REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

GETZ BROS. PHILIPPINES, INC.,
Petitioner,

CTA CASE NO. 10309

Members:

- versus -

UY, *Chairperson,*
BACORRO-VILLENA, *and*
CUI-DAVID, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
APR 24 2023
11:40 a.m.

x - x

JUDGMENT BASED ON COMPROMISE AGREEMENT

BACORRO-VILLENA, J.:

On 23 January 2023, the Court received a "Joint Motion to Render Judgment Based on Compromise Agreement"[1] (**Joint Motion**) from the parties, petitioner Getz Bros. Philippines, Inc. (**petitioner/GBPI**) and respondent Commissioner of Internal Revenue (**respondent/CIR**), stating that they have successfully reached a compromise agreement before the Philippine Mediation Center – Court of Tax Appeals (**PMC-CTA**), pursuant to A.M. No. 11-1-05-SC-PHILJA or otherwise known as the Interim Guidelines for Implementing Mediation in the Court of Tax Appeals (**Interim Guidelines**).

Under the Interim Guidelines, upon approval of the compromise agreement, the Court shall render judgment based thereon.[2] Moreover, the subject Compromise Agreement dated 02 March 2022[3] likewise

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1 Division Docket, pp. 424-449, with annexes.
2 *See* Part IX(A) of the Interim Guidelines.
3 Annex "**A**" to the parties' "Joint Motion to Render Judgment Based on Compromise Agreement" (**Joint Motion**), supra at note 1, pp. 429-430.

states that the same is subject to the approval of this Court; hence, this Judgment Based on Compromise Agreement (**JBCA**).

The parties attached the following documents to their Joint Motion: (1) the duly executed Compromise Agreement dated 02 March 2022[4], (2) the notarized Secretary's Certificate dated 11 December 2020[5] authorizing Frederik Herman Van Peski to execute the subject Compromise Agreement on petitioner's behalf; (3) photocopies of the Bureau of Internal Revenue (**BIR**) Payment Forms No. 0605[6], as well as the corresponding proofs of payment[7] of the compromise amount; and, (4) the certified true copy of the "Certificate of Availment (Compromise Settlement)" (**CA**) dated 03 November 2022[8], but without the signature page thereof evidencing approval by the National Evaluation Board (**NEB**).

In compliance with the Court's Resolution dated 21 February 2023[9], the parties filed their "Joint Manifestation and Submission"[10] on 27 February 2023, therein stating the specific ground they have relied on in agreeing to amicably settle this case. The parties manifested that the basis for acceptance of compromise is 'doubtful validity of the assessment' pursuant to Section 204(A)(1)[11] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, in relation to Section 3(1)(b)[12] of Revenue Regulations (**RR**) No. 30-2002[13], as amended by RR

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4 Supra at note 3.
5 Annex **"B"** to the parties' Joint Motion, supra at note 1, pp. 431-432.
6 Annex **"C"** to the parties' Joint Motion, supra at note 1, pp. 434, 437, 441, 443, 445 and 447.
7 Id., pp. 435, 438, 439 and 448.
8 Annex **"D"** to the parties' Joint Motion, supra at note 1, p. 449.
9 Division Docket, pp. 451-457.
10 Id., pp. 458-488, with annexes.
11 **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**[.] (Emphasis supplied.)
12 **SEC. 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:
...
(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**[.] (Emphasis supplied)
13 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.

No. 8-2004[14]; particularly, that the assessment seems to be arbitrary in nature, appearing to be based on presumptions and there is a reason to believe that it is lacking in legal and/or factual basis. The parties also submitted the original computer printouts of the documents[15] included in Annex "C" to their Joint Motion, as required by this Court.

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14 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.

15

Document under Annex "C" to the Parties' Joint Motion / Annex "A" to the Parties' Joint Manifestation and Submission	Division Docket (Page No/s.)
(1) eFPS Filing Reference with Reference No. 292200046716344 for Income Tax (**IT**) in the amount of ₱27,289,487.11, filed on 09 March 2022;	486
(2) BIR Form No. 0605 (Payment Form) for IT in the amount of ₱27,289,487.11, filed on 09 March 2022;	485
(3) UnionBank Payment Status for Filing Reference No. 292200046716344 with Payment Transaction No. 226583224 for IT in the amount of ₱27,289,487.11, paid on 09 March 2022;	482
(4) eFPS Filing Reference with Reference No. 292200046716809 for Value-Added Tax (**VAT**) in the amount of ₱13,781,974.25, filed on 09 March 2022;	488
(5) BIR Form No. 0605 (Payment Form) for VAT in the amount of ₱13,781,974.25, filed on 09 March 2022;	487
(6) UnionBank Payment Status for Filing Reference No. 292200046716809 with Payment Transaction No. 226582084 for VAT in the amount of ₱13,781,974.25, paid on 09 March 2022;	484
(7) UnionBank Online Confirmation Page for Filing Reference Nos. 292200046716344 and 292200046716809 and Payment Transaction Nos. 226583224 and 226582084;	483
(8) eFPS Filing Reference with Reference No. 292000038956933 for IT in the amount of ₱9,096,495.70, filed on 02 December 2020;	469
(9) BIR Form No. 0605 (Payment Form) for IT in the amount of ₱9,096,495.70, filed on 02 December 2020;	470-471
(10) eFPS Filing Reference with Reference No. 292000038957167 for VAT in the amount of ₱4,593,991.42, filed on 02 December 2020;	473
(11) BIR Form No. 0605 (Payment Form) for VAT in the amount of ₱4,593,991.42, filed on 02 December 2020;	474-475
(12) eFPS Filing Reference with Reference No. 292000038957291 for Withholding Tax on Compensation (**WTC**) in the amount of ₱78,201.20, filed on 02 December 2020;	476
(13) BIR Form No. 0605 (Payment Form) for WTC in the amount of ₱78,201.20, filed on 02 December 2020;	477-478
(14) eFPS Filing Reference with Reference No. 292000038957404 for Expanded Withholding Tax (**EWT**) in the amount of ₱50,476.16, filed on 02 December 2020;	479
(15) BIR Form No. 0605 (Payment Form) for EWT in the amount of ₱50,476.16, filed on 02 December 2020; and,	480-481
(16) UnionBank Online Confirmation Page for Filing Reference Nos. 292000038956933 (IT), 292000038957167 (VAT), 292000038957291 (WTC) and 292000038957404 (EWT) and Payment Transaction Nos. 208015793 (IT), 208015464 (VAT), 208015298 (WTC), and 208015019 (EWT).	472

Subsequently, on 08 March 2023, respondent submitted his or her Compliance[16], attaching therewith the certified true copy of the CA's signature page[17] in full compliance of this Court's directive.[18]

The subject Compromise Agreement[19], which Mediator (Ret.) Justice Oswaldo D. Agcaoili has duly attested, reads as follows:

...

COMPROMISE AGREEMENT

Undersigned parties, assisted by their respective counsels, Petitioner **GETZ BROS. PHILIPPINES, INC.** with address at 5/F, West Wing, Estancia Offices, Capitol Commons, Meralco Ave., Brgy. Oranbo, Pasig City, represented herein by Chief Financial Officer, Frederik Herman van Peski, and Respondent **COMMISSIONER OF INTERNAL REVENUE**, with address at Room 703 BIR Building, Bureau of Internal Revenue, Diliman, Quezon City, Philippines, represented by the Litigation Division.

AGREE as follows:

WHEREAS, on July 28, 2020, a Petition for Review was filed by petitioner GETZ BROS. PHILIPPINES, INC. challenging the validity of the Final Decision on Disputed Assessment (FDDA) issued by respondent Commissioner of Internal Revenue in connection with deficiency tax assessments for taxable year 2013. Under the FDDA, petitioner was required to pay basic tax due in the amount of **One Hundred Thirty-Six Million Nine Hundred Seventy-Three Thousand Eight Hundred Eighty-Seven Pesos and 67/100 Pesos** (Php136,973,887.67) representing deficiency taxes.

WHEREAS, during mediation proceedings before the Philippine Mediation Center - Court of Tax Appeals, the parties successfully reached compromise agreement to avoid prolonged litigation, as authorized by A.M. No. 11-1-05-SC-PHILJA;

NOW THEREFORE, in view of the limitation in Section 204 of the 1997 National Internal Revenue Code, petitioner has offered and respondent has accepted the amount of **Fifty-Four Million Eight Hundred Ninety Thousand Six Hundred Twenty-Five and 84/100 Pesos (Php54,890,625.84)**, representing 40% of the basic tax assessed, as full satisfaction of the tax assessments subject to the approval of the Honorable Court of Tax Appeals.

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16 Division Docket, pp. 489-493, with attached signature page of the "Certificate of Availment (Compromise Settlement)" (**CA**).

17 Id., p. 493.

18 *See* Resolution dated 21 February 2023, supra at note 9.

19 Supra at note 3.

IN WITNESS WHEREOF, the Parties hereto have mutually and voluntarily accepted the above stipulations, and sign this Agreement, at Quezon City on this 2nd day of March 2022 for the consideration and approval of the Honorable Court.

GETZ BROS. PHILIPPINES, INC.
Petitioner

By:

(Sgd.)
FREDERIK HERMAN VAN PESKI
Authorized Representative

COMMISSIONER OF INTERNAL REVENUE
Respondent

By:

(Sgd.)
CAESAR R. DULAY
Commissioner of Internal Revenue

ATTESTED:

(Sgd.)
(RET.) JUSTICE OSWALDO D. AGCAOILI
Mediator
...[20]

From the foregoing, it appears that respondent issued to petitioner a Final Decision on Disputed Assessment (**FDDA**) dated 04 June 2020[21], containing assessments for deficiency income tax (**IT**) of ₱164,798,180.49, deficiency value-added tax (**VAT**) of ₱85,269,585.15, deficiency withholding tax on compensation (**WTC**) of ₱78,201.20, deficiency expanded withholding tax (**EWT**) of ₱50,476.16, and compromise penalty (**MC**) of ₱120,000.00, in the aggregate amount of **₱250,316,443.00**, for TY 2013, broken down as follows:

	Basic	**Interest**	**Compromise**	**Total**
IT	₱90,964,957.03	₱73,833,223.46	-	₱164,798,180.49
VAT	45,939,914.18	39,329,670.97	-	85,269,585.15
WTC	41,943.43	36,257.77	-	78,201.20
EWT	27,073.03	23,403.13	-	50,476.16
MC	-	-	120,000.00	120,000.00
Total	**₱136,973,887.67**	**₱113,222,555.33**	**₱120,000.00**	**₱250,316,443.00**

[20] Emphasis, italics and underscoring in the original text.
[21] Pre-marked as petitioner's Exhibit "**P-9**" and respondent's Exhibit "**R-13**", Division Docket, pp. 180-189, with attached Assessment Notices (**ANs**).

The parties then agreed to amicably settle the case upon petitioner's payment of **₱54,890,625.84**, representing forty percent (40%) of the basic tax assessed, on the ground of doubtful validity of the assessment.

The Court rules in favor of the compromise.

In *Commissioner of Internal Revenue v. Iconic Beverages, Inc.*[22], the Supreme Court held that the authority of respondent to compromise is purely discretionary, and the courts cannot interfere with the exercise of discretionary functions, absent grave abuse of discretion, to wit:

> ...
>
> The power of the CIR to enter into compromise agreements for deficiency taxes is explicit in Section 204 (A) of the Tax Code, as amended. The CIR may compromise an assessment when a reasonable doubt as to the validity of the claim against the taxpayer exists, as in this case, or the financial position of the taxpayer demonstrates a clear inability to pay the tax. It is settled that the authority of the CIR to compromise is purely discretionary, and the courts cannot interfere with his exercise of discretionary functions, absent grave abuse of discretion. Here, no grave abuse of discretion exists.
>
> In this regard, a compromise agreement has the effect of *res judicata* on the parties. Compromises are generally to be favored and those entered into in good faith cannot be set aside, except when there is mistake, fraud, violence, intimidation, undue influence, or falsity of documents. None of these exceptions obtain in the present case.
>
> ...

With respect to the required approval of the Compromise Agreement, Section 6 of RR No. 30-2002[23], as amended by RR No. 9-2013[24], states:

> ...
>
> **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

[22] G.R. Nos. 240651 & 240665, 06 July 2021 (Notice of Resolution); Citations omitted and italics in the original text.

[23] Supra at note 13.

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

> 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
>
> <u>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.</u>[25]
>
> xxx xxx xxx
>
> ...

Furthermore, Revenue Memorandum Order (**RMO**) No. 3-2017[26] likewise provides:

> ...
>
> **All approved applications for compromise settlement and/or abatement of penalties shall be issued Certificate of Availment (CA)** following the prescribed format as per attached Annexes "A" and "B", while denied applications shall be issued Notice of Denial (ND) following prescribed format as per attached annexes "C" and "D".[27]
>
> ...

Consequently, a compromise settlement of any tax liability where the basic tax involved exceeds ₱1,000,000.00, such as in this case, must bear the approval of the majority of all NEB members. Such approval shall be evidenced by a CA following the prescribed format.

Records herein show that the parties were able to submit certified true copies of the CA[28] and its signature page[29] (showing the unanimous approval of the NEB members).

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25 Emphasis and underscoring in the original text.
26 Amending Further the Prescribed Format for the Certificate of Availment/Approval and Notice of Denial Relative to Application for Compromise Settlement and/or Abatement of Penalties Pursuant to Section 204 of the Tax Code, as Amended.
27 Emphasis supplied.
28 Supra at note 8.
29 Supra at note 17.

Furthermore, the parties' Joint Motion[30] and "Joint Manifestation and Submission"[31] likewise reveal that their true intention is to settle 40% of the basic tax assessed in the aggregate amount of ₱41,071,461.36[32], in addition to the ₱13,819,164.48[33] already paid; thus, totalling to **₱54,890,625.84**, summarized as follows:

TAX TYPE	BASIC TAX ASSESSED FOR TY 2013 (a)	COMPROMISE AMOUNT			% OF OFFER (c) = (b)/(a)
		PAID ON 02 DECEMBER 2020	PAID ON 09 MARCH 2022	TOTAL AMOUNT PAID (b)	
IT	₱90,964,957.03	₱9,096,495.70[34]	₱27,289,487.11[35]	₱36,385,982.81	40%
VAT	45,939,914.18	4,593,991.42[36]	13,781,974.25[37]	18,375,965.67	40%
WTC	41,943.43	78,201.20[38]	-	78,201.20	186%
EWT	27,073.03	50,476.16[39]	-	50,476.16	186%
TOTAL	₱136,973,887.67	₱13,819,164.48	₱41,071,461.36	₱54,890,625.84	

After a careful scrutiny of the parties' documents, submitted in support of the subject Compromise Agreement[40], the Court finds the same in order and in compliance with the established laws, rules and regulations.

In *Felipe O. Magbanua, et al. v. Rizalino Uy*[41], the Supreme Court ruled as follows:

> ...
> 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 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. Verily, the compromise may be either extrajudicial (to prevent litigation) or judicial (to end a litigation).

30 Supra at note 1.
31 Supra at note 10.
32 Total amount of deficiency taxes paid on 09 March 2022.
33 Total amount of deficiency taxes paid on 02 December 2020.
34 *See* eFPS Filing Reference with Reference No. 292000038956933 and BIR Form No. 0605 (Payment Form), Division Docket, pp. 469 and 470-471, respectively.
35 *See* eFPS Filing Reference with Reference No. 292200046716344 and BIR Form No. 0605 (Payment Form), id., pp. 486 and 485, respectively.
36 *See* eFPS Filing Reference with Reference No. 292000038957167 and BIR Form No. 0605 (Payment Form), id., pp. 473 and 474-475, respectively.
37 *See* eFPS Filing Reference with Reference No. 292200046716809 and BIR Form No. 0605 (Payment Form), id., pp. 488 and 487, respectively.
38 *See* eFPS Filing Reference with Reference No. 292000038957291 and BIR Form No. 0605 (Payment Form), id., pp. 476 and 477-478, respectively.
39 *See* eFPS Filing Reference with Reference No. 292000038957404 and BIR Form No. 0605 (Payment Form), id., pp. 479 and 480-481, respectively.
40 Supra at note 3.
41 G.R. No. 161003, 06 May 2005; Citations omitted and italics in the original text.

A compromise 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. To have the force of law between the parties, it must comply with the requisites and principles of contracts. Upon the parties, it has the effect and the authority of *res judicata*, once entered into.

When a compromise agreement is given judicial approval, 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. It is immediately executory and not appealable, except for vices of consent or forgery. The nonfulfillment of its terms and conditions justifies the issuance of a writ of execution; in such an instance, execution becomes a ministerial duty of the court.

...

The issue involving the validity of a compromise agreement notwithstanding a final judgment is not novel. *Jesalva v. Bautista* upheld a compromise agreement that covered cases pending trial, on appeal, and with final judgment. The Court noted that Article 2040 impliedly allowed such agreements; there was no limitation as to when these should be entered into. *Palanca v. Court of Industrial Relations* sustained a compromise agreement, notwithstanding a final judgment in which only the amount of back wages was left to be determined. The Court found no evidence of fraud or of any showing that the agreement was contrary to law, morals, good customs, public order, or public policy.

Gatchalian v. Arlegui upheld the right to compromise prior to the execution of a final judgment. The Court ruled that the final judgment had been novated and superseded by a compromise agreement. Also, *Northern Lines, Inc. v. Court of Tax Appeals* recognized the right to compromise final and executory judgments, as long as such right was exercised by the proper party litigants.

...

There is no justification to disallow a compromise agreement, solely because it was entered into after final judgment. The validity of the agreement is determined by compliance with the requisites and principles of contracts, not by when it was entered into. As provided by the law on contracts, a valid compromise must have the following elements: (1) the consent of the parties to the compromise, (2) an object certain that is the subject matter of the compromise, and (3) the cause of the obligation that is established.

...

WHEREFORE, in view of the foregoing, petitioner Getz Bros. Philippines, Inc. and respondent Commissioner of Internal Revenue's Compromise Agreement is hereby **APPROVED.** Having been impressed with judicial imprimatur, the parties are hereby **ENJOINED** to faithfully comply with all the terms and conditions of the aforesaid Compromise Agreement.

Consequently, petitioner Getz Bros. Philippines, Inc.'s pending Petition for Review, filed on 28 July 2020, is hereby rendered **MOOT AND ACADEMIC**. Accordingly, this case is now deemed **CLOSED AND TERMINATED.**

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

ATTESTATION

I attest 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's Division.

ERLINDA P. UY
Associate Justice
2nd Division 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 Based on 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