REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,

Petitioner,

-versus-

PHILIPPINE ALUMINUM WHEELS, INC.

Respondent.

CTA EB No. 994
(CTA Case No. 7817)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

MAY 1 9 2014 apolinario 9:00 a.m.

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DECISION

RINGPIS-LIBAN, *J.*:

Before the Court En Banc is a Petition for Review filed on April 8, 2013 by the Commissioner of Internal Revenue. The Petition seeks the nullification of the Decision of the First Division of this Court promulgated on November 12, 2012 in CTA Case No. 7817, captioned *Philippine Aluminum Wheels, Inc. vs. Commissioner of Internal Revenue.* The assailed Decision of the First Division ordered the cancellation and withdrawal of the deficiency tax assessments made by the CIR against the respondent corporation, in the amount of ₱29,108,767.63. The respondent therein, the Commissioner of Internal Revenue (CIR), filed a Motion for Reconsideration on December 3, 2012, which the First Division denied by Resolution dated March 1, 2013.

On March 22, 2013, the CIR filed with the Court *En Banc* a Motion for Extension of Time to File Petition for Review. On March 26, 2013, the Court *En*

Banc granted the CIR a final and non-extendible period of fifteen (15) days or until April 7, 2013 within which to file its Petition for Review. This Court received the Petitioner's Petition for Review on April 8, 2013, with the explanation that April 7, 2013 was a Sunday.

THE FACTS

The facts as found by the assailed Decision[1], are as follows:

"Petitioner Philippine Aluminum Wheels, Inc. is a corporation duly organized and existing under Philippine laws, with business address at Severina Diamond Industrial Complex, Km. 16 West Service Road, South Superhighway, Parañaque City. Respondent, on the other hand, is the Commissioner of the Bureau of Internal Revenue (BIR), with office address at BIR National Office Bldg., Agham Road, Diliman, Quezon City.

On December 16, 2003, respondent, through Deputy Commissioner Estelita C. Aguirre (Officer-in-Charge, Large Taxpayers Service), issued the Preliminary Assessment Notice (PAN) against petitioner, covering the alleged deficiency taxes for taxable year 2001 under Letter of Authority No. 00003309 dated November 19, 2002.

On March 28, 2004, the BIR issued the Final Assessment Notice (FAN) against petitioner, indicating an assessment for alleged total tax deficiency of ₱32,100,613.42 for taxable year 2001.

On July 19, 2007, petitioner filed with the BIR an application for abatement of its tax liabilities covering taxable year 2001 under Revenue Regulations (RR) No. 13-2007.

In the letter dated September 12, 2007, the BIR, through Elvira R. Vera (Head Revenue Executive Assistant, LTS-Excise Large Taxpayers), denied petitioner's application for tax abatement on the ground that the FDDA was already issued by the BIR, allegedly served through registered mail on April 12, 2007, and that the same had become final, executory and demandable for failure of petitioner to appeal the FDDA to this Court.

In its letter dated September 19, 2007, petitioner wrote the BIR in connection with its alleged tax deficiency for the year 2001 in the amount of ₱29,845,194.52. Petitioner informed the BIR in the said letter that it has paid its tax deficiency on withholding tax amounting to ₱736,726.86 through the Electronic Filing and Payment System

(EFPS) of the BIR and that it is also in the process of applying and/or availing of the tax amnesty as implemented under Revenue Memorandum Circular (RMC) No. 55-2007 to finally settle and put to rest the matter of deficiency tax assessments amounting to ₱29,108,467.63.

Subsequently, in the letter dated January 29, 2008, the BIR denied petitioner's request and informed petitioner that the FDDA has been sent to the latter through registered mail on April 12, 2007, and that the same has become final, executory and demandable.

Finally, in the letter dated July 16, 2008, the BIR insisted that the FDDA has become final and executory due to petitioner's alleged failure to appeal the same within thirty (30) days from receipt thereof, and informed petitioner that its availment of the amnesty on September 21, 2007 under R.A. No. 9480 has no effect on the assessment due to the finality of the FDDA prior to petitioner's tax amnesty availment, considering that the assessments are already accounts receivables of the BIR as clarified under the Question and Answer of Revenue Memorandum Circular (RMC) No. 69-2007. In addition, the amount of deficiency tax assessments that BIR computed to have become due and payable has increased from ₱29,108,467.63 (as stated in the previous letter of BIR) to ₱29,108,767.63, or a difference of ₱300.00.

On August 1, 2008, petitioner filed the instant Petition for Review before this Court assailing the alleged Decision of respondent dated July 16, 2008.

On October 20, 2008, respondent filed her Answer praying for the dismissal of the Petition for Review."[2]

Trial thereafter ensued and on November 12, 2012, a Decision was rendered by the First Division of this Court, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **GRANTED**. The subject assessment in the present case against petitioner is hereby **SET ASIDE** solely in view of petitioner's availment of the Tax Amnesty Program under R.A. No. 9480; and accordingly, petitioner is hereby **DECLARED ENTITLED** to the immunities and privileges provided by the Tax Amnesty Law being a

> qualified tax amnesty applicant and for having complied with all the documentary requirements set by law.
>
> **SO ORDERED.**"[3]

On December 3, 2012, respondent filed its Motion for Reconsideration (Re: Decision Promulgated November 12, 2012), and on December 17, 2012, petitioner filed its Comment/Opposition (To Respondent's Motion for Reconsideration dated November 23, 2012).

On March 1, 2013, the First Division of this Court promulgated its Resolution[4] on the respondent's Motion for Reconsideration (Re: Decision Promulgated November 12, 2012), the dispositive portion of which reads:

> "**WHEREFORE**, finding no cogent reason to disturb the assailed Decision, respondent's **Motion for Reconsideration (Re: Decision Promulgated November 12, 2012)** filed on December 3, 2012 is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"[5]

<u>THE ISSUES</u>

The instant Petition raises the following issues:

1) Whether or not the Court (First Division) has jurisdiction to try and decide the respondent corporation's Petition for Review, which was filed after the BIR had denied the corporation's application for tax amnesty, considering that the assessment had become final and executory long before the application for amnesty was filed; and

2) Whether or not the Court acquired jurisdiction over the instant case, considering that the respondent corporation is not covered by the Tax Amnesty Law of 2007 (Republic Act No. 9480).

<u>RULING OF THE COURT EN BANC</u>

The issues raised in this instant Petition for Review are no longer novel. In ***Philippine Banking Corporation (now Global Business Bank) vs. Commissioner of Internal Revenue***[6], cited by the First Division in its Decision, the Supreme Court held that a qualified tax amnesty applicant who has completed

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[3] *Rollo*, pp. 88-89.
[4] *Rollo*, pp. 90-93.
[5] *Rollo*, p. 93.

the requirements enumerated in R.A. 9480, as implemented by D.O. 29-07 and RMC 19-2008, shall be deemed to have fully complied with the tax amnesty program, and that, as mandated by the law, "the taxpayer shall thereafter be immune from the payment of taxes, and additions thereto, as well as 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."[7]

In ***Metropolitan Bank and Trust Co. vs. Commissioner of Internal Revenue***[8], the Supreme Court held that Metrobank's compliance with the tax amnesty law extinguished the 1999 deficiency documentary stamp tax liabilities assessed against it.

In the said case, the CTA *En Banc* on May 21, 2007 affirmed the September 1, 2006 decision rendered by the CTA Second Division, finding the bank liable for deficiency DST; on July 9, 2007, the CTA *En Banc* denied Metrobank's Motion for Reconsideration. Metrobank then went to the Supreme Court with a Petition for Review on Certiorari.

Although the Supreme Court upheld the propriety of the assessment of deficiency DST by the BIR, the "intervening event" of Metrobank's availment of the Tax Amnesty Law of 2007, while its Petition for Review was pending, persuaded the Supreme Court to rule that the bank's liability for deficiency DST was thereby extinguished. The Supreme Court saw no merit in the CIR's position that the BIR's assessment had already attained finality and thus the bank no longer qualifies for tax amnesty. In that case, the CIR had invoked Section 8(f) of R.A. 9480, which states that the tax amnesty shall not extend to "tax cases subject of final and executory judgment by the courts."

The Supreme Court held in ***Metrobank***:

> "Neither is there any merit in the insistence of the CIR that Assessment No. DST-2-99-000022 is already final and executory in light of the failure of Metrobank, firstly, to submit all the relevant supporting documents within 60 days from filing of its protest with the CIR; and, secondly, to appeal to the CTA the inaction of the CIR on its protest within 30 days from the lapse of the 180-day period as provided in Section 228 of the NIRC.
>
> The Court cannot simply accept the allegation of the CIR that Metrobank failed to submit the relevant supporting documents within 60 days from the filing of its protest on 17 January 2003, when the CIR does not even identify what these documents are. If the Court does not know what particular documents Metrobank purportedly failed to submit in support of its protest, then the Court likewise cannot make a determination on the relevance of such documents. In addition, there appear to be sufficient documents submitted by Metrobank to the

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[7]

CIR to have enabled the latter to render on 2 March 2004 a Decision on the protest of the former.

This brings the Court to its next point. Per the computation of the CIR, the 180-day period for the CIR to act on the protest of Metrobank ended on 13 September 2003, and the 30-day period for Metrobank to file an appeal with the CTA ended on 13 October 2003. If, indeed, Assessment No. DST-2-99-000022 became final and executory when the bank failed to file an appeal with the CTA by 13 October 2003, why then did the CIR even bother with resolving the protest of Metrobank against the said assessment and rendering a Decision thereon on 2 March 2004? That the CIR issued a Decision on 2 March 2004 denying the protest of Metrobank belies its own assertion herein that the assessment subject of the protest became final and executory after 13 October 2003. It also bears to stress that both the CTA Second Division and the CTA en banc took cognizance of the successive appeals of Metrobank, resolving both appeals on their merits without regard to the supposed finality of the appealed assessment. As argued by Metrobank, the very fact that the instant case is still subject of the present proceedings is proof enough that it has not reached a final and executory stage as to be barred from the tax amnesty under Republic Act No. 9480.

The assertion of the CIR that deficiency DST is not covered by the Tax Amnesty Program under Republic Act No. 9480 is downright specious."[9] *(Underscoring ours.)*

In ***Asia International Auctioneers, Inc. vs. Commissioner of Internal Revenue***[10], the Supreme Court also deemed fully settled the outstanding tax liabilities of the therein petitioner corporation, when it was able to avail of the 2007 tax amnesty in February 2008, while its Petition for Review against an adverse decision of this Court *En Banc* dated August 3, 2007 was pending before the highest tribunal of the land.

In the instant Petition, the respondent corporation availed of tax amnesty, despite denial of its application by the BIR on the ground that the assessment had become final. The corporation thus went to this Court, assailing the respondent's denial of its tax amnesty application.

Tax Amnesty is a Collection Matter, thus, Within the Jurisdiction of the CTA.

Did the CIR act correctly and within its authority, when it denied the tax amnesty application of Philippine Aluminum Wheels, Inc.? The CIR posits that the resolution of this question is beyond this Court's jurisdiction. Section 7 of R.A. 1125, as amended by R.A. 9282 , provides:

"**SECTION 7.** *Jurisdiction.* -- The CTA shall exercise:

(a) Exclusive appellate 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 or **other laws administered by the Bureau of Internal Revenue**; x x x" *(Emphasis supplied)*

The CIR argues that the phrase *"or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue"* refers merely to **collection matters** relative to disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto similar to a petition for nullity of the distraint and levy or for suspension of tax collection. Issues involving tax amnesty, according to the CIR, may only be properly passed upon by the Court if integrated as a **collateral matter** in petitions involving the aforementioned "collection matters".

The CIR argues that what the respondent corporation appealed to this Court was not the assessment itself, but the denial of respondent's application for Tax Amnesty Program. The CIR posits that such denial is a subject matter not within the jurisdiction of this Court, because tax amnesty is beyond the "collection matters" covered by this Court's jurisdiction.

This Court cannot agree with this theory. In its very title, R.A. No. 9480 declares that it is "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." Tax amnesty is a general pardon to taxpayers who want to start a clean tax slate. It also gives the government a chance to collect uncollected tax from tax evaders without having to go through the tedious process of a tax case.[11]

In ***Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.***[12], the Supreme Court held:

"Plainly, the assailed CTA En Banc Decision was correct in declaring that there was nothing in the foregoing provision upon which petitioner's theory with regard to the parameters of the term "other matters" can be supported or even deduced. What is rather clearly apparent, however, is that the term "other matters" is limited only by the qualifying phrase that follows it.

Thus, on the strength of such observation, we have previously ruled that the appellate jurisdiction of the CTA is not limited to cases which involve decisions of the CIR on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the National Internal

[11] *Bañas, Jr. vs Court of Appeals*, G.R. No. 102967, February 10, 2000, 325 SCRA 259, 273, cited in *CIR vs Hon.*

Revenue Code (NIRC) or related laws administered by the Bureau of Internal Revenue (BIR).[13]"

The respondent's appeal, therefore, is clearly within the jurisdiction of this Court.

Finality of Assessment Does Not Disqualify Availment of Amnesty under the Tax Amnesty Law of 2007.

The CIR, as in the ***Metrobank*** case cited above, repeats the mistake of asserting that the finality of its assessment, particularly its Final Decision on Disputed Assessment (FDDA), is, in effect, equivalent to a final and executory judgment by the courts, so as to disqualify the respondent from availment of tax amnesty.

Under R.A. No. 9480, this ground relied upon by the BIR is non-existent, and cannot be conjured by including it in the law's Implementing Rules and Regulations, *i.e.*, D.O. 29-07. Nor may this non-existence be remedied by its inclusion in Revenue Memorandum Circular No. 19-2008 dated February 22, 2008 which included the following disqualification from availment of tax amnesty: "Delinquent Accounts/Accounts Receivables considered as assets by the BIR/Government including self-assessed tax." As the First Division correctly held, RMC No. 19-2008, like D.O. 29-07, cannot modify R.A. 9480 and thus cannot be given neither the force nor the effect of law.

Section 8 of R.A. No. 9480 enumerates the grounds under which applications for tax amnesty are disqualified. Neither the finality of an assessment nor its classification as "Delinquent Accounts/Accounts Receivables considered as assets by the BIR/Government including self-assessed tax" is among the grounds enumerated. What are disqualified are **"tax cases subject of final and executory judgment by the courts"** (Section 8[6]).

In ***Philippine Banking Corporation vs. CIR***[14], the Supreme Court, in 2009, categorically rejected an attempt by the Department of Finance to expand the exclusions from the 2007 tax amnesty by adding to the statutory list "issues and cases which were ruled by any court (even without finality) in favor of the BIR prior to amnesty availment of the taxpayer." The DOF made this addition to the exclusions through Section 6 of its Department Order 29-07.

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[13] *Id.* citing *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004, 447 SCRA 214, 224.

It is a settled rule, however, that implementing rules and regulations cannot amend an act of Congress.[15] An administrative agency cannot amend an act of Congress.[16] In case of discrepancy between the basic law and a rule or regulation issued to implement said law, the basic prevails because said rule or regulations cannot go beyond the terms and provisions of the basic law.[17] Administrative regulation cannot extend the law and amend a legislative enactment. It is axiomatic that the clear letter of the law is controlling and cannot be amended by a mere administrative rule issued for its implementation.[18]

In line with the above-cited principles of law, this Court cannot give its imprimatur to the CIR's inclusion of the finality of an assessment and/or that assessment's subsequent classification as "Delinquent Accounts/Accounts Receivables considered as assets by the BIR/Government including self-assessed tax" in the list of exclusions from the coverage of the Tax Amnesty Law of 2007. The Petitioner's denial of the tax amnesty application on the ground of the finality of its tax assessment is, perforce, deemed to be without legal basis.

Completion of Requisites of R.A. No. 9048
Extinguished Liability for the FDDA.

Having concluded that the finality of assessment does not bar availment of amnesty under the Tax Amnesty Law of 2007, the issue of whether or not the FDDA had attained finality is rendered moot. The Court agrees with the First Division's observation in its Decision that the amnesty program, "if properly and timely availed of," renders "academic" the need to determine the finality of the FDDA. For even if the FDDA had attained finality and is thus no longer subject to appeal, the completion by a qualified taxpayer of the requisites for availment of the Tax Amnesty Law of 2007 is sufficient to extinguish the liability arising from the FDDA.

The respondent completed the requisites for availment of the Tax Amnesty Program on September 21, 2007, when it paid Five Hundred Thousand Pesos (₱500,000.00) as amnesty tax at the Quezon Avenue branch of the Development Bank of the Philippines, in compliance with D.O. No. 29-07. This was well within the period for availing of the program; D.O. 11-08 subsequently clarified that the last day to avail of the tax amnesty was May 5, 2008.

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[15] *National Tobacco Administration vs Commission on Audit*, G.R. No. 119385, August 5, 1999, *En Banc.*
[16] *Santos vs Estenzo*, 109 Phil. 419, 422; *Teoxon vs Members of the Board of Administrators*, L-25619, June 30, 1970, 33 SCRA 585; *Manuel vs General Auditing Office*, L-28952, December 29, 1971, 42 SCRA 660; *Deluao vs Casteel*, L-21906, August 29, 1969, 29 SCRA 350.
[17] *People vs Lim*, 108 Phil. 1091.
[18] [illegible]

Under Section 4 of R.A. No. 9480, the CIR has a period of one year from the filing of the respondent's Statement of Assets, Liabilities and Networth (SALN) in September 2007 within which to impugn the SALN's presumptive correctness. The respondent corporation filed its Petition for Review on August 1, 2008. While the respondent's Petition was pending, the one-year period lapsed without the process of contesting the SALN having been instituted. Thus, the correctness of the respondent's SALN can no longer be questioned, and has become clothed with immunity.[19]

In the above-cited cases of ***Metrobank*** in 2009 and ***Asia International Auctioneers*** in 2012, the Supreme Court upheld the validity of tax amnesty obtained while the petitions therein were pending. The Supreme Court held that the "intervening event" of those corporations' availment of the Tax Amnesty Law of 2007 had extinguished the liability for the tax assessments made against them.

In the instant case, the availment of tax amnesty was not merely an "intervening event" that transpired while the case was pending, but had been consummated more than ten (10) months before the case was filed, and was subsisting throughout the case. The legal consequence is the same: extinction of the taxpayer's liability for the assessment made against it by the CIR.

The denial by the CIR of the respondent's application for tax amnesty on the basis of the finality of the FDDA, as discussed earlier, goes beyond the authority conferred by R.A. No. 9480. The CIR has no discretion to deny a tax amnesty application under R.A. No. 9480, once a qualified taxpayer completes compliance with the requisites laid down by that law; the immunity that the taxpayer acquires can only be lost once the net worth stated in the SALN is proven to have been understated by thirty percent (30%) or more.[20]

Mere completion of the requisites for tax amnesty laid down by R.A. No. 9480 is sufficient to vest the taxpayer with immunity. This was unequivocally laid down by the Supreme Court in 2009 in ***Philippine Banking Corporation (now Global Business Bank) vs. Commissioner of Internal Revenue***[21], cited by the First Division in its Decision. The respondent corporation had satisfactorily proven to this Court that it had, in fact, fully complied with the requirements enumerated in R.A. No. 9480, as implemented by D.O. 29-07 and RMC 19-2008.

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[19] Section 6(2) of R.A. No. 9480 provides: "The taxpayer's Tax Amnesty Returns and the SALN as of December 31, 2005 shall not be admissible as evidence in all proceedings that pertain to taxable year 2005 and prior years, insofar as such proceedings relate to internal revenue taxes, before judicial, quasi-judicial or administrative bodies in which he is a defendant or respondent, and except for the purpose of ascertaining the networth beginning January 1, 2006, the same shall not be examined, inquired or looked into by any person or government office. However, the taxpayer may use this as a defense, whenever appropriate, in cases brought against him."

[20] Section 6, R.A. No. 9480, last paragraph. Two other grounds for non-application of immunity are failure to

Thus, consistent with R.A. No. 9480 and with the ***Philippine Banking Case***, respondent, being deemed to have fully complied with the tax amnesty program, "shall thereafter be immune from the payment of taxes, and additions thereto, as well as 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."[22]

WHEREFORE, premises considered, the Petition for Review filed by the Commissioner of Internal Revenue is **DENIED**, for lack of merit. The Decision of the First Division of this Court promulgated on November 12, 2012 in CTA Case No. 7817, captioned *Philippine Aluminum Wheels, Inc. vs. Commissioner of Internal Revenue*, and the Resolution of the said Division dated March 1, 2013, are **AFFIRMED** *in toto.*

SO ORDERED.

Ma. Belen M. Ringpis-Liban
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

(On Leave)
ERLINDA P. UY
Associate Justice

(On Leave)
CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Section 13 of 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.

ROMAN G. DEL ROSARIO
Presiding Justice