REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

****

MERCANTILE PROPERTIES AND HOLDINGS COMPANY, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7410

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:

MAY 26 2008, 9:25 am

x - x

RESOLUTION

This resolves the following:

1) Petitioner's "Motion to Dismiss" posted on April 11, 2008, alleging that its availment of the Tax Amnesty Program under Republic Act No. 9480, as implemented by Department Order No. 29-07, has rendered the case moot and academic; and

2) Respondent's "Comment" thereon with her own "Motion to Dismiss" the Petition for Review on the ground of lack of jurisdiction.

Respondent stated in her Comment that the availment of the tax amnesty program have no effect on assessment against the petitioner since the said assessment had already become final and executory prior to the amnesty availment citing as basis Revenue Memorandum Circular (RMC) No. 69-2007.

As pleaded in her Answer to the Petition for Review, respondent reiterated that the Court has no jurisdiction to take cognizance of the case inasmuch as the petition for review was filed out of time. Accordingly, petitioner filed the instant petition beyond the 30-day period from the lapse of the 180-day period of respondent's inaction on the letter protest. In particular, respondent argued that petitioner filed on May 5, 2005 a letter protesting the assessment, therefore, she has 180 days from May 5, 2005 or until November 1, 2005 within which to resolve the protest; that petitioner has only 30 days therefrom to appeal before this Court and that considering the Petition for Review was filed only on January 30, 2006, the same was filed sixty days late of the period granted under the Tax Code. Thus, the subject deficiency value-added tax assessment has already become final, executory and demandable.

We resolve in favor of the petitioner.

Regarding the jurisdictional issue raised by the respondent in her Motion to Dismiss, Section 228 of the 1997 Tax Code, in part provides that:

> "Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final."

> "If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days **from submission of documents**, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals with thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180) day period; otherwise the decision shall become final, executory and demandable." (Emphasis supplied)

In a Resolution of this Court in the case of ***Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*** [1], it was held that:

> "Following the periods provided for in the aforementioned laws, from July 20, 2001, that is, the date of petitioner's filing of protest, it had until September 18, 2001 to submit relevant documents and from September 18, 2001, the Commissioner had until March 17, 2002 to issue his decision. As admitted by petitioner, the protest remained unacted by the Commissioner of Internal Revenue. Therefore, it had until April 16, 2002 within which to elevate the case to this court. Thus, when petitioner filed its Petition for Review on April 30, 2002, the same is outside the thirty (30) period." (Emphasis supplied)

It is crystal clear that the 180-day period is reckoned from submission of documents, and not from the date of the protest.

Applying the above-quoted provision of the Tax Code and the aforementioned ruling of the Court in the case at bar, since the records do not reveal any particulars relating to petitioner's submission of documents after its protest, it follows that the reckoning of the 180 day period is July 4, 2005, which is the last day to submit documents, sixty (60) days after the protest was filed on May 5, 2005. Thereafter, petitioner may opt to file a

[1] CTA Case No. 6475, promulgated on September 10, 2003, signed by Presiding Justice Acosta, Associate Justices Juanito C. Castañeda and Lovell R. Bautista

petition for review with this Court within 30 days after the expiration of the 180-day period. From July 4, 2005 which is the last day to submit documents, petitioner may wait for the expiration of the 180-day period, which is on December 31, 2005 and within 30 days therefrom, it may opt to file the petition for review, as it did on January 30, 2006. ***(see Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue, GR. No. 168498, April 24, 2007)***.

Going now to petitioner's Motion to Dismiss on the ground that the case had already become moot and academic because of availment of the Tax Amnesty Law.

A tax amnesty is a general pardon or intentional overlooking by the State of its authority to impose penalties on persons otherwise guilty of evasion or violation of a revenue or tax law. It partakes of an absolute forgiveness or waiver by the government of its right to collect what is due it and to give tax evaders who wish to relent a chance to start with a clean slate.[2]

In a Resolution of the Court *En Banc* in the case of ***Metropolitan Bank and Trust Company vs. Commissioner of Internal Revenue***[3] the motion for reconsideration on the assailed decision was resolved in favor of the petitioner since it is a qualified tax amnesty applicant and has satisfied the requisites of tax amnesty law. The Court held that a taxpayer desiring to

---

[2] Commissioner of Internal Revenue vs. Marubeni, G.R. No. 137377, December 18, 2001
[3] CTA EB No. 269, promulgated on March 28, 2008

(194)

avail the benefits of a tax amnesty must conform with the requirements specified under Section 2 of R.A. 9480 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.

A taxpayer who availed of the tax amnesty must file/submit before the Court the following documents:

1. Notice of Availment of Tax Amnesty;
2. Statement of Assets, Liabilities and Networth (SALN);
3. Tax Amnesty Return (BIR Form No. 2116);
4. Payment Form (BIR Form No. 0617); and
5. Bank receipt of full payment of the amnesty tax payable.

An examination of the records shows that petitioner is a qualified tax amnesty applicant, not being one of those disqualified under Section 8 of R.A. 9480, to wit:

> (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 other felonies of frauds, illegal exactions and transactions, and malversation of public funds and property under Chapter III and IV of Title VII of the Revised Penal Code; and

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

Petitioner has duly complied with the requisites enumerated in R.A. No. 9480, as implemented by DOF Order No. 029-07 and Revenue Memorandum Circular No. 19-2008. Petitioner submitted the following documents supporting its availment of the Tax Amnesty Program, which are all found to be faithful reproductions of their original in a hearing held on April 15, 2008, to wit:

1) Notice of Availment of Tax Amnesty
2) Tax Amnesty Return (BIR Form No. 2116)
3) Banco de Oro BTR-BIR Deposit Slip
4) Tax Amnesty Payment Form (BIR Form No. 0617)
5) Statement of Assets Liabilities and Net Worth as of December 31, 2005
6) Balance sheet

As provided in **Rule III, Section 6(3) of Department Order No. 29-07 and Rule III, Section 6(3) of Revenue Memorandum Circular No. 55-2007**, the payment of the amnesty tax and the pertinent forms accomplished by a taxpayer shall be deemed full compliance with the provisions of R.A. No. 9480.

WHEREFORE, respondent's Motion to Dismiss on the ground of lack of jurisdiction is hereby **DENIED**; petitioner's Motion to Dismiss on the ground that its availment of the Tax Amnesty Program under Republic Act No. 9480, as implemented by Department Order No. 29-07, has rendered the case moot and academic is hereby **GRANTED**; and the case is now considered **WITHDRAWN, CLOSED and TERMINATED**, subject to the provision of Republic Act No. 9480, otherwise known as the Tax Amnesty Law.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

197