

P/010



RECEIVED  
JAN 22 2020  
BY: YSA  
TIME: 8:30 AM

Republic of the Philippines  
Supreme Court  
Manila

SPECIAL FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Special First Division, issued a Resolution dated **January 8, 2020** which reads as follows:

“G.R. No. 222837 (*Macario Lim Gaw, Jr. v. Commissioner of Internal Revenue*). - On July 23, 2018, the Court promulgated a Decision<sup>1</sup> in this case, the dispositive portion of which reads:

**WHEREFORE**, the Petition is hereby **PARTIALLY GRANTED**. The Decision dated December 22, 2014 and Resolution dated February 2, 2016 of the Court of Tax Appeals *En Banc* in CTA EB Criminal Case No. 026 are **REVERSED and SET ASIDE**. The case is **REMANDED** to the Court of Tax Appeals First Division to conduct further proceedings in CTA Case No. 8503 and to **ORDER** the Clerk of Court to assess the correct docket fees. Petitioner Mariano Lim Gaw, Jr. is likewise **ORDERED** to pay the correct docket fees within ten (10) days from the receipt of the correct assessment of the Clerk of Court.

**SO ORDERED.**<sup>2</sup> (Emphases in the original)

On September 7, 2018, petitioner Macario Lim Gaw, Jr. filed a Motion for Partial Reconsideration<sup>3</sup> of the July 23, 2018 Decision, praying that the deficiency tax assessments for taxable year 2008 against him, under the Final Decision on Disputed Assessment No. 2012-0001 dated May 18, 2012 and other issuances relative thereto, be nullified.<sup>4</sup>

On September 12, 2018, respondent Commissioner of Internal Revenue also filed a Motion for Reconsideration<sup>5</sup> praying that the July

<sup>1</sup> Rollo, Vol. VI, pp. 4196-4213.

<sup>2</sup> *Id.* at 4212.

<sup>3</sup> *Id.* at 4214-4261.

<sup>4</sup> *Id.* at 4260.

<sup>5</sup> *Id.* at 4264-4273.

23, 2018 Decision be reversed for being contrary to law and jurisprudence, and the present petition be denied.<sup>6</sup>

However, on July 12, 2019, the Office of the Solicitor General, representing the respondent, filed a Manifestation and Motion,<sup>7</sup> dated July 11, 2019, praying that his earlier motion for reconsideration of the July 23, 2018 Decision be considered withdrawn, and that the present case be declared closed and terminated. Respondent informed the Court that the parties had entered into a duly notarized Judicial Compromise Agreement<sup>8</sup> on April 2, 2019, amicably settling and putting an end to their dispute subject matter of the present case; that on May 28, 2019, respondent issued to petitioner a Certificate of Availment<sup>9</sup> attesting that petitioner's application for the compromise settlement of deficiency taxes for taxable year 2008, under the Final Decision on Disputed Assessment No. 2012-0001 dated May 18, 2012, has been approved by the National Evaluation Board; and that petitioner has already paid the stipulated amount of deficiency taxes.

Petitioner also filed a similar Manifestation and Motion<sup>10</sup> dated September 3, 2019, with the attached duly notarized Judicial Compromise Agreement<sup>11</sup> executed by the parties, quoted as follows:

#### JUDICIAL COMPROMISE AGREEMENT

KNOWN ALL MEN BY THESE PRESENTS:

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

MACARIO LIM GAW, JR. ("TAXPAYER"), an individual taxpayer, of legal age, Filipino, and with address at No. 5 David Street, Corinthian Gardens, Quezon City;

-and-

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, HON. CAESAR R. DULAY (collectively, the "PARTIES")

<sup>6</sup> *Id.* at 4271.

<sup>7</sup> *Id.* at 4300-4302.

<sup>8</sup> *Id.* at 4303-4312.

<sup>9</sup> *Id.* at 4313.

<sup>10</sup> *Id.* at 4315-4319.

<sup>11</sup> *Id.* at 4322-4331.

-WITNESSETH THAT-

WHEREAS, in November 2007, TAXPAYER acquired six (6) parcels of land in the aggregate amount of One Billion Nine Hundred Fifty-Seven Million Four Hundred Twenty-Two Thousand Pesos (₱1,957,422,000.00). To finance its acquisition, TAXPAYER applied for, and was granted a Short Term Loan (STL) Facility from Banco De Oro (BDO) amounting to Two Billion Twenty One Million One Hundred Fifty Four Thousand and Sixty Pesos (₱2,021,154,060.00);

WHEREAS, during the period of April to June 2008, TAXPAYER acquired four (4) more parcels of land in the aggregate amount of Two Billion Sixty-Three Million Nine Hundred Five Thousand Five Hundred Pesos (₱2,063,905,500.00). Again, TAXPAYER applied for and was granted an STL Facility from BDO in the amount of Two Billion Seven Hundred Thirty Two Million Six Hundred Sixty Six Thousand and Seven Hundred Eighty Five Pesos (₱2,732,666,785.00);

WHEREAS, on July 11, 2008, TAXPAYER conveyed the said ten (10) parcels of land to Eagle I Landholdings, Inc. (Eagle I), a joint venture company;

WHEREAS, TAXPAYER requested the BIR-Revenue District Office (RDO) No. 52 for the respective computations of the tax liabilities due on the sale of the ten (10) parcels of land to Eagle I;

WHEREAS, in accordance with the One Time Transactions (ONETT) Computation sheets, TAXPAYER paid Capital Gains Tax amounting to Five Hundred Five Million One Hundred Seventy Seven Thousand Two Hundred Thirteen Pesos and Eighty One Centavos (₱505,177,213.81) and Documentary Stamp Tax amounting to Three Hundred Thirty Thousand and Three Hundred Ninety Pesos (₱330,390.00);

WHEREAS, on July 23, 2008, Revenue District Office (RDO) No. 52 issued the corresponding Certificates Authorizing Registration and Tax Clearance Certificates to effect the transfer of the said parcels of land to Eagle I;

WHEREAS, on August 25, 2010, Letter of Authority (LOA) No. 2009-000446699 was issued which authorized the examination of Gaw's books of accounts and other accounting records for all internal revenue taxes on the ground that TAXPAYER was liable to pay the 32% regular income tax and 12% value added tax and not the 6% capital gains tax, on the theory that the properties sold by the TAXPAYER were ordinary assets and not capital assets. The LOA covered taxable year 2008 and "Unverified prior years";

WHEREAS, on August 26, 2010, the BIR filed with the Department of Justice (DOJ) a Joint Complaint Affidavit against the taxpayer for violation of Sections 254 and 255 of the NIRC of 1997, as amended, docketed as NPS Docket No. XVI-INV-10H-00256;

WHEREAS, on February 15, 2011, the BIR, through the NID, issued a Preliminary Assessment Notice (PAN) with attached Details of Discrepancies and Computation Sheets, for taxable years 2007 and 2008;

WHEREAS, on April 8, 2011, TAXPAYER received a copy of the Resolution dated March 17, 2011 issued by the DOJ dismissing the charges against him for taxable year 2007;

WHEREAS, for taxable year 2008, the DOJ charged TAXPAYER with two (2) counts of violations of Section 255 for willful failure to pay income tax and file the corresponding income tax return in 2008 (Crim. Case No. O-206), and for willful failure to pay value added tax and file the corresponding VAT return, also in 2008 (Crim. Case No. O-207) with the two cases being later on consolidated before the CTA First Division;

WHEREAS, on May 24, 2011, the BIR served on the TAXPAYER a Formal Letter of Demand dated April 8, 2011 informing him of his alleged deficiency income and value-added taxes based on third-party information for taxable years 2007 and 2008 in the aggregate amount of Six Billion Five Hundred Sixteen Million Nine Hundred Forty-One Thousand Eight Hundred Seventy-Nine and Forty-Eight Centavos (₱6,516,941,879.48), broken down as follows:

Taxable Year 2008	Deficiency Income Tax	3,201,084,829.93
	Deficiency Value Added Tax	<u>2,020,001,897.66</u>
		<u>5,221,086,727.59</u>
Taxable Year 2007	Deficiency Income Tax	<u>1,295,855,151.89</u>
	TOTAL	<u><u>6,516,941,879.48</u></u>

WHEREAS, on June 9, 2011, TAXPAYER through his legal counsel, filed his protest letter dated June 7, 2011 on the Formal Letter of Demand;

WHEREAS, on May 22, 2012, the BIR served on the TAXPAYER a copy of Final Decision on Disputed Assessment (FDDA) No. 2012-0001 dated May 18, 2012;

WHEREAS, on May 30, 2012, believing that the deficiency tax assessment for the year 2008 involves the same tax liabilities being recovered in the pending criminal cases, the taxpayer filed a motion to clarify if it is necessary to file a separate

petition to question the deficiency assessment for the year 2008 and pay the corresponding filing fees;

WHEREAS, on June 6, 2012, the CTA issued a Resolution granting the TAXPAYER'S motion and held that the recovery of the civil liabilities for the taxable year 2008 was deemed instituted with the consolidated criminal cases;

WHEREAS, on June 19, 2012, TAXPAYER filed two Petitions for Review before the Court of Tax Appeals. The first petition assails the FDDA for deficiency income tax assessment for 2007 and is docketed as CTA Case No. 8502. The second petition, entitled Petition for Review Ad Cautelam (with Motion for Consolidation with CTA Criminal Case Nos. 0-206 and 0-207), which the clerk of court of the CTA assessed with "zero filing fees", assails the same FDDA but for deficiency income tax and VAT for taxable year 2008, was docketed as CTA Case No. 8503;

WHEREAS, in 2013, the BIR issued a Warrant of Distrainment and/or Levy dated January 11, 2013, Notices of Tax Liens, and Notices of Levy on Real Property against the TAXPAYER's real properties and caused their annotation on the Condominium/Transfer Certificates of Title of the TAXPAYER's twenty one (21) real properties preparatory to their auction sale on April 29, 2014;

WHEREAS, during the April 29, 2014 auction sale, the TAXPAYER's real property covered by Transfer Certificate [of] Title No. 817308 located in Southwoods, Biñan, Laguna was awarded to a winning bidder, while the TAXPAYER's twenty (20) other properties covered by the Notice of Sale dated March 5, 2014 were forfeited in favor of the Government;

WHEREAS, the TAXPAYER moved for the nullification of the April 29, 2014 auction sale, which was denied by the CTA. The TAXPAYER elevated the CTA's denial to the Supreme Court, docketed as G.R. No. 227953;

WHEREAS, in CTA Case No. 8502, TAXPAYER sought the withdrawal and cancellation of the deficiency income tax assessment for the taxable year 2007 amounting to ₱1,295,855,151.89 which on September 2, 2016, the CTA in Division promulgated the Decision declaring the deficiency income tax assessment issued against him for taxable year 2007 void due to the invalidity of the LOA which covered audit of "unverified prior years". The dispositive portion thereof reads, as follows:

"WHEREFORE, premises considered, the instant Petition for Review is GRANTED. Accordingly, the deficiency income tax assessment for taxable year 2007, amounting to ₱1,295,855,151.89 as found in

FDDA No. 2012-0001, is hereby CANCELLED and WITHDRAWN.

SO ORDERED.”

WHEREAS, in a Resolution dated February 8, 2017, the CTA in Division denied the Motion for Reconsideration filed by the BIR.

WHEREAS, on September 20, 2018, the CTA En Banc dismissed the Petition for Review filed by the BIR to which the BIR again filed a Motion for Reconsideration.

WHEREAS, the CTA later acquitted the TAXPAYER in Criminal Case Nos. 0-206 and 0-207 and directed the litigation of the civil aspect in CTA Case No. 8503 in its Resolution dated January 3, 2013, to wit:

“WHEREFORE, all the foregoing considered, the [petitioner’s] ‘DEMURRER TO EVIDENCE’ is hereby GRANTED and CTA Crim. Case Nos. 0-206 and 0-207 are hereby DISMISSED. Accordingly, [petitioner] is hereby ACQUITTED on reasonable doubt in said criminal cases.

As regards CTA Case No. 8503, an Answer having been filed in this case on August 17, 2012, let this case be set for Pre-Trial on January 23, 2013 at 9:00 a.m.

SO ORDERED.”;

WHEREAS, the BIR filed a Motion to Dismiss the Petition for Review Ad Cautelam on the ground that the CTA First Division lacks jurisdiction to resolve the case due to petitioner’s non-payment of the filing fees;

WHEREAS, on March 1, 2013, the CTA First Division issued a Resolution granting the Motion to Dismiss. His motion for reconsideration being denied, the TAXPAYER elevated the case to the CTA En Banc;

WHEREAS, the CTA En Banc affirmed the dismissal of the case in its Decision dated December 22, 2014, thus:

“WHEREFORE, premises considered, the instant Petition for Review is DENIED for lack of merit. The Resolutions of the First Division of this Court promulgated on 01 March 2013 and 24 June 2013 are hereby AFFIRMED.

Costs against the petitioner.

SO ORDERED.”;

WHEREAS, the Supreme Court in its Decision dated July 23, 2018 reversed the resolution of the Court of Tax Appeals dismissing the case, thus:

“WHEREFORE, the Petition is hereby PARTIALLY GRANTED. The Decision dated December 22, 2014 and Resolution dated February 2, 2016 of the Court of Tax Appeals En Banc in CTA EB Criminal Case No. 026 are REVERSED and SET ASIDE. The case is REMANDED to the Court of Tax Appeals First Division to conduct further proceedings in CTA Case No. 8503 and to ORDER the Clerk of Court to assess the correct docket fees. Petitioner Mariano Lim Gaw, Jr., is likewise ORDERED to pay the correct docket fees within ten (10) days from the receipt of the correct assessment of the Clerk of Court.

SO ORDERED.”;

WHEREAS, the BIR thru the Office of the Solicitor General filed a Motion for Reconsideration on the said Decision of the Supreme Court;

WHEREAS, in letters dated September 21, 2018 and September 25, 2018, the TAXPAYER has relayed to the BIR his intention to enter into a judicial compromise pursuant to the provisions of the Civil Code of the Philippines, jurisprudence, and relevant laws on judicial compromise for his deficiency tax liabilities for taxable year 2008 and offered to pay the total amount of Seven Hundred Thirteen Million One Hundred Seventy-Seven Thousand Two Hundred Eighty-Six Pesos and Forty-Seven Centavos ([P]713,177,286.47);

WHEREAS, the BIR has evaluated the TAXPAYER’S proposal for amicable settlement;

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 its tax liability for taxable year 2008, the subject matter in G.R. No. 222837 in relation to CTA [C]ase No. 8503, the TAXPAYER has offered and paid and the BIR has accepted the total amount of Two Hundred Million Pesos (P200,000,000.00), in addition to the amount of Five Hundred Five Million One Hundred Seventy Seven

Thousand Two Hundred Thirteen Pesos and Eighty One Centavos (P505,177,213.81) previously paid as taxes and Eight Million Pesos (P8,000,000.00) collected from the auction sale of his properties.

Section 2. Submission to the Honorable Supreme Court. This Agreement fully signed by the PARTIES shall be submitted to the Honorable Supreme Court in G.R. No. 222837. The PARTIES undertake to perform any and all acts, and submit any and all documents necessary to terminate the instant case and as may be required by the Honorable Supreme Court.

Section 3. Effectivity of the Agreement. This Agreement shall only take effect and bind the PARTIES upon approval and termination of proceedings by the Honorable Supreme Court. This Agreement shall thereafter remain in force and effect until completion and fulfillment of the covenants and undertaking of the PARTIES thereto.

Section 4. Deliverables of the PARTIES upon approval of this Agreement by the Honorable Supreme Court. Upon approval by the Honorable Supreme Court of this Agreement, the BIR undertakes to execute and deliver to the TAXPAYER any and all documents as may be required to effectively withdraw and cancel the FDDA dated May 18, 2012 pertaining to income tax and VAT assessments covering taxable year 2008 including the cancellation and withdrawal of the Warrant of Dstraint and/or Levy dated 11 January 2013 and Notices of Tax Liens and Notice of Levy on Real Property of the [TAXPAYER's] twenty (20) properties identified in the Notice of Sale dated 05 March 2014 and subsequently forfeited in favor of the Government during the 29 April 2014 auction sale and the execution and delivery to the TAXPAYER of any and all documents to effectively cancel the Notices of Tax Liens and Notices of Levy on Real Property annotated on the titles of these twenty (20) forfeited properties insofar as it pertains to Income Tax and VAT assessments for taxable year 2008.

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 by the Honorable Supreme Court.

The TAXPAYER similarly warrants that he has full legal capacity to enter, sign and execute this Agreement, and to deliver payment of the above-agreed Compromise amount.

Section 6. Full and Final Settlement. This Agreement is executed by the PARTIES for the purpose of amicably settling and ending G.R. No. 222837 in relation to CTA Case No. 8503 and the Petitions and Motions filed related thereto. Considering the performance by the TAXPAYER of his obligations under Section



1 hereof, the BIR recognizes the full satisfaction of the supposed tax liability of the TAXPAYER in connection with x x x G.R. No. 222837 in relation to CTA Case No. 8503 and acknowledges that the TAXPAYER no longer has any tax liability whatsoever based upon, arising from or in connection with the particular subject of G.R. No. 222837 in relation to CTA Case No. 8503.

Section 7. Additional Requirements from the Supreme Court. In case the Supreme Court requires additional action or documents to approve this Agreement, the PARTIES undertake to comply with the Supreme Court's requirements within a curing period of sixty (60) days from receipt of the Order/Resolution. During such period, the PARTIES mutually agree to, among other matters, perform any and all acts necessary to rectify and correct the deficiency, defect or imperfection as found by the Supreme Court, and re-submit the rectified or corrected Agreement for approval of the Supreme Court. Pending the approval of the Supreme Court, it is understood that:

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 G.R. No. 222837 and the Petitions and Motions filed in relation thereto 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 of 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 Supreme Court for the immediate implementation and execution of the terms and conditions of this Agreement or the judgment or order of the Honorable Supreme Court 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.

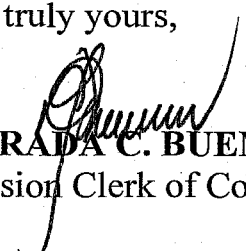
IN WITNESS WHEREOF, the PARTIES hereto have mutually and voluntarily agreed to the foregoing stipulations and have hereunto signed these presents at the date and place indicated above.<sup>12</sup> (Citations omitted)

**WHEREFORE**, finding the duly notarized Judicial Compromise Agreement entered into by petitioner Macario Lim Gaw, Jr. and respondent Commissioner of Internal Revenue to be in accordance with the law, the same is hereby **APPROVED**, and judgment is rendered in accordance with its terms. Accordingly, the present case is considered **CLOSED and TERMINATED**.

The petitioner's manifestation stating that the remand of CTA Case No. 8503 to the Court of Tax Appeals, First Division, will only unduly prolong the final disposition of the case for reason stated therein is **NOTED**.

**SO ORDERED.**"

Very truly yours,

  
**LIBRADA C. BUENA**  
Division Clerk of Court

73

**TAN ACUT LOPEZ AND PISON LAW  
OFFICES**

Counsel for Petitioner  
23<sup>rd</sup> Floor, East Tower  
Philippine Stock Exchange Centre  
Exchange Road, Ortigas Center  
1605 Pasig City

Public Information Office (x)  
Library Services (x)  
Supreme Court  
(For uploading pursuant to A.M. No.  
12-7-1-SC)

Judgment Division (x)  
Supreme Court

UR

Court of Tax Appeals  
National Government Center  
Diliman, 1101 Quezon City  
(CTA EB Crim. Case No. 026;  
CTA Crim. Case Nos. O-206 & O-207  
& CTA Case No. 8503)

The Solicitor General  
134 Amorsolo Street, Legaspi Village  
1229 Makati City

Litigation Division  
Bureau of Internal Revenue  
Room 703, BIR National Office Building  
Agham Road, Diliman 1101 Quezon City

<sup>12</sup> *Id.* at 4322-4329.