REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB NO. 2192
(CTA Case No. 8141)

- versus -

LIQUIGAZ PHILIPPINES CORP.,
Respondent.

x-------------------------------------x

LIQUIGAZ PHILIPPINES CORPORATION,
Petitioner,

CTA EB NO. 2196
(CTA Case No. 8141)

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Present:

DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, JJ.

Promulgated:
MAY 2 5 2021
4:06 p.m.

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JUDGMENT BASED ON COMPROMISE AGREEMENT

In a Resolution dated 27 October 2020, the Court required the parties to submit as proof of their compromise agreement the originals or certified true copies of the following:

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

2. Secretary's Certificate authorizing Maricel R. Cambe to enter into a compromise agreement on behalf of Liquigaz Philippines Corporation (**LPC**).

Pending the submission of the above-mentioned documents, the resolution of the parties' Joint Motion for Judgment Based on Compromise Agreement was held in abeyance.

On 09 November 2020, the Commissioner of Internal Revenue (**CIR**) filed a "Motion for Extension of Time to Submit Proof of NEB Approval", while LPC filed its Compliance on 16 November 2020 attaching a certified true copy of the Secretary's Certificate authorizing Maricel R. Cambe to enter into a compromise agreement on behalf of LPC.

Due to the parties' failure to submit a copy of the NEB Approval, in a Resolution dated 06 January 2021, the Court denied the parties' Joint Motion for Judgment Based on Compromise Agreement and submitted the case for decision.

On 28 January 2021, the parties filed their **Joint Motion for Reconsideration (of the Resolution dated 06 January 2021)**, with a certified true copy of the Certificate of Availment attached thereto. It seeks the reversal of the foregoing Resolution and the approval of the parties' Compromise Agreement.

The Compromise Agreement reads in part:

> ...
>
> **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 the above-mentioned case, the **TAXPAYER** has offered and the **BIR** has accepted the total payment of **EIGHTY FOUR MILLION SEVEN HUNDRED FIFTEEN THOUSAND THIRTY PESOS and 27/100 (Php84,715,030.27)**, representing assessed deficiency taxes for taxable year 2005 as contained in the 26 June 2019 Decision ("**Judicial Compromise Amount**").

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 Nos. EB 2192 and 2196 (CTA Case No. 8141). 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. 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 **FAN/FLD** dated 16 June 2008 and **FDDA** dated 28 June 2010.

Section 5. Authority to Enter Compromise Agreement. The **BIR**, through Commissioner Caesar R. Dulay warrants that he 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 of the Honorable CTA.

The **TAXPAYER** warrants that, MS. MARICEL R. CAMBE, 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 Nos. EB 2192 and 2196 (CTA Case No. 8141). Upon approval by the Court, the BIR recognizes the full satisfaction of the supposed tax liability of the **TAXPAYER** in connection with CTA Case Nos. EB 2192 and 2196 (CTA Case No. 8141) 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 Nos. EB 2192 and 2196 (CTA Case No. 8141).

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 Nos. EB 2192 and 2196 (CTA Case No. 8141) 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 acknowledgement 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 or obligation hereunder.[1]

...

Under the Civil Code and the Amended Rules of Court, courts are directed to persuade litigants in civil cases to agree upon some fair compromise. Such agreement has the force of law and is conclusive between the parties.[2]

A compromise agreement is a contract whereby the parties make reciprocal concessions in order to resolve their differences and, thus, avoid or put an end to a lawsuit. They adjust their difficulties in

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1 Judicial Compromise Agreement, *Rollo*, pp. 213-220.
2 *Viesca v. Gilinsky*, G.R. No. 171698, 04 July 2007.

the manner they have agreed upon, disregarding the possible gain in litigation and keeping in mind that such gain is balanced by the danger of losing. It must not be contrary to law, morals, good customs and public policy, and must have been freely and intelligently executed by and between the parties. A compromise agreement may be executed in and out of court. Once a compromise agreement is given judicial approval, however, it becomes more than a contract binding upon the parties. Having been sanctioned by the court, it is entered as a determination of a controversy and has the force and effect of a judgment.[3]

After a careful scrutiny of the documents submitted by the parties in support of the judicial compromise, the Court finds the same in order and in compliance with the established laws, rules and regulations.

WHEREFORE, in view of the foregoing, the parties' **Joint Motion for Reconsideration (of the Resolution dated 06 January 2021)** is hereby **GRANTED,** while the Court's Resolution dated 06 January 2021 is **SET ASIDE**. Accordingly, the parties' joint prayer for the approval of their Compromise Agreement is **GRANTED**. The Compromise Agreement is **APPROVED** and the same shall thus constitute as the Court's judgment in herein cases. Impressed with judicial imprimatur, the parties are **ENJOINED** to faithfully comply with all the terms and conditions of the aforesaid Compromise Agreement.

SO ORDERED.

See Concurring Opinion
ROMAN G. DEL ROSARIO
Presiding Justice

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

WITH DISSENTING OPINION
ERLINDA P. UY
Associate Justice

With due respect, I join the D.O. of J. Uy
Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

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[3] *David v. Paragas, Jr.*, G.R. No. 176973, 25 February 2015.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

ROMAN G. DEL ROSARIO
Presiding Justice

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COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 2192** *(CTA Case No. 8141)*
-versus-	
LIQUIGAZ PHILIPPINES CORP., *Respondent.*	

x---x

LIQUIGAZ PHILIPPINES CORPORATION, *Petitioner,*	**CTA EB NO. 2196** *(CTA Case No. 8141)*
	PRESENT:
-versus-	**DEL ROSARIO**, *P.J.*, **CASTAÑEDA, JR.**, **UY**, **RINGPIS-LIBAN**, **MANAHAN**, **BACORRO-VILLENA,** and **MODESTO-SAN PEDRO**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**PROMULGATED:** MAY 2 5 2021 4:06 p.m.

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CONCURING OPINION

DEL ROSARIO, P.J.:

I join the *ponencia* of my esteemed colleague, Honorable Associate Justice Jean Marie A. Bacorro-Villena, which granted the parties' joint prayer for the approval of their Compromise Agreement.

It is worthy to note that in previous cases,[1] Certificate of Availment was effectively considered as sufficient to confirm the approval by the National Evaluation Board (NEB) of compromise agreement.

A Certificate of Availment, an accountable form of the Bureau of Internal Revenue (BIR), is issued on all approved applications for compromise settlement and/or abatement of penalties pursuant to Revenue Memorandum Order (RMO) No. 03-2017. Truth to tell, under RMO No. 033-18, assessments with issued final assessment notice and formal letter of demand which were the subject of approved applications for compromise settlement and abatement of penalties under the jurisdiction of NEB may be issued an Authority to Cancel Assessment (ATCA) only upon submission of a Certificate of Availment duly signed by the Assistant Commissioner of Internal Revenue (ACIR), Collection Service.

In the present case, I humbly submit that the Certificate of Availment, issued by Clavelina S. Nacar, OIC-ACIR of the BIR's Collection Service, is sufficient to prove that the application for compromise settlement has been approved by the NEB.

In *Lifebank Foundation, Inc. vs. Commissioner of Internal Revenue*, CTA EB No. 1727 (March 2, 2021), the members of the Court *En Banc* were <u>unanimous</u> in rendering a Decision based on Compromise Agreement after noting "proof of approval by the NEB through the *Certificate of Availment* dated October 26, 2020". The submission of a separate document showing approval of the Compromise Agreement by the majority of the members of the NEB was not required, *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 NIRC. Specifically, the total compromise payment of 75% of the basic tax assessed was paid by the taxpayer.

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[1] Kepco Ilijan Corporation vs. The Commissioner of Internal Revenue, CTA Case No. 9182, Judgment on Compromise Settlement, October 22, 2019; Splash Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9370, Judgment on Compromise Agreement, November 11, 2019; St. Francis Square Realty Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9782, Judgment By Compromise Agreement, January 19, 2021; Foodsphere, Inc. vs. Caesar R. Dulay, Commissioner of Internal Revenue, CTA Case No. 9601, Judgment By Compromise Agreement, February 8, 2021.

> 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)*

In several cases, [2] no less than the Supreme Court gave its imprimatur on compromise agreements supported by Certificates of Availment.

Bearing in mind the fundamental principles underlying judicial decisions, namely: legal certainty and predictability, I submit that *sans* sufficient justification as to why the Certificate of Availment is now insufficient, the requirement of submission of a separate document showing the approval of the compromise agreement by the majority of the members of the NEB imposes upon beleaguered litigants additional burden which is as unnecessary as it is dilatory in the settlement of the controversy.

In fine, I submit that the resolution of the present incident calls for consistency, not only to expedite the proceedings but because it is demanded by the tenets of justice and fairness.

All told, I CONCUR with the *ponencia*.

ROMAN G. DEL ROSARIO
Presiding Justice

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[2] Allied Banking Corporation vs. Commissioner of Internal Revenue, G.R. No. 175097, February 5, 2010; Macario Lim Gaw, Jr. vs. Commissioner of Internal Revenue, G.R. No. 222837, January 8, 2020; Kepco Philippines Corporation vs. Commissioner of Internal Revenue, G.R. Nos. 225750-51, July 28, 2020.

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COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2192** (CTA Case No. 8141)
- versus -	
LIQUIGAZ PHILIPPINES, CORP., Respondent.	

x---x

LIQUIGAZ PHILIPPINES, CORPORATION, Petitioner,	**CTA EB NO. 2196** (CTA Case No. 8141)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** and **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** MAY 2 5 2021 4:06 p.m.

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DISSENTING OPINION

UY, *J.*:

With all due respect, I disagree with the majority opinion which granted the parties' *Joint Motion for Reconsideration (of the Resolution dated 06 January 2021)* filed on January 28, 2021 and the approval of the parties' *Judicial Compromise Agreement*[1].

[1] EB Docket (EB No. 2192), pp. 213 to 220.

I humbly submit that it is premature for the Court *En Banc* to approve the said *Judicial Compromise Agreement* considering that the parties have not yet submitted the proof of approval by the majority of the members of the National Evaluation Board (NEB), which is composed of the Commissioner of Internal Revenue (CIR) and the four (4) Deputy Commissioners, of the parties' supposed compromise agreement.

Notably, in the Resolution dated January 6, 2021, the non-submission of the requisite NEB approval was the very reason for the denial of the parties' Joint Motion for Judgment Based on Compromise Agreement filed on 11 September 2020, the dispositive portion of which reads:

> "**WHEREFORE,** for failure to submit proof of NEB approval of the parties' supposed compromise agreement, their Joint Motion of Judgment Based on Compromise Agreement filed on 11 September 2020 is hereby **DENIED.**
>
> Accordingly, with the LPC's Comment on CIR's Petition for Review filed on 19 February 2020, and the CIR's Comment on LPC's Petition for Review filed on 26 February 2020, these consolidated cases are now **SUBMITTED** for decision."

Considering that **only** the certified true copy of the *Certificate of Availment (Compromise Settlement)* dated January 21, 2021 was submitted to the Court *En Banc* on January 28, 2021, which was attached to the parties' *Joint Motion for Reconsideration (of the Resolution dated 06 January 2021),* it is my considered opinion that the said motion must be denied for failure of the parties to submit the signature page evidencing the proof of approval by the majority of the NEB of the subject Compromise Agreement.

In granting the instant *Joint Motion for Reconsideration (of the Resolution dated 06 January 2021)* and approving the parties' *Joint Judicial Compromise Agreement,* it is the position of the majority that after careful scrutiny of the documents submitted by the parties in support of the judicial compromise, the majority found the same in order and in compliance with the established laws, rules and regulations.

I respectfully disagree.

It bears emphasis that pursuant to Section 204 of the National Internal Revenue Code (NIRC) of 1997, as amended, and its implementing regulations, Revenue Regulations (RR) No. 30-2002[2], as amended by RR No. 9-2013[3], for a compromise settlement falling within the jurisdiction of the NEB to be valid, it must be shown that the same is approved by a majority of all the members of the NEB, which is composed of the CIR and the four (4) Deputy Commissioners.

While the *Certificate of Availment* dated January 21, 2021, issued by Clavelina S. Nacar, OIC-Assistant Commissioner (ACIR), Head of the Technical Working Group (TWG) on Compromise, states that the compromise settlement has been approved by the NEB, no explanation was presented by the parties, why at this point in time, they are still unable to submit the proof of **approval by the majority of all the members of the NEB**.

Moreover, it must be noted that while the authority to approve the compromise settlement is vested upon the NEB (a majority of all the members thereof, to be specific), the *Certificate of Availment* submitted to the Court was issued by an OIC-ACIR, an officer subordinate to the CIR and the Deputy Commissioners; and who is not a member of the NEB.

Although the general rule is that compromises are to be favored, and that compromises entered into in good faith cannot be set aside, this rule is not without qualification. A court may still reject a compromise or settlement when it is repugnant to law, morals, good customs, public order, or public policy.[4]

In light of the foregoing, and in order to ascertain full compliance with the mandates of the law, prudence dictates that prior to the approval of the instant *Joint Motion for Reconsideration (of the Resolution dated 06 January 2021)*, the parties must submit the signature page evidencing the approval of the majority of all the members of the NEB.

Additionaly, considering that in a line of cases[5], the parties were

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[2] *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.*

[3] *Amending Certain Provisions of Revenue Regulations No. 30-2002.*

[4] *Philippine National Oil Company vs Court of Appeals*, G.R. Nos. 109976 and 112800, April 26, 2005.

[5] *Tridharma Marketing Corp. vs Commissioner of Internal Revenue*, CTA EB Nos. 1891 and

able to secure and submit the said signature page to the Court, as proof of approval by the majority of all the members of the NEB of their respective compromise agreements, I therefore find no cogent reason to deviate from requiring the said document in this case.

All told, I **VOTE** to **DIRECT** the parties to immediately submit the requisite signature page evidencing the proof of approval by the majority of the members of the NEB of the *Judicial Compromise Agreement* submitted in this case; and meanwhile, to **HOLD IN ABEYANCE** the resolution of the parties' *Joint Motion for Reconsideration (of the Resolution dated 06 January 2021).*

ERLINDA P. UY
Associate Justice

1931, July 20, 2020; *Commissioner of Internal Revenue vs Splash Corporation*, CTA EB No. 1882, January 30, 2020; *Philippine Electric Corporation vs Commissioner of Internal Revenue*, CTA EB No. 1828, October 11, 2019.