REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

SPLASH CORPORATION,
Respondent.

CTA EB No. 1882
(CTA CASE No. 8904)

Present:
DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

JAN 3 0 2020
2:49 p.m.

x- x

RESOLUTION

***Fabon-Victorino, J.*:**

Before the Court are the following incidents jointly filed by the parties:

1) Joint Motion for Approval of Judicial Compromise Agreement dated May 28, 2019;

2) Motion for Leave to Admit Attached Joint Compliance dated January 15, 2020.

In the first incident, the parties pray for the approval of the Judicial Compromise Agreement dated May 21, 2019 which they executed, and that judgement be rendered on the basis thereof.

On the other hand, the parties, in their Motion for Leave to Admit Attached Joint Compliance, pray that their belated submission of the approval of the National Evaluation Board (NEB) of respondent's offer of compromise required in the Court's Resolution dated September 18, 2019, be noted and the attached NEB approval be admitted by the Court.

In the interest of justice, the Motion for Leave to Admit Attached Joint Compliance filed by the parties is **GRANTED**. As prayed for, their Joint Compliance is hereby **NOTED**. Consequently, the attached NEB approval is **ADMITTED** forming part of the record of the case.

With the submission of the NEB approval of the offer of compromise, the parties' Joint Motion for Approval of Judicial Compromise Agreement is now ripe for resolution.

The case before the Court *En Banc* is the assailed Decision[1] dated February 2, 2018 rendered by the Court in Division which cancelled and set aside the assessment against respondent for deficiency income tax (IT) for the taxable year (TY) 2010 in the amount of P80,984,745.75, and the similarly impugned Resolution dated June 11, 2018 which denied petitioner's plea for reconsideration.

Despite the favorable ruling, respondent, on February 27, 2019, offered a judicial compromise[2] to settle the assessment issued against it by petitioner.

On May 29, 2019, the parties submitted their Judicial Compromise Agreement dated May 21, 2019 for the Court's approval and judgment based on the said Compromise Agreement.

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

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[1] Former Second Division.
[2] Par. 3, Judicial Compromise Agreement dated May 21, 2019, docket p. 155.

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.

(B) Abate or cancel a tax liability, when:

(1) The tax or any portion thereof appears to be unjustly or excessively assessed; or

(2) The administration and collection costs involved do not justify the collection of the amount due.

All criminal violations may be compromised except: (a) those already filed in court, or (b) those involving fraud.

(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in

> writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund.
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> A Tax Credit Certificate validly issued under the provisions of this Code may be applied against any internal revenue tax, excluding withholding taxes, for which the taxpayer is directly liable. Any request for conversion into refund of unutilized tax credits may be allowed, subject to the provisions of Section 230 of this Code: Provided, That the original copy of the Tax Credit Certificate showing a creditable balance is surrendered to the appropriate revenue officer for verification and cancellation: Provided, further, That in no case shall a tax refund be given resulting from availment of incentives granted pursuant to special laws for which no actual payment was made.
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> The Commissioner shall submit to the Chairmen of the Committee on Ways and Means of both the Senate and House of Representatives, every six (6) months, a report on the exercise of his powers under this Section, stating therein the following facts and information, among others: names and addresses of taxpayers whose cases have been the subject of abatement or compromise; amount involved; amount compromised or abated; and reasons for the exercise of power: Provided, That the said report shall be presented to the Oversight Committee in Congress that shall be constituted to determine that said powers are reasonably exercised and that the Government is not unduly deprived of revenues.

Under the foregoing provision, if the basic tax involved exceeds one million pesos or the settlement offered is less than the prescribed minimum rates, the compromise shall be subject to the approval of the NEB [3] composed of the petitioner Commissioner of Internal Revenue (CIR) and four deputy commissioners.[4]

Further, the conformity of petitioner to the Judicial Compromise Agreement is necessary since only he has the power to compromise taxes, especially when the amount exceeds one million pesos, or where the settlement offered

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[3] National Evaluation Board.

[4] Commissioner of Internal Revenue vs. Azucena T. Reyes, G.R. No. 159694, Azucena T. Reyes vs. Commissioner of Internal Revenue, G.R. No. 163581, January 27, 2006.

is less than the prescribed minimum rates, pursuant to Sections 7(C)[5] and 204(A) of the NIRC of 1997, as amended.

In this case, the basic tax involved amounts to more than one million pesos, thus, the conformity of petitioner to the compromise and the approval of the NEB are required.

A review of the Judicial Compromise Agreement shows that it was duly executed by petitioner himself and by Fernando M. Manotok, the Chief Financial Officer of respondent.

The record also reveals that respondent paid on May 17, 2019 the compromise amount of P19,138,800.00, equivalent to forty percent (40%) of the basic assessed tax, which the BIR received and accepted.[6]

Lastly, the parties submitted to the Court the Certificate of Availment (Compromise Settlement) issued on November 13, 2019, stating that the NEB has approved the compromise settlement of the deficiency taxes subject of this case. The Certificate of Availment reads as follows:

> This is to certify that SPLASH CROPORATION of 5th Floor W Office Building 28th St. cor. 11th Ave., Bonifacio Global City, Taguig City, Metro Manila 1634 with Taxpayer Identification Number 001-096-221-000 has availed the provisions of Revenue Regulations No. 30-2002, and the application/s for the compromise settlement of deficiency

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[5] SEC. 7. Authority of the Commissioner to Delegate Power. - The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the rank equivalent to a division chief or higher, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner: Provided, however, That the following powers of the Commissioner shall not be delegated:

(a) x x x;
(b) x x x;
(c) The power to compromise or abate, under Sec. 204 (A) and (B) of this Code, any tax liability: Provided, however, That assessments issued by the regional offices involving basic deficiency taxes of Five hundred thousand pesos (P500,000) or less, and minor criminal violations, as may be determined by rules and regulations to be promulgated by the Secretary of finance, upon recommendation of the Commissioner, discovered by regional and district officials, may be compromised by a regional evaluation board which shall be composed of the Regional Director as Chairman, the Assistant Regional Director, the heads of the Legal, Assessment and Collection Divisions and the Revenue District Officer having jurisdiction over the taxpayer, as members; and
x x x.

[6] Section 1, Judicial Compromise Agreement dated May 21, 2019, docket p. 155; BIR eFPS payment confirmation, docket p. 161.

> INCOME tax/es amounting to Eighty Million Nine Hundred Eighty Four Thousand Seven Hundred Forty Five & 75/100 Pesos Only (P80,984,745.75) under Assessment No/s. FDDA-ELTAD II-IT-10-0006 dated August 20, 2014 covering taxable year/period 2010 has/have been approved by the National Evaluation Board.
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> Issued this 13th day of November, 2019.
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> (signed)
> Caesar R. Dulay
> Commissioner of Internal Revenue
> By: Alfredo V. Misajon
> ACIR – Collection Service
> Head, TWG on Compromise

Attached to the Certificate of Availment was the list of the members of the NEB, namely, Marissa O. Cabreros, Deputy Commissioner, Legal Group, Arnel SD. Guballa, Deputy Commissioner, Operations Group, Celia C. King, Deputy Commissioner, Resource Management Group, Lanee Cui-David, Deputy Commissioner, Information Systems Group, and Caesar R. Dulay, Commissioner of Internal Revenue, who affixed their respective signatures signifying their approval of the Judicial Compromise Agreement.

Considering the payment of respondent of P19,138,800.00, equivalent to forty percent (40%) of the basic assessed tax, and approval of the Judicial Compromise Agreement by petitioner himself, and members of the NEB, the Court finds the Judicial Compromise Agreement of the parties in order.

WHEREFORE, the parties' Joint Motion for Approval of Judicial Compromise Agreement dated May 28, 2019 is hereby **GRANTED**.

As prayed for, the **Judicial Compromise Agreement** dated May 21, 2019 is hereby **APPROVED**.

With the payment of respondent of P19,138,800.00, equivalent to forty percent (40%) of the basic assessed tax pursuant to the Judicial Compromise Agreement, which is deemed as full satisfaction of respondent's tax liability as assessed, the instant Petition for Review is hereby considered **CLOSED** and **TERMINATED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ON LEAVE
ERLINDA P. UY
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA G. MODESTO-SAN PEDRO
Associate Justice