

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL
REVENUE,

Petitioner,

CTA EB No. 2267
(CTA Case No. 8991)

- versus -

FIRST PHILIPPINE HOLDINGS
CORPORATION,

Respondent.

X-----X

FIRST PHILIPPINE HOLDINGS
CORPORATION,

Petitioner,

CTA EB No. 2315
(CTA Case No. 8991)

Present:

DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, and
CUI-DAVID, JJ.

- versus -

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

Promulgated:

JUN 17 2022

X-----X

JUDGMENT ON COMPROMISE AGREEMENT

UY, J.:

Before this Court is the *Judicial Compromise Agreement*¹ dated October 5, 2020, signed by Francis Giles B. Puno, President, on behalf of First Philippine Holdings Corporation (FPHC), and by the

¹ EB Docket (CTA EB 2267), pp. 118 to 124.

Commissioner of Internal Revenue (CIR), with the following attachments:

- a. Special Power of Attorney dated August 24, 2020, authorizing Francis Giles B. Puno to sign the compromise agreement;²
- b. Secretary's Certificate dated August 3, 2020;³
- c. Original print-outs of BIR Form 0605 and eFPS payment and confirmation with reference numbers 292000037500682, 292000037500237, 292000037499973, 292000037500438, evidencing total payment in the amount of ₱135,000,000.00;⁴
- d. Certified true copy of the *Certificate of Availment* dated March 22, 2022;⁵ and
- e. Certified true copy of the proof of approval of the *Compromise Settlement* by the majority of the members of the National Evaluation Board (NEB), as well as the concurrence thereon by the CIR.⁶

The subject *Judicial Compromise Agreement*⁷ reads as follows:

"JUDICIAL COMPROMISE AGREEMENT

KNOWN ALL MEN BY THESE PRESENTS:

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

FIRST PHILIPPINE HOLDINGS CORPORATION ("**TAXPAYER**"), a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office address at 6th Floor, Rockwell Business Center Tower 3, Ortigas Avenue, Pasig City, Philippines, represented by its President, **FRANCIS GILES B. PUNO**;



-and-

² EB Docket (CTA EB 2267), pp. 170 to 171.

³ EB Docket (CTA EB 2315), pp. 122 to 123; EB Docket (CTA EB 2267), pp. 172 to 173.

⁴ EB Docket (CTA EB 2267), pp. 158 to 169.

⁵ EB Docket (CTA EB 2267), p. 208.

⁶ EB Docket (CTA EB 2267), p. 209.

⁷ EB Docket (CTA EB 2267), pp. 118 to 124.

The **BUREAU OF INTERNAL REVENUE ("BIR")**, with principal office at Bureau of Internal Revenue, National Office Building, Agham Road, Diliman, Quezon City, represented by the Commissioner, **CAESAR R. DULAY** (collectively, the "**PARTIES**");

-Witnesseth That-

WHEREAS, the **BIR** issued to the **TAXPAYER** a **Formal Letter of Demand with Final Assessment Notice ("FLD/FAN")** dated 27 June 2014 for the table (*sic*) year 2009, for the alleged deficiency income tax, value added tax, expanded withholding tax, withholding tax on compensation, documentary stamp tax and fringe benefits tax in the total basic tax amounting to Eight Hundred Thirty One Million Six Hundred Seven Thousand One Hundred and Twenty Seven Centavos (₱831,607,100.27) for an aggregate amount of ₱1,555,240,774.37, inclusive of interest and compromise penalty.

WHEREAS, the **TAXPAYER** then filed with the **BIR** its Protest and Supplemental Protest on 25 July 2014 and 10 December 2014, respectively, denying the merit of the FLD/FAN dated 27 June 2014;

WHEREAS, without waiting for the decision of the **BIR** and within 30 days after the expiration of the 180-day period, the **TAXPAYER** instituted an action against the **BIR** entitled, "First Philippine Holdings Corporation vs. Commissioner of Internal Revenue," docketed as CTA Case No. 8991, with the Honorable Second Division of the Court of Tax Appeals ("CTA"), seeking the reversal and cancellation of the FLD/FAN;

WHEREAS, on 17 December 2019, the Honorable Second Division of the CTA rendered a Decision cancelling the deficiency Value-Added Tax (VAT) and deficiency fringe benefits tax (FBT) for taxable year 2009; ordering the **TAXPAYER** to pay deficiency income tax (IT), deficiency expanded withholdings tax (EWT), deficiency withholding tax on compensation (WTC) and deficiency documentary stamp tax (DST) in the total basic tax amounting to Two Hundred Eighty One Million Six Hundred Thirty Seven Thousand Three Hundred Ninety Eight and Sixty Seven Centavos (₱281,637,398.67) for an aggregate amount of ₱1,214,705,419.96, inclusive of interest and compromise penalty; and, ordering



TAXPAYER to pay delinquency interest amounting to ₱602,124,945.67.

WHEREAS, on 8 July 2020, the BIR appealed the Decision dated 17 December 2019 of the CTA Second Division to the CTA En Banc, docketed as CTA EB Case No. 2267. To date, no decision has been rendered by the CTA En Banc. **TAXPAYER** is also filing its Petition for Review of the Decision, the physical filing and issuance of the CTA En Banc case number is pending following the order of the Supreme Court for suspension of the reglementary period to file petition, complaints, motions, pleadings and other court submission, as well as the physical closure of all courts in NCR, from August 3-18, 2020, pursuant to Administrative Circular 43-2020 & 43 A-2020 issued by the Chief Justice of the Supreme Court. CTA Case No. EB 2267 (CTA Case No. 8991) and the relevant CTA En Banc case on the Taxpayer's Petition for Review of the Decision shall be collectively referred to as the 'CTA En Banc Cases'

WHEREAS, the **TAXPAYER** has submitted on 24 February 2020 its proposal to the **BIR** with the intention to enter into a compromise settlement pursuant to the provisions of the Civil Code of the Philippines, jurisprudence, relevant decisions of the Honorable CTA and relevant laws on judicial compromise, however, this did not prosper.

WHEREAS, on 07 August 2020 an amended compromise offer improving in the total amount of One Hundred Thirty-Five Million Pesos (₱135,000,000.00);

WHEREAS, the **BIR** has evaluated the **TAXPAYER'S** proposal for amicable settlement and believes that a judicial compromise to allow immediate tax collection and also put an end to litigation as provided in the Civil Code of the Philippines,⁸ serves the interest of the Government;

WHEREAS, the **PARTIES** wish to and 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 relevant laws on judicial compromise without

⁸ Art. 2028. A compromise is a contract whereby the parties, by making reciprocal concessions, avoid litigation or put an end to one already commenced.

contravening law, morals, public order and public policy;

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

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 the **BIR** has accepted the total payment of **One Hundred Thirty-Five Million Pesos (P135,000,000.00)** ("**Judicial Compromise Amount**"), or 47.93% of the basic tax as per Decision.

The amount is broken down as follows:

Tax Type	Basic Tax	Compromise Rate	Compromise Amount
IT	P76,409,022.22	44%	P33,958,747.02
EWT	11,634,558.97	100%	11,634,558.97
WTC	19,948,611.70	100%	19,948,611.70
DST	173,645,205.78	40%	69,458,082.31
TOTAL	P281,637,398.67	47.93%	P135,000,000.00

Section 2. Submission to the Honorable CTA En Banc. This Agreement fully signed by the **PARTIES** shall be submitted for the approval of the Honorable CTA En Banc. The **PARTIES** undertake to perform any and all acts, and submit any and all documents required by the Honorable CTA En Banc to be able to render a **Judgment by Compromise Agreement** in the said case.

Section 3. Effectivity of the Agreement. This **Agreement** shall only take effect and bind the **PARTIES** upon final approval and termination by the Honorable CTA En Banc. 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 En Banc. Upon final approval by the Honorable CTA En Banc 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, withdrawing and cancelling the **FLD/FAN** dated 27 June 2014.

Section 5. Authority to Enter Compromise Agreement. The **BIR**, through Commissioner Caesar R. Dulay, 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 En Banc.

The **TAXPAYER**, through Francis Giles B. Puno, President, 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.

Section 6. Full and Final Settlement. This Agreement is executed by the **PARTIES** for the purpose of amicably settling and ending the CTA En Banc Cases. Upon approval by the court, the **BIR** recognizes the full satisfaction of the supposed tax liability of the **TAXPAYER** in connection with the CTA En Banc cases and acknowledges that the **TAXPAYER** no longer has any tax liability whatsoever based upon, arising from or in connection with the particular subject of the CTA En Banc Cases.

Section 7. Disapproval of this Agreement by the Honorable CTA En Banc. In the event that this Agreement is disapproved by the Honorable CTA En Banc, 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 the deficiency, defect or imperfection which caused its disapproval, and re-submit the rectified or corrected Agreement for approval of the Honorable CTA En Banc. 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 En Banc after it is rectified or corrected by the parties:

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, as allowed under existing rules and regulations; and

2. The proceedings of CTA EB Case No. 2267 (CTA Case No. 8991) 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 8. 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**.

Section 9. 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 En Banc 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 10. Signatures 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.

**FIRST PHILIPPINE HOLDINGS
CORPORATION**
(Sgd.)
FRANCIS GILES B. PUNO
President

**BUREAU OF INTERNAL
REVENUE**
(Sgd.)
HON. CAESAR R. DULAY
Commissioner



Witnesses:
(Sgd.)"

A review of the subject *Judicial Compromise Agreement*, as well as the documents submitted by the parties in support thereof, shows that the same is in order.

To be specific, FPHC paid a total of ₱135,000,000.00, or 47.93% of the basic tax as per Decision, and obtained the approval of the NEB, in accordance with Section 204 (A) of the NIRC of 1997,⁹ as amended.

Moreover, it has been validly executed by the parties, and the terms and conditions specified therein are not contrary to law, morals, good customs, public order, and public policy. Thus, this Court finds the same to be in order.

A compromise is a contract whereby the parties, by making reciprocal concessions, avoid litigation or put an end to one already commenced.¹⁰ Contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided that they are not contrary to law, morals, good customs, public order, or public policy.¹¹ It is an accepted, even desirable and encouraged, practice in courts of law and administrative tribunals.¹²

Moreover, a compromise agreement intended to resolve a matter already under litigation is a judicial compromise. Having judicial mandate and entered as its determination of the controversy, it has the force and effect of a judgment. It transcends its identity as a mere contract between the parties as it becomes a judgment that is subject to execution in accordance with the Rules of Court. Thus, a

⁹ **Section 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

xxx xxx xxx

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.

¹⁰ Article 2028, Civil Code of the Philippines.

¹¹ Article 1306, Civil Code of the Philippines.

¹² *California Manufacturing Company, Inc. vs. The City of Las Piñas and the Hon. Rizal Y. Del Rosario, City Treasurer*, G.R. No. 178461, June 22, 2009, citing *DMG Industries, Inc. vs. Philippine American Investments Corporations*, G.R. No. 174114, July 6, 2007.

compromise agreement that has been made and duly approved by the court attains the effect and authority of *res judicata*, although no execution may be issued unless the agreement receives the approval of the court where the litigation is pending and compliance with the terms of the agreement is decreed.¹³

WHEREFORE, in light of the foregoing considerations, the *Judicial Compromise Agreement* dated October 5, 2020, entered into by the parties is hereby **APPROVED** and this **Judgment on Compromise Agreement** is hereby rendered in accordance therewith. The parties are hereby enjoined to faithfully comply with all the terms and conditions of the aforesaid *Judicial Compromise Agreement*.

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

SO ORDERED.


ERLINDA P. UY
Associate Justice

WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice

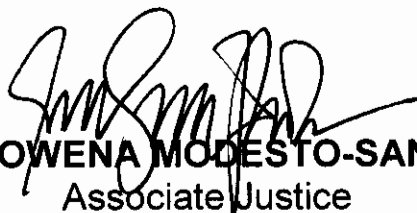

JUANITO C. CASTAÑEDA, JR.
Associate Justice

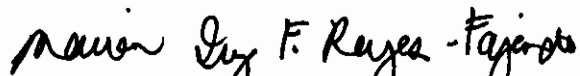

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

¹³ *Id.*, citing *Viesca vs. Gilinsky*, G.R. No. 171698, July 4, 2007.


CATHERINE T. MANAHAN
Associate Justice


JEAN MARIE A. BACORRO-VILLENA
Associate Justice


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice


MARIAN IVY F. REYES-FAJARDO
Associate Justice


LANEE S. CUI-DAVID
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Judgment on Compromise Agreement were reached in consultation before the cases were assigned to the writer of the opinion of the Court.


ROMAN G. DEL ROSARIO
Presiding Justice