REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

ZEST-O CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9489

Members:

CASTAÑEDA, JR., *Chairperson, and*
BACORRO-VILLENA, *JJ.*

Promulgated:
OCT 07 2020
9:50 a.m.

x -x

JUDGMENT BASED ON COMPROMISE AGREEMENT

CASTAÑEDA, JR., *J.*:

For this Court's resolution are the following:

1. parties' **Joint Motion for Approval of Compromise Agreement**, filed on December 17, 2018; and

2. petitioner's **Compliance**, filed through registered mail on August 19, 2020 and received by this Court on August 20, 2020.

On October 26, 2016, petitioner filed a Petition for Review, praying for the cancellation of its deficiency income tax, value added tax, deficiency documentary stamp tax and compromise penalty for taxable year ending December 31, 2011, in the following amounts[1]:

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[1] As found in the Final Decision on Disputed Assessment under FDDA-IT/VT/DS-116-LOA-00000110-11-15-2169/2170/2171 dated January 20, 2016 attached in the Petition for Review as Annex "D", docket, vol. I, pp. 60-66.

	Basic Tax	Interest	Compromise Penalty	Total
I. Income Tax Deficiency	P 54,354,686.02	P 41,249,994.60	P 51,000.00	P 95,655,680.62
II. Value-Added Tax Deficiency	75,539,534/03	60,679,976.38	125,000.00	136,344,510.41
III. Documentary Stamp Tax Deficiency	4.627.00	3,770.05	1,000.00	9,397.05
IV. Compromise penalty	0.00	0.00	50,000.00	50,000.00
Total Deficiency Taxes	P 129,898,847.05	P101,933,741.03	P 227,000.00	P 232,059,588.08

On December 17, 2018, both parties filed their **Joint Motion for Approval of Compromise Agreement**, attaching thereto the Judicial Compromise Agreement.[2]

Subsequently, the Court issued a Resolution dated January 17, 2019, giving the parties fifteen days to submit supporting documents.[3]

In compliance with the above Resolution, the parties filed their **Joint Manifestation with Motion** on February 4, 2019, attaching thereto the original copy of the Secretary's Certificate and Board Resolution as proof of authority of petitioner's signatory.[4]

The Court noted the parties' **Joint Manifestation** in a Resolution dated March 8, 2019 and gave petitioner a period of ten days to submit the National Evaluation Board (NEB) Approval and any other document supporting the approval of the subject compromise.[5]

However, in a Resolution dated February 18, 2020, the Court denied the parties' **Joint Motion for Approval of Compromise Agreement**, due to petitioner's failure to submit the required documents despite the grant of several extensions of time to file the same.[6]

Thereafter, respondent filed his Compliance on February 21, 2020, submitting the certified true copies of the documents showing the fact that the subject compromise agreement on the deficiency tax assessments of petitioner for taxable year 2011 was approved by the

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[2] Docket, vol. I, pp. 461-478.
[3] Docket, vol. I, pp. 481-483.
[4] Docket, vol. I, pp. 484-490.
[5] Docket, vol. I, pp. 492-493.
[6] Docket, vol. II, pp. 535-536.

NEB.[7] On the other hand, petitioner manifested that they sufficiently complied with the requirements of the Court to merit the approval of the resolution of the parties' joint motion, and submitted photocopies of the Certificate of Availment showing the approval of the NEB, authority of its president to enter into a compromise, and proof of payment of the compromise amount.[8]

In the June 30, 2020 Resolution, the Court noted respondent's Compliance and petitioner's manifestation and treated these as motions for reconsideration of the Resolution dated February 18, 2020. In the same Resolution, the Court required the parties to submit the original or certified true copies of the complete proof of payment of the compromised amount.

Pending the submission of the original or certified true copies of the complete proof of payment of the compromised amount, the resolution of the parties' Joint Motion for Approval of Compromise Agreement was held in abeyance.

Petitioner later filed by registered mail its Compliance on August 19, 2020, attaching the certified true copies of the following proof of payment:

Type of Tax	**Document**	**Date**	**Amount**
Income Tax *(representing 40% of the basic tax)*	Payment Form 0605 eFPS reference no. 291700020167367	May 26, 2017	₱21,741,874.20
Income Tax *(representing additional 20% of the basic tax)*	Payment Form 0605 eFPS reference no. 291900032675550	October 18, 2019	₱10,895,938.20
Value Added Tax *(representing 40% of the basic tax)*	Payment Form 0605 eFPS reference no. 291700020167185	May 26, 2017	₱30,215,813.60
Value Added Tax *(representing additional 20% of the basic tax)*	Payment Form 0605 eFPS reference no. 291900032675602	October 18, 2019	₱15,107,906.80
Compromise Penalty	Payment Form 0605 eFPS reference no. 291700020167388	May 26, 2017	₱50,000.00
Documentary	Payment Form 0605	February 15, 2017	₱9,397.05

[7] Docket, vol. II, pp. 537-542.
[8] Docket, vol. II, pp. 543-563

Stamp Tax	eFPS reference no. 291700018797673		

Petitioner's Compliance is hereby **NOTED**.

Considering the submission of the above documents in support of the judicial compromise, and in the interest of substantial justice, the Court reconsiders its Resolution dated February 18, 2020 which denied the parties' Joint Motion for Approval of Compromise Agreement.

Accordingly, the Court shall now resolve the parties' Joint Motion for Approval of Compromise Agreement based on the supporting documents submitted by the parties.

The Compromise Agreement partly reads:

xxx xxx xxx

> **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. Additional Compromise Amount**. In order to settle the above-mentioned case, the **TAXPAYER** has offered and the **BIR** has accepted the **additional amount equivalent to fifty percent (50%)** of the **Initial Compromise Amount**, resulting in the **Total Compromise Amount of Seventy Eight Million Eleven Thousand Five Hundred Thirty One and Eighty Centavos (Php78,011,531.80)** ("**Total Compromise Amount**").
>
> This amount includes the **Initial Compromise Amount** of **Fifty Two Million Seven Thousand Six Hundred Eighty Seven Pesos and Eighty Centavos**

(Php52,007,687.80), previously paid to the **BIR** and receipt of which is duly acknowledged, and the additional compromise amount of **Twenty Six Million Three Thousand Eight Hundred Forty Five pesos (Php26,003,845.00)**, to be paid to the **BIR** (the **"Additional Compromise Amount"**), equivalent to fifty percent (50%) of the **Initial Compromise Amount**.

This amount is broken down as follows:

Income Taxes Initial Compromise Amount	₱	21,741,874.20
VAT Taxes Initial Compromise Amount		30,215,813.60
Compromise Fees		50,000.00
Total Initial Compromise Amount		52,007,687.80
Additional Compromise (52,007,687.80x.50)		26,003,845.00
Total Compromise Amount		**₱78,011,531.80**

xxx xxx xxx

Section 3. Effectivity of the Agreement. This **Agreement** shall only take effect and bind the **PARTIES** upon final 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 Taxpayer undertakes to submit to the **BIR** the **Judicial Compromise Amount**. Upon receipt of the **Judicial Compromise Amount**, 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 **FDDA** dated January 20, 2016 and all other related documents.

Section 5. Authority to Enter Compromise Agreement. The **BIR**, through Commissioner Caesar R. Dulay, warrants that he has the necessary authority and capacity by virtue of Section 7 (c) in relation to Section 204 of the National Internal Revenue Code to enter, sign, and execute this Agreement, and to deliver the necessary

> implementing documents upon its approval of the Honorable CTA.
>
> The BIR litigation team has the authority to facilitate the judicial compromise agreement by virtue of the Special Power of Attorney submitted for the purpose of the Pre-Trial Conference in CTA Case No. 9489.
>
> The **TAXPAYER**, through its President, **Alfredo Yao**, similarly warrants that he 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.
>
> In addition, the lawyers of the Taxpayer has the authority to consider, negotiate, and facilitate an amicable settlement with the BIR by virtue of the Board Resolution issued by the Taxpayer dated 24 October 2016.
>
> **Section 6. Full and Final Settlement.** This Agreement is executed by the **PARTIES** for the purpose of amicably settling and ending CTA Case No. 9489. Upon performance by the **TAXPAYER of its obligations under Section 4 hereof, the BIR** recognizes the full satisfaction of the supposed tax liability of the **TAXPAYER** in connection with CTA Case No. 9489 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. 9489.
>
> xxx xxx xxx[9]

Under the Civil Code and in the Revised Rules of Court, courts are directed to persuade litigants in civil cases to agree upon some fair compromise. Such agreement has the force of law and is conclusive between the parties.[10]

[9] Judicial Compromise Agreement, docket, vol. I, pp. 468-474.
[10] *Viesca vs. Gilinsky*, G.R. No. 171698, July 4, 2007.

A compromise agreement is a contract whereby the parties make reciprocal concessions in order to resolve their differences and, thus, avoid or put an end to a lawsuit. They adjust their difficulties in the manner they have agreed upon, disregarding the possible gain in litigation and keeping in mind that such gain is balanced by the danger of losing. It must not be contrary to law, morals, good customs and public policy, and must have been freely and intelligently executed by and between the parties. A compromise agreement may be executed in and out of court. Once a compromise agreement is given judicial approval, however, it becomes more than a contract binding upon the parties. Having been sanctioned by the court, it is entered as a determination of a controversy and has the force and effect of a judgment[11].

In this regard, Section 204 (A) of the National Internal Revenue Code of 1997 (1997 NIRC) provides that for cases other than financial incapacity, the minimum compromise rate is forty percent (40%) of the basic assessed tax. And in case the basic tax exceeds P1,000,000.00 or where the settlement offered is less than the said prescribed minimum rates, the compromise must be approved by the Evaluation Board, which is composed of respondent and the four (4) Deputy Commissioners of the BIR.

Relative thereto, Section 6 of Revenue Regulations (RR) No. 30-2002, as last amended by RR No. 9-2013, provides:

> "SEC. 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.
>
> xxx xxx xxx
>
> The compromise offer shall be paid by the taxpayer upon filing of the application for compromise

[11] *David M. David vs. Federico M. Paragas, Jr.,* G.R. No. 176973, February 25, 2015.

> settlement. No application for compromise settlement shall be processed without the full settlement of the offered amount. In case of disapproval of the application for compromise settlement, the amount paid upon filing of the aforesaid application shall be deducted from the total outstanding tax liabilities."

Based from the foregoing, a compromise settlement falling within the jurisdiction of the NEB is valid if the same was approved by a majority of all the members of the NEB, and that there was a full settlement of the offered amount.

Considering the Judicial Compromise Agreement[12] submitted by the parties, the Certificate of Availment (Compromise Settlement), certifying that petitioner's application for compromise settlement of deficiency Income/Value-Added and Documentary Stamp Taxes amounting to P232,009,558.08 under FDDA-IT/VT/DS-116-LOA-00000110-11-15-2169/2170/2171 dated January 20, 2016, covering taxable period December 31, 2011, (the subject matter of the instant case) has been approved by the NEB, with the attached signature page,[13] likewise showing the approval signatures of four (4) Deputy Commissioners and of the Respondent, as well as the payment forms showing proof of complete payment of the compromise amount[14] and the Secretary's Certificate showing the authority of the person who signed the compromise agreement for petitioner[15], the Court finds the same in order and in compliance with the established laws, rules and regulations. Hence, the Court approves the compromise agreement.

WHEREFORE, in view of the foregoing, the parties' **Joint Motion for Approval of Compromise Agreement** is **GRANTED**.

Accordingly, the **Judicial Compromise Agreement** entered into by the parties is **APPROVED** and judgment is hereby rendered in accordance therewith. The parties are thus enjoined to faithfully comply with all the terms and conditions of the aforesaid Compromise Agreement.

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[12] Judicial Compromise Agreement, docket, vol. I, pp. 468-474.
[13] Docket, vol. II, pp. 541-542.
[14] Attached to petitioner's Compliance filed by registered mail on August 19, 2020.
[15] Docket, vol. I, pp. 488-489.

Accordingly, this case is now deemed **CLOSED AND TERMINATED**.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ATTESTATION

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

JUANITO C. CASTAÑEDA, JR
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice