REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

C.T.A. EB NO. 430
(C.T.A. Case No. 6868)

Present:

-versus-

Acosta, P.J.
Castañeda, Jr.
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, JJ.

PILMICO FOODS CORPORATION,
Respondent.

Promulgated: [illegible]
MAR 3 1 2009 3:05 p.m.

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D E C I S I O N

BAUTISTA, J.:

The Case

Before Us is a Petition for Review[1] filed by the Commissioner of Internal Revenue pursuant to paragraph 2, Section 18 of Republic Act No. 1125, as amended by Republic Act No. 9282, praying for the reconsideration and setting aside of:

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[1] *Rollo*, C.T.A. EB No. 430 (C.T.A. Case No. 6868), pp. 5 – 29.

1. the Resolution dated July 22, 2008 rendered by the Second Division of the Court ("Court in Division") in CTA Case No. 6868, where herein respondent's Petition for Review was deemed withdrawn and the case was considered closed and terminated, subject to the provisions of Republic Act ("R.A.") 9480[2] in view of respondent's availment of the Tax Amnesty Program ("TAP"); and
2. the Resolution of the Court in Division promulgated on October 6, 2008, which denied herein petitioner's Motion for Reconsideration[3] and herein respondent's Motion for Partial Reconsideration[4], both for lack of merit.

Antecedent Facts

The material antecedents are as follows:

Petitioner is the Commissioner of the Bureau of Internal Revenue ("BIR") who is duly appointed and empowered to perform the duties of his office, including, among others, the duty to act and approve claims for refund or tax credit as provided by law, with office address at the BIR National Office Building, BIR Road, Diliman, Quezon City, where he may be served with summons and other court processes.[5]

Respondent is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office address at Aboitiz

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[2] An Act Enhancing Revenue Administration and Collection by Granting an Amnesty on All Unpaid Internal Revenue Taxes Imposed by the National Government for Taxable Year 2005 and Prior Years which took effect on May 24, 2007.
[3] *Records*, pp. 390 – 395.
[4] *Id.*, pp. 382 – 385.
[5] *Id.*, p. 80, Joint Stipulation of Facts and Issues.

Corporate Center, Banilad, Cebu City. It is registered with the BIR under Revenue District No. 123 – LTDO with Tax Identification Number 000-314-346-000.[6]

On March 17, 2003, respondent entered into a Deed of Assignment with Uniden Phils., Inc. ("UNIDEN") for the transfer of Tax Credit Certificate ("TCC") No. SN 021723 in the amount of ₱16,291,433.71. As consideration, respondent agreed to pay UNIDEN ₱15,476,862.02 after the issuance of the new TCC and the Tax Debit Memo ("TDM") to respondent.[7]

On March 31, 2003, respondent entered into another Deed of Assignment with UNIDEN for the transfer of a portion of TCC No. SN 021736 in the amount of ₱13,464,097.34. Respondent also agreed to pay UNIDEN ₱12,790,892.47 after the issuance of the new TCC and the TDM to respondent.[8]

Both TCCs of UNIDEN were issued by the Department of Finance One Stop Shop Inter Agency Tax Credit and Duty Drawback Center. Said TCCs were subsequently cancelled and TCC Nos. 809 and 914 were issued to and in the name of respondent.[9]

For the following periods in 2003, respondent paid its Value-added Tax ("VAT") liabilities utilizing the TCCs it purchased from UNIDEN[10], for which the BIR issued the corresponding TDMs[11]:

Period Covered	*TDM No.*	*TCC No.*	*TDM Date*	*TDM Amount*
Feb. 28, 2003	3464	809	Mar. 25, 2003	₱11,498,735.05
Mar. 31, 2003	3491	809	Apr. 24, 2003	4,792,698.00
Mar. 31, 2003	3493	914	Apr. 24, 2003	7,162,620.00
Apr. 30, 2003	3496	914	May 14, 2003	6,301,477.34

[6] *Records*, p. 80, Joint Stipulation of Facts and Issues.
[7] *Id.*
[8] *Id.*, p.81, Joint Stipulation of Facts and Issues.
[9] *Id.*
[10] *Id.*, pp. 3 – 4, Petition for Review.
[11] *Id.*, pp. 215 – 218, Exhibits "C" to "F".

On December 15, 2003, respondent received by registered mail the original of a Collection Letter dated November 24, 2003 from the Large Taxpayers Service of the BIR signed by then Commissioner Guillermo L. Parayno, Jr. The letter stated that the TCCs which UNIDEN sold to respondent were fully utilized at least two years prior to the said sale so the new TCCs had no value. The Commissioner thus demanded from respondent the payment of alleged unpaid VAT liabilities amounting to ₱40,331,604.02. Four days later, respondent filed an administrative protest with the Commissioner of Internal Revenue through the Office of the Deputy Commissioner for Operations Group.[12]

On February 16, 2004, respondent received by registered mail a copy of the Final Demand Notice of the Commissioner signed by Deputy Commissioner Estelita C. Aguirre, giving respondent ten (10) days within which to settle the alleged tax liabilities otherwise, it will institute civil administrative remedies for the collection of said tax liabilities.[13]

Aggrieved, respondent elevated the matter to the Court in Division by filing a "Petition for Review (With Motion to Suspend Collection of Value Added Tax and Surcharges and Interests subject of this Petition)" on February 20, 2004.[14]

Court proceedings ensued thereafter. With the admission of its documentary exhibits, respondent (petitioner therein) rested its case before the Court in Division.[15]

However, before petitioner (respondent therein) could finish his presentation of evidence, respondent filed a "Motion/Manifestation"[16] on April 17, 2008 with the

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[12] *Records*, p. 82, Joint Stipulation of Facts and Issues.
[13] *Id.*, p. 82-83, Joint Stipulation of Facts and Issues.
[14] *Id.*, pp. 1- 36, with Annexes.
[15] *Id.*, pp. 275 – 276.

Court in Division, manifesting that it availed of the TAP pursuant to R.A. 9480 on February 19, 2008 and praying that the Court in Division direct petitioner to issue an Authority to Cancel Tax Assessment ("ATCA"), specifically the Final Demand Notice dated January 30, 2004 demanding from respondent the amount of ₱40,331,604.02 and that after the issuance of the ATCA, respondent will file the necessary Motion to Withdraw.

On May 8, 2008, petitioner filed a Comment[17] on the said "Motion/Manifestation" to which respondent filed a Reply[18] on May 19, 2008.

The Rulings of the Court in Division

On June 17, 2008, the Court in Division rendered a Resolution which noted respondent's Manifestation that it had availed of the TAP on February 19, 2008, in accordance with Section 15 of R.A. 9480 and ordered the respondent to submit the originals or copies certified as true by the BIR of the supporting documents attached to its "Motion/Manifestation" which were only machine copies certified by respondent's in-house tax counsel.

On July 7, 2008, respondent filed a "Compliance" submitting the certified true copies of the subject documents. On July 22, 2008, the Court in Division issued a Resolution noting respondent's Compliance, treating the "Motion/Manifestation" as a "Motion to Withdraw the Petition", granting the withdrawal of the Petition for Review and considering the case closed and terminated, subject to the provisions of R.A. 9480.

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[16] *Records*, pp. 341 – 350.
[17] *Id.*, pp. 352 – 354.
[18] *Id.*, pp. 357 – 367.

Dissatisfied, respondent moved for a partial reconsideration on August 1, 2008 of the Resolution dated July 22, 2008, reiterating its prayer that the Court in Division direct petitioner to issue an ATCA.

Equally aggrieved, petitioner moved for a reconsideration of the same Resolution on August 21, 2008, maintaining its position that respondent is not qualified to avail of the TAP and praying that the Court in Division deny respondent's "Motion/Manifestation." On even date, respondent also filed a Comment on petitioner's Motion for Reconsideration.

On October 6, 2008, the Court in Division promulgated its Resolution denying both Motions and ruled as follows:

1. By availing of the TAP under R.A. 9480, respondent has, in effect, withdrawn its Petition for Review considering that as a qualified taxpayer, it is already immune from the payment of taxes and penalties arising from the failure to pay any and all internal revenue taxes for taxable year 2005 and prior years;
2. The Court in Division cannot issue an order directing petitioner to issue an ATCA since it is possible that the TAP availment of respondent may still be invalidated within one (1) year from the date of filing of the tax amnesty return and the Statement of Assets and Liabilities and Networth ("SALN");
3. Should the availment be invalidated for under-declaration to the extent of thirty percent (30%) or more of the declared net worth of respondent, it would be respondent's fault so it cannot complain that it will lose its right to question the subject deficiency assessments because the case is already "withdrawn".

4. R.A. 9480 does not state that the so-called "self-assessed taxes" are exceptions to the coverage of the TAP but Q47 and A47 of Revenue Memorandum Circular ("RMC") 69-2007[19] does. Said RMC is therefore void as it clearly went beyond the provisions of R.A. 9480; and

5. The Basic Guide on the Tax Amnesty Act of 2007 is also void insofar as it extends "self-assessed taxes" as excluded from the TAP since it was issued by the Committee on Oversight of the House of Representatives ("COHR") or the Legislative Department of the government, thereby violating the principle of separation of powers under the Constitution.

The *fallo* of the said Resolution reads:

> "**WHEREFORE**, premises considered, both petitioner's "Motion for Partial Reconsideration" and respondent's "Motion for Reconsideration" are hereby **DENIED** for lack of merit.
>
> **SO ORDERED**."

Hence, this recourse to the Court *En Banc* on November 7, 2008 on the following assigned errors:

"i.

THE HON. COURT'S SECOND DIVISION ERRED IN HOLDING THAT RESPONDENT IS QUALIFIED TO AVAIL OF THE TAX AMNESTY UNDER R.A. 9480, AS SUCH THE PETITION FOR REVIEW FILED ON FEBRUARY 20, 2004 IS DEEMED WITHDRAWN AND THE CASE IS CONSIDERED CLOSED AND TERMINATED.

ii.

THE HON. COURT'S SECOND DIVISION ERRED IN HOLDING THAT RESPONDENT'S DEFICIENCY VALUE-ADDED TAXES FOR TAXABLE YEAR 2003 ARE NOT AN 'UNPAID SELF-ASSESSED TAXES' OR DELINQUENT ACCOUNT DUE TO THE GOVERNMENT.

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[19] Entitled *"Clarification of Issues Concerning the Tax Amnesty Program Under Republic Act. No. 9480 as Implemented by Department Order No. 29-07"* dated November 5, 2007.

iii.

THE HON. COURT'S SECOND DIVISION ERRED IN HOLDING THAT RMC 69-2007 IS NULL AND VOID."[20]

On January 7, 2009, respondent filed its Comment. On February 12, 2009, this case was submitted for decision since petitioner filed no Reply to respondent's Comment.

On February 19, 2009, the one-year period under Section 4 of R.A. 9480 to initiate proceedings to establish the under-declaration to the extent of thirty percent (30%) or more of respondent's declared net worth in the SALN that it filed on February 19, 2008, lapsed.

The Issues

The issues for Our resolution are:

"I.

WHETHER OR NOT THE DEFICIENCY VALUE-ADDED TAXES OF RESPONDENT FOR TAXABLE YEAR 2003, BEING COLLECTED BY THE PETITIONER ARE CONSIDERED AS AN 'UNPAID SELF-ASSESSED TAXES' OR DELINQUENT ACCOUNT DUE TO THE GOVERNMENT.

II.

A. WHETHER OR NOT RESPONDENT IS QUALIFIED TO AVAIL THE PRIVILEGES UNDER THE TAX AMNESTY LAW (R.A. 9480).

B. WHETHER OR NOT THE ISSUANCE OF RMC 69-2007 WAS IN ACCORDANCE WITH THE TAX AMNESTY LAW (R.A. 9480).

III.

WHETHER OR NOT THIS HONORABLE COURT HAS JURISDICTION TO ENTERTAIN THE INSTANT CASE."[21]

[20] *Rollo*, p. 8 – 9.
[21] *Id.*, p. 9.

The Ruling of the Court En Banc

We find the petition without merit.

The Court has jurisdiction over the instant case

Before going into the other issues of this case, We must first address the matter of jurisdiction.

Petitioner insists that the Court has no jurisdiction to entertain the instant case since the same involves an ordinary tax collection case initiated by the BIR and not a decision of the Commissioner of Internal Revenue on a case involving a disputed tax assessment, citing as bases the cases of *Uy Ham v. Republic*[22] and *Republic v. Del Rosario.*[23] He further argues that since respondent's "unpaid self-assessed taxes" partake the nature of Delinquent Accounts due to the Government, the petitioner's issuance of the Collection Letter[24] dated November 24, 2003 and the Final Demand Notice[25] dated January 30, 2004 constitute an ordinary tax collection case initiated by the BIR. Correspondingly, the Court has also no jurisdiction to consider the case withdrawn, closed and terminated on the basis of respondent's availment of the TAP.

Respondent, in its Comment, asseverates that the Court has jurisdiction over this case since the Final Demand Notice signed by Deputy Commissioner Estelita C. Aguirre is in effect a deficiency assessment. It further avers that petitioner is estopped from questioning the Court's jurisdiction since he participated in the trial

[22] L-13869, October 20, 1959.
[23] L-10460, March 11, 1959.
[24] *Records,* p. 27.
[25] *Id.*, p. 36.

of the case and even presented witnesses. It also points out that this case involves a collection letter and not an action for collection of taxes in a regular court.

Petitioner's arguments hold no water.

It is well-settled that the jurisdiction of a tribunal over the subject matter of an action is conferred by law. It is determined by the material allegations of the complaint and the law at the time the action was commenced. Lack of jurisdiction of the court over an action or the subject matter of an action, cannot be cured by the silence, acquiescence, or even by express consent of the parties. Hence, the jurisdiction of the court over the nature of the action and the subject matter thereof cannot be made to depend upon the defenses set up in the court or upon a motion to dismiss; otherwise, the question of jurisdiction would depend almost entirely on the respondent.[26]

The jurisdiction of this Court is defined in Republic Act No. 1125, as amended by Republic Act No. 9282. Section 7 thereof states, in pertinent part:

"SEC. 7. Jurisdiction. ---- The CTA shall exercise:

(a) Exclusive jurisdiction to review by appeal, as herein provided:

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, **or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;**

xxx xxx xxx

(b) Jurisdiction over cases involving criminal offenses as herein provided:

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[26] People v. Vanzuela, G.R. No. 178266, 559 SCRA 234, July 21, 2008, *citing Laresma v. Abellana, 442 SCRA 156, 168 (2004).*

xxx xxx xxx

(c) Jurisdiction over tax collection cases as herein provided:

xxx xxx xxx"
(Emphasis supplied)

The above statute confers on this Court the power to hear and decide tax disputes in general, which include other matters arising under the National Internal Revenue Code ("NIRC") or other laws administered by the BIR. This power was recognized by the Supreme Court in the case of *Philippine Journalists, Inc. v. Commissioner of Internal Revenue,*[27] where it ruled that the appellate jurisdiction of this Court is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds but includes other cases that arise out of the NIRC or related laws administered by the BIR. It elucidated in this wise:

> "xxx **The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue. The wording of the provision is clear and simple.** It gives the CTA the jurisdiction to determine if the warrant of distraint and levy issued by the BIR is valid and to rule if the Waiver of Statute of Limitations was validly effected.
>
> **This is not the first case where the CTA validly ruled on issues that did not relate directly to a disputed assessment or a claim for refund.** In *Pantoja v. David*, we upheld the jurisdiction of the CTA to act on a petition to invalidate and annul the distraint orders of the Commissioner of Internal Revenue. Also, in *Commissioner of Internal Revenue v. Court of Appeals*, the decision of the CTA declaring several waivers executed by the taxpayer as null and void, thus invalidating the assessments issued by the BIR, was upheld by this Court." *(Emphasis supplied, citations omitted)*

While the issues here do not exactly relate to a disputed assessment since no assessment notices preceded the subject Collection Letter or to a claim for refund,

[27] G.R. No. 162852, 447 SCRA 214, December 16, 2004.

nonetheless, they arose out of the NIRC and R.A. 9480, a related law administered by the BIR.

This case is similar to the case of *Pilipinas Shell Petroleum Corporation ("PSPC") v. Commissioner of Internal Revenue ("CIR")*,[28] where the *CIR* did not issue assessment notices prior to the issuance of a collection letter and where petitioner *PSPC* sought in its petition before this Court, the cancellation and withdrawal of the said collection letter. It also prayed for the validation of the transfer to and utilization by it of the TCCs assigned to it by BOI-registered enterprises in payment of the former's excise tax liabilities and the enjoinment of the *CIR* and his agents from any and all attempts to collect from *PSPC* the alleged excise tax liabilities for the years 1992, 1994-1997, inclusive of surcharges and interest. This Court granted the petition for review, ordered that the collection letter issued by the *CIR* be considered withdrawn and enjoined the *CIR* from any attempts to collect from *PSPC* the specific tax, surcharge and interest subject of the petition.

Records show that herein petitioner also did not issue assessment notices to respondent prior to the issuance of the subject Collection Letter and the Final Demand Notice. Respondent filed a Protest letter[29] on December 19, 2003 with the Office of petitioner, contesting the said Collection Letter on the ground that it had fully paid the subject VAT liabilities through valid TCCs as evidenced by Tax Debit Memos. Finding no merit in the Protest letter, petitioner, through Deputy Commissioner Estelita C. Aguirre, issued the said Final Demand Notice. This prompted respondent to elevate the matter to this Court *via* a Petition for Review,

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[28] C.T.A. Case No. 5728, July 23, 1999.
[29] *Records*, pp. 28 – 30.

seeking the validation of the utilization by respondent of the TCCs assigned to it in payment of its VAT liabilities and the withdrawal of the subject Final Demand Notice.

There is thus basis for this Court's jurisdiction over the instant case since the factual milieu and issues here are parallel to the *PSPC* case and fall under the category of "other matters arising under the National Internal Revenue Code or other laws administered by the BIR" as provided in Section 7 (a) (1) of R.A. 1125 as amended by R.A. 9282.

As for petitioner's reliance on the cases of *Uy Ham v. Republic* and *Republic v. Del Rosario*, the same is misplaced. In both cases, the Government brought an action in the Court of First Instance ("CFI") for the collection of deficiency taxes and raised the question of which court had jurisdiction, the CFI or the CTA. Here, no action in court for the collection of deficiency taxes was brought by petitioner. Petitioner merely issued a Collection Letter to respondent. Thus, petitioner's contention that the issuance of the subject Collection Letter and Final Demand Notice constitute an ordinary tax collection case initiated by the BIR, has no leg to stand on.

On the issue of whether or not the Court has jurisdiction to consider the case withdrawn, closed and terminated on the basis of respondent's availment of the provisions of R.A. 9480 or the Tax Amnesty Law, We rule in the affirmative on the basis of the afore-quoted Section 7 (a) (1) of R.A. 1125 as amended by R.A. 9282, since R.A. 9480 is a law being administered by the BIR.

Furthermore, We note that respondent's availment of the TAP is a consequence of the disputed Collection Letter and the Final Demand Notice. And since this Court has jurisdiction over the said matter, necessarily, any consequence that may arise is still within its jurisdiction.[30] This Court can consider various issues that are either essential for or incidental to the full and complete resolution of the case,[31] including the validity of respondent's TAP availment. It bears emphasis that once jurisdiction is vested, the same is retained up to the end of the litigation.[32] It is not lost until the Court shall have disposed of the case in its entirety.[33]

The alleged unpaid taxes are not delinquent accounts

Having established that this Court has jurisdiction over this case, We proceed to determine the nature of the alleged unpaid taxes involved here.

Petitioner avers that the subject deficiency value-added taxes assessment for taxable year 2003 is not a disputed assessment but a delinquent account/asset of the BIR/Government, since it covers "unpaid self-assessed taxes" of respondent.

Respondent, in its Comment, asserts that petitioner failed to take into consideration that it is the contention of respondent that the alleged tax liabilities "have already been fully paid through a valid Tax Debit Memoranda". It also points out that the final demand for payment is in the nature of a deficiency assessment which is the result of the unilateral disallowance by the petitioner of the TDM. Thus, the subject taxes cannot be considered as unpaid self-assessed taxes.

We agree with respondent.

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[30] Professional Services, Inc. v. Commissioner of Internal Revenue, C.T.A. Case No. 7361, August 1, 2008.
[31] Tax Law and Jurisprudence, Vitug and Acosta, 2nd ed, p. 396.
[32] People v. Vanzuela, G.R. No. 178266, 559 SCRA 234, July 21, 2008, *citing Laresma v. Abellana, 442 SCRA 156, 168 (2004).*
[33] Morales v. Subic Shipyard & Engineering, Inc., G.R. No. 148206, 531 SCRA 66, 71, August 24, 2007.

The Collection Letter and the Final Demand Notice are in the nature of assessments for deficiency VAT which should have been preceded by a pre-assessment or assessment notice as mandated by Section 228 of the NIRC, to wit:

> "**SECTION 228. Protesting of assessment. — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings**; provided, however, that a pre-assessment notice shall not be required in the following cases:
>
> (a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or
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> (b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or
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> (c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or
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> (d) When the excise tax due on excisable articles has not been paid; or
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> (e) When an article locally purchased or imported by an exempt person such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.
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> **The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise the assessment shall be void.**
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the 180-day period; otherwise, the decision shall become final, executory and demandable." *(Emphasis supplied)*

As previously mentioned, neither an assessment nor a pre-assessment notice pursuant to Section 228 of the NIRC was ever sent by the BIR to the respondent. What was sent was a Collection Letter demanding payment of the allegedly delinquent value-added taxes and penalties on the ground that the TCCs issued to respondent have no value. This fact was admitted by petitioner in the Joint Stipulation of Facts and Issues by the parties, No. 7 and 9 thereof.[34]

Considering that the case of respondent does not fall under the exceptions where a pre-assessment notice shall not be required, it is mandatory for petitioner to furnish the respondent a pre-assessment and/or assessment notice and to afford respondent a chance to dispute the same before petitioner resorts to remedies for the collection of said taxes, as this Court declared in the aforementioned *PSPC* case.[35] Petitioner clearly violated Section 228 of the NIRC.

While this particular issue has been rendered moot by respondent's availment of the TAP under R.A. 9480, it behooves Us to remind petitioner that the procedure granted by law under Section 228 of the NIRC is a statutory right of the taxpayer which cannot be wantonly disregarded without violating the taxpayer's right to due process.

RMC 69-2007 and RMC 19-2008 are void with regard to "delinquent accounts"

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[34] *Records*, pp.81 – 82.
[35] *Supra*, at note 28.

Assuming *arguendo* that the alleged unpaid taxes here are self-assessed taxes and/or delinquent accounts, We now turn to the question of whether RMC 69-2007 and the Basic Guide on the Tax Amnesty Act of 2007 are void insofar as they considered *"self-assessed taxes"* as excluded from the TAP under R.A. 9480.

Petitioner contends that the issuance of RMC 69-2007 was in accordance with R.A. 9480. By virtue of Section 2, Rule I of Department Order No. 29-07 issued by the Department of Finance, the BIR was given the authority to issue the necessary clarification in case of conflict or ambiguity which may arise in the implementation of the TAP. Hence, petitioner submits that RMC 69-2007 as well as the Basic Guide on the Tax Amnesty Act of 2007 which excluded from the coverage of R.A. 9480 the *"Delinquent Accounts/Account Receivables considered as assets already of the BIR/Government, including self-assessed taxes"*, fulfills the intent of the law.

For its part, respondent posits that even assuming *arguendo* that the taxes involved in this case are considered unpaid self-assessed taxes and/or delinquent accounts, the same do not fall under the exceptions enumerated in Section 8 of R.A. 9480. When RMC 69-2007 restricted the scope of R.A. 9480 by excluding the delinquent accounts and unpaid self-assessed taxes from the coverage of the Tax Amnesty Law, said RMC amounted to unauthorized administrative legislation. The same is also unenforceable for lack of publication and hearing.

Q-47 and A-47 of RMC 69-2007 as well as the Basic Guide on the Tax Amnesty Act issued by the COHR which was circularized by the BIR through RMC 19-2008, read:

> "Q-47 *Are Delinquent Accounts/Accounts Receivable, including unpaid self-assessed taxes, in the records of the BIR which are already Accounts Receivable of the*

BIT/assets of the Government as of date of amnesty availment by the taxpayer still covered by such amnesty availment?

A-47 No. This is so because these are already properties/assets of the Government prior to/upon taxpayer's date of amnesty availment."

"A BASIC GUIDE ON THE TAX AMNESTY ACT OF 2007

The following is a basic guide for taxpayers who wish to avail of tax amnesty pursuant to Republic Act No. 9480 (Tax Amnesty Act of 2007)

Who may avail of the amnesty?

The following taxpayers may avail of the Tax Amnesty Program:

Ö Individuals
Ö Estates and Trusts
Ö Corporations
Ö Cooperatives and tax-exempt entities that have become taxable as of December 31, 2005
Ö Other juridical entities including partnerships
Ø Fiscal year taxpayers may likewise avail of the tax amnesty using their Financial Statement ending in any month of 2005

EXCEPT:

☒ Withholding agents with respect to their withholding tax liabilities
☒ Those with pending cases:
- Under the jurisdiction of the PCGG
- Involving violations of the Anti-Graft and Corrupt Practices Act
- Involving violations of the Anti-Money Laundering Law
- For tax evasion and other criminal offenses under the NIRC and/or the RPC

☒ Issues and cases which were ruled by any court (even without finality) in favor of the BIR prior to amnesty availment of the taxpayer. (e.g. Taxpayers who have failed to observe or follow BOI and/or PEZA rules on entitlement to Income Tax Holiday Incentives and other incentives)
☒ Cases involving issues ruled with finality by the Supreme Court prior to the effectivity of RA 9480 (e.g. DST on Special Savings Account)
☒ Taxes passed on and collected from customers for remittance to the BIR
☒ **Delinquent Accounts/Accounts Receivable considered as assets of the BIR/Government, including self-assessed tax**" *(Emphasis supplied)*

On the other hand, the relevant portions of R.A. 9480 on who may or may not qualify to avail of the TAP are as follows:

"SECTION 1. Coverage. — There is hereby authorized and granted a tax amnesty which shall cover all national internal revenue taxes for the taxable year 2005 and prior years, with or without assessments duly issued therefor, that have remained unpaid as of December 31, 2005: Provided, however, That the amnesty hereby authorized and granted shall not cover persons or cases enumerated under Section 8 hereof."

"SECTION 8. Exceptions. — The tax amnesty provided in Section 5 hereof shall not extend to the following persons or cases existing as of the effectivity of this Act:

(a) Withholding agents with respect to their withholding tax liabilities;
(b) Those with pending cases falling under the jurisdiction of the Presidential Commission on Good Government;
(c) Those with pending cases involving unexplained or unlawfully acquired wealth or under the Anti-Graft and Corrupt Practices Act;
(d) Those with pending cases filed in court involving violation of the Anti-Money Laundering Law;
(e) 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 III and IV of Title VII of the Revised Penal Code; and
(f) Tax cases subject of final and executory judgment by the courts."

Corollary thereto, Department Order No. 029-07 dated August 15, 2007 or the *Rules and Regulations to Implement Republic Act No. 9480*, contains the following provisions:

"RULE II

Coverage

SECTION 3. Taxes Covered. — The tax amnesty shall cover all national internal revenue taxes imposed by the National Government for the taxable year 2005 and prior years, with or without assessments duly issued therefor, that have remained unpaid as of December 31, 2005.

SECTION 4. Who May Avail of Tax Amnesty. — The following may avail of the tax amnesty under RA 9480:

1. Individuals, whether resident or nonresident citizens, or resident or nonresident aliens;

2. Estates and trusts;
3. Corporations;
4. Cooperatives and tax exempt entities that have become taxable as of December 31, 2005; and
5. Other juridical entities including partnerships.

xxx xxx xxx

SECTION 5. Exceptions. – The tax amnesty shall not extend to the following persons or cases existing as of the effectivity of RA 9480:

1. Withholding agents with respect to their withholding tax liabilities;
2. Those with pending cases falling under the jurisdiction of the Presidential Commission on Good Government;
3. Those with pending cases involving unexplained or unlawfully acquired wealth, revenue or income under the Anti-Graft and Corrupt Practices Act;
4. Those with pending cases filed in court involving violation of the Anti-Money Laundering Law;
5. Those with pending criminal cases filed in court or in the Department of Justice for tax evasion and other criminal offenses under Chapter II of Title X of the National Internal Revenue Code of 1997, as amended.
6. Those with pending criminal cases filed in court for felonies of frauds, illegal exactions and transactions, and malversation of public funds and property under Chapters III and IV of Title VII of the Revised Penal Code; and
7. Tax cases subject of final and executory judgment by the courts."

Indubitably, R.A. 9480 and Department Order No. 29-07 are the governing law and regulation and both explicitly do not include *"Delinquent Accounts/Accounts Receivable considered as assets of the BIR/Government, including self-assessed tax"* as one of the exceptions to the coverage of R.A. 9480. The well-entrenched rule is that "(i)n case of conflict, the law must prevail. A "regulation adopted pursuant to law is law." Conversely, a regulation or any portion thereof not adopted pursuant to law is no law and has neither the force nor the effect of law."[36] Thus, the inevitable conclusion is that Q-47 and A-47 of RMC 69-2007 as well as RMC 19-2008 which circularized the

[36] Commissioner of Internal Revenue v. Central Luzon Drug Corporation, G.R. No. 159647, 456 SCRA 441, April 15, 2005.

Basic Guide on the Tax Amnesty Act of 2007, have neither the force nor the effect of law insofar as they included *"Delinquent Accounts/Accounts Receivable considered as assets of the BIR/Government, including self-assessed tax"* as one of the exceptions to the coverage of R.A. 9480.

Respondent's case is therefore covered by the TAP as will be further discussed hereafter.

Respondent is qualified to avail of the TAP

Respondent maintains that it complied with the requirements of the Tax Amnesty Law by submitting all the required documents and paid the amnesty tax. Hence, it is legal and meritorious to consider the Petition for Review as deemed withdrawn subject to the provisions of R.A. 9480.

We agree.

Under R.A. 9480, any person, natural or juridical, who wishes to avail himself of the tax amnesty authorized and granted under the Act shall file with the BIR a notice and Tax Amnesty Return accompanied by a 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.[37]

In this case, respondent submitted the certified true copies of the following documents required under R.A. 9480 to the Court in Division in compliance with the Resolution dated June 17, 2008:

[37] Section 2, R.A. 9480.

(1) Notice of Availment of Tax Amnesty;[38]

(2) Tax Amnesty Payment Form/Acceptance of Payment Form (BIR Form 0617) in the amount of ₱1,487,777;[39]

(3) Tax Amnesty Return (BIR Form 2116);[40]

(4) SALN as of December 31, 2005;[41] and

(5) Philippine National Bank BTR-BIR Payment Slip in the amount of ₱1,487,777.[42]

Thus, the Court in Division ordered the withdrawal of respondent's Petition for Review and considered the case closed and terminated, subject to the provisions of R.A. 9480.

We have previously resolved that taxpayers found to have fully complied with the documentation requirements of R.A. 9480 are entitled to the immunities as found under Section 6 thereof.[43] In fact, in the recent case of *Philippine Banking Corporation (Now: Global Business Bank, Inc.) v. Commissioner of Internal Revenue,*[44] the Supreme Court echoed the same pronouncement that: "Considering that the completion of these requirements *(enumerated in R.A. 9480)* shall be deemed full compliance with the tax amnesty program, the law mandates that the taxpayer shall thereafter be immune from payment of taxes, and additions thereto, as well as the appurtenant civil, criminal or administrative penalties under the NIRC of 1997, as

[38] *Records*, p. 374.
[39] *Id.*, p. 375.
[40] *Id.*, p. 376.
[41] *Id.*, p. 377.
[42] *Id.*, p. 378.
[43] Metropolitan Bank & Trust Company v. Commissioner of Internal Revenue, C.T.A. EB No. 354 (C.T.A. Case No. 7144), August 29, 2008.
[44] G.R. No. 170574, January 30, 2009.

amended, arising from failure to pay any and all internal revenue taxes for taxable year 2005 and prior years." *(Words in parenthesis supplied)*

Moreso in this case where the one-year period, stated in Section 4 of R.A. 9480,[45] for investigation or audit of the documents and/or representations made by taxpayer in connection with the availment of the tax amnesty benefit had already lapsed. Records show that respondent availed of the TAP on February 19, 2008, and to date there is nothing in the records which would show that proceedings have been filed under the said section.

WHEREFORE, the instant Petition for Review is hereby **DISMISSED.** Accordingly, the assailed Resolutions dated July 22, 2008 and October 6, 2008 are hereby **AFFIRMED**.

Accordingly, the subject VAT deficiencies against respondent are hereby **CANCELLED** and the case is **CLOSED** and **TERMINATED**, pursuant to R.A. 9480.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

(On Leave)
ERNESTO D. ACOSTA
Presiding Justice

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[45] SECTION 4. *Presumption of Correctness of the SALN.* — The SALN as of December 31, 2005 shall be considered as true and correct except where the amount of declared networth is understated to the extent of thirty percent (30%) or more as may be established in proceedings initiated by, or at the instance of, parties other than the BIR or its agents: Provided, That such proceedings must be initiated within one year following the date of the filing of the tax amnesty return and the SALN. Findings of or admission in congressional hearings, other administrative agencies of government, and/or courts shall be admissible to prove a thirty percent (30%) under-declaration.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
(Acting Presiding Justice)

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice