Under the Civil Code and in the Revised Rules of Court, courts are directed to persuade litigants in civil cases to agree upon some fair compromise. It is settled that contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided that these are not contrary to law, morals, good customs, public order, or policy.[2] Such agreement has the force of law and is conclusive between the parties.[3]

A compromise agreement that is basically intended to resolve a matter already under litigation is what would normally be termed as judicial compromise. Once it 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.[4]

Section 204 (A) of the National Internal Revenue Code of 1997 (1997 NIRC) provides that for cases other than financial incapacity, the minimum compromise rate is forty percent (40%) of the basic assessed tax. And in case the basic tax exceeds ₱1,000,000.00 or where the settlement offered is less than the said prescribed minimum rates, the compromise must be approved by the Evaluation Board, which is composed of respondent and the four (4) Deputy Commissioners of the BIR.

Relative thereto, Section 6 of Revenue Regulations (RR) No. 30-2002, as last amended by RR No. 9-2013, 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
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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." *gr*

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[2] Article 1306, Civil Code.

[3] *Viesca vs. Gilinsky*, G.R. No. 171698, July 4, 2007.

[4] *Armed Forces of the Philippines Mutual Benefit Association, Inc. vs. Court of Appeals*, G.R. No. 126745, July 26, 1999.

Based on the foregoing, a compromise settlement falling within the jurisdiction of the NEB is valid if the same was approved by a majority of all the members of the NEB, and that there was a full settlement of the offered amount.

Considering the Judicial Compromise Agreement, submitted by the parties in connection with the FLD dated March 13, 2015, FDDA dated June 23, 2016 and the Decision promulgated by this Court on April 8, 2019 for the alleged deficiency tax assessment against herein petitioner for the taxable year 2009, the Certificate of Availment (Compromise Settlement),[5] certifying that petitioner's application for compromise settlement of deficiency Income, Withholding on Compensation, Expanded Withholding, and Fringe Benefits Taxes amounting to ₱576,107,688.31, per Decision of the CTA dated April 8, 2019 covering taxable period 2009, has been approved by the NEB, the signature page attached to respondent's Ex-Parte Compliance filed on March 22, 2021, showing the approval signatures of four (4) Deputy Commissioners and of the Respondent, as well as the payment forms attached to petitioner's Compliance filed on March 10, 2020, showing proof of complete payment of the compromise amount, and the Secretary's Certificate showing the authority of the person who signed the compromise agreement for petitioner[6] the Court finds the same in order and in compliance with the established laws, rules and regulations. Hence, the Court approves the compromise agreement.

WHEREFORE, respondent's **Ex-Parte Compliance** is **NOTED** and the parties' **Joint Motion for Approval of Compromise Agreement** is **GRANTED**. Accordingly, the **Judicial Compromise Agreement** entered into by the parties is **APPROVED** and judgment is hereby rendered in accordance therewith. The parties are enjoined to faithfully comply with all the terms and conditions of the aforesaid Judicial Compromise Agreement.

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

In view thereof, the resolution of both petitioner's **Motion for Reconsideration**, filed on April 25, 2019 and respondent's **Motion for Partial Reconsideration Re: Decision dated 8 April 2019**, filed on April 25, 2019 is now deemed **MOOT**.

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[5] Attached to respondent's Compliance dated February 9, 2021.

[6] Secretary's Certificate showing authority of petitioner's representative, Ms. Cecilia R. Patricio, to sign the compromise agreement is attached to petitioner's Compliance filed on March 10, 2020.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

I CONCUR:

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

ATTESTATION

I attest 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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division 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.

ROMAN G. DEL ROSARIO
Presiding Justice