

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

UNION CARBIDE PHILIPPINES
(FAR EAST), INC., (formerly
DOW CHEMICAL PHILIPPINES, INC.),
Petitioner,

C.T.A. CASE NO. 6768

- versus -

Members:

CASTAÑEDA, JR., *Chairman*
UY, and
PALANCA-ENRIQUEZ, JJ.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

Promulgated:

MAY 23 2005

Edy Palanca

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JUDGMENT

For consideration of this Court is the "Joint Motion to Approve Compromise Agreement" filed by both parties on February 2, 2005. The said Compromise Agreement was executed by petitioner and respondents, together with the Land Bank of the Philippines (LBP for brevity).

On April 6, 2005, We issued a Resolution ordering both petitioner and intervenor to submit their respective board resolutions and/or secretary's certificates showing the authority of their representatives to sign the subject motion and compromise agreement, within ten (10) days from receipt.

Meanwhile, action on the Joint Motion to Approve Compromise Agreement was held in abeyance.

Both petitioner and intervenor have complied, and the Joint Motion to Approve Compromise Agreement is now deemed submitted for resolution.

The Compromise Agreement is hereinbelow quoted in full as follows:

“COMPROMISE AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

This Compromise Agreement (“Agreement”) made and entered into by and among:

The **BUREAU OF INTERNAL REVENUE**, a government bureau under the Department of Finance, with principal office at the Bureau of Internal Revenue National Office Building, Agham Road, Quezon City, represented herein by its Commissioner, **GUILLERMO L. PARAYNO, JR.**, hereinafter referred to as the “BIR”;

UNION CARBIDE PHILIPPINES (FAR EAST), INC., formerly **DOW CHEMICAL PHILIPPINES, INC.**, a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal place of business at the 23rd Floor, 6750 Ayala Avenue, Makati City, Metro Manila, represented herein by its President, **CARLOS I. LANSANGAN**, hereinafter referred to as “UCPFE”;

- and -

The **LAND BANK OF THE PHILIPPINES**, a government financial institution organized and existing under the laws of the Republic of the Philippines, with principal office address at 1598 M.H. Del Pilar corner Dr. Quintos Streets, Intramuros, Manila, represented herein by its President and Chief Executive Office *[sic]*, **MARGARITO B. TEVES**, hereinafter referred to as “LBP.”

(UCPFE, LBP and the BIR are hereinafter collectively referred to as the “Parties”.)

WITNESSETH, that

WHEREAS, UCPFE is registered as a large taxpayer with the BIR;

WHEREAS, UCPFE alleges to have paid its tax obligations (value-added taxes and withholding taxes on compensation income, creditable income and final income) for the months of March, April and May 2002 to the BIR in the total amount of Thirty Three Million Thirteen Thousand Seven Hundred Ninety Eight and 34/100 Pesos (Php33,013,798.34) (hereinafter referred to as the "Taxes"), allegedly through LBP, an authorized agent bank of the BIR duly authorized to collect tax payments of taxpayers for and in behalf of the BIR, at LBP's East Avenue Branch located at the BIR National Office Building, Agham Road, Quezon City;

WHEREAS, UCPFE alleges to have paid the Taxes with crossed checks payable to "Bureau of Internal Revenue" and drawn on UCPFE's account at Citibank, N.A. (hereinafter, "Citibank"), which checks were numbered Nos. 1000000420, 1000000418, 1000000443, 1000000442, 1000000453, 1000000454, 1000000456, 1000000455, 1000000337 (hereinafter referred to as the "Checks");

WHEREAS, UCPFE's Checks were reportedly not credited by LBP to the account of the BIR and were fraudulently diverted to and deposited in the personal accounts of certain unscrupulous/fictitious persons in LBP's Binangonan, Rizal Branch;

WHEREAS, the BIR sent a Demand Letter dated 26 June 2003 and a Final Demand Notice dated 28 August 2003 to UCPFE, demanding payment of the Taxes, plus surcharges and interest, in the total amount of Fifty Seven Million Six Hundred Forty Thousand Four Hundred Twenty Five and 00/100 Pesos (Php57,640,425.00);

WHEREAS, UCPFE filed suit against the BIR to question its demand for payment of the Taxes, plus surcharges and interest, in the Court of Tax Appeals (hereinafter referred to as the "CTA"), entitled "*Union Carbide Philippines (Far East), Inc., formerly Dow Chemical Philippines, Inc. vs. Commissioner of Internal Revenue*", docketed as Case No. 6768;

WHEREAS, UCPFE alleges to have fully complied with its tax obligations for the months of March, April and May 2002;

WHEREAS, the parties wish to and have agreed to amicably settle the dispute between them relating to the Taxes;

WHEREAS, the Parties further acknowledge that taxes are the lifeblood of the country, its efficient and prompt collection is of imperious need; hence it is to the country's best interest and the parties' respective interests, that the present case be amicably settled promptly and speedily disposed of;

WHEREAS, LBP also wishes to amicably settle its obligations to UCPFE relating to the Taxes, and has offered to pay fifty percent (50%) of the amount of the Taxes to the BIR, following the case of "*Philippine Commercial International Bank vs. Court of Appeals and Ford Philippines*", 350 SCRA 446 (hereinafter referred to as the "Ford Case");

WHEREAS, the BIR also wishes to follow the Ford Case and intends to collect the other 50% of the Taxes from UCPFE's drawee bank, Citibank;

WHEREAS, the Parties have agreed that the BIR shall release UCPFE from its demand for payment of the Taxes, subject to UCPFE assigning its rights and causes of action against Citibank, relating to the alleged diversion of the Taxes, in favor of the BIR;

NOW, THEREFORE, for and in consideration of the foregoing premises, and the mutual covenants herein obtained, the Parties hereby agree as follows:

1. PAYMENT

LBP, upon approval by the court of this Agreement, shall deliver to the BIR the amount of PESOS: Sixteen Million Five Hundred Six Thousand Eight Hundred Ninety Nine and 17/100 (Php16,506,899.17) (representing half of the principal amount of the Taxes amounting to Php33,013,798.34 subject of the present case), which both the BIR and UCPFE hereby acknowledge to be LBP's full and final settlement of whatever claim either of them may

have against it in connection with the fraudulent diversion of the Taxes.

2. ASSIGNMENT OF CAUSES OF ACTION

2.1 UCPFE hereby assigns, transfers and conveys, in favor of the BIR, all causes of action that UCPFE may have against Citibank in connection with or relating to the clearing of and Citibank's payment on the Checks after they were allegedly diverted to and deposited in certain fictitious accounts in LBP's Binangonan, Rizal Branch, and the alleged diversion of the Taxes (hereinafter referred to as the "Assigned Causes of Action").

2.2 The BIR agrees that if it shall ever file suit against Citibank or any other third parties, it shall not mention the name of Union Carbide Philippines (Far East), Inc., Dow Chemical Philippines, Inc., "Union Carbide", "Dow" or any other related name in the caption of the complaint, petition or other pleading.

2.3 This assignment of rights is intended by UCPFE as an accommodation to the BIR in exchange for the BIR releasing UCPFE from its demand for payment of the Taxes. It should not be construed as limiting or precluding in any way the exercise by UCPFE of any and all rights to protect and defend itself from actions, liability and claims by any party in connection with the payment of the Taxes.

2.4 LBP and UCPFE hereby respectively undertake to render the necessary assistance to the BIR, in the form of sharing relevant evidence, documentary or otherwise, necessary for the BIR to pursue the Assigned Causes of Action against Citibank.

3. RELEASE/WAIVER

3.1. The BIR hereby forever releases, waives, discharges and quitclaims UCPFE and LBP, completely and unconditionally, from any and all claims, rights, demands and causes of action whatsoever in connection with the Taxes and any obligation therefor, as well as any other matter in relation thereto, regardless of whether or not the BIR is able to recover the Taxes or related amounts or damages from Citibank and/or third parties.

3.2 UCPFE forever releases, waives, discharges and quitclaims LBP, completely and unconditionally, from any

and all claims, rights, demands and causes of action whatsoever in connection with the Checks.

4. AUTHORITY

4.1 UCPFE, the BIR and LBP hereby represent and warrant to each other that they have the requisite authority and power to enter into this Agreement and that the persons representing them in this Agreement have been duly authorized and appointed to represent them.

4.2 UCPFE, the BIR and LBP hereby represent and warrant to each other that this Agreement, when executed and delivered by them, shall constitute their valid and binding obligations and may be enforced against them according to its terms and conditions.

5. WAIVER AND SEVERABILITY

5.1 No failure or delay by any Party in exercising any right, power or remedy under this Agreement will impair such right, power or remedy or operate as a waiver thereof, nor will any single or partial exercise of the same preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

5.2 The rights, powers and remedies provided herein are cumulative and do not exclude any other rights, powers and remedies provided by law.

5.3 If at any time any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect, the legality, validity and enforceability of the remaining provisions of this Agreement will not be affected or impaired thereby.

6. FURTHER ASSIGNMENT

The BIR shall not assign its rights and obligations under this Agreement without the prior written consent of UCPFE.

7. FURTHER ACTS AND DEEDS

Each Party agrees, at the request of any other Party, at any time and from time to time after the date hereof, to execute and deliver all such further documents, and to take all such action as may be reasonably necessary or appropriate in

order to more effectively pursue the intention of this Agreement or otherwise to confirm or carry out the provisions of this Agreement.

8. BINDING EFFECT

8.1 This Agreement shall be binding upon, and shall benefit and be enforceable by, each Party and their respective successors and assigns.

8.2 The Parties hereby acknowledge that the execution of this Agreement shall be without prejudice to the criminal liability of the persons ultimately responsible for the fraudulent diversion and encashment of the Checks subject hereof.

9. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the law of the Philippines.

IN WITNESS WHEREOF, the Parties have hereunto set their hands on ____ May 2004 in Quezon City, Metro Manila.

BUREAU OF INTERNAL REVENUE

Represented by:

(Signed)

Name: Guillermo L. Parayno, Jr.

Position: Commissioner

Date ____ May 2004

LAND BANK OF THE PHILIPPINES

Represented by:

(Signed)

Name: Margarito B. Teves

Position: President/Chief Executive Officer

Date: ____ May 2004

UNION CARBIDE PHILIPPINES (FAR EAST), INC.
(formerly DOW CHEMICAL PHILIPPINES, INC.)

Represented by:

(Signed)
Name: Carlos I. Lansangan
Position: President
Date 11 May 2004

Respectively assisted by:

(Sgd.) **ATTY. PABLO M. BASTES, JR.**
Counsel for the BIR

(Sgd.) **ATTY. REYNAULD R. VILLAFUERTE**
Counsel for LBP

(Sgd.) **RAMON J. QUISUMBING**
Counsel for UCPFE”

WHEREFORE, finding the Compromise Agreement not contrary to law, morals, public order and public policy, the same is hereby approved and judgment is hereby rendered based therein.

The parties are thus enjoined to faithfully comply with all the terms and conditions of the aforesaid compromise agreement.

SO ORDERED.

(On leave)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

We concur:


ERLINDA P. UY
Associate Justice


OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

I hereby certify that this judgment was reached after due consultation among the members of this Division in accordance with the provisions of Section 13, Article VIII of the Constitution.



ERLINDA P. UY
Senior Associate Justice