



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated July 6, 2021 which reads as follows:

“G.R. Nos. 240651 & 240665 (Commissioner of Internal Revenue, Petitioner, v. Iconic Beverages, Inc., Respondent.) – This Petition for Review on *Certiorari*¹ (Petition) under Rule 45 seeks to reverse and set aside the Decision² dated 30 January 2018 and Resolution³ dated 16 July 2018 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB Case Nos. 1412 and 1417. The CTA *En Banc* affirmed the Decision⁴ dated 14 August 2015 and Resolution⁵ dated 06 January 2016 of the CTA Division in CTA Case No. 8607, which cancelled the assessment for compromise penalty but affirmed with modification the assessment for deficiency income tax (IT) for taxable year (TY) 2009 issued by petitioner Commissioner of Internal Revenue (CIR) against respondent Iconic Beverages, Inc. (IBI).

Antecedents

IBI received from the Bureau of Internal Revenue (BIR) Letter of Authority No. 121-2010-00000012 dated 14 May 2010 for the examination of its books of accounts and other financial records pertinent to its internal revenue taxes for TY 2009. This was followed

¹*Rollo*, pp. 42-64.

²*Rollo*, pp. 70-84; Penned by Associate Justice Esperanza R. Fabon-Victorino and concurred in by Associate Justices Roman G. Del Rosario, Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Cielito N. Mindaro-Grulla, Ma. Belen Ringpis-Liban and Catherine T. Manahan, *En Banc*, Court of Tax Appeals, Quezon City.

³*Id.* at 86-90.

⁴*Id.* at 698-718; Penned by Associate Justice Cielito N. Mindaro-Grulla and concurred in by Presiding Justice Roman G. Del Rosario and Associate Justice Erlinda P. Uy of the First (1st) Division, Court of Tax Appeals, Quezon City.

⁵*Id.* at 75.

by a Notice of Informal Conference indicating that its alleged deficiency internal revenue taxes have been submitted for evaluation.⁶

The BIR subsequently issued a Preliminary Assessment Notice dated 19 October 2011, finding IBI liable for deficiency IT, documentary stamp tax (DST) and administrative penalties for TY 2009 in the aggregate amount of Php111,382,989.41, inclusive of interest and compromise penalty.⁷ This was protested by IBI through a letter dated 04 November 2011.⁸

On 17 April 2012, IBI received a Formal Letter of Demand with attached Final Assessment Notices (FAN) dated 30 March 2012, assessing it for alleged deficiency IT and DST in the amount of Php119,944,634.43, inclusive of interest, compromise and other administrative penalties.⁹ IBI protested the FAN on 16 May 2012 for lack of factual and legal bases. It also claimed that its royalties were properly declared as passive income subject to Final Withholding Tax of 20% on the gross amount.¹⁰

The CIR denied IBI's protest in the Final Decision on Disputed Assessment (FDDA) dated 07 January 2013. In said FDDA, the CIR cancelled the DST assessment, the administrative penalties and the deficiency IT arising from the "unrecorded purchases from San Miguel Corporation," on the ground that IBI voluntarily settled said deficiencies. The CIR also cancelled the "unrecorded sales to San Miguel Corporation" upon finding that it was not a taxable sale. The CIR, however, upheld the deficiency IT on IBI's revenues derived from San Miguel Brewery, Inc. (SMBI) and My Philippines Lifestyles, Inc. (MPLI), which IBI treated as royalty income subject to 20% Final Tax. The CIR found IBI still liable for deficiency IT in the amount of Php131,312,747.39.¹¹

On 07 February 2013, IBI assailed the adverse ruling via a Petition for Review filed with the CTA in Division.¹²

The CIR, for its part, maintained that the royalty fees received by IBI from SMBI and MPLI were in the nature of active income arising from the active pursuit of its business and must be subject to

⁶*Id.* at 72.

⁷*Id.*

⁸*Id.*

⁹*Id.*

¹⁰*Id.* at 73.

¹¹*Id.*

¹²*Id.* at 74.

the regular corporate IT of 30% under Section 27 of the Tax Code, as amended.¹³

Ruling of the CTA Division

On 14 August 2014, the CTA Division promulgated its Decision, the dispositive portion of which reads:

WHEREFORE, premises considered, the instant Petition For Review is **PARTIALLY GRANTED**. The compromise penalty assessed by respondent against petitioner in the amount of [Php]50,000.00 is hereby **CANCELLED**. On the other hand, the remaining amount in the assessment covering deficiency income tax for the taxable year 2009 is hereby **AFFIRMED** with some modifications. Accordingly, petitioner is **ORDERED TO PAY** respondent the amount of **[Php]88,254,300.60** representing basic deficiency income tax for the taxable year 2009 inclusive of the twenty-five percent (25%) surcharge imposed under Section 248 (A) (3) of the NIRC of 1997, computed as follows:

Taxable Income	[Php](50,009,617.40)
Add: Royalty income subject to regular income tax	856,063,257.00
Adjusted Taxable Net Income	[Php]806,053,639.60
Tax Rate	30%
Tax Due	[Php]241,816,091.88
Less: Final Tax of 20% (856,063,257.00 x 20%)	171,212,651.40
Deficiency Income Tax	[Php]70,603,440.48
Add: 25% Surcharge	17,650,860.12
Total Amount Due	[Php]88,254,300.60

Likewise, petitioner is **ORDERED TO PAY** the following:

(a) deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income tax of [Php]70,603,440.48 computed from [15 April 2010] until full payment thereof pursuant to Section 249 (B) of the NIRC of 1997; and

(b) delinquency interest at the rate of 20% per annum on the total amount of [Php]88,254,300.60 and on the 20% deficiency interest which have accrued as afore-stated in (a) computed from [09

¹³*Id.*

January 2013] until full payment thereof pursuant to Section 249 (C) of the NIRC of 1997.

SO ORDERED.¹⁴

The CTA Division cancelled the assessment for compromise penalty but affirmed with modification the assessment for deficiency IT for TY 2009 on the ground that IBI failed to support its defense that the royalties received in 2009 were not earned in active pursuit or performance of its primary purpose. Since IBI failed to present substantial evidence to overturn the presumption of correctness and good faith attributed to tax assessments by tax examiners, the CTA Division ruled that the assessment must be sustained.¹⁵

Both parties moved for reconsideration, which the CTA Division denied in its Resolution dated 06 January 2016.¹⁶ Aggrieved, the parties appealed to the CTA *En Banc*.

While the case was pending, IBI filed a Motion (To Be Allowed to Pay Judgment Award without Prejudice to the Pending Appeal) on 18 April 2016, which the CTA *En Banc* granted. Accordingly, IBI paid the BIR Php270,226,434.11 on 26 August 2016. IBI's payment and compliance was noted in the CTA *En Banc* Resolution dated 21 September 2016.¹⁷

Ruling of the CTA *En Banc*

In its 30 January 2018 Decision,¹⁸ the CTA *En Banc* denied both parties' Petitions for Review, *viz*:

WHEREFORE, the *Petitions for Review* filed on February 9, 2016 and January 22, 2016 by the Commissioner of Internal Revenue and Iconic Beverages, Inc., respectively, are hereby **DENIED** for lack of merit.

SO ORDERED.¹⁹

Both parties again moved for reconsideration, which was

¹⁴*Id.* at 74-75.

¹⁵*Id.* at 74.

¹⁶*Id.* at 75.

¹⁷*Id.* at 17-18.

¹⁸*Id.* at 70-84.

¹⁹*Id.* at 82-83.

denied by the CTA *En Banc* in its Resolution dated 16 July 2018.²⁰ Hence, this Petition for Review on *Certiorari*, whereby the CIR assails the cancellation of the portion of the income tax liability amounting to Php50,009,617.40, equivalent to Php15,002,885.22 IT.²¹

Meanwhile, IBI likewise filed a Petition for Review before this Court, docketed as G.R. No. 241147-48, which was denied with finality on 26 June 2019.²²

On 28 January 2020, however, the CIR filed a *Manifestation and Motion Re: Compromise Agreement*, stating that it entered into a Compromise Agreement with IBI to amicably settle the controversy, and praying that this Court approves the withdrawal of the instant Petition. The CIR attached the original notarized Compromise Agreement and the BIR Payment Form 0605.²³ The attached duly notarized Compromise Agreement executed by the parties is quoted as follows:

COMPROMISE AGREEMENT

KNOWN ALL MEN BY THESE PRESENTS:

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

ICONIC BEVERAGES, INC. ("**TAXPAYER**"), a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office at 40 San Miguel Avenue, Mandaluyong City, represented by its duly authorized representatives, **RAYMUND H. PATALINGHUG** and **ANDREI JOSEF Y. KASILAG**, as evidenced by the Secretary's Certificate dated [05 December 2019] which is hereto attached as Annex "A";

-and-

The **BUREAU OF INTERNAL REVENUE ("BIR")**, with principal office at Bureau of Internal Revenue, National Office Building, Agham Road, Diliman, Quezon City,

²⁰*Id.* at 86-90.

²¹*Id.* at 54-61.

²²*Id.* at 680-682.

²³*Id.* at 774-775.

represented by the Commissioner, **HON. CAESAR R. DULAY** (collectively, the "**PARTIES**");

-Witnesseth That-

WHEREAS, the **BIR** issued FINAL DECISION ON DISPUTED ASSESSMENT ("FDDA") dated [07] January 2013 which required the TAXPAYER to pay basic deficiency Income Tax in the amount of Php85,606,325.70.

WHEREAS, the TAXPAYER instituted an action against the BIR entitled "Iconic Beverages, Inc. vs. Commissioner of Internal Revenue", docketed as CTA Case No. 8607, before the Honorable First Division of the Court of Tax Appeals ("CTA"), seeking the reversal of the FDDA.

WHEREAS, on 14 August 2015, the CTA First Division promulgated a Decision partially granting the petition and cancelled Php15,002,885.22 of the income tax assessment as well as the compromise penalty while upholding Php70,603,440.48 of the income tax assessment. The dispositive portion thereof reads, as follows:

WHEREFORE, premises considered, the instant Petition For Review is **PARTIALLY GRANTED**. The compromise penalty assessed by respondent against petitioner in the amount of [Php]50,000.00 is hereby **CANCELLED**. On the other hand, the remaining amount in the assessment covering deficiency income tax for the taxable year 2009 is hereby **AFFIRMED** with some modifications. Accordingly, petitioner is **ORDERED TO PAY** respondent the amount of **[Php]88,254,300.60** representing basic deficiency income tax for the taxable year 2009 inclusive of the twenty-five percent (25%) surcharge imposed under Section 248 (A) (3) of the NIRC of 1997, computed as follows:

Taxable Income	[Php](50,009,617.40)
Add: Royalty income subject to regular income tax	856,063,257.00
Adjusted Taxable Net Income	[Php]806,053,639.60
Tax Rate	30%
Tax Due	[Php]241,816,091.88
Less: Final Tax of 20% (856,063,257.00 x 20%)	171,212,651.40
Deficiency Income Tax	[Php]70,603,440.48
Add: 25% Surcharge	17,650,860.12
Total Amount Due	[Php]88,254,300.60

Likewise, petitioner is **ORDERED TO PAY** the following:

(a) deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income tax of [Php]70,603,440.48 computed from April 15, 2010 until full payment thereof pursuant to Section 249 (B) of the NIRC of 1997; and

(b) delinquency interest at the rate of 20% per annum on the total amount of [Php]88,254,300.60 and on the 20% deficiency interest which have accrued as afore-stated in (a) computed from January 9, 2013 until full payment thereof pursuant to Section 249 (C) of the NIRC of 1997.

SO ORDERED.

WHEREAS, both parties filed their respective **Motions for Reconsideration** of the Decision dated 14 August 2015. In a Resolution dated [06 January 2016], the CTA First Division **denied** both Motions for Reconsideration.

WHEREAS, both parties appealed to the CTA En Banc under case numbers CTA EB No. 1412 and CTA EB No. 1417.

WHEREAS, on 18 April 2016, **TAXPAYER** filed a "Motion (To Be Allowed to Pay Judgment Award without Prejudice to the Pending Appeal)", which the CTA En Banc granted. Accordingly, the **TAXPAYER** paid the **BIR** Php270,226,434.11 ("**Judgment Award**") on 26 August 2016. The **TAXPAYER's** payment and compliance was **NOTED** in the CTA En Banc Resolution dated 21 September 2016.

WHEREAS, on 30 January 2018, the CTA En Banc **DENIED** both appeals and sustained the decision of the CTA First Division. Both **PARTIES** filed **Motions for Reconsideration** but these were denied in a Resolution dated 16 July 2018.

WHEREAS, both **PARTIES** appealed to the Supreme Court. The **TAXPAYER's** appeal was docketed under GR No. 241147-48 while the **BIR's** appeal was docketed under GR Nos. 240651 and 240665.

WHEREAS the Supreme Court has denied the **TAXPAYER's** appeal with finality and the current pending case is GR Nos. 240651 and 240665 entitled "Commissioner of Internal Revenue v. Iconic Beverages, Inc." where the **BIR** is

appealing the cancellation of the portion of the income tax assessment amounting to **Php15,002,885.22** ("**Cancelled Assessment**").

WHEREAS, in a letter dated 5 November 2019, the **TAXPAYER** has relayed to the **BIR** its intention to enter into an amicable settlement pursuant to the provisions of the Civil Code of the Philippines, jurisprudence, and relevant provisions on compromise agreements.

WHEREAS, apart from the amount of [Php]270,226,434.11 which the **TAXPAYER** already paid in satisfaction of the judgment rendered against it by the CTA First Division, the **TAXPAYER** has offered to pay an additional amount of Fifteen Million Pesos (Php15,000,000.00) ("**Additional Compromise Amount**"), representing 99.98% of the **Cancelled Assessment** which is the subject of the **BIR's** appeal, thereby increasing its total payment to the **BIR** to **Php285,226,434.11**.

WHEREAS, the **BIR** informed its statutory counsel, the **Office of the Solicitor General**, of the proposal for amicable settlement and submitted thereto a copy of the same.

WHEREAS, the **BIR** has evaluated the **TAXPAYER'S** proposal for amicable settlement and believes that a compromise to allow immediate tax collection from a case it lost in the court below and also put an end to litigation as provided in the Civil Code of the Philippines, serves the interest of the Government.

WHEREAS, the **PARTIES**, ensure that the terms of the amicable settlement as contained in this **Compromise Agreement** do not circumvent the limitations provided in Section 204 of the National Internal Revenue Code an administrative compromise proceedings as the **TAXPAYER** has paid 99.99% of the basic income tax assessment, as well as the applicable surcharge and corresponding deficiency and delinquency interest, all of which amount **Php285,226,434.11**;

WHEREAS, for the purpose of acquiring peace and putting an end to a mutually prejudicial litigation, the **PARTIES** 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. Compromise Amount. In order to settle the above-mentioned case, the **TAXPAYER** has offered and paid and the **BIR** has accepted and received the compromise amount of Php285,226,434.11, consisting of the Judgment Award of Php270,226,434.11 and the **Additional Compromise Amount of Fifteen Million Pesos (Php15,000,000.00)**.

Section 2. Submission to the Honorable Supreme Court. This **Agreement** fully signed by the **PARTIES** shall be submitted to the Supreme Court in GR Nos. 240651 and 240665 entitled "Commissioner of Internal Revenue vs. Iconic Beverages, Inc." as part of the pleading to be filed by the **BIR** withdrawing its petition.

Section 3. Effectivity of the Agreement. This **Agreement** shall take effect after signing thereof by the **PARTIES**. This **Agreement** shall thereafter remain in force and effect until completion and fulfillment of the covenants and undertakings of the **PARTIES** hereto.

Section 4. Deliverables of the PARTIES upon approval of this Agreement. Upon approval by the **PARTIES** of the terms of this Agreement the **TAXPAYER** undertakes to submit to the **BIR** proof of payment of the **Additional Compromise Amount** and this **Agreement** duly signed by its authorized representative. Upon receipt of the **Additional Compromise Amount**, the **BIR** Undertakes to sign the **Agreement** and execute and deliver to the **TAXPAYER** any and all documents as may be required to effectively withdraw and cancel the assessment subject of this case.

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.

The **TAXPAYER** through its duly authorized representatives **Raymund H. Patalinghug** and **Andrei Josef Y. Kasilag**, similarly warrants that it is duly authorized by the Board of Director 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 GR Nos. 240651 and 240665 (CTA Case No. 8607). 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 the subject case and acknowledges that the

TAXPAYER no longer has any tax liability whatsoever based upon, arising from or in connection with the particular subject which stemmed from CTA Case No. 8607.

Section 7. Defects in this Agreement. In the event that defects are noted in this Agreement, the PARTIES mutually agree to perform any and all acts necessary to rectify or correct the deficiency, defect or imperfection. However, in the case the deficiency, defect or imperfection is not or cannot be 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, as allowed under existing rules and regulations; and
2. The proceedings of GR Nos. 240651 and 240665 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 acknowledgement 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/action for the immediate implementation and execution of the terms and conditions of this Agreement.

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.²⁴

In the duly notarized Compromise Agreement dated 16 December 2019, it was stated that **the BIR has accepted and received the compromise amount of P285,226,434.11, consisting of the Judgment Award (rendered against IBI by the CTA Division as affirmed by the CTA *En Banc*) of Php270,226,434.11 and the**

²⁴Rollo, pp. 763-768.

Additional Compromise Amount of Php15,000,000.00, in the total amount of Php285,226,434.11, representing 99.99% of the basic income tax assessment, as well as the applicable surcharge and corresponding deficiency and delinquency interest, including 99.98% of the amount assailed herein. As such, the BIR recognizes the full satisfaction of IBI's tax liability in connection with the present case and acknowledges that IBI no longer has any tax liability arising from or in connection with the same.²⁵

Ruling of the Court

The Court grants the motion and rule in favor of the compromise.

There is no dispute that IBI entered into a compromise agreement with the CIR on its deficiency IT and the applicable surcharge and corresponding deficiency and delinquency interest for TY 2009, as embodied by the duly notarized Compromise Agreement submitted before this Court. On this basis, the deficiency tax assessments subject of the Petition can now be considered closed and terminated.

The power of the CIR to enter into compromise agreements for deficiency taxes is explicit in Section 204 (A) of the Tax Code, as amended. The CIR may compromise an assessment when a reasonable doubt as to the validity of the claim against the taxpayer exists, as in this case,²⁶ or the financial position of the taxpayer demonstrates a clear inability to pay the tax. It is settled that the authority of the CIR to compromise is purely discretionary, and the courts cannot interfere with his exercise of discretionary functions, absent grave abuse of discretion. Here, no grave abuse of discretion exists.²⁷

²⁵*Id.*

²⁶Revenue Regulations No. 30-2002, as amended by RR No. 08-2004, enumerates the bases for acceptance of the compromise settlement on the ground of doubtful validity, *viz*:

SEC. 3. *Basis for Acceptance of Compromise Settlement.* — x x x
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:

xxx

(i) The assessment is based on an issue where a court of competent jurisdiction made an adverse decision against the Bureau, but for which the Supreme Court has not decided upon with finality.
(Emphasis Supplied)

²⁷See *Kepeco Philippines Corp. v. Commissioner of Internal Revenue*, G.R. Nos. 225750-51, 28

In this regard, a compromise agreement has the effect of *res judicata* on the parties. Compromises are generally to be favored and those entered into in good faith cannot be set aside, except when there is mistake, fraud, violence, intimidation, undue influence, or falsity of documents. None of these exceptions obtain in the present case.²⁸

Given the foregoing, We find the duly notarized Compromise Agreement entered into by the CIR and IBI to be in accordance with the law.²⁹ Consequently, the same is valid and binding. As such, there is nothing left for Us to do but to declare the case closed and terminated.³⁰

We also note that the compromise settlement between the BIR and IBI is a supervening event which rendered the case moot and academic.³¹ Where a case has become moot and academic, there is no more justiceable controversy, so that a declaration thereon would be of no practical value. A case becomes moot and academic when, by virtue of supervening events, there is no more actual controversy between the parties and no useful purpose can be served in passing upon the merits. Since they are constituted to pass upon substantial rights, courts of justice will not consider questions where no actual interests are involved. As a rule, courts decline jurisdiction over such cases or dismiss them on the ground of mootness.³²

WHEREFORE, the Petition for Review is hereby **DENIED**. Accordingly, the *Manifestation and Motion Re: Compromise Agreement* is **GRANTED**. Finding the duly notarized Compromise Agreement entered into by petitioner Commissioner of Internal Revenue and respondent Iconic Beverages, Inc., to be in accordance with the law, the same is hereby **APPROVED**, and judgement is rendered in accordance with its terms. Accordingly, the case is considered **CLOSED and TERMINATED**.

July 2020 [Per J. Lopez]; See also *Kepeco Philippines Corp. v. Bureau of Internal Revenue (Notice)*, G.R. No. 217695, 07 October 2020.

²⁸*Kepeco Philippines Corp. v. Commissioner of Internal Revenue, id.*

²⁹*Id.*; See also *Gaw, Jr. v. Commissioner of Internal Revenue (Notice)*, G.R. No. 222837, 08 January 2020.

³⁰*Kepeco Philippines Corp. v. Commissioner of Internal Revenue, id.*

³¹*Kepeco Philippines Corp. v. Bureau of Internal Revenue (Notice)*, *supra* at note 27.

³²*Id.*

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
158-B

The Solicitor General
Amorsolo St., Legaspi Village
1229 Makati City

Litigation Division
Bureau of Internal Revenue
Room 703, BIR National Office Bldg.
Diliman, 1101 Quezon City

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1101 Quezon City
(CTA EB Nos. 1412 & 1417)
(CTA Case No. 8607)

BANIQUED LAYUG & BELLO
Counsel for Respondent
Suite 803, 8th Flr., Jollibee Centre
San Miguel Ave., Ortigas Center
1605 Pasig City