REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2372** **(CTA Case No. 9523)**
-versus-	**Present:** **Del Rosario,** *P.J.,* **Uy,** **Ringpis-Liban,** **Manahan,** **Bacorro-Villena,** **Modesto-San Pedro,** **Reyes-Fajardo,** **Cui-David,** *and* **Ferrer-Flores,** *JJ.*
PANAY ELECTRIC COMPANY, INC., **Respondent.**	**Promulgated:** FEB 01 2023 4:28PM

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JUDGMENT ON COMPROMISE AGREEMENT

RINGPIS-LIBAN, J.:

Before this Court is the parties' "Joint Motion for Approval of Compromise Agreement,"[1] filed on October 27, 2021, praying that the motion of both parties be granted and the Court approve the Judicial Compromise Agreement and issue a Decision based on the said Compromise Agreement.

On December 16, 2021, the Court issued a Resolution[2] noting the "Joint Motion for Approval of Compromise Agreement," and ordering the parties to submit the original or certified true copy of the Judicial Compromise Agreement and the National Evaluation Board (NEB) Approval or the Certificate of Availment, both within fifteen (15) days from notice.

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[1] Rollo, CTA EB No. 2372, pp. 84-88.
[2] Ibid., pp. 103- 106.

On March 2, 2022, the Court received petitioner's "Compliance,"[3] submitting the original copy of the "Judicial Compromise Agreement."

On April 4, 2022, the Court issued a Resolution[4] noting the "Compliance" and ordering the parties to submit the original or certified true copy of the National Evaluation Board (NEB) Approval or the Certificate of Availment, within ten (10) days from notice.

On May 31, 2022, the Court *En Banc* promulgated the Decision.[5]

On June 21, 2022, the Court *En Banc* received petitioner's "Motion for Reconsideration (Re: Decision promulgated on 31 May 2022)."[6]

On July 15, 2022, the Court *En Banc* received petitioner's "Compliance with Submission and Offer of Profuse Apologies,"[7] submitting as Annex "A" the certified true copy of the Certificate of Availment and signature page showing the approval of the offer of compromise settlement by the NEB.

On July 20, 2022, the Court *En Banc* issued a Resolution[8] ordering respondent to file its Comment on the petitioner's "Motion for Reconsideration (Re: Decision promulgated on 31 May 2022)" within five (5) calendar days from notice.

On July 29, 2022, the Court *En Banc* received respondent's "Comment and Opposition (to the Motion for Reconsideration dated June 21, 2022)."[9]

On September 19, 2022, the Court *En Banc* issued a Resolution[10] ordering the parties to manifest to the Court *En Banc* if they still intend to proceed with the *a)* resolution of the petitioner's "Motion for Reconsideration (Re: Decision promulgated on 31 May 2022) or *b)* resolution of their "Joint Motion for Approval of Compromise Agreement," within five (5) days from notice.

On October 3, 2022, the Court *En Banc* received petitioner's "Manifestation (Re: Resolution dated 29 September 2022)"[11] stating that petitioner opts for the resolution of the "Joint Motion for Approval of Compromise Agreement" considering that a Judicial Compromise Agreement was already executed between the respondent and the former Commissioner of

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[3] Ibid., pp. 107- 109.
[4] Ibid., pp. 118-119.
[5] Ibid., pp. 121-130.
[6] Ibid., pp. 149-159.
[7] Ibid., pp. 160-163.
[8] Ibid., pp. 167-168.
[9] Ibid., pp. 169-174.
[10] Ibid., pp. 176-178.
[11] Ibid., pp. 179-182.

Internal Revenue and payment of the compromise agreement was already made by respondent. On even date, respondent filed by registered mail a "Manifestation and Motion to Resolve the "Joint Motion for Approval of Compromise Agreement" stating that respondent intends to proceed with the resolution of the "Joint Motion for Approval of Compromise Agreement."

On November 2, 2022, the Court *En Banc* issued a Resolution noting petitioner's "Manifestation (Re: Resolution dated 29 September 2022)" and respondent's "Manifestation and Motion to Resolve the "Joint Motion for Approval of Compromise Agreement." In view thereof, the "Joint Motion for Approval of Compromise Agreement" is deemed submitted for resolution.

Considering that the Decision dated May 31, 2022 has not yet attained finality because of the timely filing of petitioner's Motion for Reconsideration, and in view of the parties' manifestation that they intend to proceed with the resolution of the "Joint Motion for Approval of Compromise Agreement," hence, the Court *En Banc* shall now resolve the parties' "Joint Motion for Approval of Compromise Agreement."

The "Judicial Compromise Agreement"[12] states as follows:

> "**WHEREAS**, the **BIR** issued to the **TAXPAYER** a Formal Letter of Demand ("**FLD**") dated June 27, 2014 for the year 2009 assessing the **Taxpayer** alleged deficiency taxes for an aggregate amount of **Php1, 973,630,053.21**;
>
> **WHEREAS**, the **TAXPAYER** then filed with the **BIR** its Request for Reinvestigation dated July 30, 2014 disputing the **FLD** dated June 27, 2014;
>
> **WHEREAS**, the **BIR** issued a FINAL DECISION ON DISPUTED ASSESSMENT ("**FDDA**") dated December 21, 2016, which denied the protest filed by the **TAXPAYER** but reducing the assessment into an aggregate amount of **Php890,996,459.00**;
>
> **WHEREAS**, the **TAXPAYER** instituted an action against the BIR entitled "***Panay Electric Company, Inc. vs. Commissioner of Internal Revenue***", docketed as CTA Case No. 9523, pending before the Honorable First Division of the Court of Tax Appeals ("**CTA**"), seeking the reversal of the **FDDA**, and the cancellation of the **FLD**.

[12] Ibid., pp. 110-116.

WHEREAS, after trial, a **Decision** dated June 1, 2020 was promulgated in favor of **TAXPAYER** the dispositive portion reads:

> "**WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is **GRANTED**. Accordingly, the FDDA dated December 20, 2016 issued by respondent, and the assessments for deficiency income tax, VAT, EWT, WTC, and DST, in the aggregate amount of P890,996,459.00 inclusive of interest and penalties, for taxable year 2009, are **CANCELLED** and **SET ASIDE**."

WHEREAS, the **BIR** then filed with the CTA its Motion for Reconsideration on June 18, 2020;

WHEREAS, the **CTA** promulgated a **Resolution** on October 16, 2020 denying BIR's Motion for Reconsideration;

WHEREAS, the **BIR** then filed with the **CTA *En Banc*** Petition for Review dated November 23, 2020;

WHEREAS, the **TAXPAYER** has submitted to the BIR a **Proposal for Amicable Settlement** dated 24 March 2021 for the alleged deficiency tax assessment contained in the **FLD** and **FDDA**;

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 provisions of the Civil Code of Philippines, jurisprudence, relevant decisions of the Honorable CTA, and relevant laws on judicial 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 **Ten Million Pesos (P10,000,000.00) ("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 EB Case No. 2372 (CTA Case No. 9523). 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 dated June 27, 2014 and **FDDA** dated December 21, 2016.

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, Emmanuel D. Lubis, 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 amicable settling and ending CTA EB No. 2372 (CTA Case No. 9523). Upon approval by the court, the BIR recognizes the full satisfaction of the supposed tax liability of the **TAXPAYER** in connection with CTA EB Case No. 2372 (CTA Case No. 9523) 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 EB Case No. 2372 (CTA Case No. 9523).

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 of 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 EB Case No. 2372 (CTA Case No. 9523) 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."

Section 204(A) of the NIRC of 1997, as amended, provides for the authority of the 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) 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.

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 P1,000,000.00) 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 supplied)*

A compromise settlement is thus deemed valid when the following requirements are present:

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 agreement should be approved by the NEB, which is composed of the respondent and his four (4) Deputy Commissioners if the subject assessment exceeds One Million pesos (P1,000,000.00) or where the settlement offered is less than the prescribed minimum rates.

To prove that the offer of compromise was approved by the CIR, the parties presented the Certificate of Availment dated June 29, 2022 and the Approval Sheet of the Judicial Compromise, which shows the signature of all the members of the NEB approving the Judicial Compromise Amount. It was stated in the Approval Sheet of the Judicial Compromise Agreement that the ground for the approval of the Judicial Compromise is doubtful validity. It appears that the amount paid with regard to the deficiency taxes is below the 40% minimum rate required by the Tax Code. Nevertheless, the NEB approved the same.

Having found the documents in order, the Court finds the Approval Sheet of the NEB and the Certificate of Availment sufficient evidence of the parties' compliance with the second and third requisites, respectively, and the mandate of Section 6 of RR No. 30-2002, as amended, to wit: -

> "SEC. 6. APPROVAL OF OFFER OF COMPROMISE.- Except for offers of compromise where the approval is delegated to the REB[13] 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**[14] 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 xxx xxx

[13] Regional Evaluation Board.
[14] National Evaluation Board.

> Provided, however, that if the offer of compromise is less than the prescribed rates set forth in Sec. 4 hereof, the same shall always be subject to the approval of the NEB.
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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. xxx"

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 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.[15]

Finding the subject compromise agreement to be in order and in compliance with established laws, rules and regulations, taking into consideration the documents submitted by the parties in support thereof, the same is approved.

WHEREFORE, in view of the foregoing, the Decision dated May 31, 2022 is **RECALLED**.

The parties' **"Judicial Compromise Agreement"** is **APPROVED** and judgment is hereby rendered in accordance therewith. Accordingly, the proceedings in the instant cases are considered **CLOSED** and **TERMINATED.**

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[15] David vs. Paragas, Jr., G.R. No. 176973, February 25, 2015.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, it is hereby certified 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.

ROMAN G. DEL ROSARIO
Presiding Justice