REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

PHILIPPINE BANK OF COMMUNICATIONS,
Respondent.

CTA EB Case No. 436
(CTA CASE NO. 6177)

PHILIPPINE BANK OF COMMUNICATIONS,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB Case No. 438
(CTA CASE NOS. 6177)

Members:
ACOSTA, Chairperson
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, JJ.

Promulgated:
AUG 13 2009 [signature] 11:02 a.m.

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DECISION

CASANOVA, *J.*:

The consolidated *Petitions for Review* before Us were filed by Philippine Bank of Communications (PBCom) and the Commissioner of Internal Revenue

(Commissioner), who were respectively the petitioner and respondent in CTA Case No. 6177, entitled *Philippine Bank of Communications vs. Commissioner of Internal Revenue,* in order to assail the Decision[1] (Assailed Decision) dated June 30, 2008 and Resolution[2] (Assailed Resolution) dated November 17, 2008 rendered by the Court of Tax Appeals (CTA) Second Division.

The facts[3] of the Case, as correctly found by the CTA Second Division, are as follows:

> "On December 14, 1999, PBCom received a Final Notice of Assessment dated November 5, 1999 and eight (8) Assessment Notices with Assessment Nos. ST-INC-96-0115-99; ST-GRT-96-0116-99; ST-WC-96-0117-99; ST-FT-97-0118-99; ST-OFT-0119-99; ST-OFT-97-1020-99; ST-DST-96-0121; and ST-DST-97-0122-99, all bearing the same date, from the BIR, through Asst. Commissioner-Enforcement Service, Percival T. Salazar, Esq., in connection with PBCom's alleged 1996 and 1997 internal revenue tax liabilities.
>
> The total deficiency tax of petitioner for taxable years 1996 to 1997 amounts to P389,185,343.78[4], detailed as follows:

A. Income Tax	1996	1997	Total
Basic	P53,287,765.11	-	
Interest	29,278,666.50	-	
Compromise	-		
Amount Due & Collectible	P82,566,431.61	-	P82,566,431.61
B. Percentage Tax (Gross Receipt Tax)			
Basic	P5,528,106.44	-	
Interest	3,286,152.16	-	
Compromise	-	-	
Amount Due & Collectible	P8,814,258.60	-	P8,814,258.60
C. Withholding Tax on Compensation			
Basic	P3,637.46	-	
Interest	2,210.77	-	
Compromise	-	-	

[1] Division Rollo, pp. 907-978.
[2] Division Rollo, pp. 1307-1318.
[3] Supra, note 1.
[4] In the Formal Notice dated November 5, 1999, the total assessment of deficiency tax is P389,140,343.78. There is a difference of P45,000.00 *vis-à-vis* the sum of the details of the deficiency assessment.

Amount Due & Collectible	P5,848.23	-	P5,848.23
D. 20% Final Tax			
Basic	-	P10,668,737.52	
Interest	-	4,172,661.78	
Compromise	-	-	
Amount Due & Collectible			P14,841,399.30
E. 10% Onshore Final Tax			
Basic	P1,565,512.36	P548,382.36	P2,113,903.72
Interest	929,745.74	214,478.43	1,144,224.17
Compromise	-	-	45,000.00
Amount Due & Collectible	P2,495,267.10	P762,860.79	P3,303,127.89
F. Documentary Stamp Tax			
Basic	P154,454,966.84	22,295,384.20	176,750,351.04
Interest	93,874,296.51	9,029,630.60	102,903,927.11
Amount Due & Collectible	P248,329,263.35	P31,325,014.80	P279,654,278.15

(Annex "A", Petition for Review)

On January 13, 2000, petitioner filed a protest letter to the Assessment Notices.

On March 13, 2000, petitioner filed with the BIR the supporting documents for such protest.

Since respondent failed to act on the protest within the 180-day period, on October 9, 2000, petitioner elevated its case to this Court by way of Petition for Review.

In his 'Answer' filed on December 1, 2000, respondent, by way of special and affirmative defenses, alleged that: the worthlessness of the loans cannot be ascertained; the assessment for deficiency withholding tax on payment of compensation is based on *Section 34 (K) of the 1997 Tax Code*; the proceeds of petitioner's Initial Public Offering ('IPO') from previous years were placed in its trust department declared as income allegedly subjected to final tax. However, petitioner's allegation that correct taxes were withheld was not supported. Thus, respondent added said income placed in trust department to petitioner's taxable income, pursuant to *Sec. 2.57 (A) of Revenue Regulations No. 2-98*; the investigation conducted shows that petitioner failed to include other interest income in its gross income, which petitioner claimed to have already been subjected to the 20% final tax. Thus, petitioner was assessed of deficiency gross receipts tax on the basis of *Section 121 of the Tax Code on Tax on Banks and Non-bank Financial Intermediaries*; the investigation conducted shows that there was a discrepancy in the 20% final withholding tax on interest expense for the year 1997; hence petitioner was assessed of deficiency tax; petitioner was assessed of the 10% deficiency onshore final withholding tax on the basis of *Section 27 (D) (3) of the 1997 Tax*

Code, in relation to *Section 28 (a) (7) (b) of the same Code*. For 1996 and 1997, there is a discrepancy; the investigation conducted revealed that some of the bank transactions were not subjected to documentary stamp tax, under *Sections 180, 181, and 182 of the Tax Code*.

Petitioner presented Domingo Aure, Pepito Bravo, Rene Alejandrino, Rowena Ong Tan, Annabelle Yeo, Lorenzo Francisco, Richard Arvisu, Charisee Dolina, Leo Villanueva, Felimon Baltazar, Francisco Capalar, Ave Reyes, as witnesses, and Revenue Officer Edison Larin, as an adverse witness, and formally offered documentary evidence, marked as *Exhibits 'A'* to *'RRR'*, inclusive of their submarkings, which were admitted by the Court in a Resolution dated May 18, 2005, except for *Exhibits 'QQQ-5'* to *'QQQ-8'*, *'QQQ-12'*, *'QQQ-17'*, *'QQQ-19'* to *'QQQ-21'*, *'QQQ-23'* to *'QQQ-28'*, *'QQQ-31'* to *'QQQ-46'*, *'QQQ-49'*, *'QQQ-50'*, *'QQQ-51-b'*, *'QQQ-53'*, and *'QQQ-54'*, which were denied admission for failure to present their original copies.

On the other hand, respondent presented Revenue Officer Edison Larin, as witness, and formally offered documentary evidence, marked as *Exhibits '1'* and *'2'*, which were all admitted by this Court in a Resolution dated March 19, 2007.

Thereafter, both parties were granted thirty days from notice to file their simultaneous memoranda, after which the case shall be deemed submitted for decision.

Petitioner having filed its memorandum, without respondent filing the same, the case was deemed submitted for decision."

After trial on the merits, the *CTA Second Division* promulgated the Assailed Decision[5] on June 30, 2008, the dispositive portion of which reads as follows:

"**WHEREFORE**, premises considered, the present Petition For Review is **PARTIALLY GRANTED**. Accordingly, petitioner is hereby ORDERED to pay respondent Commissioner of Internal Revenue the reduced amounts of SIXTY FOUR MILLION ONE HUNDRED FIFTY FOUR THOUSAND NINE HUNDRED TWENTY ONE AND 34/100 PESOS **(P64,154,921.34)**, representing deficiency income tax; THREE MILLION FOUR HUNDRED FIFTY THOUSAND TWO HUNDRED EIGHTEEN AND 30/100 PESOS **(P3,450,218.30)**, representing deficiency gross receipts tax; and ONE MILLION TWO HUNDRED FORTY SIX THOUSAND EIGHT HUNDRED NINETY AND 11/100 PESOS **(P1,246,890.11)**, representing deficiency 10% final tax on onshore income, all for taxable year 1996, or the total amount of SIXTY EIGHT

[5] Ibid.

MILLION EIGHT HUNDRED FIFTY TWO THOUSAND TWENTY NINE AND 75/100 PESOS **(P68,852,029.75)**; and FOURTEEN MILLION EIGHT HUNDRED FORTY ONE THOUSAND THREE HUNDRED NINETY NINE AND 30/100 PESOS **(P14,841,399.30)**, representing deficiency 20% final tax for taxable year 1997, or the aggregate amount of P83,693,429.05 for both taxable years 1996 and 1997, broken down as follows:

DEFICIENCY TAX DUE				
1996				
	Income Tax	**GRT**	**10% Final Tax**	**Total**
Basic	P42,436,655.11	P2,214,011.39	P801,540.84	P45,452,207.34
Interest	21,718,266.23	1,236,206.91	445,349.27	23,399,822.41
Total	**P64,154,921.34**	**P3,450,218.30**	**P1,246,890.11**	**P68,852,029.75**
1997				
20% Final Withholding Tax				
Basic				P10,668,737.52
Interest				4,172,661.78
Total				**P14,841,399.30**
AGGREGATE AMOUNT (1996 and 1997)				**P83,693,429.05**

In addition, petitioner is hereby **ORDERED** to pay respondent 20% delinquency interest per annum on the total amount of **P83,693,429.05**, computed from December 14, 1999, until full payment thereof, pursuant to *Section 249(C) of the NIRC of 1997, as amended.*

The deficiency assessments of **P762,860.79**, representing 10% final tax on onshore income for taxable year 1997, **P248,329,263.35**, representing DST for taxable year 1996, and **P31,325,014.80**, representing DST for taxable year 1997, are hereby ordered cancelled.

SO ORDERED."

Not satisfied with the Assailed Decision, PBCom filed a *Motion for Partial Reconsideration*[6] on July 17, 2008 wherein it alleged as one its arguments that it availed of the Tax Amnesty Program under Republic Act (RA) 9480 on March 6, 2008. Also on July 17, 2008, the Commissioner, for his part, filed a *Motion for Partial*

[6] Division Docket, pp. 993-1019.

Reconsideration (of the Decision Dated June 30, 2008)[7]. PBCom filed an *Opposition to Respondent's Motion for Partial Reconsideration*[8] on August 7, 2008. Shortly thereafter, or on August 20, 2008, the Commissioner filed a *Comment/Opposition (On Petitioner's Motion for Partial Reconsideration)*[9].

On August 29, 2008, the CTA Second Division issued a *Resolution*[10] saying that in view of the submission of photocopies by PBCom in support of its tax amnesty availment, the resolution of the simultaneous Motions for Partial Reconsideration of the parties was held in abeyance and PBCOm was ordered to submit the originals of its supporting documents.

In compliance[11] with the August 29, 2008 Resolution, PBCom submitted the originals of its supporting documents on September 15, 2008. On November 17, 2008, the CTA Second Division rendered the Assailed Resolution[12] which stated as follows:

> "**WHEREFORE**, premises considered, as regards petitioner Philippine Bank of Communication's 'Motion for Partial Reconsideration', the motion is partially **GRANTED**. Accordingly, the instant Petition for Review, as regards petitioner's deficiency assessment on income tax for taxable year 1996, gross receipt tax for taxable year 1996, 10% onshore final taxes for taxable years 1996 to 1997 ONLY, is hereby deemed **WITHDRAWN,** and the case is considered **CLOSED AND TERMINATED**, subject to the provisions of RA 9480.
>
> As regards petitioner's 'Motion for Partial Reconsideration' on its deficiency 20% final tax assessment for taxable year 1997, the motion is hereby **DENIED** for lack of merit.

[7] Ibid., pp. 979-991.
[8] Ibid., pp. 1146-1156.
[9] Ibid., pp. 1163-1177.
[10] Ibid., pp. 1180-1182.
[11] Ibid., pp. 1183-1184.
[12] Supra, note. 2.

SO ORDERED."

On December 2, 2008, the Commissioner filed a *Motion for Extension of Time to File Petition for Review*[13] before this Court *En Banc* which was granted in a *Resolution*[14] dated December 8, 2008. On December 5, 2008, PBCom filed an *Urgent Motion for Additional Time*[15] to file its *Petition for Review* which was granted on December 12,2008[16].

On December 15, 2008, PBCom filed its *Petition for Review*[17] before the Court *En Banc*, docketed as CTA EB Case No. 438, which stated the following assignment of errors:

"III. STATEMENT OF THE ISSUE

WHETHER THE SECOND DIVISION SERIOUSLY ERRED IN RULING THAT PBCOM IS LIABLE FOR DEFICIENCY 20% FINAL TAX FOR TAXABLE YEAR 1997 FOR ITS FAILURE TO ESTABLISH THE AMOUNT OF INTEREST EXPENSE NOT SUBJECT TO 20% FINAL TAX.

IV. ARGUMENTS

THE SECOND DIVISION SERIOUSLY ERRED IN RULING THAT PBCOM IS LIABLE FOR DEFICIENCY 20% FINAL TAX FOR THE TAXABLE YEAR 1997 FOR ITS FAILURE TO ESTABLISH THE AMOUNT OF INTEREST EXPENSE NOT SUBJECT TO 20% FINAL TAX, CONSIDERING THAT:

A. PBCOM MORE THAN SUFFICIENTLY PROVED THAT THE ACCOUNT OF P2,251,698.91 PERTAINED TO REVALUATION GAINS FROM FOREIGN EXCHANGE FORWARD CONTRACTS FOR 1997 AND NOT AN INTEREST EXPENSE SUBJECT TO 20% FINAL TAX.

B. PBCOM MORE THAN ADEQUATELY PROVED THAT THE AMOUNTS OF P205,630,701.07 AND P291,321,720.20 REFERRED TO INTEREST EXPENSES ON BORROWED FUNDS

[13] CTA EB Case No. 436 Rollo, pp. 1-3.
[14] Ibid., p. 5.
[15] CTA EB Case No. 438 Rollo, pp. 1-2.
[16] Ibid., p. 5.
[17] Ibid., pp. 6-18.

FROM INTERBANK CALL LOANS AND PRIVATE ENTITIES/INDIVIDUALS, RESPECTIVELY, AND NOT AN INTEREST EXPENSE SUBJECT TO 20% FINAL TAX."

On December 19, 2008, the Commissioner then filed its *Petition for Review* [18]before this Court *En Banc*, docketed as CTA EB Case No. 436, stating the following issues:

A. The Honorable Court erred in ruling that under the 1993 Tax Code, "Interbank Call Loans" are not subject to DST under Section 180 thereof;

B. The Honorable Court erred in ruling that reverse purchase agreement was not considered as of the Deposit Substitutes under the NIRC of the 1997, as amended;

C. The Honorable Court erred in ruling that the term 'Deposit Substitutes' was inserted in the NIRC only in 1997;

D. The Honorable Court erred in ruling that petitioner's trust account is not subject to DST under Section 180 of the 1997 Tax Code;

E. The Honorable Court erred in granting respondent's Petition for Review as regards its deficiency assessment on income tax for taxable year 1996, gross receipt tax for taxable year 1996, 10% onshore final taxes for taxable years 1996 and 1997 since under the tax amnesty law and its implementing rules, the Honorable Court has no jurisdiction to decide on whether a party validly availed of the provisions of such law; and

F. Assuming arguendo that the Honorable Court has jurisdiction to decide on the validity of respondent's availment of the provisions of the Amnesty Law, however, under said law respondent cannot validly avail the same.

On January 15, 2009, the Court *En Banc,* denied due course and dismissed the *Petition for Review* in CTA EB Case Nos. 436[19] and 438[20] after finding that the same were procedurally defective as it failed to submit the originals or certified true copies of the Assailed Decision and Assailed Resolution. a

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[18] CTA EB Case No. 436 Rollo, pp. 6-33.
[19] Ibid., pp. 126-128.
[20] CTA EB Case No. 438 Rollo, pp. 186-188.

On January 21, 2009, PBCom filed its *Comment [On Petition for Review dated 18 December 2008]*[21] in CTA EB Case No. 436. On January 23, 2009, PBCom filed an *Omnibus Motion 1. For Reconsideration of 15 January 2009 Resolution; 2. To Admit Attached Certified True Copy of Decision*[22] in CTA EB Case No. 438. The Commissioner filed his *Omnibus Motion (For Reconsideration of the Resolution dated January 15, 2009 and To Admit Attached Certified True Copies of the Decision and Resolution)*[23] on January 28, 2009 in CTA EB Case No. 436. Both Motions were separately granted by the Court *En Banc* on February 3, 2009 in CTA EB Case No. 438[24] and on February 9, 2009 in CTA EB Case No. 436[25].

On February 18, 2009, the Court *En Banc* ordered the consolidation[26] of CTA EB Nos. 436 and 438 and ordered the parties to submit their respective Consolidated Memoranda. PBCom submitted its *Consolidated Memorandum*[27] on March 24, 2009 while the Commissioner submitted his *Memorandum*[28] on March 25, 2009. On April 3, 2009, the instant Petitions were submitted for decision[29].

This Court shall first rule on the issues presented in CTA EB Case No. 436, the Commissioner's Petition for Review.

The Commissioner presented seven arguments in his Petition, among which, the last two issues shall primarily be resolved.

[21] CTA EB Case No. 436 Rollo, pp. 129-144.
[22] CTA EB Case No. 438 Rollo, pp. 197-206.
[23] CTA EB Case No. 436 Rollo, pp. 155-159.
[24] CTA EB Case No. 438 Rollo, pp. 281-282.
[25] CTA EB Case No. 436 Rollo, pp. 254-255.
[26] CTA EB Case No. 436 Rollo, pp. 258.
[27] CTA EB Case No. 436 Rollo, pp. 260-286.
[28] CTA EB Case No. 436 Rollo, pp. 288-311.
[29] CTA EB Case No. 436 Rollo, p. 314.

The Honorable Court erred in granting respondent's Petition for Review as regards its deficiency assessment on income tax for taxable year 1996, gross receipt tax for taxable year 1996, 10% onshore final taxes for taxable years 1996 and 1997 since under the tax amnesty law and its implementing rules, the Honorable Court has no jurisdiction to decide on whether a party validly availed of the provisions of such law.

The Commissioner alleged that "[t]here is no provision in RA No. 9480 that vests on the Honorable Court the jurisdiction to decide on whether a party validly availed of the provisions of the said law. Likewise, there is nothing in Department Order No. 29-07, the implementing rules of R.A. No. 9480, that vests jurisdiction on the Honorable CTA." The Commissioner furthered that the tax amnesty is administered by the BIR as this is a relief granted through an administrative process and not through a judicial action.

PBCom in its Comment countered that the CTA Second Division did not decide on the validity of PBCom's availment of the provisions of the Tax Amnesty Program, much less usurp the BIR of its claimed primary jurisdiction; in partially granting PBCom's Petition for Review, the CTA Second Division recognized the fact of PBCom's availment of the Tax Amnesty Program, and applied the provisions of RA 9480 and its implementing rules.

We find for PBCom.

In the case of *Commissioner of Internal Revenue vs. Tutuban Properties, Inc.*, this Court *En Banc* ruled as follows:

"Section 7 of Republic Act No. 9282, amending, Republic Act 1125 expressly states that:

'Sec. 7. ***Jurisdiction.*** — The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue; *(Emphasis supplied)*

xxx xxx xxx'

Clearly, the appellate jurisdiction of the CTA is not limited to cases which involve decisions of the CIR on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue ('BIR'),[30] which includes RA 9480.

Besides, TPI's availment of the tax amnesty program of the BIR is a consequence of the tax assessments issued by the CIR. And since the CTA has jurisdiction to hear disputed assessment cases, necessarily, any consequence that may arise is still within its jurisdiction.[31] It bears stressing that once jurisdiction has been acquired, it is not lost until the Court shall have disposed of the case in its entirety.[32]"

Under the pronouncement in the cited case, the Court of Tax Appeals was properly conferred jurisdiction by law over issues that require the application of statutes administered by the BIR. Considering that RA 9480 is one of these statutes, the CTA Second Division properly exercised its authority in ruling upon the application for Tax Amnesty by PBCom.

The Commissioner argued that the exercise of authority by the CTA Second Division is a violation of the doctrine of primary jurisdiction where the courts should

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[30] *Philippine Journalist, Inc. v. Commissioner of Internal Revenue, G.R. No. 162852*, 447 SCRA 214, December 16, 2004.
[31] *Professional Services, Inc. vs. Commissioner of Internal Revenue*, C.T.A. Case No. 7361, August 1, 2008.
[32] *Morales vs. Subic Shipyard & Engineering, Inc.*, G.R. No. 148206, 531 SCRA 66, 71, August 24, 2007.

not determine a controversy involving a question which is within the jurisdiction of the administrative body.

This contention is without merit.

The Doctrine of Primary Jurisdiction precludes a court from arrogating unto itself the authority to resolve a controversy the jurisdiction over which is initially lodged with an administrative body of special competence[33]. However, it is this Court's opinion that this rule has no application in the present case. The Doctrine of Primary Jurisdiction is a corollary principle of the Doctrine of Exhaustion of Administrative remedies which hinges on the established theory that issues which administrative agencies are authorized to decide should not be summarily taken from them and submitted to a court without first giving such administrative agency the opportunity to dispose of the same after due deliberation[34]. This naturally presupposes that the issue of a case should have been submitted first to the administrative body with the technical knowledge to properly deliberate on the matter presented to it.

It is on this aspect that the Commissioner is mistaken: he is on the belief that the main issue herein is PBCom's availment of tax amnesty which should have first been submitted to his discretion. However, what was presented to the CTA Second Division for adjudication at the outset was the issue of assessments issued against PBCom. The issue of tax amnesty is merely an ancillary to the main action of PBCom and as such is within this Court's primary jurisdiction to determine.

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[33] *Gala, et al. vs Ellice Agro-Industrial Corp.*, et al., G.R. No. 156819. December 11, 2003.
[34] *Republic of the Philippines vs. Carlito Lacap*, G.R. No. 158253, March 2, 2007.

In the case of *Philippine Airlines Employees Association vs. Philippine Air Lines, Inc., G.R. No. L-18559, June 30, 1964, 11 SCRA 387* the incidental jurisdiction of a court was discussed to be as follows:

> "A grant of jurisdiction implies the necessary and usual incidental powers essential to effectuate it, and every regularly constituted court has power to do all things reasonably necessary for the administration of justice within the scope of its jurisdiction, and for the enforcement of its judgment and mandates, even though the court may thus be called upon to decide matters which would not be within its cognizance as original causes of action.
>
> While a court may be expressly granted the incidental powers necessary to effectuate its jurisdiction, a grant of jurisdiction, in the absence of prohibitive legislation, implies the necessary and usual incidental powers essential to effectuate it (In re Stinger's Estate, 201 p. 693), and, subject to existing laws and constitutional provisions, every regularly constituted court has power to do all things that are reasonably necessary for the administration of justice within the scope of its jurisdiction, and for the enforcement of its judgments and mandates. So demands, matters, or **questions ancillary or incidental to, or growing out of, the main action, and coming within the above principles, may be taken cognizance of by the court and determined, since such jurisdiction is in aid of its authority over the principal matter, even though the court may thus be called on to consider and decide matters which, as original causes of action, would not be within its cognizance** (Bartolome vs. Shipe 251 S. W. 1031)." (21 C.J.S., pp. 136-138.)" (Emphasis supplied)

The determination of the validity and enforceability of assessments issued against PBCom necessarily carries with it the application of the immunities and privileges of the petitioner under RA 9480; for if indeed PBCom is entitled to RA 9480, the contested assessments may no longer have any standing in Court. Being intertwined with the enforceability of assessments, which is under the principal jurisdiction of this Court, the application of the immunities and privileges of RA 9480 is, likewise, within this Court's incidental jurisdiction contrary to the Commissioner's argument. Stated differently, the availment of tax amnesty is a supervening event to PBCom's challenge on the assessments against it which must be resolved by this Tribunal if complete disposition of this case must be had.

Common sense and exigency dictates Us to invoke the provisions of RA 9480, when applicable, for if this Court were to rule on PBCom's liability on the assessments where RA 9480 negates liability, We will be rendering a moot decision that does not give much credit to the intelligence and discretion of this Specialty Court.

Assuming arguendo that the Honorable Court has jurisdiction to decide on the validity of respondent's availment of the provisions of the Amnesty Law, however, under said law respondent cannot validly avail the same.

The Commissioner states Section 8 of RA 9480 provides the exceptions when tax amnesty may not be availed of. This section reads as follows:

> "**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 Commissioner argues that Revenue Memorandum Circular No. 70-2007 elucidates the coverage of Section 8(f) of RA 9480, to wit:

"REVENUE MEMORANDUM CIRCULAR NO. 70-07

SUBJECT : Clarification on the Proper Treatment of Cases Under Administrative or Judicial Protest for Amnesty Tax Purposes

TO : All Internal Revenue Officials, Employees and Others Concerned

With the issuance of Republic Act No. 9480 or the Tax Amnesty Law, there are so many queries as to whether cases under administrative protest or judicial protest which involve issues which were previously decided by the court with finality are still covered by the benefits under the said Amnesty Law.

To clarify these concerns, it is hereby enunciated that these cases are no longer covered by said amnesty law considering that the issues have already been ruled by the Supreme Court with finality and has been applied to other cases under similar circumstances. Article 6, Section 28 of the Philippine Constitution provides that 'The rule of taxation shall be uniform and equitable'. Thus, persons, properties and events similarly situated should be treated alike. Since there is already a final resolution to the issue that has been applied to at least one instance, the same treatment should be accorded to all other instances similarly situated.

All concerned are hereby enjoined to be guided accordingly and give this circular a wide publicity as possible."

The Commissioner argues that, based on above citations, cases under administrative or judicial protest which were previously decided by the Court with finality are no longer covered by the benefits under RA 9480; that cases where the issues have been ruled by the Supreme Court with finality and has been applied to other cases under similar circumstances cannot avail of the provisions of RA 9480; hence, considering that the issues presented by PBCom in contesting the deficiency assessments against it have been ruled by the Supreme Court, PBCom can no longer invoke the privileges and immunities of RA 9480.

The Commissioner is again mistaken.

The non-applicability of RA 9480 to "tax cases subject of final and executory judgment by the courts" simply refers to cases that have been decided upon with finality which may already be executed. It is a basic principle in law that implementing rules should not exceed the scope of the law it seeks to implement. What RMC 70-2007 seeks to achieve is widen the application of Section 8(f) to the prejudice of taxpayers; therefore, RMC 70-2007 is thus void for going beyond the provisions of RA 9480. Furthermore, RA 9480 is clear on its face and requires no room for interpretation the role of the Courts being merely to implement the law.

The other four issues that the Commissioner presented in its *Petition for Review* were likewise raised in its *Motion for Partial Reconsideration (of the Decision Dated June 30, 2008)* on July 17, 2008, to wit:

A. The Honorable Court erred in ruling that under the 1993 Tax Code, "Interbank Call Loans" are not subject to DST under Section 180 thereof;

B. The Honorable Court erred in ruling that reverse purchase agreement was not considered as one of the Deposit Substitutes under the NIRC of the 1997, as amended;

C. The Honorable Court erred in ruling that the term 'Deposit Substitutes' was inserted in the NIRC only in 1997; and

D. The Honorable Court erred in ruling that petitioner's trust account is not subject to DST under Section 180 of the 1997 Tax Code.

In light of PBCom's availment of the Tax Amnesty Program under RA 9480, the four issues above were deemed moot in the Assailed Resolution which reads as follows:

> "Considering that the issues raised in respondent Commissioner of Internal Revenue's 'Motion for Partial Reconsideration (Of the Decision Dated June 30, 2008)', all pertain to deficiency assessment on DST and said deficiency assessment is an internal revenue tax not exempted from the coverage of the Tax Amnesty Program, respondent's motion is rendered moot and academic with the Court's ruling considering the instant petition partially withdrawn in view of petitioner's availment of the Tax Amnesty Program under RA 9480."

As PBCom's availment of tax amnesty remains valid, We find no reason to disturb the ruling in the Assailed Resolution rendering above issues moot.

We now proceed to resolve the issues presented by PBCom in CTA Case No. 438.

Whether the Second Division seriously erred in ruling that PBCom is liable for deficiency 20% final tax for taxable year 1997 for its failure to establish the amount of interest expense not subject to 20% final tax.

PBCom's lone issue was supported by the following arguments:

A. PBCOM MORE THAN SUFFICIENTLY PROVED THAT THE ACCOUNT OF P2,251,698.91 PERTAINED TO REVALUATION GAINS FROM FOREIGN EXCHANGE FORWARD CONTRACTS FOR 1997 AND NOT AN INTEREST EXPENSE SUBJECT TO 20% FINAL TAX;

B. PBCOM MORE THAN ADEQUATELY PROVED THAT THE AMOUNTS OF P205,630,701.07 AND P291,321,720.20 REFERRED TO INTEREST EXPENSES ON BORROWED FUNDS FROM INTERBANK CALL LOANS AND PRIVATE

ENTITIES/INDIVIDUALS, RESPECTIVELY, AND NOT AN INTEREST EXPENSE SUBJECT TO 20% FINAL TAX.

With respect to its first argument, petitioner states that contrary to the CTA Second Division's findings, it had adequately proved that the amount of P2,251,698.91 pertained to revaluation gains which arose from PBCom's Foreign Exchange Forward Contracts, specifically for Account No. 9-30301-000-6 for the taxable year 1997. PBCom presented a schedule showing its monthly revaluation gains specifically pertaining to Statement of Account No. 9-30301-000-6, the details of which are as follows:

Date 1997	Conversion Take-On	Bank Transaction	Revaluation Beginning of Month	Revaluation End	Ending Balance End of Month
31-Jan	5,454,782.55	2,883,122.51			
February			104.17	216,388.76	5,451,782.55
March			51.67	184,166.65	10,620,942.50
April			81.14	187,500.00	17,150,209.45
May			76.30	182,986.16	23,269,927.99
June					29,289,989.43
July			128.95	193,750.01	36,700,618.80
August			243.12	331,287.37	49,244,053.71
September					66,333,111.17
October			379.48	434,190.09	85,420,234.33
November			321.40	309,154.88	107,044,326.50
December			435.45	212,274.99	132,343,110.76
		Total		2,251,698.91	

PBCom attached Annexes "I" and "J" with its *Petition* in support of its argument. However, upon close scrutiny of said Annexes, this Court *En Banc* finds no sufficient justification to reverse its findings on the division level. Annexes "I" and "J" are mere schedules that does not adequately prove PBCom's claim and, further, are the very same documents found insubstantial by the CTA Second Division. Although these schedules are summaries of documents marked as Annexes "C-1 to C-133" and "D-1 to D-106", these documents were not offered in evidence nor duly admitted by the CTA Second Division, hence cannot be given consideration. Therefore, this Court *En Banc* stands by the findings of the CTA Second Division in its Decision which reads as follows:

> "Although petitioner contends that respondent's computation of deficiency final tax is overstated since there are expenses that are allegedly not subject to final tax, but to ordinary income tax, petitioner failed to establish how much of said interest expense computed by the respondent was not subject to interest income. Petitioner only made a general statement that part of the interest expense of P2,526,741,767.00 was not subject to final tax for the aforesaid reasons stated by petitioner. Without presentation of concrete documentary proof to support its claim, there is no way for the Court to determine the veracity of petitioner's claim. Hence, We are constrained to uphold respondent's assessment on deficiency final withholding of P14,841,399.30."

With respect to PBCom's second argument, PBCom alleges that it was erroneous of the BIR to include the following items in its assessment:

a. Interest paid on Borrowed Funds- Interbank Call Loans amounting to P205,630,701.07; and

b. Interest pad on Bills Payable (Borowed Funds)- Private Firms and Individuals amounting to P291,321,720.20.

PBCom stipulates that the Interbank Call Loans occurred prior to the effectivity of the 1997 National Internal Revenue Code and pursuant thereto, Interbank Call Loans were specifically exempted from the term Deposit Substitutes specifically taxed under Section 20(y) of the 1977 Tax Code.

On the other hand, as to subparagraph "b", PBCom argues that this represents its interest payment on its direct borrowings from private firms and individuals for the limited purpose of financing its needs; as such, it should again be considered outside the term of Deposit Substitutes which has been consistently a defined by the BIR as "an alternative form of obtaining funds from the public, other than deposits, through the issuance, endorsement, or acceptance of debt instruments for the borrower's own account, for purposes of relending or purchasing of receivables and other obligation."

Despite PBCom's arguments, the Court *En Banc* cannot find basis to grant its claim. There is no documentary support that would substantiate its allegations relating its claims to the value of the assessments against it.

PBCom presented the very same arguments in its Motion for Partial Reconsideration which was ruled by the CTA Second Division in the Assailed Resolution as follows:

> "Likewise, as regards the amount of P205,630,701.07, allegedly pertaining to interbank call loans, other than petitioner's allegations, petitioner failed to present documentary evidence, such as the agreement for the interbank call loan, interbank loan advice, and repayment transfer tickets, among others, which will prove that the amount of P205,630,701.07 was indeed interbank call loans intended merely to cover deficiency in reserves. Settled is the rule that allegation is not synonymous with proof *(Martin vs. Court of Appeals, 205 SCRA 597)*. We have stressed time and again that allegations must be proven by sufficient evidence because mere allegations are not definitely evidence. It cannot be used as basis for a court's decision *(Rimbunan Hijack Group of Companies vs. Oriental Word Processing Corporation, 470 SCRA 665)*.
>
> As regards the amount of P291,321,720.20, allegedly pertaining to Bills Payable (Borrowed Funds) – Private Firms and Individuals, petitioner likewise failed to prove that said amount must not be subjected to 20% final tax. Petitioner did not present documentary evidence to support its contention, other than its bare allegations. Basic is the rule that mere testimonies are self-serving if they are not supported by documentary evidence. Corollary thereto, is the settled rule that the presumption is always and inevitably against a litigant who fails to furnish evidence within his reach, and it is stronger when documents, writings, etc., would be conclusive in establishing his case *(Republic vs. Sandiganbayan, 255 SCRA 473)*.
>
> Moreover, *Section 24 (e) of the NIRC of 1977, as amended*, does not make any distinction that monetary benefit from deposit

substitutes, trust funds and similar arrangements is subject to 20% final tax, if the same was deposited by banks and other financial intermediaries. Neither does said *Section 24 (e)* provide that deposits by private firms and individuals are not subject to 20% final tax. *Section 24 (e) of the NIRC of 1977, as amended,* does not make any distinction as to the depositor of said monetary benefits. The final tax is imposed on all monetary benefits from deposit substitutes, trust funds and similar arrangements, whether coming from banks, financial intermediaries or private firms and individuals. Applicable herein, therefore, is the well-known maxim in statutory construction — *Ubi lex non distinguit nec nos distinguere debemos* — when the law does not distinguish, we should not distinguish *(Philippine National Oil Company vs. Court of Appeals, 457 SCRA 115).*"

Despite the thorough review of the records of the case both in the division and *En Banc* level, We find no reason to alter or modify the Assailed Decision and Assailed Resolution.

WHEREFORE, the Commissioner of Internal Revenue's Petition for Review, docketed as CTA EB Case No. 436, and Philippine Bank of Commerce's Petition for Review, docketed as CTA EB Case No. 438, are hereby **DENIED** for **LACK OF MERIT**. The Assailed Decision dated June 30, 2008 and Assailed Resolution dated November 17, 2008 are hereby **AFFIRMED *in toto*.**

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice