REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

FOODSPHERE, INC.,
Petitioner,

-*versus*-

CAESAR R. DULAY, COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9601

Members:
DEL ROSARIO, *P.J., Chairperson,* and
MANAHAN, *JJ.*

Promulgated:
FEB 08 2021 11:07 am

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JUDGMENT BY COMPROMISE AGREEMENT

On August 26, 2020, the parties filed their *Joint Motion for Judgment Based on Compromise Agreement.*

After various partial submissions and motions for extension, on November 23, 2020, the parties were given until January 6, 2021, within which to submit the following documents:

1. Original or certified true copy of the Certificate of Availment of compromise;

2. Original or certified true copy of the NEB approval of the compromise;

3. Basis of respondent's Acceptance of Compromise Settlement (doubtful validity or financial incapacity); and

4. Other relevant documents in support of Item (3) above.

On December 9, 2020, petitioner filed its *Manifestation with Motion for Extension of Time (To Comply with Resolution dated 16 October 2020)*, stating its concurrence with respondent's request for an additional period to submit documents evidencing NEB approval until January 6, 2021. This *Manifestation* is NOTED. *am*

On January 8, 2021, petitioner filed its *Manifestation* that on January 6, 2021, it had filed a *Motion* praying for an additional period of time. Petitioner also manifested that it was informed by respondent's counsel that proof of NEB approval had been submitted by registered mail. This *Manifestation* is likewise NOTED.

On January 18, 2021, the Court received petitioner's *Manifestation with Motion for Extension of Time (To Comply with Resolution dated 23 November 2020)* which was posted on January 6, 2021. Petitioner prays for an additional sixty (60) days from January 6, 2021, within which to submit the required documents. Petitioner's *Manifestation with Motion* is NOTED, although rendered moot due to respondent's *Compliance* on even date.

The Court also received respondent's *Compliance* on January 18, 2021, submitting a certified true copy of the Certificate of Availment (Compromise Settlement) issued to Foodsphere, Inc. The *Compliance* is NOTED.

Thus, the parties have submitted the following documents:

1. Original Judicial Compromise Agreement;

2. Original printout of BIR Form 0605, Filing Reference and UBP payment status;

3. Original Offer of Compromise showing the computation of compromise amount at 40% of the basic tax due; and

4. Certified true copy of Certificate of Availment (Compromise Settlement).

In view of the submission of the required documents, we now proceed to analyze the *Judicial Compromise Agreement* and supporting documents submitted by the parties.

The Judicial Compromise Agreement partly reads as follows:

> **WHEREAS**, the **BIR** issued to the **TAXPAYER** a Formal Letter of Demand (**"FLD"**) dated **<u>22 January 2016</u>** for the year July 1, 2014 to December 31, 2014 assessing the **Taxpayer** an

alleged deficiency taxes for an aggregate amount of **Twelve Million Eight Hundred Thirty-One Thousand One Hundred Twenty-Nine Pesos and 85/100 (Php12,831,129.85)**;

WHEREAS, the **TAXPAYER** then filed with the **BIR** its Protest dated 24 February 2016 disputing the **FLD** dated **22 January 2016**;

WHEREAS, the **BIR** issued a FINAL DECISION ON DISPUTED ASSESSMENT (**"FDDA"**) dated 07 June 2016, which denied the Protest filed by the **TAXPAYER**;

WHEREAS, the **TAXPAYER** instituted an action against the **BIR** entitled "***Foodsphere Inc. vs. Commissioner of Internal Revenue***", docketed as CTA Case No. 9601, 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**;

WHEREAS, the **TAXPAYER** has submitted to the BIR a **Proposal for Amicable Settlement** dated 17 January 2020 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 the 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 amicable 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 **Five Million** cm

One Hundred Thirty-Two Thousand Four Hundred Fifty-One Pesos and 94/100 (Php5,132,451.94) ("**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 No. 9601. 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 4.[1] **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 22 January 2016 and **FDDA** dated 07 June 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, **MR. FRANCISCO C. ELICAÑO**, 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 Case No. 9601. 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. 9601 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. 9601.

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

[1] There is no Section 3 in the submitted Judicial Compromise Agreement.

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. 9601 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 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 hereof signed by the other party hereto, the Agreement shall have no effect and no party shall have any 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.

FOODSPHERE, INC.	**BUREAU OF INTERNAL REVENUE**
By:	By:
(Signed) **MR. FRANCISCO C. ELICAÑO**	(Signed) **HON. CAESAR R. DULAY** Commissioner

am

Witnesses:

(Signed) (Signed)

RULING OF THE COURT

Section 204(A) of the 1997 National Internal Revenue Code (NIRC), as amended, provides:

> 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) 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**. (*emphasis supplied*)

Based on the above-cited provision, the requisites for a valid compromise agreement are the following: *cm*

1. The application for compromise is 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 and, 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 approval of 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) or where the settlement offered is less than the prescribed minimum rates.

Implementing the foregoing section of the 1997 NIRC, as amended, Revenue Regulations (RR) No. 30-2002 dated December 16, 2002, as amended by RR No. 8-2004, or the "*Revenue Regulations Implementing Section 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,*" provides for those cases that may be compromised, *to wit:*

> SEC. 2. CASES WHICH MAY BE COMPROMISED. - The following cases may, upon taxpayer's compliance with the basis set forth under Section 3 of these Regulations, be the subject matter of compromise settlement, viz:
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> 1. Delinquent accounts;
>
> 2. Cases under administrative protest after issuance of the Final Assessment Notice to the taxpayer which are still pending in the Regional Offices, Revenue District Offices, Legal Service, Large Taxpayer Service (LTS), Collection Service, Enforcement Service and other offices in the National Office;
>
> 3. Civil tax cases being disputed before the courts;
>
> 4. Collection cases filed in courts; cm

5. Criminal violations, other than those already filed in court or those involving criminal tax fraud.

EXCEPTIONS

1. Withholding tax cases, unless the applicant-taxpayer invokes provisions of law that cast doubt on the taxpayer's obligation to withhold;

xxx xxx xxx

The records of this case show, particularly the use of the 40% limitation in the computation of the compromise amount, that the application for compromise settlement was grounded on doubtful validity of respondent's tax assessment.

In the proceedings before this Court, petitioner assailed the deficiency Value-Added Tax (VAT) assessment for the period July 1, 2014 to December 31, 2014 on the ground that respondent violated petitioner's right to due process due to the issuance of multiple Letters of Authority (LOA) covering the same taxable period. Petitioner also assails the factual and legal basis of the assessment, alleging that: (1) respondent merely relied on unverified third-party information in computing output tax liabilities and in disallowing input tax on importations; (2) respondent erroneously applied Section 110 of the NIRC pertaining to VAT-Exempt Sales and Sale Transactions to Government, without stating the facts as to such disallowance; and, (3) respondent failed to properly inform petitioner of the alleged violations of invoicing requirements.

In his Answer, respondent reiterates his findings that there was undeclared sales based on matching data; that the input tax on importation in the amount of Php1,298,250.20 was unsupported; that the breakdown of invoicing violations were shown in a separate schedule as part of the Formal Letter of Demand (FLD); and compromise penalties were computed pursuant to the law and regulations.

The disquisitions and arguments propounded by the parties relative to the deficiency VAT assessment for the period July 1, 2014 to December 31, 2014 show that the validity thereof was clearly put in issue. cm

Based on the foregoing, the first requisite under Section 204(A) of the 1997 NIRC, as amended, pertaining to the ground of doubtful validity is complied with.

As to the amount of compromise payment, the FLD[2] and Final Decision on Disputed Assessment (FDDA)[3] contained basic deficiency VAT assessment in the amount of Php12,831,129.85. In the Offer of Compromise dated January 17, 2020, the compromise amount was computed on the basis of Php12,831,12**8**.85 x 40%, resulting to Php5,132,451.**5**4. However, the compromise amount was correctly reflected as Php5,132,451.**9**4,[4] in the Judicial Compromise Agreement and BIR Form No. 0605, filing reference number, and UBP Payment Status.

The computation for the compromise settlement amount, using 40% as compromise rate, is in accordance with Section 204(A) of the 1997 NIRC, as amended. Thus, the correct computation of the compromise amount and the payment thereof by petitioner constitute compliance with the second requisite.

As to the last requisite, the Court notes that there is sufficient compliance with the law by respondent's submission[5] of a certified true copy of the Certificate of Availment dated January 6, 2021 which states that petitioner's application for compromise settlement has been approved by the National Evaluation Board (NEB). This is more than the required majority vote under Section 204(A) of the 1997 NIRC, as amended.

With the faithful observance by the parties of all the requisites under Section 204(A) of the 1997 NIRC, as amended, the Court hereby approves the Judicial Compromise Agreement submitted by the parties.

In the case of *Far East Bank and Trust Co. et al. v. Trust Union Shipping Corp. et al.,*[6] the Supreme Court explained the effect of a compromise agreement, to wit:

> **A compromise is a contract whereby the parties**, by making reciprocal concessions, **avoid litigation or put an**

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[2] Docket, Vol. VI, Exhibit "P-4" and sub-markings, pp. 2542-2547.
[3] Docket, Vol. VI, Exhibit "P-11", pp. 2562-2563.
[4] As computed on the correct deficiency amount of Php12,831,129.85 x 40%.
[5] Compliance filed on January 18, 2021.
[6] G.R. No. 154716, September 16, 2008.

> **end to one already commenced**. It is an accepted and desirable practice in courts of law and administrative tribunals. Settlement of disputes brought before the courts is, in fact, encouraged.
>
> It is settled that contracting parties may establish such stipulations, clauses, terms and conditions as they deem convenient, provided that these are not contrary to law, morals, good customs, public order, or public policy. (*Emphasis supplied*)

WHEREFORE, for the reasons stated therein, the parties' *Joint Motion for Judgment Based on Compromise Agreement* is **GRANTED**.

Accordingly, the Judicial Compromise Agreement entered into by the parties is **APPROVED** and this Judgment on Compromise Agreement is rendered in accordance therewith. The parties are hereby enjoined to faithfully comply with all the terms and conditions of the aforesaid Judicial Compromise Agreement.

This case is now deemed **CLOSED** and **TERMINATED**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice