REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES,
Petitioner,

CTA EB CRIM. CASE No. 018
(CTA Crim. Case No. O-155)

-versus-

Present:
Del Rosario, *P.J.*
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, and
Ringpis-Liban, *JJ.*

GLORIA F. TUYAY,
Respondent.

Promulgated:

JUN 17 2013 apolinario 1:55 p.m.

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D E C I S I O N

CASTAÑEDA, JR., *J.* :

Petitioner People of the Philippines ("petitioner", for brevity), by the Special Prosecutors, filed for review before this Court the Petition for Review *en banc* on November 9, 2011 assailing the Resolution[1] dated October 3, 2011 promulgated by the First Division of the Court of Tax Appeals (CTA First Division) in the case entitled "*People of the Philippines vs. Gloria F. Tuyay (No. 44 Sta. Barbara St., Gulod, Novaliches, Quezon City)*" docketed as CTA Criminal Case No. O-155. This case was dismissed by the CTA First Division because of the accused's availment and payment of tax amnesty under Republic Act (RA) 9480[2].

[1] *Rollo*., pp. 27-34, penned by Associate Justice Esperanza R. Fabon-Victorino and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justice Erlinda P.Uy.
[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 Years 2005 and Prior Years."

Petitioner prays to set aside the assailed Resolution dated October 3, 2011 which denied the Motion for Reconsideration and to issue an order granting such motion.

The dispositive portion of the October 3, 2011 Resolution reads:

> WHEREFORE, the Motion for Reconsideration (Resolution dated July 21, 2011) dated August 12, 2011 filed by the prosecution, is hereby **DENIED**, for utter lack of merit.
>
> SO ORDERED.

THE FACTS

On October 23, 2009, Information[3] (with attached documents[4]) for violation of Section 254 of the National Internal Revenue Code of the Philippines (NIRC) was filed in the Court of Tax Appeals against respondent (accused) Gloria F. Tuyay, the accusatory portion of which reads:

> "That on or about the 15th day of April, 2002, at Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did, then, and there, willfully, unlawfully, and feloniously attempt to evade or defeat taxes by declaring in her income tax return for year 2001 that her gross income is P24,711,464.00, when in truth and in fact, her correct income for the said taxable year is P157,505,758.66, resulting to a tax deficiency of P110,305,049.68 which she failed to pay, to the damage and prejudice of the government in the same amount.
>
> CONTRARY TO LAW,
> Manila, August 20, 2009."

This case was previously dismissed[5] on March 1, 2010 for utter lack of interest to prosecute and later on reinstated[6] on May 6, 2010 after the CTA First Division granted the prosecution's Motion for Reconsideration. Je

[3] Division Docket, pp. 1-2.
[4] *Id.*, pp. 3-36; Resolution, Affidavits, and other supporting documents.
[5] *Id.*, p. 142.
[6] *Id.*, pp. 158-161.

On June 1, 2010, warrant of arrest against the accused was ordered issued.[7] Accused surrendered on June 8, 2010[8] and posted cash bail bond[9] on June 9, 2010.

During the arraignment, on June 29, 2010, accused entered a plea of not guilty.[10]

Preliminary conference on July 8, 2010[11] and pre-trial conference on July 23, 2010[12] were held.

The parties' Joint Stipulation of Facts and Issues dated July 31, 2010 was filed on August 11, 2010.[13]

Pre-trial Brief for the Accused was filed on September 17, 2010.[14]

On October 1, 2010, prosecution's Compliance and Manifestation with Motion to Admit Attached Pre-trial Brief[15] filed on September 29, 2010 was granted by the CTA First Division.[16]

On November 2, 2010, special prosecutor's Compliance and Formal Entry of Appearance posted on October 7, 2010 was noted.[17]

On November 5, 2010, in view of the parties' agreement in open court, the Joint Stipulation of Facts and Issues filed on August 11, 2010 was withdrawn.[18] Preliminary conference and pre-trial were reset on December 9, 2010 and January 14, 2011, respectively.[19]

On January 14, 2011 pre-trial conference, both parties were given ten (10) days from said date to file an Amended Joint Stipulation of Facts and Issues.[20]

On February 1, 2011, accused's Motion to Dismiss was filed.[21]

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[7] Division Docket, pp. 163-164.
[8] *Id.*, p. 166.
[9] *Id.*, p. 173.
[10] *Id.*, p. 180.
[11] *Id.*, p. 181.
[12] *Id.*, p. 252.
[13] *Id.*, pp. 253-254.
[14] *Id.*, pp. 262-266.
[15] *Id.*, pp. 269-282.
[16] *Id.*, p. 283.
[17] *Id.*,p. 303.
[18] *Id.*, p. 308.
[19] *Id.*, p. 309.
[20] *Id.*, p. 315.
[21] *Id.*, pp. 316- 327.

Prosecution's Opposition to the Motion to Dismiss was filed on February 21, 2011.[22] Accused filed her Reply (To: Opposition to Motion to Dismiss) on March 8, 2011.[23]

On March 22, 2011 hearing set for the initial presentation of evidence for the prosecution, special prosecutors appeared. Defense counsel failed to appear despite due notice. The accused's Motion to Dismiss was deemed submitted for resolution. On the other hand, the filing of an Amended Joint Stipulation of Facts and Issues was held in abeyance subject to the outcome of the resolution on the motion to dismiss. Furthermore, the hearing set on April 12 and 26, 2011 were cancelled.[24]

On July 21, 2011, the Motion to Dismiss filed by the accused was granted and accordingly, CTA Criminal Case No. O-155 was dismissed.[25]

On August 12, 2011, Motion for Reconsideration (Resolution dated July 21, 2011) was filed by the prosecution.[26] Comment/Opposition (To: Motion for Reconsideration) was filed by the accused on September 5, 2011.[27]

On October 3, 2011, prosecution's motion was denied for utter lack of merit.[28]

Within the extended period granted by the Court *en banc*, Petition for Review was filed by the special prosecutors.

On January 18, 2012, accused filed her Comment/Opposition (To: Petition for Review).[29]

On January 19, 2012, the Petition for Review was denied due course and accordingly dismissed. Petitioner People of the Philippines was represented by the BIR Special Prosecutors and not by the Office of the Solicitor General (OSG).

The Special Prosecutors filed a Motion for Reconsideration (Resolution dated 19 January 2012) on February 14, 2012.[30]

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[22] *Id.*, pp. 331-336.
[23] *Id.*, pp. 337-343.
[24] *Id.*, p. 346.
[25] *Id.*, pp. 348-359.
[26] *Id.*, pp. 360- 374.
[27] *Id.*, pp. 386- 391.
[28] *Supra*, Note 1.
[29] *Rollo*, pp. 99-112.
[30] *Id.*, pp. 130-142.

The Court *en banc* noted the submission of the OSG's Letter of Deputation authorizing Attys. Curiba, Bulaong, and Baquirin to appear as counsel for People of the Philippines in CTA *en banc* Nos. O-17 & O-18 (subject to the conditions in the said Letter of Deputation).[31]

On March 14, 2012, accused filed her Comment/Opposition (To: Motion for Reconsideration).[32]

On March 21, 2012, the Court *en banc* ordered the respondent and the OSG to file their comment on the Motion for Reconsideration (Resolution dated 19 January 2012).[33]

On April 2, 2012, OSG filed its Comment (On the Motion for Reconsideration dated February 13, 2012 filed by the Special Prosecutors of the Bureau of Internal Revenue).[34]

On May 7, 2012, Resolution dated January 19, 2012 was lifted and set aside, and CTA EB Crim Case No. 018 was reinstated. The parties were also granted thirty (30) days from notice, within which to file their memoranda.[35] However, per records verification dated July 27, 2012, both parties failed to file Memoranda.[36]

In a Resolution promulgated on August 22, 2012, the case was submitted for decision. Thereafter, respondent filed "Motion for Leave to Admit Attached Memorandum" which the Court *en banc* granted in the interest of justice. Accordingly, respondent's Memorandum was admitted. In effect, the Court's Resolution promulgated on August 22, 2012 submitting the case for decision was recalled and set aside. Thus, the case was submitted for decision on December 20, 2012.

Hence, this decision.

ISSUE

Petitioner's Assignment of Error:

A. The Honorable First Division erred in holding that there is discrepancy between Section 8 (e) of R.A. 9480 and Section

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[31] *Rollo*, p. 150.
[32] *Id.*, pp. 151-155.
[33] *Id.*, pp. 158-159.
[34] *Id.*, pp. 160-172.
[35] *Id.*, pp. 174-178.
[36] *Id.*, p. 179.

5 (5) Rule II of Department Order No. 029-07[37] of the Department of Finance.

B. The Honorable First Division erred in holding that Respondent (Accused) is eligible to avail of the tax amnesty under R.A. 9480.

Based on the foregoing, **the core issue of this case is whether the dismissal of the case on the ground of the availment of tax amnesty under RA 9480 is proper.**

THIS COURT'S RULING

Petition is denied.

After a careful review of the assailed Resolution as well as the grounds raised by petitioner and the arguments of both parties in the instant case, We agree that the dismissal of the petition by the CTA First Division is proper.

We reiterate that 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. A tax amnesty, much like a tax exemption, is never favored or presumed in law. The grant of a tax amnesty, similar to a tax exemption, must be construed strictly against the taxpayer and liberally in favor of the taxing authority.[38]

Under Section 6 of RA 9480, taxpayers who availed of the tax amnesty and have fully complied with all its conditions are entitled to immunities and privileges enumerated therein. Pertinent to this case is provided under paragraph (a) of the said provision of law which reads, as follows:

> "The taxpayer shall be **immune from the payment of taxes, as well as additions thereto, and the appurtenant civil, criminal** or administrative **penalties** under the National Internal Revenue Code of 1997, as amended, arising from the

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[37] "Rules and Regulations to Implement Republic Act No. 9480", August 15, 2007.

[38] *Metropolitan Bank and Trust Co. vs. Commissioner of Internal Revenue*, G.R. No. 178797, August 4, 2009, 595 SCRA 234 citing *Philippine Banking Corporation (Now: Global Business Bank,Inc.) v. Commissioner of Internal Revenue*, G.R. No. 170574, 30 January 2009, 577 SCRA 366.

failure to pay any and all internal revenue taxes for taxable year 2005 and prior years." *(Emphasis Supplied).*

Section 2 of RA 9480 and Section 6, Rule III of DOF DO No. 29-07 list the documents needed to avail of the tax amnesty such as Notice of Availment, Statement of Assets and Liabilities and Networth (SALN) as of December 31, 2005, and Tax Amnesty Return which shall be received only after complete payment. The completion of these documents shall be deemed compliance with the provisions of RA 9480.

In this case, it is undisputed that respondent (accused) availed and complied with the requirements of the tax amnesty program under RA 9480. Pertinent portion[39] of the July 21, 2011 Resolution of the CTA First Division provides:

> 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 and Statement of Assets, Liabilities, and Networth (SALN) as of December 31, 2005 on February 21, 2008, and her Tax Amnesty Return on February 26, 2008[40]. As proof of payments of the amnesty tax, accused introduced two (2) Tax Amnesty Payment Forms (BIR Form No. 0617), one for the amount of P79,913.90, and the other for P35,177.50.
>
> 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. *(Emphasis Supplied).*

Discrepancy between
Section 8 (e) of RA 9480 and
Section 5 (5) of the DOF Order No. 29-07

Petitioner alleges that there is no conflict or discrepancy between Section 8 (e) of RA 9480 and Section 5 (5) of the DOF Order No. 29-07.

Petitioner's contention is untenable.

[39] *Rollo*, pp. 66-67.
[40] Should be February 21, 2008.

For easier comparison, the persons or cases not covered by the tax amnesty law under Section 8 of RA 9480 and Section 5 of the DOF Department Order No. 29-07 (DOF DO No. 29-07) are enumerated in the table below:

RA 9480	DOF DO No. 29-07
(a) Withholding agents with respect to their withholding tax liabilities;	1. 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;	2. 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;	3. Those with pending cases involving unexplained or unlawfully acquired wealth, revenue or income under the Anti-Graft and Corrupt Practices Act;
(d) Those with pending cases filed in court involving violation of the Anti-Money Laundering Law;	4. 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	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
(f) Tax cases subject of final and executory judgment by the courts.	7. Tax cases subject of final and executory judgment by the courts.

Jc

Based on the foregoing, the glaring difference between Section 8 (e) of RA 9480 and Section 5 (5) of the DOF DO No. 29-07, is that DOF DO No. 29-07 incorporated the words "filed in court or in the Department of Justice". No such words were written in RA 9240, the law which DOF DO No. 29-07 is implementing.

It is well-settled that a regulation should not conflict with the law it implements. Thus, those drafting the regulations should study well the laws their rules will implement, even to the extent of reviewing the minutes of the deliberations of Congress about its intent when it drafted the law.[41] Moreover, in case of discrepancy between the basic law and a rule or regulation issued to implement said law, the basic law prevails.[42]

Respondent (Accused) is eligible to avail of the tax amnesty under R.A. 9480

Petitioner alleges that respondent ("accused") at the time she availed of the tax amnesty has a pending criminal case or offense for tax evasion in the DOJ, hence, she is not entitled to the benefit of RA 9480.

Petitioner believes that DOF DO No. 29-07 provides a precise interpretation of the legislative intent and does not amend or supplant RA 9480.

We do not agree.

The Court is bound to effectuate the lawmakers' intent, which is the controlling factor in interpreting a statute.[43] Significantly, this Court (Supreme Court) has held that the soul of the law is intent:

> "The intent of a statute is the law. If a statute is valid it is to have effect according to the purpose and intent of the lawmaker. The intent is the vital part, the essence of the law, and the primary rule of construction is to ascertain and give effect to the intent. The intention of the legislature in enacting a law is the law itself, and must be enforced when ascertained, although it may not be consistent with the strict letter of the statute. Courts will not follow the letter of a statute when it leads away from the true intent and purpose of the legislature and to conclusions inconsistent with the general purpose of the

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[41] *Commissioner of Internal Revenue vs. Bicolandia Drug Corporation (Formerly known as Elmas Drug Co.),* G.R. No. 148083, July 21, 2006, 496 SCRA 176.
[42] *Id.*
[43] *Commissioner of Internal Revenue vs. Philippine Airlines, Inc.,* G.R. No. 160528, October 9, 2006, 504 SCRA 90.; Citations Omitted.

> act. Intent is the spirit which gives life to a legislative enactment. In construing statutes the proper course is to start out and follow the true intent of the legislature and to adopt that sense which harmonizes best with the context and promotes in the fullest manner the apparent policy and objects of the legislature."[44]

After a careful perusal of the deliberations of the Congress on House Bill No. 2933 (basis of Senate Bill No. 2479 which eventually became RA 9480), there is no doubt that those with criminal tax cases pending in the courts are not qualified for inclusion in the government's tax amnesty program as repeatedly emphasized by one of the sponsors of the bill as shown in the Journal of the House of Representatives[45], pertinent portions of the said Journal provide:

> xxx xxx xxx
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> Rep. Suarez, in reply, explained that the primary objective of the measure is to entice about half-a-million tax avoiders and tax evaders and make them avail themselves of the tax amnesty program. He pointed out that the only way that the government can go after them is to take them to court to face charges. However, he said that considering the limited capabilities, manpower, and resources of the government the next best alternative in going after these voluminous number of tax avoiders and tax evaders is to grant them tax amnesty.
>
> While he shares the concern of Rep. Malapitan regarding the need to pursue pending tax cases against big tax cheaters, <u>Rep. Suarez underscored however that those with pending tax cases in the courts, particularly criminal in nature, are not qualified for inclusion in the government's tax amnesty program</u>.[46]
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> xxx xxx xxx
>
> In his rejoinder, Rep. Serapio however pointed out that there are still <u>pending tax cases in courts</u> which are near resolution because of strong evidence of tax evasion. xxx xxx xxx.[47] Jr

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[44] *Id.*

[45] Thirteenth Congress, First Regular Session (2004-2005), Journal of the House of Representatives, Journal No. 33, Tuesday, December 7, 2004.

[46] *Id.*, p. 12.

[47] *Id.*, p.13.

> xxx xxx xxx
>
> In reply, Rep. Suarez explained that the pending big-time tax cases that Rep. Serapio was talking about are mostly criminal cases that cannot be qualified for inclusion under the tax amnesty program. xxx xxx xxx.[48]
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> xxx xxx xxx
>
> Rep. Suarez affirmed that those with final and executory judgment by the courts or who have pending tax evasion cases in lower courts, the CTA or the Supreme Court, cannot avail of the amnesty program. He explained that the cases involved are criminal in nature and are thus not included in the program.[49] *(Underlines Supplied)*.

Clearly, it is the legislative intent that those with pending criminal cases in courts for tax evasion and other criminal offenses under Chapter II of Title X of the National Internal Revenue Code of 1997, as amended, are disqualified to avail of the tax amnesty program.

Parenthetically, in *People of the Philippines vs. David Te Tan*[50], CTA *en banc* affirmed the dismissal of the case by virtue of the availment of the Tax Amnesty Program under RA No. 9480. Respondent-accused therein availed of the tax amnesty under RA No. 9480 on December 20, 2007 while the case was still pending investigation by the Department of Justice.

In this case, considering that respondent (accused) availed of the tax amnesty and has fully complied with all its requirements at the time the case was pending in the DOJ, dismissal of the case is proper because of her immunity.

Based on the foregoing, there is no reason to set aside the findings and conclusions of the CTA First Division in the assailed Resolution.

[48] Thirteenth Congress, First Regular Session (2004-2005), Journal of the House of Representatives, Journal No. 33, Tuesday, December 7, 2004, p. 13.
[49] *Id.*, p. 23.
[50] CTA EB Crim 008 (CTA Crim Case No. O-148), January 10, 2011 penned by Associate Justice Erlinda P. Uy and unanimously concurred in by the 8 justices headed by the retired Presiding Justice Ernesto D. Acosta; case closed and terminated on July 27, 2011 Resolution of the Supreme Court First Division in G.R. No. 195205 and with Entry of Judgment on October 5, 2011.

WHEREFORE, premises considered, the Petition for Review is hereby **DENIED**. Accordingly, the assailed Resolution of the CTA First Division dated October 3, 2011 in CTA Crim Case No. O-155 is **AFFIRMED**.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

(Inhibited)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

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

no part.
Ma. Belen Ringpis-Liban
MA. BELEN RINGPIS LIBAN
Associate Justice

C E R T I F I C A T I O N

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 the Court.

ROMAN G. DEL ROSARIO
Presiding Justice