REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

ZMG WARD HOWELL, INC., *Petitioner,*	**CTA Case No. 10657** Members:
- versus -	**MANAHAN**, *Chairperson,* **REYES-FAJARDO**, and **ANGELES**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: NOV 14 2024 4:14 p.m.

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JUDGMENT BY COMPROMISE AGREEMENT

REYES-FAJARDO, *J.*:

On July 29, 2024, a Compromise Agreement (CA)[1] was executed by and between petitioner's authorized representative, and respondent, which is hereby reproduced in *verbatim*:

COMPROMISE AGREEMENT

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

> **ZMG WARD HOWELL, INC.** (the "**TAXPAYER**"), a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with principal address at 5/F The Athenaeum Bldg., 160 Leviste Street, Salcedo Village, Makati City, represented by Chief Financial Officer, **HERNAN C. SARIGAN;**

- and -

[1] Annex "C," the parties' Joint Motion to Render Judgment Based on Compromise Agreement. Docket, pp. 988-996. Footnotes omitted.

The **BUREAU OF INTERNAL REVENUE** (the "**BIR**"), with principal office at Bureau of Internal Revenue, 511 National Office Building, Sen. Miriam Defensor-Santiago Road, Diliman, Quezon City, represented by the **Commissioner of Internal Revenue (CIR), HON. ROMEO D. LUMAGUI, JR.** (collectively, the "**PARTIES**");

- Witnesseth That -

WHEREAS, the **TAXPAYER** received the BIR's Formal Letter of Demand (FLD) in which the Regional Director of BIR, Revenue Region (RR) No. 8A, requested the **TAXPAYER** to pay its alleged deficiency income tax (IT), valued-added tax (VAT), expanded withholding tax (EWT), withholding tax on compensation (WTC), fringe benefits tax (FBT), documentary stamp tax (DST), and improperly accumulated earnings tax (IAET) for TY 2016 in the total amount of Php75,238,636.78, inclusive of surcharge, interest, and compromise penalty.

WHEREAS, on February 13, 2020, the **TAXPAYER** filed with the BIR, RR No. 8A its protest, by way of a request for reinvestigation, against the FLD (the "Protest") in which the **TAXPAYER** disputed the **BIR's** deficiency IT, VAT, EWT, WTC, FBT, DST[,] and IAET for TY 2016 in the total amount of Php75,238,636.78 and prayed for the cancellation and withdrawal thereof.

WHEREAS, on September 30, 2021, the **TAXPAYER** received the Final Decision on Disputed Assessment (FDDA) dated September 28, 2021. In his FDDA, the **BIR**, denied and reiterated the deficiency tax assessments against the **TAXPAYER** for IT, VAT, EWT, WTC, FBT, DST[,] and IAET for TY 2016 in the total amount of Php86,428,200.56, inclusive of surcharge, interest, and compromise penalty[,] computed as follows:

Tax Type	Basic Tax	Interest	Surcharge	Total
IT	15,977,489.64	9,773,846.26		25,751,335.90
VAT	28,039,072.38	18,381,340.38		46,420,412.76
EWT	2,387,911.40	1,578,507.57		3,966,418.97
WTC	773,733.63	511,469.73		1,285,203.36
FBT	2,784,544.47	1,840,698.33	696,136.12	5,321,378.92
DST	73,811.00	49,196.54	18,452.75	141,460.30
IAET	2,004,604.40	931,234.85	501,151.10	3,436,990.35
MC	105,000.00			105,000.00
TOTAL				86,428,200.56

WHEREAS, on October 29, 2021, the **TAXPAYER** instituted an action against the **BIR** entitled "**SMG WARD HOWELL, INC. vs. COMMISSIONER OF INTERNAL REVENUE**", docketed as CTA Case No. 10657, before the First Division of the Court of Tax Appeals ("**CTA**"), seeking the cancellation and withdrawal of the

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assessment for the alleged deficiency [IT], VAT, EWT, WTC, FBT, DST[,] and IAET for TY 2016 in the total amount of Php86,428,200.56, inclusive of surcharge, interest, and [compromise penalty].

WHEREAS, on April 18, 2022, the CTA promulgated a Resolution in which the CTA referred the case to mediation in the Philippine Mediation Center - Court of Tax Appeals ("PMC-CTA") pursuant to Section 2, Interim Guidelines for Implementing Mediation in the Court of Tax Appeals.

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 the Supreme Court, and pertinent laws and issuances on judicial compromise without contravening laws, morals, public order, and public policy.

WHEREAS, in the course of the mediation proceedings before the PMC-CTA, the **PARTIES** have agreed to amicably settle this case upon the **TAXPAYER's** payment of the compromise amount of **Php8,049,597.22**, which represents 10% of the assessed basic taxes, excluding withholding taxes which were subjected to a compromise rate at 100% of the assessed basic taxes, in compliance with Section 204(A), National Internal Revenue Code, as amended, and Revenue Regulations No. 30-2002.

WHEREAS, the Honorable CTA has issued rulings allowing judicial compromises similar to the instant case.

WHEREAS, the **BIR** evaluated the **TAXPAYER's** proposal for amicable settlement and believes that a compromise would allow immediate tax collection and also put an end to litigation as provided in the Civil Code of the Philippines, and serve the interest of the Government.

WHEREAS, on October 26, 2022, the **TAXPAYER** has remitted and paid to the BIR[,] the total amount of Php8,049,597.22[,] as evidenced by:

1. Payment Form (BIR Form No. 0605) filed on October 26, 2022 with EFPS Filing Reference No. 292200050428843, covering the **TAXPAYER's** payment of Php1,597,748.96, representing ten percent (10%) of the basic deficiency IT assessment for TY2016;

2. Payment Form (BIR Form No. 0605) filed on October 26, 2022 with EFPS Filing Reference No. 292200050428914, covering the **TAXPAYER's** payment of Php2,803,907.24, representing ten percent (10%) of the basic deficiency VAT assessment for TY 2016;

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3. Payment Form (BIR Form No. 0605) filed on October 26, 2022 with EFPS Filing Reference No. 292200050429001, covering the **TAXPAYER's** payment of Php2,387,911.40, representing one hundred percent (100%) of the basic deficiency EWT assessment for TY 2016;

4. Payment Form (BIR Form No. 0605) filed on October 26, 2022 with EFPS Filing Reference No. 292200050429060, covering the **TAXPAYER's** payment of Php773,733.63, [representing] one hundred percent (100%) of the basic deficiency WTC assessment for TY 2016;

5. Payment Form (BIR Form No. 0605) filed on October 26, 2022 with EFPS Filing Reference No. 292200050429128, covering the **TAXPAYER**'s payment of Php278,454.45, representing ten percent (10%) of the basic deficiency FBT assessment for TY 2016;

6. Payment Form (BIR Form No. 0605) filed on October 26, 2022 with EFPS Filing Reference No. 292200050429167, covering the **TAXPAYER's** payment of Php7,381.10, representing ten percent (10%) of the basic deficiency DST assessment for TY 2016; and

7. Payment Form (BIR Form No. 0605) filed on October 26, 2022 with EFPS Filing Reference No. 292200050429215, covering the **TAXPAYER's** payment of Php200,460.44, representing ten percent (10%) of the basic deficiency IAET assessment for TY 2016;

WHEREAS, the **PARTIES**, ensure that the terms of the amicable settlement as contained in this **Agreement** do not circumvent the limitations provided in Section 204 of the National Internal Revenue Code on administrative compromise proceedings.

WHEREAS, the **PARTIES,** for the purpose of avoiding and putting an end to a protracted, expensive, and mutually prejudicial 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 paid, and that the **BIR** has accepted the total payment of **Php8,049,597.22** that the **TAXPAYER** has paid to the BIR on October 26, 2022 (the **"Judicial Compromise Amount")**.

This amount is broken down as follows:

TAX TYPE	BASIC DEFICIENCY TAX AMOUNT	OFFER	RATE
IT	15,977,489.64	1,597,748.96	10%
VAT	28,039,072.38	2,803,907.24	10%
EWT	2,387,911.40	2,387,911.40	100%
WTC	773,733.63	773,733.63	100%
FBT	2,784,544.47	278,454.45	10%
DST	73,811.00	7,381.10	10%
IAET	2,004,604.40	200,460.44	10%
TOTAL	**52,041,166.92**	**8,049,597.22**	

Section 2. Submission to the Honorable CTA. This Agreement fully signed by the **PARTIES** shall be submitted for the approval of the Honorable Court of Tax Appeals in CTA Case No. 10657. 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, including[,] but not limited to, the **Authority to Cancel Assessment**[,] withdrawing and cancelling the FDDA dated September 28, 2021.

Section 5. Authority to Enter Compromise Agreement. The **BIR**, through **COMMISSIONER ROMEO D. LUMAGUI, JR.**, 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**, through **HERNAN C. SARINGAN**, 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. 10657. Upon approval by the Honorable CTA, the **BIR** recognizes the full satisfaction of the supposed tax liability of the **TAXPAYER** in connection with CTA Case No. 10657

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and acknowledges that the **TAXPAYER** no longer has any tax liability whatsoever based upon, arising from, or in connection with the TY 2016 Assessment.

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, subject to extension, 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 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 Bureau of Internal Revenue shall be deemed a tax credit which may be applied against the 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. 10657 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. Nullification of this Agreement by the Honorable Supreme Court. In the event that this **Agreement** is later nullified by the Honorable Supreme Court, the **PARTIES** likewise agree to a curing period of sixty (60) days, from receipt of the Order/Resolution nullifying 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 nullification, and re-submit the rectified or corrected Agreement for approval of the Honorable Supreme Court. In case the deficiency, defect or imperfection, however, is not or cannot be rectified or corrected within the said curing period, or still not approved by the Honorable Supreme Court after it is rectified or corrected:

1. The amount insofar 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, or be applied for a tax refund, as allowed under existing rules and regulations; and

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2. The proceedings of CTA Case No. 10657 shall continue and the discussions pursuant to the disapproved Agreement cannot be used by the **PARTIES** in said proceeding unless consent of the other party be obtained.

Section 9. 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 10. 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 11. Signature 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, for consideration and approval of the Honorable Court.

ZMG WARD HOWELL, INC.,
Petitioner/TAXPAYER

By:

(Sgd.)
HERNAN C. SARIGAN
Authorized Representative

COMMISSIONER OF INTERNAL REVENUE
Respondent/CIR

By:

(Sgd.)
HON. ROMEO D. LUMAGUI, JR.
Commissioner of Internal Revenue

By their Joint Motion to Render Judgment Based on Compromise Agreement filed on August 12, 2024, the parties move for the approval of said CA, and for the Court to render a decision based on the approved CA.

RULING

We stamp our imprimatur on the parties' CA.

Republic of the Philippines v. Heirs of Cruz, et al.[2] decreed that "[b]efore approving a compromise, courts are bound to strictly scrutinize the same to ensure that the compromise *and* its execution are compliant with the law and consistent with procedural rules." In this regard, Section 204(A) of the 1997 National Internal Revenue Code (NIRC), as amended, reads:

> **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.
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> 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.

To secure approval of said CA, the following requisites must be present: *one,* the authority of the parties' themselves, or their representatives to enter into compromise agreement;[3] *two,* the compromise must be based on doubtful validity of the government's

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2 G.R. No. 208956, October 17, 2018.

3 Article 1317 of Republic Act No. 386, or the Civil Code, states that no one may contract in the name of another without being authorized by the latter.

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claim against the taxpayer (doubtful validity); or financial incapacity of the latter (financial incapacity); *three,* the subject matter being compromised is *not* prohibited by law, or by its implementing rules and regulations;[4] *four,* payment of the compromise amount, *i.e.,* at least 40% of the basic tax/es for doubtful validity; or at least 10% of the basic tax/es for financial incapacity; and *five,* approval[5] of the National Evaluation Board (NEB), if: (a) the compromise amount is less than the prescribed minimum rates; or (b) basic tax/es assessed exceeds ₱1,000,000.00. These requisites were met. Consider:

First. The persons who executed said CA were properly clothed with authority to do so. To be precise, Hernan C. Saringan's authority to compromise on petitioner's behalf, is based on the notarized Secretary's Certificate dated June 6, 2024,[6] whereas respondent's authority to compromise internal revenue taxes is conferred by Section 204(A) of the NIRC, as amended.

Second and Third. Records reveal that the BIR issued a Preliminary Assessment Notice (PAN) (Part I)[7] dated December 4, 2019, containing the proposed tax assessment for TY 2016, with the following basic taxes:

Tax Type	Amount
IT	₱15,977,489.64
VAT	28,039,072.38
EWT	2,387,911.40
WTC	773,733.63
FBT	2,784,544.47
DST	73,811.00
IAET	2,004,604.40

Petitioner protested the PAN through a Letter dated December 23, 2019.[8] Yet, the Formal Letter of Demand (FLD) dated January 14, 2020 and Details of Discrepancies,[9] side by side with the Final Assessment Notices[10] for IT, VAT, EWT, WTC, FBT, DST, and IAET reflect the very same amount of basic taxes stated in the PAN. Notably, there was no indication that the BIR informed petitioner

4 Article 1409 of the Civil Code provides that contracts contrary to law are void.
5 See Section 6, RR No. 30-2002.
6 Annex "D," parties' Joint Motion to Render Judgment Based on Compromise Agreement. Docket, p. 1011.
7 Docket, pp. 96-105.
8 *Id.* at pp. 106-120.
9 *Id.* at pp. 121-130.
10 *Id.* at pp. 131-138.

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why its defenses set forth in its Reply on the PAN are without merit. Indeed, respondent is not obliged to accept the taxpayer's defenses. However, when respondent refuses to subscribe on those defenses, it must give reason for doing so. As there was none, it would seem that respondent violated petitioner's right to due process on assessment, thereby casting doubt as to the claim of the government against the taxpayer. *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*[11] ordained:

> It is true that the Commissioner is not obliged to accept the taxpayer's explanations, as explained by the Court of Tax Appeals. However, when he or she rejects these explanations, he or she must give some reason for doing so. He or she must give the particular facts upon which his or her conclusions are based, and those facts must appear in the record.
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> Indeed, the Commissioner's inaction and omission to give due consideration to the arguments and evidence submitted before her by [the taxpayer] are deplorable transgressions of [the taxpayer]'s right to due process. The right to be heard, which includes the right to present evidence, is meaningless if the Commissioner can simply ignore the evidence without reason.

Said observation, too, would fall under one of the instances where compromise may be accepted. Section 3(1)(f) of RR No. 30-2002 confirmed:

> SEC. 3. Basis For Acceptance of Compromise Settlement. - ...
>
> 1. Doubtful validity of the assessment. — The offer to compromise a delinquent account or disputed assessment under these Regulations on the ground of reasonable doubt as to the validity of the assessment may be accepted when it is shown that:
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> ...
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> (f) The assessments were issued on or after January 1, 1998, where the demand notice allegedly failed to comply with the formalities prescribed under Sec. 228 of the National Internal Revenue Code of 1997 ...

Fourth and Fifth. In the BIR's FLD/FAN, the total basic taxes found against petitioner for TY 2016 amounted to ₱52,041,166.92.

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11 G.R. Nos. 201398-99, October 3, 2018.

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Meanwhile, petitioner offered, and the BIR accepted, the compromise amount of ₱8,049,597.22, detailed as follows:

TAX TYPE	BASIC DEFICIENCY TAX AMOUNT	COMPROMISE AMOUNT	RATE
IT	15,977,489.64	1,597,748.96[12]	10%
VAT	28,039,072.38	2,803,907.24[13]	10%
EWT	2,387,911.40	2,387,911.40[14]	100%
WTC	773,733.63	773,733.63[15]	100%
FBT	2,784,544.47	278,454.45[16]	10%
DST	73,811.00	7,381.10[17]	10%
IAET	2,004,604.40	200,460.44[18]	10%
TOTAL	**52,041,166.92**	**8,049,597.22**	

Considering that the compromise amount for IT, VAT, FBT, DST, and IAET are less than the prescribed minimum rate, *i.e.,* at least 40% of the basic tax assessed, approval of the NEB is indispensable. This approval was secured, as evidenced by the Certificate of Availment (Compromise Settlement) dated July 29, 2024,[19] along with the Judicial Compromise Offer,[20] showing that the NEB unanimously accepted petitioner's compromise offer.

ACCORDINGLY, the parties' Joint Motion to Render Judgment Based on Compromise Agreement filed on August 12, 2024, is **GRANTED**. The Compromise Agreement executed on July 29, 2024, by and between petitioner, as represented by Hernan C. Sarigan, and respondent is **APPROVED**. CTA Case No. 10657 is **DECLARED CLOSED** and **TERMINATED**.

SO ORDERED.

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

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12 Docket, pp. 997-998.
13 *Id.* at pp. 999-1000.
14 *Id.* at pp. 1001-1002.
15 *Id.* at pp. 1003-1004.
16 *Id.* at pp. 1005-1006.
17 *Id.* at pp. 1007-1008.
18 *Id.* at pp. 1009-1010.
19 Annex "A," parties' Joint Motion to Render Judgment Based on Compromise Agreement. Docket, p. 986.
20 Annex "B," parties' Joint Motion to Render Judgment Based on Compromise Agreement. *Id.* at p. 987.

WE CONCUR:

CATHERINE T. MANAHAN
Associate Justice

HENRY S. ANGELES
Associate Justice

ATTESTATION

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

CATHERINE T. MANAHAN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the Judgment by Compromise Agreement 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