REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB No. 2189
(CTA Case No. 9395)

-versus-

SM_RESIDENCES CORP.,
Respondent.

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SM_RESIDENCES CORP.,
Petitioner,

CTA EB No. 2193
(CTA Case No. 9395)

-versus-

Present:
Del Rosario, P.J.,
Castañeda, Jr.,
Uy,
Ringpis-Liban,
Manahan,
Bacorro-Villena, and
Modesto-San Pedro, JJ.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUL 2 2 2021
3:50 p.m.

x---x

JUDGMENT BASED ON COMPROMISE AGREEMENT

CASTAÑEDA, JR., *J.*:

On January 22, 2020, SM_Residences Corp. (SMRC) and the Commissioner of Internal Revenue (CIR), collectively referred to as the "Parties", filed a Joint Motion for Approval of Compromise Agreement.

On March 2, 2020, the resolution of the subject Joint Motion for Approval of Compromise Agreement was held in abeyance. This Court directed both parties to submit, in a form of Compliance, the original or certified true copies of the following documents:

1. Proof of authority of Ms. Cecilia R. Patricio as the authorized person by the Board of Directors of SMRC to enter into Judicial Compromise Agreement;

2. BIR Form No.0605 and eFPS payment confirmation receipt on November 28, 2019 (for Annexes "B" and "B-1");

3. SMRC's Proposal for Amicable Settlement dated July 25, 2019 or the Application for Compromise; and

4. Proof of approval of the majority of the National Evaluation Board (NEB) because the basic tax exceeds 1 million pesos; and

5. Certificate of Availment (CA) signed by the Commissioner of Internal Revenue pursuant to Revenue Memorandum Order No. 003-17.

On July 10, 2020, the Court noted SM_Residences Corp. (SMRC)'s Compliance, as to its submission of the original copies of the notarized Secretary's Certificate as proof of the authority of Ms. Cecilia R. Patricio to enter into Judicial Compromise Agreement, BIR Form No. 0605 and eFPS payment confirmation receipt on November 28, 2019, and SMRC's Proposal for Amicable Settlement dated July 25, 2019 or the Application for Compromise.

On July 27, 2020, the Court noted the "Ex-Parte Manifestation" filed by the CIR on July 14, 2020.

On September 22, 2020, the resolution of the said Joint Motion was again held in abeyance and the Court ordered both parties to submit, in a form of Compliance, the original or certified true copies of the following documents:

1. Proof of approval of the majority of the NEB because the basic tax exceeds one (1) million pesos; and

2. Certificate of Availment (CA) signed by the Commissioner of Internal Revenue pursuant to Revenue Memorandum Order No. 003-17.

On May 28, 2021, this Court noted the Compliance, *i.e,* submission of the Certificate of Availment (Compromise Agreement), filed by the CIR, *fr* through counsel, on November 18, 2020, as a partial Compliance to the September 22, 2020 Resolution. Both parties were given additional time to submit within thirty (30) days from receipt of the resolution to submit the original or certified true copies of the proof of approval of the majority of the NEB because the basic tax exceeds one (1) million pesos. The resolution of the parties' Joint Motion for Approval of Compromise Agreement was again held in abeyance.

On June 21, 2021, CIR, through counsel, filed his Compliance with the Court's Resolution dated May 28, 2021, submitting a certified true copy of the signature page of the Certificate of Availment showing the fact that the compromise agreement on the deficiency tax assessments covering taxable year 2009 of petitioner was approved by the NEB.

Upon perusal of the CIR's Compliance, this Court notes that the members of the NEB unanimously approved the Judicial Compromise Agreement.[1]

With the parties various Compliances and submission of supporting documents, the parties' Joint Motion for Approval of Compromise Agreement filed on January 22, 2020, is now submitted for judgment.

Hence, this judgment.

The parties' Compromise Agreement states that:

"JUDICIAL COMPROMISE AGREEMENT

KNOWN ALL MEN BY THESE PRESENTS:

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

SM_RESIDENCES CORP. ("TAXPAYER"), a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with principal business address at 15/F TwoE-Com Center, Harbor Drive, Mall of Asia Complex, Pasay City, represented by its authorized representative Ms. Cecilia R. Patricio;

- and -

The BUREAU OF INTERNAL REVENUE ("BIR"), with principal office at Bureau of Internal 9c

[1] *Rollo*, CTA EB No. 2189, p. 174.

Revenue, National Office Building, Agham Road, Diliman, Quezon City, represented by the Commissioner, HON. CAESAR R. DULAY (collectively, the "PARTIES");

-Witnesseth That -

WHEREAS, the BIR issued to the TAXPAYER a Formal Letter of Demand ("FLD") dated 26 February 2014 for the year 2009 assessing the Taxpayer alleged deficiency taxes for an aggregate amount of P39,345,258.25;

WHEREAS, the TAXPAYER then filed with the BIR its Protest dated 31 March 2014 disputing the FLD dated 26 February 2014;

WHEREAS, the BIR issued a FINAL DECISION ON IDSPUTED ASSESSMENT ("FDDA") dated 23 June 2016, which denied the Protest filed by the TAXPAYER and reiterating payment in the aggregate amount of P49,552,927.83;

WHEREAS, the TAXPAYER instituted an action against the BIR entitled "SM_Residences Corp. vs. Commissioner of Internal Revenue", docketed as CTA Case No. 9395, pending before the Honorable Special First Division of the Court of Tax Appeals ("CTA"), seeking the reversal of the FDDA, and the cancellation of the FLD;

WHEREAS, on 10 April 2019, the Special First Division of the Court of Tax Appeals rendered a Decision holding TAXPAYER liable for basic deficiency taxes in the aggregate amount of P5,359,893.12.

WHEREAS, the TAXPAYER has submitted to the BIR a Proposal for Amicable Settlement dated 25 July 2019 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[2], 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.[3]

WHEREAS, the PARTIES, for the purpose of avoiding and putting an end to a protracted, expensive and mutually prejudicial

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[2] Art. 2028. A compromise is a contract whereby the parties, by making reciprocal concessions, avoid litigation or put an end to one already commenced.

[3] Examples are ***Union Carbide Philippines (Far East), Inc., (Formerly Dow Chemical Philippines, Inc.) vs. Commissioner of Internal Revenue***, C.T.A. Case No. 6768 (23 May 2005); and **The Philippine American Life and General Insurance Company vs *Commissioner of Internal Revenue***, C.T.A. Case No. 8894 (27 April 2018).

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 P8,729,093.32 (Eight Million Seventy[4] *[sic]* Hundred Twenty Nine Thousand Ninety Three Pesos and Thirty Two Centavos)("Judicial Compromise Amount"), or 40% of the basic tax assessed per FDDA.

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. 9395. 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 FLD dated 26 February 2014 and FDDA dated 23 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, Ms. Cecilia R. Patricio, 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. 9395. 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. 9395 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. 9395.

Section 7. Disapproval of this Agreement by the Honorable CTA. In the event that this Agreement is disapproved by the Honorable CTA,

[4] Should be "Seven".

the PARTIES agree to a curing period of sixty (60) days from receipt of the Order/Resolution disapproving this Agreement. During such 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 the CTA Case No. 9395 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. 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.

SM_RESIDENCES CORP.	**BUREAU OF INTERNAL REVENUE**
By:	By:
[Signed] **CECILIA R. PATRICIO** Authorized Representative of SM_Residences Corp.	[Signed] **HON. CAESAR R. DULAY** *Commissioner*

gc

Witnesses:

_______________________ _______________________"

A compromise is a contract whereby the parties, by making reciprocal concessions, avoid litigation or put an end to one already commenced.[5]

The compromise agreement shall be subject to the limitations under Section 204 (A) of the National Internal Revenue Code (NIRC) of 1997, as amended,[6] as well as Section 6 of Revenue Regulations (RR) No. 30-2002,[7] as amended by RR No. 09-13.

In this case, SMRC has offered and the BIR has accepted the total payment of P8,729,093.32 ("Judicial Compromise Amount"), or 40% of the basic tax assessed per FDDA based on doubtful validity of the assessments pursuant to Section 204 (A) of the NIRC, as amended.

After a careful perusal of the subject Judicial Compromise Agreement and its supporting documents, this Court finds that the Judicial Compromise Agreement is not contrary to law, morals, public order and public policy. Hence, the Court approves the same.

WHEREFORE, the parties' Joint Motion for Approval of Compromise Agreement is **GRANTED**. The Judicial Compromise Agreement entered into by the parties is **APPROVED** and this Judgment Based on Compromise Agreement is hereby rendered in accordance

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[5] Article 2028 of the Civil Code of the Philippines.

[6] SECTION 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.** *(Emphases Supplied)*

[7] SECTION 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 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. *(Emphases Supplied)*

therewith. The parties are hereby enjoined to faithfully comply with all the terms and conditions of the aforesaid Judicial Compromise Agreement.

Accordingly, these consolidated cases are now **CLOSED AND TERMINATED**.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Judgment Based on Compromise Agreement were reached in consultation before the consolidated cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice