REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

COVANTA ENERGY PHILIPPINE HOLDINGS, INC.,
Respondent.

CTA EB CASE NO. 713
(CTA Case Nos. 7338 & 7365)

Present:

Acosta, *P.J.*
Castañeda, Jr.
Bautista,
Uy,
Casanova,
Palanca-Enriquez,
Fabon-Victorino,
Mindaro-Grulla, *and*
Cotangco-Manalastas, *JJ.*

Promulgated:

MAR 3 0 2012

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D E C I S I O N

BAUTISTA, J.:

Before the Court *En Banc* is a Petition for Review[1] filed by petitioner Commissioner of Internal Revenue on January 4, 2011 pursuant to Section 18 of Republic Act No. 1125,[2] as amended by Republic Act No. 9282 and Republic Act No. 9503,[3] praying for the Court *En Banc* to set aside the Decision[4] and Resolution[5]

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[1] *Rollo*, CTA EB Case No. 713 (CTA Case Nos. 7338 & 7365), pp. 1-52, with Annexes.
[2] An Act Creating the Court of Tax Appeals, dated June 16, 1954.
[3] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes, dated March 30, 2004.

promulgated by the Second Division of the Court ("Court in Division") on July 27, 2010 and December 13, 2010, respectively, and to order respondent Covanta Energy Philippine Holdings, Inc., to pay the total amount of P754,496.99 representing deficiency Value-Added Tax and Expanded Withholding Tax, as well as Minimum Corporate Income tax in the amount of P467,801.99 for the taxable year 2001, plus surcharge and interest, pursuant to Sections 248 and 249 of the National Internal Revenue Code of 1997, as amended.

The Parties[6]

Petitioner, Commissioner of Internal Revenue ("CIR"), is the official authorized under Section 4 of the National Internal Revenue Code ("NIRC") of 1997 to assess and collect internal revenue taxes, as well as to decide disputed assessments, subject to the exclusive appellate jurisdiction of this Court. She holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent, Covanta Energy Philippine Holdings, Inc. ("CEPHI"), is a corporation duly organized and existing under Philippine laws, with principal office located at the 17th Floor, Robinsons Equitable Tower, ADB Avenue corner Poveda Street, Ortigas Center, Pasig City and registered with the Bureau of Internal Revenue (BIR) Revenue District Office (RDO) No. 43.

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[4] *Records*, (CTA Case Nos. 7338 & 7365), pp. 891-912; penned by Associate Justice Cielito N. Mindaro-Grulla, with Associate Justices Juanito C. Castañeda, Jr. and Caesar A. Casanova, concurring.
[5] *Id.*, pp. 941-945.
[6] *Rollo*, p. 24.

Antecedent Facts

The relevant antecedents are succinctly recited by the Court in Division in its Decision dated July 27, 2010 as follows:

"Respondent[7] issued Formal Letters of Demand and Assessment Notices dated December 6, 2004, assessing petitioner[8] for deficiency value-added tax (VAT) and expanded withholding tax (EWT) for taxable year 2001, in the respective amounts of P465,593.21 and P288,903.78.

Respondent based [her] findings of deficiency VAT on the following grounds:

'*Erroneous Computation of Output Tax*-Verification showed that taxpayer did not compute the output tax based on gross receipts as required under Section 108 of the Notional Internal Revenue Code.

Disallowed Input Taxes -Verification showed that part of input taxes claimed were for the purchase of non-vat goods, while some were purchases properly attributable to its affiliates and subsidiaries in violation of Sec. 110 of the Notional Internal Revenue Code.'

The deficiency VAT assessment is detailed as follows:

Accounts Receivable as of January 1, 2001		P 1,749,930.00
Add: Management Fee for the year		21,362,425.00
Total		P 23,112,355.00
Output Tax		P 2,311,235.50
Less: Creditable Input Tax		
Input Tax per General Ledger	P 1,840,258.33	
Less: Disallowed Input Taxes	22,424.74	
Add: Input Taxes from previous quarter	132,703.93	
Allowable Input Tax		P 1,950,537.52
VAT Due		P 360,697.98
Add: Input Tax carried over to next quarter		210,852.87
Less: VAT Paid per return		294,627.59
Deficiency Value-Added Tax		P 276,923.26
Add: Interest up to January 10, 2005		163,669.95
Compromise penalty for non-filing of Quarterly lists of Sales and Purchases		25,000.00
Total Deficiency Value-Added Tax		**P 465,593.21**

On the other hand, the basis of petitioner's alleged deficiency EWT is as follows:

[7] Herein Petitioner CIR.
[8] Herein Respondent CEPHI.

> '***Failure to withhold taxes*** - Verification showed that taxpayer failed to withhold on various income payments subject to expanded withholding tax in violation of Revenue Regulation 2-98.'

Account	Withholding Tax Due
Professional Fees	P 320,228.71
Rental Expense	371,522.69
Various contractors	79,480.67
Total EWT Due	P 771,232.07
Less: EWT remitted	590,328.01
Deficiency EWT	180,904.06
Add: Interest up to 01.10.05	107,999.72
Total Deficiency EWT	**P 288,903.78**

On January 19, 2005, petitioner filed two (2) separate protest letters addressed to respondent, on the assessments for VAT and EWT for taxable year 2001 in the aggregate amount of P754,496.99.

On January 21, 2005, petitioner received respondent's Formal Letter of Demand and Assessment Notice dated January 11, 2005, assessing petitioner for alleged deficiency minimum corporate income tax (MCIT) in the amount of P467,801.99.

On February 16, 2005, petitioner filed a protest letter on the foregoing assessment, enumerating the factual and legal bases supporting its arguments against the subject assessment and requesting the withdrawal and cancellation of the same.

Respondent failed however to render a decision on petitioner's protests, prompting petitioner to elevate its claims before this Court; which were docketed as CTA Case No. 7338 and CTA Case No. 7365.

The Petition for Review docketed as CTA Case No. 7338 was filed on October 10, 2005, seeking the cancellation and withdrawal of the assessments for deficiency VAT and EWT for taxable year 2001 in the total amount of P754,496.99.

The Petition for Review docketed as CTA Case No. 7365 was filed on November 9, 2005, seeking the cancellation and withdrawal of the deficiency assessment for MCIT for taxable year 2001 in the total amount of P467,801.99.

On December 6, 2005, respondent filed [her] Answer for CTA Case No. 7338, interposing the following counter-arguments:

> '3. He SPECIFICALLY DENIES the allegations contained in paragraph 1 under the heading 'The Case'; paragraphs 3.4 and 3.5 under the heading 'Jurisdictional Allegations';

paragraph 5.1 under the heading 'The Issues'; paragraph 6.3 under the heading 'Discussion' (Computation of Output Tax); paragraphs 6.5, 6.6, 6.7 and 6.8 under the heading 'Discussion' (Disallowed Input Taxes), paragraph 6.9 under the heading 'Discussion' (Compromise Penalty), and paragraph 6.10 under the heading 'Discussion' (Expanded Withholding Tax) of the Petition for being gratuitous and unfounded assertions of facts and/or law, the truth of the matter being that verification showed that petitioner did not compute the output tax based on gross receipts as required under Section 108 of the National Internal Revenue Code of 1997 which provides among others:

> 'xxx xxx xxx
>
> The term 'gross receipts' means the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for material supplied with the services and deposits and advanced payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax.
>
> xxx xxx xxx'

Part of input taxes claimed were for the purchase of non-vat goods, while some were purchases properly attributable to its affiliates and subsidiaries in violation of Section 110 of the Notional Internal Revenue Code of 1997 which provides, among others:

> xxx xxx xxx
>
> (2) The input tax on domestic purchase of goods or properties shall be creditable:
>
> (a) To the purchaser upon consummation of sale and on importation of goods or properties; and
>
> (b) To the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs.

> However, in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee.
>
> xxx xxx xxx'

The deficiency value-added tax was computed mainly from petitioner's failure to consider the Accounts Receivable which accrued on December 31, 2000 in the computation of the output tax and disallowance of some input taxes.

The income tax returns of foreign executives Oliver Cruz, Frank Sine and Timothy Davis and their respective schedules showing their income tax computation and income details were submitted on 28 July 2004 and 9 August 2004, respectively. The documents proved that the rental and other expenses from which input taxes amounting to P372,632.80 were previously disallowed in the Post-Reporting Notice formed part of the foreign executives' compensation which was declared in their income tax return.

Verification further showed that petitioner failed to withhold on various income payments subject to expanded withholding tax in violation of Revenue Regulations 2-98.

Assessment of withholding taxes was based on the various contracts of lease and schedules of professional fees, rental expenses and repairs and maintenance accounts submitted by petitioner.

All presumptions are in favor of the correctness of tax assessments. The good faith of tax assessors and the validity of their actions are presumed. They will be presumed to have taken into consideration all the facts to which their attention was called (*CIR vs. Construction Resources of Asia, Inc., 145 SCRA 671*). It is incumbent upon the taxpayer to prove the contrary (*Mindanao Bus Company vs. CIR, 1 SCRA 538; CIR vs. Tuazon, Inc., 173 SCRA 397*) and failure to do so shall vest legality to respondent's actions and assessments.

Failure to present proof of error in the assessment will justify judicial affirmation of said assessment (*Delta Motors Co. vs. Commissioner, CTA Case No. 3782, 21 May 1986; Commissioner of Internal Revenue vs. Court of Appeals, et al., G.R. Nos. 104151 and 105563, 10 March 1995*).'

On January 10, 2006, respondent filed [her] Answer for CTA Case No. 7365, alleging the following counter-arguments:

> "5. Verification by the Bureau of Internal Revenue examiners showed that petitioner failed to pay the Minimum Corporate Income Tax (MCIT) required under Section 27(E) of the National Internal Revenue Code of 1997 (NIRC of 1997) which is imposed whenever the corporation has zero or negative taxable income.
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> Section 27(E) of the NIRC of 1997 provides, thus:
>
> > '*Sec. 27. Rates of Income Tax on Domestic Corporations.* -
> >
> > xxx
> >
> > (E) *Minimum Corporate Income Tax on Domestic Corporations.* –
> >
> > (1) Imposition of Tax. - A minimum corporate income tax of 2% of the gross income as of the end of the taxable year, as defined herein, is hereby imposed on a corporation taxable under this Title, beginning on the fourth taxable year immediately following the year in which such corporation commenced its business operations, when minimum income tax is greater than the tax computed under Subsection (A) of this Section for the taxable year.
> >
> > xxx'
>
> Revenue Regulations No. 9-98 provides that '*for purposes of MCIT, the taxable year in which business operations commenced shall be the year in which the domestic corporation registered with the BIR*'.
>
> Petitioner's Certificate of Registration with the BIR would show that it registered in 1997. Hence, petitioner became liable to MCIT beginning taxable year 2001.
>
> Revenue Regulations No. 9-98 further provides that the 2% MCIT rate shall be imposed on corporation's 'gross income' which is defined for seller of services, such as petitioner, as gross receipts less sales returns, allowances, discounts and cost of services. And 'cost of services' is defined as all direct costs and expenses necessarily incurred to provide the services required by the customers and clients including (a) salaries and employee benefits of personnel,

consultants and specialists directly rendering the service, and (b) cost of facilities directly utilized in providing the service such as depreciation or rental of equipment used and cost of supplies.

Petitioner avers that in order to provide its client the services specified in the alleged agreement it incurred expenses such as, but not limited to, salaries and employee benefits, office rentals, transportation, etc. which become part of its cost. However, as found by the BIR examiners petitioner was able to substantiate only the salaries and wages of its foreign executives but not the direct costs and expenses it claimed it incurred to provide the services required by its client. Hence, the latter is disallowed.

6. The assessment was issued in accordance with law and regulations;

7. All presumptions are in favor of the correctness of tax assessments. (*Commissioner of Internal Revenue vs. Construction Resources of Asia, Inc., 145 SCRA 671*).'

On March 27, 2006, petitioner filed a Motion to Consolidate CTA Case No. 7338 with CTA Case No. 7365, which was granted by this Court in a Resolution dated April 28, 2006.

During trial, petitioner presented documentary and testimonial evidence, which were formally offered in its Formal Offer of Evidence on July 21, 2008.

Respondent likewise filed his Formal Offer of Evidence on May 4, 2009, which was admitted by the Court in a Resolution dated June 22, 2009.

On October 7, 2008, petitioner filed a Supplemental Petition with respect to its availment of tax amnesty under Republic Act (R.A.) No. 9480.

On August 24, 2009, petitioner filed a Supplemental Formal Offer of Evidence, as to Exhibits "IIIII" to "QQQQQ," representing the documents to prove its availment of the tax amnesty.

Upon admission of petitioner's supplemental documentary evidence, this Court ordered the parties to file their respective memorandum within thirty (30) days.

On January 4, 2010, the consolidated cases were submitted for decision upon submission of respondent's Memorandum on December 9, 2009 and petitioner's Memorandum on December 17, 2009.

The jointly stipulated issues as stated in CTA Case No. 7338, are as follows:

> 'A. Deficiency VAT Assessment
>
> I. WHETHER PETITIONER CORRECTLY COMPUTED ITS OUTPUT TAX BASED ON GROSS RECEIPTS FOR THE TAXABLE YEAR 2001.
>
> II. WHETHER RESPONDENT ERRED IN DISALLOWING INPUT TAX IN THE AMOUNT OF P22,424.74.
>
> III. WHETHER RESPONDENT ERRED IN IMPOSING A P25,000.00 COMPROMISE PENALTY FOR ALLEGED NON-FILING OF QUARTERLY LISTS OF SALES AND PURCHASES.
>
> IV. WHETHER PETITIONER IS LIABLE FOR DEFICIENCY VALUE-ADDED TAX FOR THE TAXABLE YEAR 2001 IN THE AMOUNT OF P465,593.21, INCLUSIVE OF INTEREST.
>
> B. Deficiency EWT Assessment
>
> I. WHETHER PETITIONER IS LIABLE FOR DEFICIENCY EXPANDED WITHHOLDING TAX FOR THE TAXABLE YEAR 2001 IN THE TOTAL AMOUNT OF P288,903.78, INCLUSIVE OF INTEREST.'

The issues submitted by the parties for CTA Case No. 7365 are as follows:

> 'I. WHETHER OR NOT PETITIONER RENDERS SERVICES PURSUANT TO A CONSULTANCY AND MANAGEMENT SERVICES AGREEMENT.
>
> II. WHETHER OR NOT PETITIONER'S COST OF SERVICES FOR 2001 CAN BE SUBSTANTIATED BY SUFFICIENT EVIDENCE.
>
> III. WHETHER OR NOT PETITIONER'S COST OF SERVICES FOR 2001 WAS GREATER THAN ITS GROSS RECEIPTS FOR THE SAME YEAR, THUS RESULTING IN A NEGATIVE GROSS INCOME FOR THE PETITIONER.
>
> IV. WHETHER OR NOT PETITIONER IS LIABLE FOR DEFICIENCY MINIMUM CORPORATE INCOME TAX AMOUNTING TO P476,801.99 FOR TAXABLE YEAR 2001.'

On October 7, 2008, petitioner filed a Supplemental Petition manifesting that it availed of the tax amnesty under Republic Act No. 9480 on March 3, 2008. In a Resolution dated June 22, 2009, the Court held in abeyance the resolution of petitioner's availment of tax amnesty until the pertinent documents proving petitioner's application and compliance with the requirements of R.A. No. 9480 are submitted. Petitioner then filed its Supplemental Formal Offer of Evidence on August 24, 2009, submitting the following documents:

1. Exhibit "IIIII"-Notice of Availment of Tax Amnesty;
2. Exhibit "JJJJJ" -Tax Amnesty Payment Form (BIR Form No. 0617);
3. Exhibit "KKKKK"-UCPB BTR-BIR Deposit Slip;
4. Exhibit "LLLLL"-Tax Amnesty Return (BIR Form No. 2116);
5. Exhibit "MMMMM" - Petitioner's Statement of Assets, Liabilities and Networth as of December 31, 2005 (original declaration);
6. Exhibit "NNNNN" -Petitioner's Statement of Assets, Liabilities and Networth as of December 31, 2005 (amended declaration);
7. Exhibit "00000"-Petitioner's Annual Income Tax Return for taxable year 2005;
8. Exhibit "PPPPP" -Petitioner's Audited Financial Statements as of December 31, 2005; and
9. Exhibit "QQQQQ" -Sworn Statement of Ms. Kristine Sta. Maria.

The foregoing exhibits were admitted by this Court on October 6, 2009."[9]

The Ruling of the Court in Division

On July 27, 2010, the Court in Division promulgated a Decision partially granting the Petition for Review,[10] stating:

"**WHEREFORE**, the instant Petitions for Review are hereby **PARTIALLY GRANTED**. Accordingly, the deficiency value-added tax and deficiency minimum corporate income tax assessments for taxable year 2001 issued against petitioner are **CANCELLED** and **WITHDRAWN**.

However, petitioner is **ORDERED TO PAY** respondent the amount of **ONE HUNDRED THIRTY-ONE THOUSAND SEVEN HUNDRED NINETY-ONE PESOS AND 02/100 (P131,791.02)**, representing deficiency expanded withholding tax, including the twenty-five percent (25%) surcharge imposed thereon.

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[9] *Id.*, pp. 24-34.
[10] See note 4.

Likewise, petitioner is **ORDERED TO PAY**:

(a) deficiency interest at the rate of twenty percent (20%) *per annum* on the basic deficiency EWT of P29,415.00 computed from November 16, 2005 until full payment thereof pursuant to Section 249(B) of the NIRC of 1997; and

(b) delinquency interest at the rate of 20% *per annum* of P131,791.02 which is the total amount still due and on the 20% deficiency interest which have accrued as afore-stated in paragraph (a) computed from January 10, 2005 until full payment thereof, pursuant to Section 249(c) of the NIRC of 1997.

SO ORDERED."

Petitioner filed a Motion for Reconsideration,[11] and on December 13, 2010, the Court in Division issued a Resolution denying petitioner's Motion for Reconsideration.[12]

Hence, this Petition for Review.

The Issue

Petition alleges a single error in the Petition for Review dated January 4, 2011:

> "THE SECOND DIVISION ERRED IN HOLDING THAT RESPONDENT VALIDLY AVAILED OF THE TAX AMNESTY GRANTED UNDER RA 9480."[13]

Petitioner's Arguments

Petitioner asseverates that the mere filing of tax amnesty documents does not automatically entitle the applicants to the immunities and privileges granted under the said law, and that the application must conform with all the conditions and

[11] *Records*, (CTA Case Nos. 7338 & 7365), pp. 913-927.
[12] See note 5.
[13] *Rollo*, p. 11.

requirements of the law and implementing rules and regulations.[14] Petitioner also argues that the cited jurisprudence by the Court in Division is not applicable in this case, since respondent failed to comply with the mandatory requirements of Department Order No. 29-07, which mandates that certain information be disclosed.[15] In the case of respondent, petitioner points out that the columns for "Reference" and "Basis of Valuation" on the SALN and the Amended SALN were left blank.[16] Petitioner cites the case of *Bibiano V. Bañas v. Court of Appeals, et al.*[17] where the Supreme Court denied a tax amnesty application under P.D. 1740 and 1840, stating that a mere filing does not shield him from prosecution. Thus, in the same manner, respondent can only have immunity when it has fully complied with the conditions of RA No. 9480.

Petitioner even argues that the one-year period of limitation does not apply in this case because that only applies to the administrative proceedings, citing Rule IV, Section 9 and 10 of Department Order No. 29-07,[18] which provides:

> "SEC. 9. *Presumption of Correctness of SALN.* - The corresponding SALN as of December 31, 2005 filed by the taxpayer desiring to avail of the tax amnesty shall be presumed true and correct, except in the following cases:
>
> 1. Where the amount of the declared networth is understated to the extent of thirty percent (30%) or more as may be established in proceedings initiated within one (1)-year following the date of filing of the Tax Amnesty Return and the SALN, by, or the instance of parties other than the BIR or its agents, as when any person, entity or government agency informs the BIR, with sufficient evidence, that the amount of the declared networth is understated to the extent of thirty percent (30%) or more.

[14] *Id.*, p.11.
[15] *Id.*, p. 12.
[16] *Id.*, 13.
[17] G.R. No. 102967, February 10, 2000, 325 SCRA 259.
[18] Rules And Regulations To Implement Republic Act No. 9480.

2. When findings of or admission in congressional hearings or proceedings in administrative agencies of the government, and in courts, prove that there is a least thirty percent (30%) underdeclaration.

x x x *x x x* *x x x*

SEC. 10. *Immunities and Privileges.* – Taxpayers who have fully complied with the conditions under RA 9480 and these rules shall be entitled to the following immunities and privileges:

1. The taxpayer shall be immune from the payments 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 failure to pay any and all internal revenue taxes year 2005 and prior years.

2. The taxpayer's Tax Amnesty Return 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.

3. The books of accounts and other records of the taxpayer for the years covered by the tax amnesty availed of shall not be examined by the BIR. However, the Commissioner of Internal Revenue may authorize in writing the examination of the said books of accounts and other records to verify the validity or correctness of a claim for any tax refund, tax credit (other than refund or credit of taxes withheld on wages), tax incentives, and/or exemptions under existing laws.

4. The above-stated immunities and privileges shall not apply where the person failed to file a SALN and the Tax Amnesty Return, or where the amount of networth as of December 31, 2005 is proven to be understated to the extent of thirty percent (30%) or more, in accordance with the provisions of Section 4 of RA 9480 and Section 9, Rule IV hereof.

Also, petitioner wishes to emphasize that the applications for Tax Amnesty must be strictly construed.[19]

Last, petitioner is questioning the decision of the Court in Division when it ordered respondent to pay only the reduced amount of P131,791.02 representing the

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[19] *Rollo*, p. 17.

deficiency expanded withholding tax, since it failed to have its documents and entries, in particular the alleged withholding tax certificates, identified by the respective withholding agents, as well as prove the remittance of the said amounts to have been withheld to the BIR.[20]

Respondent's Arguments

On the other hand, respondent filed a Comment[21] to the Petition for Review, stating that all the issues brought up has already been passed upon and rejected by the Court in Division. Also, respondent claims that it is entitled to the immunities afforded to it by RA No. 9480, as it already complied with the conditions set forth. Respondent also points out that there is a presumption that the SALN filed is true and correct unless it can be proven that there is an under declaration of net worth amounting to at least 30%.[22] It was pointed out by respondents that there was no proceeding initiated to that effect in this case. [23]

As to the one-year period, respondent states that this should be taken into consideration with the under declaration of at least 30%. Also, that the *Baňas* case cited by the BIR does not apply in this case since the older case tackled with the fact that the declaration of income was not truthful, unlike in the present case where there is a presumption of correctness.[24]

Another point being raised by respondent is on the deficiency expanded withholding tax. Respondent refutes this by stating that not only did it submit its Monthly Remittance Return of Creditable Income Taxes Withheld, it was able to

[20] *Id.*, p. 18.
[21] *Id.*, pp. 61-73.
[22] *Id.*, pp. 64-65.
[23] *Id.*
[24] *Id.*, pp. 67-68.

prove that payments and professional fees paid out was properly documented and correct amounts were withheld and remitted to the BIR.

The Ruling of the Court En Banc

In Section 228 of the NIRC of 1997, it states that:

"SEC. 228. *Protesting of Assessment.* –

x x x

> 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 Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

The Petition for Review appealing a protest should be filed within 30-days either from the end of the 180-day period given allowed under the law for Commissioner of Internal Revenue to decide on the said protest, or from the receipt of the said decision.

From the records of the case, docketed as CTA Case No. 7338, the Formal Letter of Demand dated December 6, 2004 was received by respondent on December 20, 2004. Respondent then filed a protest thereto on January 19, 2005, and submitted its supporting documents on March 14, 2005. While in the case docketed as CTA Case No. 7365, the Formal Letter of Demand dated January 11, 2005 was received on January 21, 2005. Respondent filed a protest on February 16, 2005. The supporting documents were filed on April 13, 2005.

Applying Section 228 of the NIRC of 1997, both the Petitions for Review filed on October 10, 2005 and November 9, 2005, respectively, were made within the prescribed periods.

Instructive is the case of *Philippine National Bank v. Commissioner of Internal Revenue,* [25] where the Supreme Court stated that:

> "Verily, the periods for filing petitions for review and for *certiorari* are to be observed religiously. "Just as [the] losing party has the privilege to file an appeal within the prescribed period, so does the winner have the x x x right to enjoy the finality of the decision." In *Air France Philippines v. Leachon*, we held:
>
> > 'Procedural rules setting the period for perfecting an appeal or filing an appellate petition are generally inviolable. It is doctrinally entrenched that appeal is not a constitutional right but a mere statutory privilege. Hence, parties who seek to avail of the privilege must comply with the statutes or rules allowing it. The requirements for perfecting an appeal within the reglementary period specified in the law must, as a rule, be strictly followed. Such requirements are considered indispensable interdictions against needless delays, and are necessary for the orderly discharge of the judicial business. For sure, the perfection of an appeal in the manner and within the period set by law is not only mandatory, but jurisdictional as well. Failure to perfect an appeal renders the judgment appealed from final and executory.
> >
> > While it is true that the Court may deviate from the foregoing rule, this is true only if the appeal is meritorious on its face. The Court has not hesitated to relax the procedural rules in order to serve and achieve substantial justice. "In the circumstances obtaining in this case however, the occasion does not warrant the desired relaxation.'
>
> *x x x* *x x x* *x x x*

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[25] G.R. No. 172458, December 14, 2011.

> While PNB may believe that it has a meritorious legal defense, this must be weighed against the need to halt an abuse of the flexibility of procedural rules. It is well established that faithful compliance with the Rules of Court is essential for the prevention and avoidance of unnecessary delays and for the organized and efficient dispatch of judicial business."

In the case of *Antique Sawmills, Inc. v. Aquiles R. Zayco, et al.*[26], citing the case of *Miranda vs. Guanzon, et al.*,[27] the Supreme Court explained that:

> "In a long line of cases, the Supreme Court has ruled that compliance with the period provided by law for the perfection of an appeal is not merely mandatory but also a jurisdictional requirement. Thus, in the case of *Miranda vs. Guanzon, et al.*, 92 Phil. 168, this Court held:
>
> > 'Section 13 of Rule 41 provides that when the appeal is not perfected within the reglementary period the appeal shall be dismissed. *The requirement regarding the perfection of an appeal within the reglementary period is not only mandatory but jurisdictional.* Such failure has the effect of rendering final the judgment of the court, and the certification of the record on appeal thereafter cannot restore the jurisdiction which has been lost. The dismissal of the appeal can be effected even after the case has been elevated to the Court of Appeals (Rule 52, Section 1[a]). Appellee's failure to file a motion for dismissal of appeal in the court of origin before the transmittal of the record to the appellate court, does not constitute a waiver on his part to interpose such objection." (*Emphasis supplied*)

Having discussed the propriety of filing the Petitions for Review within the allotted period under the law, the Court will now resolve the sole issue raised by petitioner.

After a perusal of the records of the case, it is the opinion of the Court *En Banc* that the Petition for Review filed by petitioner is bereft of merit.

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[26] G.R. No. L-20051, May 30, 1966, 17 SCRA 316.
[27] G.R. No. L-4992, October 27, 1952, 92 Phil. 168.

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. A tax amnesty, much like a tax exemption, is never favored nor 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.[28]

R.A. No. 9480,[29] entitled "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," provides for the coverage of the Tax Amnesty Law of 2007, *viz.*:

> **SEC. 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.
>
> xxx xxx xxx
>
> **SEC. 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;

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[28] Commissioner of Internal Revenue v. Marubeni Corporation, G.R. No. 137377, December 18, 2001, 372 SCRA 588.
[29] Lapsed into law on May 24, 2007.

(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, D.O. No. 29-07 embodying the "Rules and Regulations to Implement Republic Act No. 9480," issued on August 15, 2007, states the following:

RULE II
COVERAGE

SEC. 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.

xxx xxx xxx

SEC. 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.

To avail of the tax amnesty program, Section 2 of the Tax Amnesty Law states:

> **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.

From the afore-quoted provision, any person intending to avail of the tax amnesty program shall: (a) file a notice and tax amnesty return with SALN as of December 31, 2005; and (b) pay the applicable tax to the BIR.

Corollary thereto, Section 6(3) of Rule III of Department Order No. 20-07, or the "Implementing Rules and Regulations of Republic Act No. 9480," provides:

> "**RULE III**
> *Availment and Payment of Amnesty*
>
> **Section 6.** *Method of Availment of Tax Amnesty.* –
>
> xxx xxx xxx

> 3. *Payment of Amnesty Tax and Full Compliance.* – xxx
>
> 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.
>
> xxx xxx xxx"

As required, respondent submitted the following documents to the Court in Division on October 7, 2008:

a) The Notice of Availment of Tax Amnesty under RA No. 9480, dated 3 March 2008 and filed on the same day;[30]

b) A Statement of Assets, Liabilities and Net worth (Amended Declaration) as of 31 December 2005 and filed on 3 March 2008;[31]

c) A Statement of Assets, Liabilities and Net worth (Original Declaration) as of 31 December 2005; [32]

d) The Tax Amnesty Return for Taxable Year 2005 and Prior Years (BIR Form No. 2116) filed on 3 March 2008; and[33]

e) The Tax Amnesty Payment Form (Acceptance of Payment Form) for taxable Year 2005 and Prior Years (BIR Form No. 0617) filed on 3 March 2008.[34]

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[30] See p. 10.
[31] *Id.*
[32] *Id.*
[33] *Id.*
[34] *Id.*

As pointed out by the Court in Division in the Decision dated July 27, 2010, respondent has fully complied with the requirements of RA No. 9480, as implemented by RMC No. 19-2008.[35]

The Court *En Banc* has previously resolved that taxpayers found to have fully complied with the documentation requirements of RA No. 9480 are entitled to the immunities as found under Section 6 thereof.[36] More importantly, in the case of *Philippine Banking Corporation (Now: Global Business Bank, Inc.) v. Commissioner of Internal Revenue*,[37] the Supreme Court declared that the completion of these requirements shall be deemed full compliance with the tax amnesty program, and 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 amended, arising from failure to pay any and all internal revenue taxes for taxable year 2005 and prior years.

Also, Section 4 of R.A. No. 9480 provides:

> SEC. 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.** *(Boldfacing supplied)*

As stated in the Resolution dated December 13, 2010:

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[35] *Rollo*, p. 36.
[36] Metropolitan Bank and Trust Company *v.* Commissioner of Internal Revenue, C.T.A. EB No. 354 (C.T.A. Case No. 7154), August 29, 2008; Commissioner of Internal Revenue *v.* PILMICO Foods Corporation, C.T.A. EB No. 430 (C.T.A. Case No. 6868), March 31, 2009.
[37] G.R. No. 170574, January 30, 2009, 597 SCRA 366.

"Unless the amounts stated in the SALN is understated to the extent of thirty percent (30%) or more as may be established in proceedings initiated within one year following the date of the filing of the tax amnesty return and the SALN or there is a finding of or admission in congressional hearings, other administrative agencies of government, and/or courts that prove a thirty percent (30%) under-declaration, the SALN shall be presumed CORRECT. This is the clear import of Sec. 4 of RA No. 9480 and Sec. 9 of Department Order No. 29-07.

While the Reference and basis of valuation was left blank in its SALN and Amended SALN, it does not controvert the fact that there was a presumption of compliance with the provisions of the tax amnesty law as there was payment of the amnesty tax and submission of Acceptance of Payment Form, the Notice of Availment, the SALN and the Tax Amnesty Return. Mere omission of filing up the reference and basis of valuation column in the SALN in the absence of proof to defraud the government or under declaration of at least 30% will not deny petitioner in having complied with the requirements of the tax amnesty law.

Absent any evidence to prove that there is at least a 30% under declaration, to dispute the presumption given by the law on petitioner's SALN, the same is presumed correct. Concomitantly, there is no legal bass for respondent to conclude that petitioner failed to comply with the tax amnesty law."[38]

The Court *En Banc* sees no reason to deviate from the above cited Resolution. The Petition for Review filed by petitioner did not allege any under declaration that would work against the immunity that the respondent now enjoys under the law, as such the immunity must stand.

WHEREFORE, the Petition for Review filed by Commissioner of Internal Revenue is hereby **DENIED** for lack of merit. The Decision dated July 27, 2010 and Resolution dated December 13, 2010 are hereby **AFFIRMED**. Deficiency Value Added Tax and Deficiency Minimum Corporate Income Tax in taxable year 2001

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[38] *Rollo*, pp. 45-49.

remain **CANCELLED** and **WITHDRAWN**. Respondent, however, is **ORDERED TO PAY** the amount of **ONE HUNDRED THIRTY-ONE THOUSAND SEVEN HUNDRED NINETY-ONE PESOS AND 02/100 (P131,791.02)**, representing deficiency expanded withholding tax, including the twenty-five percent (25%) surcharge imposed thereon. Likewise, respondent is **ORDERED TO PAY**:

(a) deficiency interest at the rate of twenty percent (20%) *per annum* on the basic deficiency EWT of P29,415.00 computed from November 16, 2005 until full payment thereof pursuant to Section 249(B) of the NIRC of 1997; and

(b) delinquency interest at the rate of 20% *per annum* of P131,791.02 which is the total amount still due and on the 20% deficiency interest which have accrued as afore-stated in paragraph (a) computed from January 10, 2005 until full payment thereof, pursuant to Section 249(c) of the NIRC of 1997.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

(On Wellness Leave)
ERNESTO D. ACOSTA
Presiding Justice

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

ERLINDA P. UY
Associate Justice

(On Wellness Leave)
CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
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, 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