REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff,	CTA CRIM. CASE NO. O-155
	Members:
- versus -	ACOSTA, *Chairperson* UY, *and* FABON-VICTORINO, JJ
GLORIA F. TUYAY *(No. 44 Sta. Barbara St., Gulod Novaliches, Quezon City),* Accused.	Promulgated: JUL 21 2011 ; 11:50 am

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RESOLUTION

Fabon-Victorino, J.:

Invoking the exculpatory provision of Republic Act No. 9480, otherwise known as "An Act Enhancing Revenue Administration and Collection by Granting an Amnesty on All Unpaid Internal Revenue Imposed by the National government for Taxable Year 2005 and Prior Year", accused Gloria F. Tuyay now comes to Court, praying for the dismissal of the instant case filed against her for violation of Section 254 of the National Internal Revenue Code (NIRC), as amended.

Accused alleges that she availed of the tax amnesty program of the Government under R.A. No. 9480, which took effect on June 16, 2007. In compliance with the law, she filed with the Bureau of Internal Revenue (BIR) a Notice of Availment of Tax Amnesty on February 21, 2008. She also filed with the same office the required Tax Amnesty Return (BIR Form 2116), Tax Amnesty Payment Forms (BIR Form 0617), indicating her payments of tax in the amounts of Php79,913.90 and Php35,177.50. The BTR-BIR deposit slips as well show such payments. Her Statement of Assets and Liabilities and Net Worth (SALN) was likewise submitted to the BIR as part of the required documents.

Accused added that under Section 4 of the R.A. 9480, her stated assets and liabilities and net worth as declared pursuant to the availment is presumed correct. Moreover, Section 6 of the same law provides that those who availed of the subject tax amnesty program shall be immuned from any prosecution, whether civil, criminal, or administrative arising from failure to pay any and all internal revenue taxes for taxable year 2005 and prior years.

Hence, the instant criminal case should be dismissed as she is immuned from further prosecution having availed of the amnesty program and complied with all the requirements thereof.

In rejecting the motion, the prosecution posits that notwithstanding accused' availment of the amnesty program, her criminal liability had not been extinguished. The Rules and Regulations to Implement R.A. No. 9480 specifically disqualified persons with criminal cases pending before the court or Department of Justice (DOJ) from enjoying the immunities and privileges provided by the law, like accused. When accused applied for tax amnesty on February 21, 2008, the instant criminal case filed with the DOJ on June 3, 2005 was still pending investigation. This fact effectively excludes her from the coverage of R.A. No. 9480.

In her Reply, accused asseverates that the government agencies tasked with the prosecution of the case specifically, the Department of Finance (DOF) and the BIR, are already estopped from proceeding with the case as they were ones who processed her application for amnesty and received payment therefor pursuant to R.A. No. 9480. By approving her application for tax amnesty, the DOF and the BIR are deemed to have condoned all her income tax liabilities including any civil, criminal, or administrative for the covered years.

In addition, Section 5 of DOF-029-07 or the Rules and Regulations Implementing R.A. No. 9480 is null and void for it expanded the coverage of the law which it seeks to implement. An administrative agency cannot issue administrative rulings or circulars inconsistent with the law sought to be applied. While R.A. No. 9480 provides that only those with pending cases in Court are excluded from availing the benefits of the law, Section 5 of DOF-029-07 expands the coverage to include those with pending complaints before the DOJ undergoing preliminary investigation. Therefore, being null and void, Section 5 of DOF-029-07 cannot be a legal basis for claiming that she cannot avail of the benefits under the amnesty program of the Government.

After the parties traded pleadings, the instant Motion to Dismiss was submitted for resolution on March 22, 2011.

Section 2 of R.A. No. 9480 enumerates the requirements to qualify under the tax amnesty program of the Government, thus:

> Sec. 2. *Availment of the Amnesty*. Any person, natural or juridical, who wishes to

> avail himself of the tax amnesty authorized and granted under this Act shall file with the Bureau of Internal Revenue (BIR) a notice and Tax Amnesty Return accompanied by a Statement of Assets, Liabilities and Networth (SALN) as of December 31, 2005, in such form as may be prescribed in the implementing rules and regulations (IRR) of this Act, and pay the applicable amnesty tax within six months from the effectivity of the IRR.

Section 6, Rule III of Department Order No. 29-07 dated August 15, 2007, or the Rules and Regulations to Implement Republic Act No. 9480, lists the documents which a taxpayer needs to submit to the BIR to avail of the tax amnesty, to wit:

> **AVAILMENT AND PAYMENT OF AMNESTY**
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> SEC. 6. *Method of Availment of Tax Amnesty*. -
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> 1. *Forms/Documents to be filed.* - To avail of the general tax amnesty, concerned taxpayers shall file the following documents/requirements:
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>   a. Notice of Availment in such form as may be prescribed by the BIR.
>   b. Statement of Assets, Liabilities and Networth (SALN) as of December 31, 2005 in such form, as may be prescribed by the BIR.
>   c. Tax Amnesty Return in such form as may be prescribed by the BIR
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> x x x x x x
>
> 2. *Payment of Amnesty Tax and Full Compliance.* - Upon filing of the Tax

> Amnesty Return in accordance with Sec. 6(2) hereof, the taxpayer shall pay the amnesty tax to the authorized agent bank or in the absence thereof, the Collection Agent or duly authorized Treasurer of the city or municipality in which such person has his legal residence or principal place of business.
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> The RDO shall issue sufficient Acceptance of Payment Forms, as may be prescribed by the BIR for the use of – or to be accomplished by – the bank, the collection agent or the Treasurer, showing the acceptance of the amnesty tax payment. In case of the authorized agent bank, the branch manager or the assistant branch manager shall sign the acceptance of payment form.
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> The Acceptance of Payment Form, the Notice of Availment, the SALN, and the Tax Amnesty Return shall be submitted to the RDO, which shall be received only after complete payment. The completion of these requirements shall be deemed full compliance with the provisions of RA 9480. *(underscoring ours)*

There is no denying that accused availed of the tax amnesty program of the Government under R.A. No. 9480 when she filed her Notice of Availment of Tax Amnesty[1] and Statement of Assets, Liabilities, and Networth (SALN)[2] as of December 31, 2005 on February 21, 2008, and her Tax Amnesty Return[3] on February 26, 2008. As proof of payments of the amnesty tax, accused introduced two (2) Tax Amnesty Payment Forms (BIR

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[1] Docket, page 133 and Annex 1, Motion to Dismiss dated January 31, 2011.
[2] Docket, page 131.
[3] Annex 2, Motion to Dismiss dated January 31, 2011.

Form No. 0617), one for the amount of P79,913.90,[4] and the other for P35,177.50.[5]

Under the cited provisions, accused has complied with all the requirements of the tax amnesty program as mandated under R.A. No. 9480. In fact, the prosecution admitted this with only one objection to the relief sought, viz., accused is not covered by the benefits due to the pendency of her case in the DOJ at the time she availed of the amnesty program.

But the law is clear. Only those with pending criminal cases for tax evasion and other criminal offenses under Chapter II of Title X of the National Internal Revenue Code of 1997, as amended, and the felonies of frauds, illegal exactions and transactions, and malversation of public funds and property under Chapters II and IV of Title VII of the Revised Penal Code are precluded from availing the tax amnesty.

Section 8(5) of R.A. No. 9480 provides:

> **Sec. 8. *Exceptions.*** The tax amnesty provided in Sec. 5 hereof shall not extend to the following persons or cases existing as of the effectivity of this Act:

[4] Annex 3, Motion to Dismiss dated January 31, 2011.
[5] Annex 4, Motion to Dismiss dated January 31, 2011.

x x x x x x x x x

> 5. Those with pending criminal cases for tax evasion and other criminal offenses under Chapter II of Title X of the National Internal Revenue Code of 1997, as amended, and the felonies of frauds, illegal exactions and transactions, and malversation of public funds and property under Chapters II and IV of Title VII of the Revised Penal Code; x x x

By the prosecution's own averments, the complaint against accused was filed with the DOJ on June 3, 2005. While the case was still pending preliminary investigation or on February 21, 2008, accused filed with the BIR her Notice of Availment of Tax Amnesty together with all the other requirements of the law. She paid and complainant BIR accepted the required amnesty tax as evidenced by the Tax Amnesty Forms (BIR Form 0617) and BTR-BIR deposit slips. Hence, there was yet no criminal case to speak of at the time she opted to avail of the benefit of the law. She was then merely a respondent in a complaint filed against her by complainant BIR subject of preliminary investigation. In fact, there was yet no finding of probable cause against her to hold her for trial.

It is elementary that proceedings before the DOJ are inquisitorial in nature and only for the purpose preliminary investigation to determine the existence of probable cause. A preliminary investigation is "an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial.[6] Being generally inquisitorial, the preliminary investigation stage is often the only means of discovering the persons who may be reasonably charged with a crime, to enable the preparation of a complaint or information.[7] It must be stressed that preliminary investigation is an executive, not a judicial, function. As the officer authorized to direct and control the prosecution of all criminal actions, a prosecutor is primarily responsible for ascertaining whether there is sufficient ground to engender a well-founded belief that an offense has been committed and that the accused is probably guilty thereof.[8]

In fine, at the time accused availed of the amnesty offered by the government to erring taxpayers, accused was not yet subject of any indictment to preclude her from enjoying the benefit of the law.

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[6] Yusop vs. Sandiganbayan, G.R. Nos. 138859-60, February 22, 2001.
[7] Santos-Concio, et al. vs. Department of Justice, et al., G.R. No. 175057, January 29, 2008.
[8] People vs. Navarro, G.R. No. 96229, March 25, 1997.

Anent the alleged discrepancy between the provisions of R.A. No. 9480 and Department Order No. 29-07, the implementing rules of the said law, suffice it to say in cases of conflict between the law and the rules and regulations implementing the law, the law shall always prevail. Should Revenue Regulations deviate from the law they seek to implement, they will be struck down.[9]

While "it is widely accepted that the interpretation placed upon a statute by the executive officers, whose duty is to enforce it, is entitled to great respect", this interpretation is not conclusive upon the court and will have to be "ignored if judicially found to be erroneous" and "clearly absurd x x x or improper." An administrative issuance that overrides the law it merely seeks to interpret, instead of remaining consistent and in harmony with it, will not be countenanced by the Court.[10] Indeed, administrative issuances must not override, supplant or modify the law, but must remain consistent with the law they intend to carry out. Only Congress and not complainant BIR can repeal or amend the law.[11]

As stated, Section 6 of the subject law provides immunities

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[9] CIR vs. Bicolandia Drug Corporation, G.R. No. 148083, July 21, 2006.
[10] CIR vs. American Express, G.R. No. 152609, June 29, 2005.
[11] CIR vs. Michel J. Lhuillier Pawnshop, G.R. No. 150947, July 15, 2003.

and privileges to taxpayers, not otherwise excluded, whose applications were processed and approved by complainant BIR. The provision reads as follows:

> Sec. 6. ***Immunities and Privileges.*** Those who availed themselves of the tax amnesty under Sec. 5 hereof, and have fully complied with all its conditions shall be entitled to the following immunities and privileges:
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> 1. the taxpayer shall be immune from the payment of taxes, as well as addition thereto, and the appurtenant civil, criminal or administrative penalties under the National Internal Revenue Code of 1997, as amended, arising from the failure to pay any and all internal revenue taxes for taxable year 2005 and prior years.
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> x x x x x x x x x

Thus, by virtue of Section 6 of R.A. No. 9480, accused, at the time that her application for amnesty was processed and approved by complainant BIR, is rendered immune from "the appurtenant civil, criminal or administrative penalties under the NIRC of 1997, as amended, arising from the failure to pay any and all internal revenue taxes for taxable year 2005 and prior years."

It must also be stressed that a tax amnesty is a general pardon or the intentional overlooking by the State of its authority to impose penalties on persons otherwise guilty of violation of a tax law. It partakes of an **absolute waiver** by the government of its right to collect what is due it and to give tax evaders who wish to relent a chance to start with a clean slate.[12]

WHEREFORE, premises considered, the Motion to Dismiss dated January 31, 2011, filed by the accused Gloria F. Tuyay is hereby **GRANTED**. Accordingly, CTA Criminal Case No. O-155 is ordered **DISMISSED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

ERLINDA P. UY
Associate Justice

[12] Metropolitan Bank and Trust Co. vs. Commissioner of Internal Revenue, G.R. No. 178797, August 04, 2009.