REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB No. 433** (C.T.A. CASE No. 6880)
	Present:
-versus-	**Acosta,** ***P.J.*** **Castañeda, Jr., Bautista, Uy, Casanova, and Palanca-Enriquez,** ***JJ.***
PILMICO MAURI FOODS CORPORATION, *Respondent.*	**Promulgated:** APR 2 2 2009 ApApolinario 2:40 p.m.

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DECISION

ACOSTA, *P.J:*

This is a Petition for Review *En Banc* filed on November 7, 2008 seeking to reconsider and set aside the Resolutions dated July 31, 2008 and October 6, 2008, respectively, of the Court of Tax Appeal Second Division[1] in CTA Case No. 6880 entitled Pilmico Mauri Foods Corporation vs. Commissioner of Internal Revenue, declaring the Petition for Review filed by herein respondent on February 27, 2004 as deemed withdrawn, and the case considered closed and terminated, subject to the provision of Republic Act (R.A.) No. 9480.

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[1] Court Second Division.

THE FACTS

As stipulated by the parties in the Joint Stipulation of Facts and Issues filed with the Court Second Division and as borne by the records of this case, the following are the undisputed facts:

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

Respondent is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office address at Aboitiz Corporate Center, Banilad, Cebu City. It is registered with the Bureau of Internal Revenue under Revenue District No. 123-LTDO.

On March 31, 2003, respondent entered into a Deed of Assignment with Uniden Philippines, Inc. (UNIDEN) for the transfer of a portion of Tax Credit Certificate No. SN 021736 in the amount of ₱2, 000,000.00 owned by UNIDEN. In consideration of said assignment, respondent paid UNIDEN, through its authorized representative, Mr. Ernesto S. Araneta, the amount of ₱1, 900,000.00 as evidenced by Check No. 523353 only after the issuance of the new Tax Credit Certificate (TCC) and Tax Debit Memo (TDM) to the respondent.

On December 5, 2003, respondent received by registered mail a photocopy of the Collection Letter from the Large Taxpayers Service of the Bureau of Internal Revenue (BIR), duly signed by Commissioner Guillermo L. Parayno Jr. The letter demanded the payment of respondent's alleged unpaid tax liabilities in the amount of ₱1,853,633.33.

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In order to safeguard respondent's rights, despite the fact it did not receive the original copy of the above referred collection letter, respondent filed on December 12, 2003, an administrative protest to the Commissioner of Internal Revenue, through the Office of the Deputy Commissioner for Operations Group.

On December 15, 2003, respondent received by registered mail the original copy of the Collection letter dated November 24, 2003.

On January 12, 2004, respondent re-filed its administrative protest on the original copy of the Collection Letter dated November 24, 2003.

On February 23, 2004, respondent received by registered mail a copy of the Final Demand Notice of the Commissioner of Internal Revenue signed by Deputy Commissioner Estelita C. Aguirre, giving respondent ten (10) days within which to settle the alleged tax liabilities, otherwise, it will institute civil administrative remedies for the collection of the said tax liabilities, which in effect denied its petition.

Respondent elevated the matter to the Court of Tax Appeals by filing a Petition for Review on February 27, 2004.

In the course of the trial, respondent availed of the Tax Amnesty Program of the BIR under R.A. No. 9480, involving its value added and income tax liabilities for taxable year 2003.

Respondent then, in its Motion/Manifestation filed on April 17, 2008, informed the Court Second Division that it had already availed of the Tax Amnesty Program by paying the necessary tax amnesty in accordance with R.A. No. 9480.

Petitioner filed its Comment and Supplemental Comment on May 7, 2008 and May 8, 2008, respectively.

Respondent filed its Reply on May 19, 2008.

On July 1, 2008, the Court Second Division issued a Resolution directing respondent to submit the original or duly certified true copy of the tax amnesty documents.

On July 15, 2008, respondent filed its Compliance, submitting to the Court Second Division the certified true copies of the tax amnesty documents.

On July 31, 2008, the Court Second Division issued a Resolution, the dispositive portion of which states:

> "WHEREFORE, premises considered, the instant Petition for Review filed on February 27, 2004 is hereby deemed WITHDRAWN, and the case is considered CLOSED and TERMINATED, subject to the provisions of R.A. No. 9480."

On August 19, 2008, petitioner filed a Motion for Reconsideration of the said Resolution dated July 31, 2008.

On October 6, 2008, the Court Second Division issued a Resolution denying Petitioner's Motion for Reconsideration and affirming the July 31, 2008 Resolution, the dispositive portion of which states:

> "WHEREFORE, premises considered, respondent's "Motion for Reconsideration" is hereby DENIED for lack of merit."

Hence, petitioner filed this Petition for Review *En Banc*.

THE ISSUES

The issues raised by petitioner in the instant petition are as follows:

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I

WHETHER OR NOT THE DEFICIENCY INCOME AND VALUE ADDED TAXES OF RESPONDENT FOR TAXABLE YEAR 2003 BEING COLLECTED BY THE PETITIONER ARE CONSIDERED "UNPAID SELF-ASSESSED TAXES" OR DELINQUENT ACCOUNTS DUE TO THE GOVERNMENT.

II

A. WHETHER OR NOT RESPONDENT IS QUALIFIED TO AVAIL OF THE TAX AMNESTY UNDER R.A. No. 9480.
B. WHETHER OR NOT THE ISSUANCE OF RMC 69-2007 WAS IN ACCORD WITH THE TAX AMNESTY LAW OR R.A. No. 9480.

III

WHETHER OR NOT THE HONORABLE COURT HAS JURISDICTION TO ENTERTAIN THE INSTANT CASE.

THE ARGUMENTS OF THE PARTIES

Petitioner's Arguments

Petitioner argues that the respondent's deficiency income and value added taxes for taxable year 2003, being collected by petitioner through Collection letter dated November 24, 2003 and Final Demand Notice dated January 30, 2004, are considered "unpaid self-assessed taxes" since they were solely computed by respondent without the intervention of an assessment made by the BIR. Petitioner alleges that since he already declared that the tax certificates used by respondent are of "no value", it then follows that respondent's income and VAT liability which remained unpaid as of date are considered delinquent accounts due to the government. Moreover, petitioner believes that the respondent, in its Petition for Review, admitted that the subject of its tax liabilities is delinquent tax.

Arising from the aforementioned arguments, petitioner concludes that the tax liabilities of respondent, being unpaid self-assessed taxes, partakes the nature of a delinquent accounts/account receivables which are considered as assets of the BIR/government and therefore excepted from the coverage of the Tax Amnesty Law of 2007 or R.A. No. 9480, pursuant to Revenue Memorandum Circular (RMC) No.

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69-2007, which clarifies the issues concerning the Tax Amnesty Program under R.A. No. 9480.

Lastly, petitioner is of the opinion that what is appealable to the Court of Tax Appeals are decisions of the Commissioner of Internal Revenue on cases involving disputed assessments and that ordinary collection cases initiated by the government falls outside the Court of Tax Appeals jurisdiction. Since the unpaid self assessed taxes of respondent partakes of a nature of delinquent accounts due to the government, petitioner asserts that its issuance of the Collection letter dated November 24, 2003 and Final Demand Notice dated January 30, 2004 constitutes an ordinary collection case initiated by the BIR. Thus, there is no disputed assessment to speak of which ultimately divested the Court of Tax Appeals of its jurisdiction to entertain the instant case. The Petition for Review filed by respondent in CTA Case No. 6880 is dismissible for having no cause of action.

Respondent's Counter-arguments

On the other hand, the respondent assails that the taxes cannot be considered as unpaid assessed taxes since it is precisely respondent's contention that the alleged tax liabilities have already been fully paid through a valid Tax Debit Memoranda (TDM). Respondent alleges that the final demand for payment made by petitioner is in the nature of deficiency assessment which resulted from the unilateral disallowance by petitioner of the TDM issued by the petitioner himself thereby disregarding such TDM as valid mode of payment. The validity of the Tax Credit Certificate and the payment of tax through the TDM are the issues that have to be resolved in this case, therefore; respondent believes that the final resolution of the case will resolve whether the taxes remains unpaid or not. Furthermore, an outright disallowance of a creditable tax without affording the taxpayer an opportunity to be heard and present evidence in a tax investigation and an opportunity to contest the result of the tax investigation at the proper court would constitute denial of due process. Also, the respondent alleges that from the beginning it has continuously questioned the Final Demand Notice issued by petition and has consistently argued that there is no delinquent tax and penalties to start with, hence it used the terms alleged delinquency taxes.

Respondent further argues that by its availment of the Tax Amnesty Program, it was granted immunity from the payment of taxes for taxable year 2005 and prior years. Since Section 6 of the R.A. No. 9480 covers failure to pay any and all internal revenue taxes without any distinction, respondent believes that all self-assessed taxes are included therein contrary to the belief of the petitioner. Moreover, Section 6 of R.A. No. 9480 is all embracing, subject only to Section 8 of said law, which does not include in its enumeration delinquent accounts and unpaid self-assessed taxes.

Respondent went on to state that even assuming *ad arguendo* that the deficiency taxes of respondent are considered unpaid self assessed taxes and/or delinquent accounts, the unpaid self assessed taxes are not covered by the exceptions to the coverage of the Tax Amnesty Law of 2007. The respondent posits that the power of the Commissioner of the Bureau of Internal Revenue to promulgate rules and regulations for the proper enforcement of tax laws is not absolute and a BIR regulation cannot amend nor expand a law. In case of conflict between the basic law and the rule and regulations issued to implement said law, the law prevails for the said rule and regulation cannot go beyond the terms and provisions of the basic law. Hence, respondent avers that RMC 69-2007 amounted to unauthorized administrative legislation which is beyond the scope of powers of the Commissioner of the BIR. Assuming *arguendo* that the RMC is a valid exercise, respondent believes it is still unenforceable for lack of publication.

As to the issue of the Court Second Division's jurisdiction over the case, respondent argues that the Final Demand Notice sent by petitioner is in reality a deficiency assessment which was seasonable protested and questioned by respondent by filing a Petition for Review with the Court of Tax Appeals. Assuming arguendo that the Court Second Division has no jurisdiction to entertain the respondent's Petition for Review, petitioner is estopped from questioning said jurisdiction for having participated in the trial of the case.

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THE DECISION OF THE COURT

We find no merit in the petition. Allow us to discuss the issues *in seriatim.*

THE ALLEGED INCOME AND VALUE ADDED TAXES OF RESPONDENT FOR TAXABLE YEAR 2003 ARE NOT CONSIDERED AN "UNPAID SELF-ASSESSED TAXES" OR DELINQUENT ACCOUNT DUE TO THE GOVERNMENT.

The Court *En Banc*[2] agrees with the petitioner in stating that the alleged unpaid income and value added taxes of respondent are indeed self-assessed taxes. However, since the main issue before the Court Second Division is whether they were unpaid or not, lacking the necessary certainty of non-payment for said alleged unpaid taxes, the Court *En Banc* cannot conclude, therefore, that they are unpaid self-assessed taxes considered as delinquent accounts.

A self-assessed tax, as the term implies, is a tax self-assessed by the taxpayer, without the intervention of an assessment by the taxing authority to create the tax liability. In other words, it is a tax that the taxpayer himself assesses or computes and pays to the taxing authority.[3] The Supreme Court, in the case of *Tupaz vs. Ulep*, elaborated the same, viz:

> At the outset, it must be stressed that **"internal revenue taxes are self-assessing and no further assessment by the government is required to create the tax liability.** An assessment, however, is not altogether inconsequential; it is relevant in the proper pursuit of judicial and extra judicial remedies to enforce taxpayer liabilities and certain matters that relate to it, such as the imposition of surcharges and interest, and in the application of statues of limitations and in the establishment of tax liens." (Emphasis provided)

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[2] Court of Tax Appeals *En Banc*.
[3] Dissenting opinion of Justice Carpio in the case of *Philippine National Oil Company vs. Court of Appeals, Et.Al.,* G.R. No. 109976, April 26, 2005.

On the other hand, a delinquent account refers to the amount of tax due from a taxpayer who **failed to pay the same** within the time prescribed for its payment arising from (1) a self-assessed tax, whether or not a return was filed or (2) a deficiency assessment issued by the BIR which has become final and executory.[4]

The main requisite for an account to be declared delinquent is its character of being **unpaid**. Even supposing the taxes in question originated from a self-assessed tax or from a deficiency assessment which became final and executory, it is essential to prove foremost that an account is unpaid before it is considered a delinquent account.

Applying the aforesaid analogy in the case at bar, the Court *En Banc* holds that the alleged unpaid income and value added taxes of Respondent do not fall under the definition of delinquent accounts. Even though the alleged unpaid income and value added taxes of respondent fall squarely to the definition of self-assessed taxes, it cannot be conclusively declared as delinquent accounts since the issue of its non-payment has not been concluded with finality. In fact, the payment made by respondent for said income and value added taxes is the main subject matter to be resolved in respondent's Petition for Review before the Court Second Division. Absent the requisite of being unpaid, the respondent's alleged unpaid income and value added taxes cannot be considered as delinquent accounts.

DELINQUENT ACCOUNTS/ UNPAID SELF ASSESSED TAXES DO NOT FALL UNDER ONE OF THE EXCEPTIONS TO THE AVAILMENT OF TAX AMNESTY UNDER R.A. NO. 9480.

RMC 69-2007 WAS NOT IN ACCORD WITH THE TAX AMNESTY LAW OR R.A. NO. 9480.

Albeit the pronouncement that respondent's deficiency income and value added taxes are not delinquent account, we are still inclined to give judgment whether

[4] Revenue Regulation No. 17-86.

or not delinquent accounts/ unpaid self-assessed taxes are excepted from the provision of R.A. No. 9480 or the Tax Amnesty Law of 2007 since this is the crux in both Resolutions assailed by petitioner.

Section 8 of R.A. No. 9480 and Section 5, Rule II of Department of Finance Order (DOF) No. 029-07 or Rules and Regulations to Implement R.A. No. 9480 provide the exceptions to the application of the Tax Amnesty Law of 2007, to wit:

> **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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> 1. Withholding agents with respects to their withholding tax liabilities;
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> 2. Those with pending cases falling under the jurisdiction of the Presidential Commission on Good Government;
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> 3. Those with pending cases involving unexplained or unlawfully acquired wealth or under the Anti-Graft and Corrupt Practices Act;
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> 4. Those with pending cases filed in court involving violation of the Anti-Money Laundering Law;
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> 5. 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
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> 6. Tax cases subject of final and executory judgment by the courts.

Petitioner contends that RMC No. 69-2007 clarified DOF No. 029-07 to include Delinquent Accounts/Accounts Receivable, including unpaid self-assessed taxes, as one of those excepted from the coverage of R.A. No. 9480.

Petitioner is clearly mistaken. R.A. No. 9480 is very clear when it enumerated the exceptions to the Tax Amnesty Law of 2007. Nowhere among the enumeration did it include Delinquent Accounts/Accounts Receivable or Unpaid Self-Assessed Taxes to be one of the exceptions from the application of R.A. No. 9480. Neither did the Rules and Regulations on the Implementation of said law or DOF No. 029-07 stipulate that such accounts are included among the enumeration. The non-inclusion of said accounts, therefore, is surmised to be the intent of the makers of R.A. No. 9480.

It is a settled rule in statutory construction that the express mention of one person, thing, act, or consequence excludes all others. This rule is expressed in the familiar maxim *expressio unius est exclusio alterius*. Where a statute, by its terms, is expressly limited to certain matters, it may not, by interpretation or construction, be extended to others. The rule proceeds from the premise that the legislature would not have made specific enumerations in a statute had the intention been not to restrict its meaning and to confine its terms to those expressly mentioned (*Agpalo*, Statutory Construction, 2nd Ed., 1990, pp. 160-161, and the cases therein cited).[5] Notably, the Delinquent Accounts/Accounts Receivable, including unpaid self-assessed taxes are not included in the list of exception in both R.A. No. 9480 and DOF No. 029-07, it follows inevitably as a matter of law and legal principle that the Court *En Banc* may not properly consider them as exception. To do otherwise would be to legislate on its part, such power not conferred to by the Constitution.

Moreover, although petitioner has been given the authority to issue the necessary clarification, in this case by issuing RMC No. 69-2007, he, however, cannot just make an interpretation of DOF No. 029-07 which will expand the rights and limitations provided by R.A. No. 9480. The Supreme Court held, in the case of *Commissioner of Internal Revenue vs. Lhuillier Pawshop, Inc.*[6], that the Commissioner of Internal Revenue cannot, in the exercise of its rule making powers, issue administrative rulings or circulars not consistent with the law it sought to apply, to wit:

> RMO No. 15-91 and RMC No. 43-91 were issued in accordance with the power of the CIR to make rulings and opinions in connection with the implementation of internal revenue laws, which

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[5] *Commissioner of Customs vs. Court of Tax Appeals and Litonjua Shipping Company*, G.R. No. 48886-88, July 21, 1993.
[6] G.R. No. 150947, July 15, 2003.

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> was bestowed by then Section 245 of the NIRC of 1977, as amended by E.O. No. 273.[6] Such power of the CIR cannot be controverted. **However, the CIR cannot, in the exercise of such power, issue administrative rulings or circulars not consistent with the law sought to be applied. Indeed, administrative issuances must not <u>override, supplant or modify</u> the law, but must remain consistent with the law they intend to carry out. Only Congress can repeal or amend the law.** (Emphasis and underscoring provided)

Thus, the Court *En Banc* rules that the provision in RMC No. 69-2007, expanding the list of exceptions to the application of R.A. No. 9480 to include Delinquent Accounts/Unpaid self assessed taxes, is not valid for being contrary to law.

Notably, records indicate respondent to be a qualified applicant, which availed of the Tax Amnesty Program on March 6, 2007 and has fully complied with the requirements enumerated in R.A. No. 9480, as implemented by DOF No. 029-07. Considering that the one (1) year period to contest the presumption of correctness of the Statement of Assets and Liabilities and Networth of petitioner, as an additional condition to the full entitlement of the full immunities and privileges granted applicants under the Tax Amnesty Program, has already lapsed[7], the law mandates that it shall thereafter be immune from the payment of taxes, and additions thereto, as well as appurtenant civil, criminal or administrative penalties under the National Internal Revenue Code (NIRC) of 1997, as amended, arising from the failure to pay any and all internal revenue taxes for taxable year 2005 and prior years.[8]

THE COURT SECOND DIVISION HAS JURISDICTION TO ENTERTAIN RESPONDENT'S PETITION FOR REVIEW

Anent the issue that the Court Second Division has no jurisdiction to rule on this case, petitioner's stance is erroneous.

[7] Section 4, R.A. No. 9480.
[8] Section 6, R.A. No. 9480.

Consistent with the Court's ruling above that the alleged unpaid assessments are not delinquent accounts or unpaid self assessed accounts, the allegation of petitioner that this is a collection case, not within the jurisdiction of the Court Second Division, has no leg to stand on.

Even more, the controversy in the case before the Court Second Division stemmed from a unilateral act of the petitioner when it cancelled the TDM used by respondent to pay its taxes. Respondent thus questions, first, the petitioner's act of unilaterally invalidating the TDM which the petitioner himself issued and, second, his right to collect based on said unilateral act. The collection letter informing the respondent of its alleged unpaid income and value added taxes and the demand to pay such alleged unpaid tax liabilities is a decision by the petitioner which involves a matter arising under the application of the NIRC of 1997, particularly, the validation, usage and application of a tax debit memo, thus within the jurisdiction of the Court Second Division.

Accordingly, the jurisdiction of the Court of Tax Appeals includes its powers to exercise appellate jurisdiction in reviewing appeals over 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, <u>or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue</u>.[9] The collection letter, being a decision of the petitioner on the validation, usage and application of the TDM is embraced in the phrase *"or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue"*, hence, such is appealable to the Court Second Division.

In sum, since the Court *En Banc* does not find respondent's alleged unpaid income and value added taxes to be delinquent accounts/unpaid self assessed taxes, and additionally, since delinquent accounts/unpaid self assessed taxes are not among the exceptions to the application of R.A. No. 9480, the alleged unpaid income and

[9] Republic Act No. 1125 § (a)(1).

value added taxes of respondent are, thus, covered by R.A. No. 9480. Consequently, the respondent is now immune from the payment of taxes, and additions thereto, as well as appurtenant civil, criminal and administrative penalties under the NIRC of 2007, as amended, arising from the failure to pay any and all internal revenue taxes for taxable year 2005 and prior years. The Court Second Division, in the exercise of its appellate jurisdiction, has the power to decide on the case at hand.

WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit. The assailed Resolutions dated July 31, 2008 and October 6, 2008 of the Court Second Division are hereby **AFFIRMED**.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

Juanito C. Castaneda, Jr.
JUANITO C. CASTANEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Justice