REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

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KEPCO ILIJAN CORPORATION,
Petitioner,

- *versus* -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9461

Members:

UY, *Chairperson,*
RINGPIS-LIBAN, and
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

AUG 05 2019
9:24 a.m.

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RESOLUTION

For resolution is petitioner's ***Manifestation and Motion To Render Judgment Based On The Parties' Compromise Settlement Under Section 204(A) of the NIRC***[1] filed on January 17, 2019, praying that this Court render judgment pursuant to the parties' compromise settlement under Section 204 (A) of the National Internal Revenue Code (NIRC), and to consider the instant case as closed and terminated.

In its *Manifestation and Motion*, petitioner alleges that during the pendency of this case petitioner availed of the BIR's compromise settlement program under Section 204(A) of the NIRC, as implemented by Revenue Regulations No. 30-2002, as amended.

The instant petition pertains to the assailed assessment for taxable year 2009, as reflected in the Bureau of Internal Revenue's undated Final Decision on Disputed Assessment, hereafter quoted below:

Tax Type	Basic Tax	Interest	Compromise	Total in Php
Final	49,698,634.91	65,438,803.87	50,000.00	115,187,438.78

[1] Docket (Vol. III), pp. to 1261 to 1270.

Withholding Tax				
Withholding VAT	19,879,453.97	26,175,252.16	50,000.00	46,104,976.13
Total	69,578,088.87	91,614,326.04	100,000.00	161,292,414.91

Petitioner further manifests, among others, the following:

1) That in compliance with the requirement of the minimum compromise rate for assessments that have doubtful validity (40% of the basic tax assessed), petitioner paid the amounts of ₱25,707,058.84 for the assessed Final Withholding Tax (FWT), and ₱10,282,823.53 for the Final Withholding Value Added Tax (FWVAT), both for the year 2009;

2) That the said compromise amounts are more than 40% of the basic tax assessed, thus, compliant with Sec. 204(A) of the NIRC; and

3) That as proof of the approval of the National Evaluation Board (NEB), the Bureau of Internal Revenue (BIR) issued a *Certificate of Availment (Compromise Settlement)*[2] in favor of petitioner on December 18, 2018.

In the Resolution dated February 19, 2019, the Court directed respondent to submit the authority of Assistant Commissioner – Collection Service, Alfredo V. Misajon, who signed the Certificate of Availment, and the document(s) showing the legal and factual bases for the approval of the instant compromise settlement, within ten (10) days from receipt hereof.

On March 8, 2019, respondent filed a ***Motion for Additional Time to Submit Compliance*** which the Court granted on March 15, 2019, giving respondent an additional period of fifteen (15) days from March 8, 2019, or until March 23, 2019, within which to submit proof of authority of Assistant Commissioner Misajon as well as documents showing legal and factual bases of the amount of compromise approved by the National Evaluation Board (NEB).

Thereafter, respondent filed an ***Urgent Motion for Additional Time To Submit Compliance*** on March 25, 2019, praying for an extension of thirty (30) days from March 23, 2019 or until April 22,

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[2] Docket (Vol. III), p. 1307.

2019 within which to submit proof of authority of Assistant Commissioner Misajon, as well as, documents showing legal and factual bases of the amount of compromise approved by the NEB. The same was granted by this Court on March 28, 2019.

Subsequently, respondent filed its ***Compliance with Submission*** on April 17, 2019 with the following attachments:

1) Memorandum dated 11 April 2019 from Assistant Commissioner Alfredo V. Misajon stating the basis of his authority to sign the Certificate of Availment in relation to the approved Compromise Settlement ;

2) Certified True Copy of Revenue Delegation Authority Order (RDAO) No. 6-2007 proving his authority to sign the Certificate of Availment in relation to the approved Compromise Settlement;

3) Certified True Copy of Revenue Memorandum Order (RMO) No. 33-2018 proving his authority to sign the Certificate of Availment in relation to the approved Compromise Settlement; and

4) Certified True Copy of the signature page evidencing approval by the NEB of the Compromise Settlement.

Respondent's *Compliance* with Submission was noted by this Court and petitioner's *Manifestation and Motion to Render Judgment Based On The Parties' Compromise Settlement Under Sec. 204(A) of the NIRC* was submitted anew for resolution on May 2, 2019.

Hence, this resolution.

THE COURT'S RULING

The authority of the Commissioner to compromise, abate and refund or credit taxes is mentioned under Section 204(A) of the National Internal Revenue Code (NIRC) of 1997, which 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.

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."

The foregoing legal provision specifies the allowable minimum rates in entering into a compromise settlement, to wit: For cases of financial incapacity, a minimum compromise rate equivalent to ten percent (10%) of the basic assessed tax; and, For cases other than financial incapacity, the minimum compromise rate is forty percent (40%) of the basic assessed tax. Additionally, in case the basic tax exceeds ₱1,000,000.00, 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 to Section 204(A), Section 6 of Revenue Regulations (RR) No. 30-2002,[3] as last amended by RR No. 9-2013, provides:

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[3] SUBJECT: 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.

> "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) <u>shall be approved by a majority of all the members of the NEB</u> 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**.
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> xxx xxx xxx
>
> The compromise offer shall be paid by the taxpayer upon filing of the application for compromise 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." *(Emphases and underscoring supplied)*

Thus, for a compromise settlement falling within the jurisdiction of the NEB to be valid, it must be shown that that the same was approved by a majority of all the members of the NEB, and that there had been a full settlement of the offered amount.

In this case, upon perusal of the parties supporting documents attached to petitioner's *Manifestation and Motion To Render Judgment Based on The Parties' Compromise Settlement Under Section 204(A) of the NIRC* and respondent's *Compliance with Submission*, the Court finds that petitioner has settled the legally required minimum of amounts (40% of the basic tax) relative of its application for compromise settlement, as shown in the BIR Payment Forms, eFPS Payment Details and Filing Reference Nos in the amount of ₱25,707,058.84[4] for the assessed Final Withholding Tax (FWT) and ₱10,282,823.53[5] for the Final Withholding Value Added Tax (FWVAT) for its 2009 tax assessments.

Furthermore, the Court notes that petitioner has fully complied

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[4] Docket (Vol. III), pp. 1221 to 1222.
[5] Docket (Vol. III), pp. 1223 to 1224.

with legal requirements as evidenced by the *Certificate of Availment* (Compromise Settlement) dated December 18, 2018[6], together with the Certified True Copy of the signature page evidencing approval by all of the members of the NEB of the subject Compromise Settlement.

WHEREFORE, in light of the foregoing considerations, the petitioner's *Motion to Render Judgment Based On The Parties' Compromise Settlement* filed on January 17, 2019 is **GRANTED**. The parties Compromise Settlement is hereby **APPROVED.**

Accordingly, petitioner is deemed to have fully settled the legally required minimum compromise rate of forty percent (40%) of the basic assessed tax in the amount of ₱25,707,058.84[7] for the assessed Final Withholding Tax (FWT) and ₱10,282,823.53[8] for the Final Withholding Value Added Tax (FWVAT) for its 2009 tax assessments. This case is now deemed **CLOSED and TERMINATED**.

SO ORDERED.

ERLINDA P. UY *Associate Justice*	**MA. BELEN M. RINGPIS-LIBAN** *Associate Justice*

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[6] Docket, Vol. III, p. 1307
[7] Docket (Vol. III), pp. 1221 to 1222.
[8] Docket (Vol. III), pp. 1223 to 1224.