

REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

THIRD DIVISION

ERICSSON SERVICES
PHILIPPINES, INC.,
Petitioner,

C.T.A. CASE NO. 7488

Members:

-versus-

BAUTISTA, Chairperson
PALANCA-ENRIQUEZ, and
COTANGCO-MANALASTAS, JJ.

COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

Promulgated:

JAN 21 2010

3:58 p.m.

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DECISION

PALANCA-ENRIQUEZ, J.:

Once a taxpayer has fully complied with the prescribed requirements of *RA 9480*, as implemented by *DO 29-07* and *RMC 19-2008*, 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” (*Philippine Banking Corporation vs. Commissioner of Internal Revenue, G.R. No. 170574, January 30, 2009*). More so

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in this case, where the one (1) year period to initiate any proceeding to establish under-declaration of the SALN, had already expired without any proceeding initiated by any party to overturn the presumption of correctness of petitioner's SALN, the amnesty granted to petitioner is now final and cannot be questioned in any proceeding involving tax deficiencies for taxable year 2005 and prior years.

THE CASE

This is a Petition for Review filed on June 7, 2006 by Ericsson Services Philippines, Inc. (hereafter "petitioner"), which seeks to cancel and set aside respondent Commissioner of Internal Revenue's Formal Letter of Demand and Assessment Notices dated July 13, 2005, for alleged deficiency income and value-added taxes for the third quarter of taxable year 2002, in the total amount of P11,376,781.45, inclusive of penalties and interest.

THE PARTIES

Petitioner Ericsson Services Philippines, Inc. is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office at 7/F Octagon Building, San Miguel Avenue, Ortigas Center, Pasig City, where it may be served with summons and other processes.



Respondent, on the other hand, is the Commissioner of Internal Revenue who is charged with the assessment and collection of national internal revenue taxes, fees and charges and the enforcement of all forfeitures, penalties and fines connected therewith. He may be served with summons and other legal processes at the BIR National Office Building, Diliman, Quezon City.

THE FACTS

The facts, as culled from the records, are as follows:

On December 8, 2003, petitioner received from respondent Letter Notice No. 116-R-02-03-S-01602 dated October 17, 2003. The said Letter Notice (*Exhibit "I"*) informed petitioner that a partial tally resulting from a computerized matching conducted by respondent on the purchases of petitioner's customers against the sales declared in petitioner's tax returns disclosed the following discrepancy for the third quarter of 2002:

Per Summary List of Purchases submitted by Customers	P 122,843,469.80
Sales per Tax Return	110,964,508.30
Discrepancy in sales	P 11,878,961.50

The Quarterly Report on Third Party Information on Purchases Per Taxpayer (*Exhibit "J"*), attached to the Letter Notice, shows the following composition of the amount of P122,843,469.80, to wit:

Period	Name of Purchaser	Gross Purchases Reported
July	Ericsson Telecommunications, Inc.	P 734,784.90
	Globe Telecom, Inc.	118,814,123.50

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	MG Exeo Network, Inc.	56,628.00
August	Ericsson Telecommunications, Inc.	1,323,560.60
September	Eastern Telecommunications Phil., Inc.	1,058.40
	Ericsson Telecommunications, Inc.	765,961.00
	Globe Telecom, Inc.	627,048.00
	MG Exeo Network, Inc.	520,305.40
	TOTAL	P 122,843,469.80

On January 19, 2005, petitioner received from respondent a Preliminary Assessment Notice (PAN) dated November 30, 2004, alleging that there is a discrepancy in petitioner's sales in the amount of P71,402,393.26, which was arrived at after comparing the sales in the VAT Returns with the sales per official receipts issued for the third quarter of 2002. Due to this discrepancy, a deficiency income tax and deficiency value-added tax were computed at P7,133,481.02 and P2,386,210.40, respectively, inclusive of interest (*Exhibit "K"*).

On July 22, 2005, petitioner received a Formal Letter of Demand and Audit Results/Assessment Notices (*Exhibits "A", "B", and "C"*), all dated July 13, 2005, assessing petitioner of the following alleged deficiency taxes:

Assessment No.	Tax Type	Amount	Period Covered (2002)
LTS-LN#116-R-02-03-S-01602-IT-05-00183	Income Tax	P8,255,975.26 (inclusive of interest computed up to July 31, 2005)	Third Quarter
LTS-LN#116-R-02-03-S-01602-VT-05-00184	VAT	P2,422,994.84 (inclusive of interest computed up to July 31, 2005)	Third Quarter

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Petitioner protested said assessments, through a letter dated August 22, 2005 (*Exhibits "D" to "D-6"*), which was denied by respondent in its undated Final Decision (*Exhibit "E"*).

In his Answer, respondent raised the following Special and Affirmative Defenses:

"8. The assessment for taxable year 2002 deficiency Income Tax and 3rd Quarter of Taxable Year 2002 deficiency Value Added Tax (VAT) in the amounts of P8,255,975.26 and P2,422,994.84, respectively, was issued in accordance with law and jurisprudence;

9. The deficiency VAT assessment arose from a discrepancy arising from a comparison of the sales per VAT return (sic) with the sales per Official Receipts issued for the 3rd Quarter of 2002;

10. This resultant discrepancy was multiplied by the Gross Profit Rate as derived from the BIR Form 1702 (Annual Income Tax Return) for the calendar year 2002, to arrive at the additional taxable sales. The additional taxable sale was then multiplied by the tax rate as provided by Section 106(A) of the NIRC of 1997 to arrive at the deficiency VAT;

11. The deficiency Income Tax assessment arose from the same above stated discrepancy. This discrepancy was multiplied by the Gross Profit Rate as derived from the BIR Form 1702 (Annual Income Tax Return) for the calendar year 2002, to arrive at the additional taxable sales. The additional taxable sale was then added to the taxable income per Annual Income Tax Return to arrive at the adjusted Taxable Income which was then multiplied by the tax rate as provided by the NIRC (Sec. 32) to arrive at the deficiency income tax;



12. 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.

13. Failure to present proof of error in the assessment will justify judicial affirmation of said assessment (*Delta Motors Co. vs. Commissioner*, C.T.A. 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)."

Petitioner presented Lilibeth Mendez, Ma. Theresa Ramos, Joseph Sedric Calica and Atty. Christian Cantera, as witnesses, and documentary evidence, marked as *Exhibits "A" to "GGGG"*, inclusive of submarkings, which were all admitted by the Court.

On February 29, 2008, in the course of the trial, petitioner availed of the Tax Amnesty granted under *RA 9480*, otherwise known as "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" (*Tax Amnesty Law of 2007*).

In support thereof, petitioner submitted the following exhibits:



1. Notice of Availment of Tax Amnesty of petitioner, dated February 29, 2008 (*Exhibit "GGGG"*);
2. Original Statement of Assets, Liabilities and Networth (SALN) as of December 31, 2005 (*Exhibit "GGGG-3"*);
3. Amended SALN as of December 31, 2005 (*Exhibit "GGGG-4"*);
4. Tax Amnesty Return (BIR Form No. 2116) (*Exhibit "GGGG-5"*);
5. Tax Amnesty Payment Form (BIR Form 0617) (*Exhibit "GGGG-6"*); and
6. Machine-validated BIR Tax Payment Deposit Slip (*Exhibit "GGGG-9"*).

On October 29, 2008, for the repeated failure of counsel for respondent to appear at the initial presentation of the evidence for the respondent and upon motion of counsel for petitioner, the Court declared respondent to have waived his right to present evidence.

Thereafter, both parties were ordered to file their simultaneous memoranda. Petitioner filed its Memorandum on December 18, 2008, and considering the report dated January 30, 2009 of the Judicial Records Division that no Memorandum for Respondent has been filed, the case was deemed submitted for decision on February 3, 2009.

ISSUES

As stipulated upon by the parties, the following are the issues for the consideration of this Court:

I

WHETHER OR NOT A LETTER NOTICE CAN BE USED
AS A BASIS FOR THE ISSUANCE OF A PRELIMINARY

ASSESSMENT NOTICE AND EVENTUALLY, A FINAL ASSESSMENT NOTICE.

II

WHETHER OR NOT RESPONDENT COMPLIED WITH THE REQUIREMENT OF SECTION 228 OF THE NATIONAL INTERNAL REVENUE CODE AND REVENUE REGULATIONS NO. 12-99.

III

WHETHER OR NOT PETITIONER HAS UNDECLARED SALES SUBJECT TO VAT FOR THE THIRD QUARTER OF TAXABLE YEAR 2002.

IV

WHETHER OR NOT PETITIONER HAS UNDECLARED SALES SUBJECT TO INCOME TAX FOR THE THIRD QUARTER OF TAXABLE YEAR 2002.

However, upon the filing of petitioner's Memorandum, petitioner further raised the following issue:

WHETHER OR NOT THE PETITIONER HAS AVAILED OF THE TAX AMNESTY UNDER THE TAX AMNESTY LAW AND THEREFORE, THE PETITIONER IS ENTITLED TO THE IMMUNITIES AND PRIVILEGES UNDER SECTION 6 THEREOF.

THE COURT'S RULING

At the outset, the Court deems it necessary to first address the issue raised by petitioner as regards its availment of the Tax Amnesty.

Section 1 of RA 9480 provides:

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“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.”

Pursuant to the above provision, in order to be considered a qualified tax amnesty applicant, the tax involved must be a national internal revenue tax for taxable year 2005 and prior years that have remained unpaid as of December 31, 2005, with or without prior assessments duly issued. Further, the tax amnesty applicant must not fall within the exceptions provided for under *Section 8 of the Amnesty Law*.

On February 29, 2008, petitioner availed of the Tax Amnesty for its tax deficiencies, including the third quarter of 2002, where the subjects of assessment are income and value-added taxes, which are not excluded from the coverage of *RA 9480*.

However, petitioner must show compliance with *Section 2* of the aforesaid law, in relation to *Section 6 of Department of Finance Order No. 29-07*, which provides:

“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.”

Corollary thereto, *Section 6 of Department of Finance Order No. 29-07* provides that any resident, juridical or natural person, who/which wishes to avail of the Tax Amnesty is required to file the following forms/documents with the RDO/Large Taxpayer District Office of the BIR, which has jurisdiction over the legal residence or principal place of business of the taxpayer:

- 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; and
- c. Tax Amnesty Return, in such form as may be prescribed by the BIR.

In conjunction thereto, *Revenue Memorandum Circular No. 69-2007* prescribes the procedure for availment of Tax Amnesty, which states that a taxpayer who wishes to avail the Tax Amnesty must accomplish and submit, aside from the foregoing stated forms, the following:

- 1) Tax Amnesty Return (BIR Form No. 2116); and
- 2) Payment Form (BIR Form No. 0617).

In this case, petitioner formally offered the following exhibits:



1. Exhibit "GGGG" – Notice of Availment of Tax Amnesty of petitioner, dated February 29, 2008;
2. Exhibit "GGGG-3" – Original Statement of Assets, Liabilities and Networth (SALN), as of December 31, 2005;
3. Exhibit "GGGG-4" – Amended SALN, as of December 31, 2005;
4. Exhibit "GGGG-5" – Tax Amnesty Return (BIR Form No. 2116);
5. Exhibit "GGGG-6" – Tax Amnesty Payment Form (BIR Form 0617); and
6. Exhibit "GGGG-9" – Machine-validated BIR Tax Payment Deposit Slip.

Based on the foregoing, the Court finds that petitioner is a qualified Tax Amnesty applicant, and having substantially complied with the requirements provided in *RA 9480*, as implemented by *DO 29-07*, it is entitled to the benefits of the Tax Amnesty.

Furthermore, *Section 6 of RA 9480* provides:

"SEC. 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:

- 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. xxx" (*Emphasis supplied*)

Therefore, by virtue of the availment of petitioner of the Tax Amnesty Program under *RA 9480*, petitioner is already immune from the



payment of taxes, including deficiency income tax and VAT for the third quarter of 2002, as well as addition thereto, and is now entitled to the cancellation of the assessments against it. In the recent case of *Metropolitan Bank & Trust Company vs. Commissioner of Internal Revenue* (G.R. No. 178797, August 4, 2009), the Supreme Court cancelled the assessments against Metrobank after finding that it has complied with the requirements for its application and was qualified for the Tax Amnesty under RA 9480, and the one (1) year period had already lapsed.

Once a taxpayer has fully complied with the prescribed requirements of RA 9480, as implemented by DO 29-07 and RMC 19-2008, 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” (*Philippine Banking Corporation vs. Commissioner of Internal Revenue*, G.R. No. 170574, January 30, 2009). Considering further that the one (1) year period to initiate any proceeding to establish under-declaration of the SALN, under Section 4 of RA 9480, had already expired on February 29, 2009, without any proceeding initiated by any party to overturn the presumption of the correctness of petitioner’s SALN, the amnesty granted to petitioner is now final and

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cannot be questioned in any proceeding involving tax deficiencies for taxable year 2005 and prior years.

In view of petitioner's availment of the Tax Amnesty, we find it unnecessary to pass upon the other issues raised by petitioner, for being moot and academic.

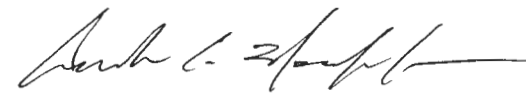
WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the assessments for deficiency income tax and value added tax in the total amount of P11,376,781.45 for the third quarter of taxable year 2002 are hereby **CANCELLED** solely in view of petitioner's availment of the Tax Amnesty Program under *RA 9480 (Tax Amnesty Act)*.

SO ORDERED.


OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:


LOVELL R. BAUTISTA
Associate Justice


AMELIA R. COTANGCO-MANALASTAS
Associate Justice

ATTESTATION

I attest 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's Division.



LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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