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

**FIRST DIVISION**

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| **PAYO MANUFACTURING CORPORATION** represented by its Chief Operating Officer, Clovis Jones Louis Sabornido, *Petitioner,* | **CTA Case No. 10164** |
| | Members: |
| | **DEL ROSARIO**, *PJ, Chairperson,* **MANAHAN**, and **REYES-FAJARDO**, *JJ.* |
| - versus - | |
| **COMMISSIONER OF THE BUREAU OF INTERNAL REVENUE,** *Respondent.* | Promulgated: OCT 04 2022 3:53 pm |

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# JUDGMENT BY COMPROMISE AGREEMENT

**REYES-FAJARDO, *J.*:**

On December 14, 2021, a duly notarized Judicial Compromise Agreement (JCA), [1] was executed by and between petitioner's representative Clovis Jones Louis Sabornido, and respondent, which is hereby reproduced in *verbatim*:

**JUDICIAL COMPROMISE AGREEMENT**

**KNOWN ALL MEN BY THESE PRESENTS:**

This **JUDCIAL COMPROMISE AGREEMENT ("Agreement")**, made and executed, by and between:

> **PAYO MANUFACTURING CORPORATION ("TAXPAYER")**, a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office at Km. 7, Bangkal, Davao City, represented by its **Chief**

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1 Docket, pp. 331-336. Footnotes omitted.

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**Operating Officer, CLOVIS JONES LOUIS SABORNIDO;**

- and -

The **BUREAU OF INTERNAL REVENUE** ("**BIR**'), with principal office at the Bureau of Internal Revenue, National Office Building, Agham Road, Diliman, Quezon City, represented by the **Commissioner, HON. CAESAR R. DULAY** (collectively, the "**PARTIES**");

- Witnesseth That –

**WHEREAS**, the **TAXPAYER** instituted an action against the **BIR** entitled **"Payo Manufacturing Corporation vs. Commissioner of Internal Revenue"**, docketed as CTA Case No. 10164, pending before the Honorable First Division of the Court of Tax Appeals ("**CTA**"), seeking for the revocation and cancellation of the Follow-up Collection Letter of the BIR for the alleged tax deficiency for the year 2013;

**WHEREAS**, the **TAXPAYER** has submitted to the BIR a **Proposal for Amicable Settlement** to pay 51% of the basic Tax of the alleged deficiency for 2013;

**WHEREAS,** the **TAXPAYER** has applied/availed of Compromise Settlement for its alleged Tax Delinquency for 2013 and paid 41% of its basic tax prior to the institution of the case and has offered to pay an additional 10% of the basic taxes assessed against it;

**WHEREAS,** the **BIR** has evaluated the **TAXPAYER'S** proposal for amicable settlement and believes that a judicial compromise to allow immediate tax collection and also put an end to litigation as provided in the Civil Code of the Philippines, serves the interest of the Government;

**WHEREAS,** the **PARTIES** have agreed to enter into an amicable settlement pursuant to the provision of the Civil Code of the Philippines and relevant laws on compromise without contravening law, morals, public order and public policy;

**WHEREAS,** the Honorable CTA has issued rulings allowing judicial compromises similar to the instant case.

**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 **P359,025.92("Judicial Compromise Amount")**.

Out of the Judicial Compromise Amount, and prior to the institution of the instant case, the **TAXPAYER** has already paid P288,663.00 or 41% of the basic assessed deficiency taxes, and has now offered an additional Php70,362.92, or 10% of the assessed deficiency taxes.

**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. 10164**. 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 aforementioned Follow-up Collection Letter.

**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, CLOVIS JONE LOUIS SABORNIDO, 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. 10164. 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. 10164 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. 10164.

**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 No. 10164 shall continue and the discussions pursuant to the disapproved Agreement cannot be used by the **PARTIES** in said proceedings 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. Signature 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 and obligations hereunder.

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> **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 indicate above.
>
> **PAYO MANUFACTURING CORPORATION**
> By:
> (Sgd.)
> **CLOVIS JONES LOUIS SABORNIDO**
> *Chief Operating Officer*
>
> **BUREAU OF INTERNAL REVENUE**
> By:
> (Sgd.)
> **HON. CAESAR R. DULAY**
> *Commissioner*

*Republic of the Philippines v. Heirs of Cruz, et al.*[2] ordains that "[b]efore approving a compromise, courts are bound to strictly scrutinize the same to ensure that the compromise *and* its execution are compliant with the law and consistent with procedural rules." In this regard, Section 204(A) of the National Internal Revenue Code (NIRC), as amended, reads:

> **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.
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> 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.

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2 G.R. No. 208956, October 17, 2018.

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For the Court to approve said JCA, the following requisites must be present: *one*, the authority of the parties' themselves, or their representatives to enter into compromise agreement;[3] *two*, the compromise must be based on doubtful validity of the government's claim against the taxpayer (doubtful validity); or financial incapacity of the latter (financial incapacity); *three*, the subject matter being compromised is *not* prohibited by law, or by its implementing rules and regulations;[4] *four*, payment of the compromise amount, *i.e.*, at least 40% of the basic tax/es for doubtful validity; or at least 10% of the basic tax/es for financial incapacity; and *five*, approval[5] of the National Evaluation Board (NEB). These requisites were met. Consider:

*First*, the persons who executed said JCA were properly clothed with authority to do so. To be precise, Clovis Jones Louis Sabornido's authority to compromise, on petitioner's behalf, is based on the notarized Secretary's Certificate dated November 18, 2021, issued by the latter's Corporate Secretary,[6] whereas respondent's authority to compromise internal revenue taxes is conferred by Section 204(A) of the NIRC, as amended.

*Second*, it would appear that the Formal Letter of Demand, Final Assessment Notices, with Details of Discrepancy (FLD/FAN) dated August 24, 2016, do not have corresponding proof of service to petitioner. This casts doubt on the validity of respondent's claim against it.

*Third*, this case stemmed from petitioner's appeal of the BIR's Follow-up Collection Letter dated October 4, 2018.[7] Specifically, petitioner was requested to pay the total amount of ₱779,120.63, representing the deficiency income tax (IT), value-added tax (VAT), and expanded withholding tax (EWT) for taxable year (TY) 2013.[8] The BIR Payment Forms (Form No. 0605)[9] submitted by respondent further shows that petitioner paid ₱70,362.92, representing deficiency IT, VAT, and EWT. The Certificate of Availment dated June 27, 2022,

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3 Article 1317 of Republic Act No. 386, or the Civil Code, states that no one may contract in the name of another without being authorized by the latter.
4 Article 1409 of the Civil Code provides that contracts contrary to law are void.
5 See Section 6, RR No. 30-2002.
6 Docket, p. 329.
7 Page 2 of Petition for Review. Docket, p. 11.
8 Annex A, Petition for Review. Docket, p. 22.
9 See table on the succeeding page.

also confirmed that petitioner's application for compromise refers to deficiency IT, VAT, and EWT for TY 2013, under Assessment Nos. IT-ELA58204-13-02814, VT-ELA58204-13-02814, and WE-ELA58204-1302814.[10]

Section 2 of RR No. 30-2002[11] declares that withholding tax cases may not be compromised, unless the applicant-taxpayer invokes provisions of law that cast doubt on the taxpayer's obligation to withhold.

Petitioner sought to amicably settle the alleged deficiency IT, VAT, and EWT for TY 2013. However, it failed to invoke a provision of law casting doubt on its obligation to withhold. Ordinarily, said deficiency EWT for TY 2013, may not be allowed to be compromised for being prohibited by Section 2 of RR No. 30-2002.

Yet, as noted earlier, it appears that the BIR failed to serve the FLD/FAN dated August 24, 2016,[12] including the deficiency EWT for TY 2013 to petitioner. Indeed, the FLD/FAN "... signals the time 'when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies[.]' Thus, it must be 'sent to and received by the taxpayer, and must demand payment of the taxes described therein within a specific period.'"[13] Therefore, the noted circumstance falls under one of the instances where compromise may be accepted. Section 3(1)(f) of RR No. 30-2002 provides:

> SEC. 3. Basis For Acceptance of Compromise Settlement. - ...
>
> 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:
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> ...

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10 Docket, p. 343.

11 SUBJECT: 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.

12 BIR Records, pp. 199-203.

13 *Commissioner of Internal Revenue v. T-Shuttle Services, Inc.*, citing *Commissioner of Internal Revenue v. Fitness by Design, Inc.*, G.R. No. 799 Phil. 391 (2016).

> (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 ...

*Fourth,* in the BIR's FLD,[14] the total basic deficiency taxes for TY 2013 amounted to ₱703,629.18, consisting of: 1) IT in the sum of ₱268,851.00; 2) EWT in the sum of ₱6,391.10; and 3) VAT in the sum of ₱428,387.08.

Meanwhile, the JCA [15] shows that petitioner offered, and respondent accepted, the judicial compromise amount of ₱359,025.92, composed of: 1) ₱288,663.00, or equivalent to 41% of the basic assessed deficiency taxes, which petitioner paid prior to the filing of this instant case;[16] and 2) ₱70,362.92, or an additional 10% of the assessed deficiency taxes,[17] evidenced by three (3) BIR Payment Forms, with attached BIR Payment Slips, provided by respondent, broken down as follows:

| Location of BIR Payment Forms (0605) and Payment Slips[18] | Amount in PHP | Tax Type |
|---|---|---|
| Docket, p. 354 | 24,667.17 | IT |
| Docket, p. 355 | 39,304.65 | VAT |
| Docket, p. 356 | 6,391.10 | WE |

Truly, the Judicial Compromise Amount in the total sum of ₱359,025.92 is 51.04% of the total assessed basic taxes per FLD amounting to ₱703,369.18.[19]

*Fifth,* all the members of the NEB approved the above JCA.[20] Said approval was further confirmed in the Certificate of Availment dated June 27, 2022, issued in favor of petitioner.[21]

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14 BIR Records, pp. 202-203.

15 In *Commissioner of Internal Revenue v. Iconic Beverages, Inc.*, G.R. Nos. 240651 and 240665, Resolution dated July 6, 2021, the Supreme Court recognized a duly notarized Compromise Agreement as basis for determining the taxpayer's payment of the compromise amount, as well as the acceptance thereof by the BIR.

16 See Section 1, JCA. Docket, p. 332.

17 *Ibid.*

18 The respective BIR payment slips are appended to said BIR Payment Forms (0605) and are unpaged.

19 ₱359,025.92/₱703,369.18 = 51.04%

20 Docket, p. 344.

21 *Id.* at p. 343.

Therefore, approval of the parties' JCA is in order.

**WHEREFORE**, the Court resolves to:

1) **NOTE** respondent's Manifestation and Compliance, filed on August 5, 2022, submitting the original copies of the BIR Payment Forms (0605), and Payment Slips, as required in the Resolution dated July 20, 2022;

2) **APPROVE** the Judicial Compromise Agreement dated December 14, 2021, executed by and between Payo Manufacturing Corporation, represented by Clovis Jones Louis Sabornido, and the Commissioner of Internal Revenue; and

3) **DECLARE** CTA Case No. 10164 **CLOSED** and **TERMINATED**.

**SO ORDERED.**

Marian Ivy F. Reyes-Fajardo

**MARIAN IVY F. REYES-FAJARDO**
Associate Justice

We Concur:

**ROMAN G. DEL ROSARIO**
Presiding Justice

Catherine T. Manahan

**CATHERINE T. MANAHAN**
Associate Justice

## CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the 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