REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

BTICINO PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. **10674**

Members:

DEL ROSARIO, *P.J.*, *Chairperson,*
BACORRO-VILLENA, *and*
CUI-DAVID, *JJ.*

Promulgated:
OCT 11 2023; 9:00AM

x - x

JUDGMENT BASED ON COMPROMISE AGREEMENT

BACORRO-VILLENA, J.:

For the Court's resolution is the parties' "Joint Motion to Approve and Render Judgment Based on Compromise Agreement [**CA**]"[1] (**Joint Motion**) filed on 26 May 2023.

In a Resolution dated 11 July 2023 the Court noted the parties' submission of the Joint Motion and the following attachments to the CA, to wit:

...

1) Duly executed and signed Compromise Agreement;

2) Secretary's Certificate executed by petitioner authorizing a) Julien Garraud; b) Cristine Saclay; c) Neonel Nuñez; d) the law firm of SyCip Salazar Hernandez and Gatmaitan; and/or e) any authorized representative of the law firm to sign the [CA] on petitioner's behalf;

[1] Division Docket, Volume II, pp. 805-848.

> 3) Copy of a written request for compromise rate of 10.44%;
>
> 4) Payment Form (BIR Form 0605); and,
>
> 5) Certificate of Availment showing approval of the [CA] by the National Evaluation Board.
>
> ...

However, the Court observed that the amount in the compromise offer was only equivalent to 10.4357% of the basic tax deficiency, lesser than the prescribed minimum required by Revenue Regulations (**RR**) No. 30-2002[2] as amended by RR No. 08-2004.[3] However, the CA is silent as to the reasons for the application of the lower compromise rate. The records are also devoid of any written request for a lower rate. Therefore, the Court held in abeyance the resolution of the parties' Joint Motion and instead ordered the following:

> ...
>
> **WHEREFORE**, in view of the foregoing, before the Court proceeds to resolve the parties' "*Joint Motion to Approve and Render Judgment Based on Compromise Agreement*" filed on 26 May 2023, they are **ORDERED** to **SUBMIT** the original or certified true copy of the written request for a lower compromise rate submitted and duly received by respondent Commissioner of Internal Revenue, within ten (10) days from receipt hereof.
>
> **SO ORDERED.**
>
> ...

On 31 July 2023, respondent filed a Compliance and submitted a certified true copy of petitioner's offer for a lower compromise rate as approved by the National Evaluation Board (**NEB**), citing the doubtful validity of the assessment (lack of authority of the revenue officers who conducted the assessment) as a ground for the application for a lower compromise rate pursuant to the provisions of Section 4 of RR No. 30-2002, as amended.[4]

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[2] 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.

[3] 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. 7-2000 and 30-2002.

[4] Sec. 4. *Prescribed Minimum Percentages of Compromise Settlement.* — ...
...

In light of petitioner's Compliance, the Court shall now proceed to act on the parties' CA wherein they have agreed to the following:

...

Now, Therefore, for and in consideration of the foregoing premises the Parties agree as follows:

1. **Full Settlement.**

To amicably settle and end CTA Case No. 10674, the Company has offered and paid, and the BIR has accepted, the total compromise amount of **Three Million Pesos (PhP3,000,000.00)** (the "**Compromise Amount**"), which is equivalent to approximately 10.4357% of the basic deficiency income tax assessment amounting to PhP2,303,916.65, and of the basic deficiency VAT assessment amounting to PhP696,083.35, broken down as follows:

Tax Type	**Basic Assessed Tax (PhP)**	**Compromise Amount (PhP)**
Income Tax	22,077,253.60	**2,303,916.65**
VAT	6,670,210.38	**696,083.35**
TOTAL	28,747,463.98	**3,000,000.00**

Attached as **Annexes C-1** and **C-2** are copies of the respective BIR Form 0605 (Payment Form), filed and paid via eFPS, covering the compromise settlement of the income tax and VAT assessments.

Upon approval of the Honorable CTA, the CIR recognizes the full satisfaction of the Assessment, including any alleged deficiency interest, surcharge, and other penalties thereon, and acknowledges that the Company no longer has any tax liability whatsoever based upon, arising from, or in connection with the Assessment or the Case.

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2. For cases of "doubtful validity" – A minimum compromise rate equivalent to forty percent (40%) of the basic assessed tax.

The taxpayer may, nevertheless, request for a compromise rate lower than forty percent (40%): Provided, however, that he shall be required to submit his request in writing stating therein the reasons, legal and/or factual, why he should be entitled to such lower rate: Provided, further, that for applications of compromise settlement based on doubtful validity of the assessment involving an offer lower than the minimum forty percent (40%) compromise rate, the same shall be subject to the prior approval by the NEB.

The herein prescribed minimum percentages shall likewise apply in compromise settlement of assessments consisting solely of increments, *i.e.*, surcharge, interest, etc., based on the total amount assessed.

...

2. **Submission to the Honorable Court of Tax Appeals.**

This Agreement shall be submitted for the approval of the CTA. The Parties undertake to perform any and all acts and submit and any and all documents required by the CTA to be able to render a judgment by way of compromise agreement in the said Case.

3. **Effectivity of the Agreement.**

This Agreement (except Section 5 hereof, which, for the avoidance of doubt, shall be effective upon execution of this Agreement by both Parties notwithstanding disapproval by the Honorable CTA) shall take effect and bind the Parties immediately upon approval of the Honorable CTA.

4. **Obligations of the Parties.**

(a) Upon the execution of this Agreement by both Parties, the CIR undertakes to deliver to the Company the Certificate of Availment and any and all documents as may be required by the Honorable CTA the rendition of a Judgment by Compromise Agreement in this Case.

(b) The Parties shall file with the CTA a joint manifestation and motion for the termination of the Case based on compromise.

5. **Disapproval of this Agreement.**

In the unlikely event that this Agreement is disapproved by the 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 any deficiency, defect or imperfection which caused the disapproval, and re-submit the rectified or corrected Agreement for approval of the CTA.

However, in case the deficiency, defect or imperfections is not or cannot be rectified or corrected within the said curing period, or this Agreement is still not approved by the CTA after it is rectified or corrected by the Parties, the Compromise Amount shall be deemed a tax credit which may be applied against internal revenue taxes for which the Company may be liable as allowed under existing rules and regulations.

6. **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.

7. **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 CTA for the immediate implementation and execution of the terms and conditions of this Agreement or the judgment or order of the CTA approving the same.

...

Upon review of the parties' CA and the documents submitted in support thereof, the Court finds the CA compliant with the provisions of the National Internal Revenue Code (**NIRC**) of 1997, as amended. The Court further finds that the grounds stated for the application of a lower compromise rate are compliant with the requirements of RR No. 30-2002, as amended.

In closing, however, the Court finds it necessary to give its observation anent Section 204(A) of the NIRC of 1997, as amended, provides for the authority of the Commissioner of Internal Revenue to compromise the payment of internal revenue taxes, which 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 (₱1,000,000) 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.**[5]

...

The law allows the compromise of internal revenue taxes if there is reasonable doubt as to the validity of the claim against the taxpayer, and the Commissioner of Internal Revenue (CIR) may accept an **offer with lower than the minimum statutory compromise rate of forty percent (40%)** provided that such is approved by the National Evaluation Board (NEB).

The Court notes that there is nothing in the NIRC of 1997, as amended, or its implementing rules, which provide for parameters or clear-cut guidelines on when a compromise rate lower than forty percent (40%) may be allowed or approved by the NEB. ***Sans* such parameters or guidelines in the law that the NEB must adhere to, the unfettered discretion granted to the NEB becomes susceptible to abuse, at the very least, or invites corruption, at its worse, to the prejudice of both the taxpayer and the government**. Illustratively, a ₱100.00 compromise amount involving a ₱1 Billion deficiency taxes would be considered lawful merely because the NEB has approved the same.

The foregoing noted insufficiency in the law is one that must be resolved by legislation, specifically by corresponding amendments to Section 204(A) of the NIRC of 1997, as amended.

WHEREFORE, the Court hereby **RESOLVES** to:

(1) **NOTE** petitioner's "Compliance" filed on 31 July 2023;

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5 Emphasis supplied.

(2) **GRANT** the parties' "Joint Motion to Approve and Render Judgment Based on Compromise Agreement" filed on 26 May 2023;

(3) **APPROVE** the Compromise Agreement entered into by the parties;

(4) **ENJOIN** the parties to faithfully comply with all the terms and conditions of the said Compromise Agreement;

(5) **CLOSE** and **TERMINATE** the case; and,

(6) **FURNISH** a copy of this Judgment to the Senate of the Philippines and the House of Representatives for their information and consideration, particularly on the propriety of introducing amendments to Section 204(A) of the National Internal Revenue Code of 1997, as amended.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

(On Official Business)
ROMAN G. DEL ROSARIO
Presiding Justice

LANEE S. CUI-DAVID
Associate Justice

ATTESTATION

I attest that the conclusions in the above Judgment Based on Compromise Agreement were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
1st Division Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Acting Chairperson's Attestation, it is hereby certified that the conclusions in the above Judgment Based on Compromise Agreement were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Acting Presiding Justice