REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PHILIPPINE BANK OF COMMUNICATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 398
(CTA Case No. 7129)

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

Promulgated:
FEB 24 2009 Apolinario 2:45 p.m.

X- X

RESOLUTION

This resolves petitioner's **"Motion for Reconsideration"** filed on December 5, 2008; respondent's **"Opposition (Re: Motion for Reconsideration dated 05 December 2008)"** filed on December 23, 2008; and petitioner's **"Reply (To Respondent's Opposition dated 23 December 2008)"** filed on January 21, 2009.

Records disclose that petitioner moves for the reconsideration of the Decision of the *CTA Second Division* in the instant case based on the following grounds:

I

WITH PBCOM'S AVAILMENT OF THE TAX AMNESTY PROGRAM UNDER REPUBLIC ACT NO. 9480, PBCOM IS NOW IMMUNE FROM THE COLLECTION OF INTERNAL REVENUE TAXES FOR 2005 AND PRIOR YEARS, INCLUDING THE DEFICIENCY ASSESSMENT OF GRT SUBJECT OF THE PRESENT PETITION.

II

THE HONORABLE COURT ERRED IN RULING THAT PBCOM'S ONSHORE INCOME FROM ITS FCDU TRANSACTIONS IS NOT EXEMPT FROM NON-INCOME TAXES SUCH AS GRT. IN ENACTING THE CTRP, CONGRESS DID NOT INTEND TO REMOVE THE EXEMPTION OF FCDUS FROM ON-INCOME TAXES SUCH AS GRT.

III

THE HONORABLE COURT FAILED TO CONSIDER THAT THE DISPUTED GRT ASSESSMENT IS ERRONEOUS FOR USING A TAX BASE AND RATE THAT NOT HAVE BEEN ESTABLISHED AND THEREFORE NOT AUTHORIZED BY LAW. MOREOVER, THE BIR'S ASSESSMENT CANNOT BE ACCORDED THE PRESUMPTION OF CORRECTNESS IN VIEW OF THE BIR'S FAILURE TO CONDUCT AN INVESTIGATION OF PBCOM'S BOOKS OF ACCOUNTS. SUCH PRESUMPTION IS COMPLETELY REFUTED BY THE EVIDENCE ON HAND.

On December 23, 2008, petitioner filed a "Motion to Admit (Certified True Copies of Amnesty Documents)". Copies of the following documents were attached to the said motion: a) Annex "A"- BIR Tax Payment Deposit Slip dated March 6, 2008, evidencing the payment and remittance of the tax amnesty[1]; b) Annex "B"- Notice of Availment of Tax Amnesty[2] dated March 5, 2008; c) Annex "C"- Tax Amnesty Payment Form/Acceptance of Payment Form (BIR FORM 0617)[3]; d) Annex "D"- Previously filed Income Tax Return for 2005 with attached

[1] Exhibit "L", CTA En Banc Rollo, p. 537.
[2] Exhibit "M", CTA En Banc Rollo, p. 538.
[3] Exhibit "N", CTA En Banc Rollo, p. 539.

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SALN/Balance Sheet as of 31 December 2005[4]; e) Annex "E"- Revised or restated SALN/Balance Sheet as of 31 December 2005[5]: and f) Annex "F"- Tax Amnesty Return (BIR FORM 2116)[6].

During the scheduled Commissioner's hearing on February 10, 2009 for the due identification, authentication and marking of petitioner's tax amnesty documents, results of comparison by Atty. Theresa G. Cinco-Bactat, Executive Clerk of Court III, showed that Exhibits "L", "M", "N", "O", "P", and "Q" were all faithful reproductions of their originals[7].

Considering that the proper remedy of petitioner is to file a motion to withdraw the petition, the Court *En Banc* shall accordingly treat petitioner's "Motion for Reconsideration" as a motion to withdraw the petition.

After carefully evaluating the documents submitted, the Court *En Banc* is convinced that petitioner duly complied with the requirements of the Tax Amnesty Program. The effect thereof is stated under Section 6 (a) of the law, *viz:*

> *"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:*
>
> *(a) The taxpayer shall be immune from the payment of taxes as well as additions 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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[4] Exhibit "P", CTA En Banc Rollo, p. 540-653.
[5] Exhibit "Q", CTA En Banc Rollo, p. 654.
[6] Exhibit "O", CTA En Banc Rollo, p. 655.
[7] COMMISSIONER'S REPORT, CTA En Banc Rollo, p. 665.

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IN VIEW OF THE FOREGOING, petitioner's "Petition for Review" filed on June 26, 2008 is deemed **WITHDRAWN**, and the afore-entitled case is considered **CLOSED** and **TERMINATED**, subject to the provisions of RA 9480.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

(On Leave)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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