REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

ALEXANDER C. CRISOSTOMO, as sole proprietor of BIOCARE HEALTH RESOURCES,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE through OIC REGIONAL DIRECTOR JONAS AMORA,
Respondent.

CTA CASE NO. 8672

Members:

CASTAÑEDA, JR., *Chairperson, and*
CASANOVA, *JJ.*

Promulgated:

JUL 07 2017

3:05 p.m.

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AMENDED DECISION

CASTAÑEDA, JR., *J.*

For resolution is petitioner's **Motion for Reconsideration**, filed on September 4, 2015, with respondent's **Comment (On Petitioner's Motion for Reconsideration of the Court's Decision dated 18 August 2015)**, filed on September 23, 2015 and petitioner's **Manifestation** filed via courier on May 26, 2017 and by registered mail on May 25, 2017 and received by the Court on June 8, 2017.

Petitioner's **Manifestation**, informing the Court that he filed his **Memorandum with Motion to Admit Originals of Certain Exhibits** on time, is **NOTED**.

As regards the Motion for Reconsideration, petitioner seeks the reconsideration of the Decision dated August 18, 2015, the dispositive portion of which reads:

> **WHEREFORE**, the instant Petition for Review is **DISMISSED** for lack of jurisdiction.
>
> Even considering that the Court has jurisdiction over the issue of whether petitioner is entitled to the immunities provided in the Tax Amnesty Law, the instant Petition for Review should likewise be **DISMISSED** for insufficiency of evidence.
>
> **SO ORDERED**.

Petitioner interposes the following grounds in his motion:

1. Whether the assessment issued by the Bureau of Internal Revenue against petitioner Biocare Health Resources is void from the beginning based on the following grounds:

    a. For being based on a mere Letter Notice.
    b. Since the Preliminary Assessment Notice, Final Assessment Notice and Formal Letter of Demand were signed only by an Officer-in-Charge of the Assistant Regional Director.

2. Whether the Deficiency Income Tax and Value Added Tax (VAT) liabilities of petitioner for year 2004 should be condoned for his availment of Tax Amnesty pursuant to Republic Act (RA) No. 9480.

With respect to the first ground, the Court, in a Resolution dated November 12, 2015, already held that there is no reason to reverse its findings that the assessment has become final, demandable and executory. Thus, a further discussion on the matter is unnecessary.

As to petitioner's availment of Tax Amnesty under RA No. 9480, the Court noted in the same resolution that petitioner attached photocopies of documents to support the said availment, thus, the Court gave petitioner the opportunity to present the originals of the said documents.

Accordingly, petitioner presented, identified and formally offered his exhibits and eventually, submitted his Memorandum by registered mail on April 24, 2017 with the attached originals of the documents supporting the availment of Tax Amnesty under RA No. 9480. The exhibits were later admitted in the Resolution dated May 22, 2017.

Considering the foregoing, the Court shall now determine whether petitioner is not liable to pay for the deficiency income tax and VAT for year 2004 in view of his alleged availment of Tax Amnesty.

The pertinent provisions on the availment and grant of Tax Amnesty under RA No. 9480 are as follows:

> SECTION 1. *Coverage.* — There is hereby authorized and granted a tax amnesty which shall cover all national internal revenue taxes for the taxable year 2005 and prior years, with or without assessments duly issued therefor, that have remained unpaid as of December 31, 2005: *Provided, however*, That the amnesty hereby authorized and granted shall not cover persons or cases enumerated under Section 8 hereof.
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> xxx xxx xxx
>
> SECTION 6. *Immunities and Privileges.* — Those who availed themselves of the tax amnesty under Section 5 hereof, and have fully complied with all its conditions shall be entitled to the following immunities and privileges:
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> a. The taxpayer shall be immune from the payment of taxes, as well as addition thereto, and the appurtenant civil, criminal or administrative penalties under the National Internal Revenue Code of 1997, as amended, arising from the failure to pay

any and all internal revenue taxes for taxable year 2005 and prior years.

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

(a) Withholding agents with respect to their withholding tax liabilities;

(b) Those with pending cases falling under the jurisdiction of the Presidential Commission on Good Government;

(c) Those with pending cases involving unexplained or unlawfully acquired wealth or under the Anti-Graft and Corrupt Practices Act;

(d) Those with pending cases filed in court involving violation of the Anti-Money Laundering Law;

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

(f) Tax cases subject of final and executory judgment by the courts.

The Department of Finance (DOF) issued Department Order No. 29-07 (DO No. 29-07). Section 6 of DOF DO No. 29-07 provides: *[initial]*

SEC. 6. *Method of Availment of Tax Amnesty.* —

1. *Forms/Documents to be filed.* - To avail of the general tax amnesty, concerned taxpayers shall file the following documents/requirements:

a. Notice of Availment in such form as may be prescribed by the BIR;

b. Statements of Assets, Liabilities and Networth (SALN) as of December 31, 2005 in such form, as may be prescribed by the BIR;

c. Tax Amnesty Return in such form as may be prescribed by the BIR.

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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.

In order to substantiate its availment of the Tax Amnesty Program under RA No. 9480, petitioner presented and formally offered to this Court the following: (1) Notice of Availment of Tax Amnesty; (2) Tax Amnesty Return (BIR Form No. 2116); (3) SALN as of December 31, 2005; (4) Tax Amnesty Payment Form (Acceptance of Payment Form) BIR Form No. 0617; (5) Certification from Security Bank dated March 18, 2016; and (6) Certification from BIR Revenue Accounting Division dated December 22, 2015.

An examination of the documents presented shows that petitioner satisfactorily complied with the provisions of the Tax Amnesty Law. Consequently, petitioner should be immune from the payment of taxes, as well as the appurtenant civil, criminal or administrative penalties under the National Internal Revenue Code of 1997, as amended, arising from the failure to pay any and all internal revenue taxes for taxable year 2005 and prior years as was held in the case of *Philippine Banking Corporation (Now: Global Business Bank, Inc.) vs. Commissioner of Internal Revenue*[1].

Notably, petitioner alleged in his Memorandum that respondent disqualified him from the availment of the Tax Amnesty Law on May 31, 2011 or two (2) years after March 6, 2009.[2] Based on the letter of respondent's representative to petitioner dated December 8, 2008[3], his availment of Tax Amnesty does not cover delinquent accounts on the basis of Revenue Memorandum Circular (RMC) No. 69-2007 which allegedly clarified some issues in the provisions of RA No. 9480 and its implementing rules and regulations under DOF Department Order No. 29-07, specifically Q-47 and A-47, saying that Delinquent Accounts/Accounts Receivable as of the date of amnesty availment are not covered.

In this regard, it must be emphasized that the Supreme Court itself nullified the said portions of RMC No. 69-2007 in the case of *LG Electronics Philippines, Inc., vs. Commissioner of Internal Revenue*[4], the pertinent portion which reads:

> **Respondent erred when it relied on the answers to questions numbered 47 and 49 of BIR Revenue Memorandum Circular No. 69-2007** reproduced below:
>
>> Q-47 Are Delinquent Accounts/Accounts Receivable, including unpaid self-assessed taxes, in the records of the BIR which are already Accounts Rec[ei]vable of the BIR/assets of the Government as of date of amnesty availment by the taxpayer still covered by such amnesty availment?
>>
>> A-47 No. This is so because these are already properties/assets of the Government prior to/upon taxpayer's date of amnesty availment. fr

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[1] G.R. No. 170574, January 30, 2009.
[2] The alleged end of the one-year period to initiate a proceeding in accordance with RMC No. 55-2007. Petitioner's Tax Amnesty Return was filed on March 7, 2008.
[3] Exhibit "P-5", docket, vol. I, p. 252.
[4] G.R. No. 165451, December 3, 2014.

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> Q-49 Are tax assessments that are disputed administratively or judicially still covered by the tax amnesty law?
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> A-49 As a rule yes, except those cases excluded from the coverage of the Tax Amnesty Program as discussed in this CIRCULAR and those cases involving issues that have already been ruled by the trial court/appellate court in favor of the BIR/Government prior to taxpayers availment of the amnesty law.

The law is clear. Only final and executory judgments are excluded from the coverage of the tax amnesty program, hence:

> 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:
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> xxx xxx xxx
>
> (f) Tax cases subject of final and executory judgment by the courts.
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> This exception was reproduced in the Implementing Rules and Regulations of the law:
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> SEC. 5. *Exceptions.* — The tax amnesty shall not extend to the following persons or cases existing as of the effectivity of RA 9480:
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> xxx xxx xxx

7. Tax cases subject of final and executory judgment by the courts.

We hold that only cases that involve final and executory judgments are excluded from the tax amnesty program.

This court has already ruled on the Bureau of Internal Revenue's unjustified expansion of cases not covered under the tax amnesty program.

In *Philippine Banking Corporation (Now: Global Business Bank, Inc.)*, this court categorically found that "BIR's inclusion of 'issues and cases which were ruled by any court (even without finality) in favor of the BIR prior to amnesty availment of the taxpayer' as one of the exceptions . . . is misplaced." This court said that:

> RA 9480 is specifically clear that the exceptions to the tax amnesty program include "tax cases subject of final and executory judgment by the courts." The present case has not become final and executory when Metrobank availed of the tax amnesty program.

In the recent case of *CS Garment, Inc. v. Commissioner of Internal Revenue* we declared that:

> While tax amnesty, similar to a tax exemption, must be construed strictly against the taxpayer and liberally in favor of the taxing authority, it is also a well-settled doctrine that the rule-making power of administrative agencies cannot be extended to amend or expand statutory requirements or to embrace matters not originally encompassed by the law. Administrative regulations should always be in accord with the provisions of the statute they seek to carry into effect, and any resulting inconsistency shall be resolved in favor of the basic law. We thus definitively declare that

> the exception "[i]ssues and cases which were ruled by any court (even without finality) in favor of the BIR prior to amnesty availment of the taxpayer" under BIR RMC 19-2008 is invalid, as the exception goes beyond the scope of the provisions of the 2007 Tax Amnesty Law.
>
> BIR Revenue Memorandum Circular No. 19-2008, declared by this court as erroneous, is substantially the same as the answers to the questions numbered 47 and 49 in BIR Revenue Memorandum Circular No. 69-2007, which respondent relied upon in the present case. Pertinent provisions of BIR Revenue Memorandum Circular No. 19-2008 are the following:
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> xxx xxx xxx
>
> **Accordingly, answers to the questions numbered 47 and 49 of BIR Revenue Memorandum Circular No. 69-2007 are declared invalid for going beyond the text of the law.** (*Emphasis supplied, citations omitted*)

Clearly, regardless of whether or not the tax liabilities pertain to delinquent accounts, petitioner may still be covered by the Tax Amnesty under RA No. 9480 and its implementing rules.

Moreover, the one-year period provided under Section 4 of RA No. 9480 had already lapsed without anyone challenging the correctness of petitioner's SALN. Thus, the same continues to bear the presumption of correctness as provided for under RA No. 9480. Considering all the foregoing, petitioner may now enjoy the immunities provided for by the said law.

WHEREFORE, petitioner's **Motion for Reconsideration** is **GRANTED**. Accordingly, the instant Petition for Review is **GRANTED** and the deficiency value added tax in the amount of ₱8,128,459.83 and deficiency income tax in the amount of ₱25,459,656.42, for taxable year 2004, are **CANCELLED**, solely in view of petitioner's availment of the Tax Amnesty Program under RA No. 9480.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

I CONCUR:

CAESAR A. CASANOVA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

JUANITO C. CASTAÑEDA, JR
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice