REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Special Third Division

UNION BANK OF THE PHILIPPINES, INC.,
Petitioner,

- *versus* -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 7938

Members:
BAUTISTA, *Chairperson, and*
COTANGCO-MANALASTAS, *JJ.*

Promulgated:
AUG 5 2013
4:16 p.m.

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DECISION

BAUTISTA, J.:

The Petition for Review, filed pursuant to Section 7(a)(2)[1] of Republic Act ("RA") No. 1125,[2] as amended by RA No. 9282,[3] and RA No. 9503,[4] in relation to Sections 204(C)[5] and 229[6] of the 1997 National

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[1] SECTION 7. *Jurisdiction.* - The CTA shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
xxx xxx xxx
(2) Inaction by 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 Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial.
[2] An Act Creating the Court of Tax Appeals, dated June 16, 1954.
[3] An Act Expanding the Jurisdiction of the Court of Tax Appeals, Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes, dated March 30, 2004.
[4] An Act Enlarging the Organizational Structure of the Court of Tax Appeals, Amending for the Purpose Certain Sections of the Law Creating the Court of Tax Appeals, and for Other Purposes, dated June 12, 2008.
[5] SECTION 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –
xxx xxx xxx
(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of

Internal Revenue Code ("NIRC"), as amended, and Article 2154 of the New Civil Code of the Philippines, as amended,[7] seeks the refund and/or issuance of a tax credit certificate representing the amount paid in connection with the applications for abatement of tax assessments in the total amount of ₱147,727,650.61.

FACTS OF THE CASE

Petitioner, Union Bank of the Philippines, Inc., is a universal banking corporation duly organized and existing under and by virtue of Philippine laws with principal office address at Union Bank Plaza Building, Meralco Avenue, corner Onyx and Sapphire Roads, Ortigas Center, Pasig City.

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue, vested under the laws with the authority to carry out all the functions, duties and responsibilities of said office, including, *inter alia*, the power to decide, approve, and grant refunds and/or tax credits of erroneously paid or illegally collected internal revenue taxes, and holds office at the 5th Floor, Bureau of Internal Revenue ("BIR") National Office Building, BIR Road, Diliman, Quezon City.

On June 5, 2006, petitioner absorbed all the assets and liabilities of International Exchange Bank, pursuant to a merger duly approved by the *Bangko Sentral ng Pilipinas* and the Securities and Exchange Commission.

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the tax or penalty: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund.

[6] SECTION 229. *Recovery of Tax Erroneously or Illegally Collected.* – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

[7] ARTICLE 2154. If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises.

On June 29, 2007, petitioner filed with respondent, twelve (12) applications for administrative abatement under Revenue Regulations ("RR") No. 15-06,[8] as amended by RR No. 03-07,[9] and accordingly paid the total amount of ₱147,727,650.61.

On February 4, 2008, petitioner availed of the Tax Amnesty Program, pursuant to Republic Act No. 9480,[10] with respect to the tax liabilities of International Exchange Bank.

And on February 19, 2008, petitioner availed of the Tax Amnesty Program, with respect to its own tax liabilities.

On March 4, 2009, petitioner then filed a claim for refund and/or issuance of a tax credit certificate, representing the amount paid in connection with its applications for abatement of tax assessments in the total amount of ₱147,727,650.61.

Due to respondent's inaction, on June 29, 2009, petitioner filed the present Petition for Review.[11]

On July 20, 2009, respondent filed her Answer,[12] interposing the following Special and Affirmative Defenses, to wit:

> 9. Petitioner claims to have filed twelve (12) applications for administrative abatement on June 29, 2007 and paid the total amount of ₱147,727,650.61 for the settlement of the following:
>
> A. Union Bank Tax Assessments

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[8] Implementing a One-Time Administrative Abatement of All Penalties/Surcharges and Interest on Delinquent Accounts and Assessments (Preliminary or Final, Disputed or Not) as of June 30, 2006, dated August 18, 2006.

[9] Regulations Providing for the Policies, Guidelines and Procedures in the Implementation of the Expanded One-Time Administrative Abatement of All Penalties/Surcharges and Interest on Delinquent Accounts and Assessments, dated January 7, 2007.

[10] 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, dated May 24, 2007.

[11] *Records*, pp. 4-149, with Annexes. Raffled to the then Second Division of the Court before the issuance of CTA Administrative Circular No. 01-2010, entitled *"Implementing the Fully Expanded Membership in the Court of Tax Appeals,"* dated January 5, 2010.

[12] *Records*, pp. 152-158.

Assessment Notice/ Case No.	Type of Tax	Taxable Year	Amount of Basic Tax Assessed	Amount Paid
DST-94-000007 (GR No. 169169)	DST	1994	₱18,305,720.81	₱7,322,28[8].32
DST-95-000008 (GR No. 169169)	DST	1995	4,651,832.01	1,860,732.80
DST-96-000004 (GR No. 169169)	DST	1996	27,604,906.67	11,041,962.43
DST2-97-000005 (GR No. 169169)	DST	1997	44,681,456.79	17,872,582.72
DST2-99-000031 (CTA Case No. 7017)	DST	1999	27,080,031.25	10,832,012.50
DST2-03-000071 (CTA Case No. 7576)	DST	2003	65,258,112.86	26,103,2[45].14
VT-03-000224 (CTA Case No. 7674)	VAT	2003	95,349,213.09	9,534,921.31
DST-04-000078	DST	2004	9,283,094.17	928,309.42
TOTAL			**₱292,169,367.65**[13]	**₱85,496,054.64**

B. International Exchange Bank Tax Assessments

Assessment Notice/ Case No.	Type of Tax	Taxable Year	Amount of Basic Tax Assessed	Amount Paid
(GR No. 171266)	DST	1996	₱14,768,246.70	₱14,768,246.70
(GR No. 171266)	DST	1997	42,036,359.51	42,036,359.51
ES-DST-2002-0468 (CTA Case No. 7663)	DST	2002	29,605,831.12	2,960,583.11
ES-DST-2003-0469 (CTA Case No. 7663)	DST	2003	24,664,066.54	2,466,406.65
TOTAL			**₱111,074,503.87**	**₱62,231,595.97**

Petitioner also filed several cases in relation to the tax abatements in the Supreme Court and Court of Tax Appeals. Petitioner also claims to have filed an amnesty application for the above assessments. Now, petitioner files this new case covering same assessments. Apparently, petitioner vacillates between administrative and judicial remedies it has previously elected. This is in violation of Rule 7, Section 5 of the Rules of Court, which states:

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12. Assuming that this case was validly instituted, the incomplete payment of petitioner constitutes an installment payment of the total basic tax assessed. Revenue Regulations [No.] 3-2007 recognizes staggered payments and complete payment.

13. Furthermore, the claim of the petitioner that the abatement cases are subject to the tax amnesty law has been disproven in RMC [No.] 69-07, Q-57 and A-57, which states:

[13] The correct total amount is ₱292,214,367.65.

xxx xxx xxx

> 14. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation *(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)* and such, they are looked upon with disfavor *(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211)*.[14]

On January 8, 2010, the Court issued a Resolution, resolving the Motion to Dismiss filed by respondent.[15]

On January 26, 2010, the Court, pursuant to CTA Administrative Circular No. 01-2010, entitled *"Implementing the Fully Expanded Membership in the Court of Tax Appeals,"* dated January 5, 2010, transferred the case to the Third Division of the Court.[16]

On September 23, 2010, the parties entered their Joint Stipulation of Admitted Facts and Issues.[17]

Trial ensued. Petitioner presented documentary and testimonial evidence. On the other hand, respondent waived her right to present evidence.

On August 3, 2012,[18] the case was submitted for decision, taking into consideration the Memorandum filed by respondent on May 31, 2012,[19] and the Memorandum filed by petitioner on July 16, 2012.[20]

Hence, this Decision.

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[14] *Records*, pp. 153-156.
[15] *Id.*, at pp. 259-262.
[16] *Id.*, at p. 263.
[17] *Id.*, at pp. 335-340.
[18] *Id.*, at p. 851.
[19] *Id.*, at pp. 809-819.
[20] *Id.*, at pp. 823-847.

ISSUES

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

For petitioner:

WHETHER OR NOT PETITIONER IS ENTITLED TO A REFUND AND/OR ISSUANCE OF A TAX CREDIT CERTIFICATE FOR THE AMOUNT OF PESOS: ONE HUNDRED FORTY SEVEN MILLION SEVEN HUNDRED TWENTY SEVEN THOUSAND SIX HUNDRED FIFTY AND 61/100 (₱147,727,650.61), REPRESENTING THE AMOUNT WHICH WAS PAID TO RESPONDENT FOR THE SETTLEMENT OF ALLEGED DEFICIENCY TAX ASSESSMENT UNDER THE ABATEMENT PROGRAM, BY VIRTUE OF THE FACT THAT RESPONDENT DID NOT ACCEPT AND HAS NOT ACTED UPON THE SAID APPLICATIONS FOR ABATEMENT, AND THAT PETITIONER HAS VALIDLY AVAILED OF THE TAX AMNESTY PROGRAM ('TAP") UNDER RA NO. 9480.

For respondent:

WHETHER OR NOT PETITIONER CAN VALIDLY CLAIM A REFUND ON THE STAGERRED PAYMENTS OF ITS ABATEMENT; and

WHETHER OR NOT PETITIONER CAN AVAIL OF TAX AMNESTY WHEN IT HAS AVAILED FOR TAX ABATEMENT.[21]

To summarize, the issue to be resolved by the Court is essentially on petitioner's entitlement to a refund or issuance of a tax credit certificate in the amount of ₱147,727,650.61.

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[21] *Id.*, at p. 338.

RULING OF THE COURT

The Court finds the Petition for Review partly meritorious.

Section 7(a)(2) of RA No. 1125, as amended by RA No. 9282,[22] and RA No. 9503,[23] expressly states as follows:

> SECTION 7. *Jurisdiction.* - The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> xxx xxx xxx
>
> (2) Inaction by 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 Code or other laws administered by the Bureau of Internal Revenue, **where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial**. (*Boldfacing supplied.*)

The foregoing provision states that the Court has jurisdiction to review inaction by respondent, wherein a specific period for action was provided, in which case such inaction is considered a denial.

Based on the records of the case, petitioner's claim for refund and/or issuance of a tax credit certificate for the amount of ₱147,727,650.61 represents the payments it made for the settlement of deficiency tax assessments under the abatement program, which respondent did not accept and has not acted upon under Revenue Regulations ("RR") No. 15-06, dated August 18, 2006, entitled, "*Implementing a One-Time Administrative Abatement of All Penalties/Surcharges and Interest on Delinquent Accounts and Assessments (Preliminary or Final, Disputed or Not) as of June 30, 2006,*" as amended, on January 16, 2007, by RR No. 03-07, entitled "*Regulations Providing for the Policies, Guidelines and Procedures in the Implementation of the*

[22] *Supra*, note 3.
[23] *Supra*, note 4.

Expanded One-Time Administrative Abatement of All Penalties/Surcharges and Interest on Delinquent Accounts and Assessments," computed as follows:

A. Union Bank Tax Assessments

Assessment Notice/ Case No.	Type of Tax	Taxable Year	Amount of Basic Tax Assessed	Amount Paid	Exhibit
DST-94-000007	DST	1994	₱18,305,720.81	₱7,322,288.32	*"A" to "A-5"*
DST-95-000008	DST	1995	4,651,832.01	1,860,732.80	*"B" to "B-4"*
DST-96-000004	DST	1996	27,604,906.67	11,041,962.43	*"C" to "C-5"*
DST2-97-000005	DST	1997	44,681,456.79	17,872,582.72	*"D" to "D-4"*
DST2-99-000031	DST	1999	27,080,031.25	10,832,012.50	*"E" to "E-6"*
DST2-03-000071	DST	2003	65,258,112.86	26,103,245.14	*"F" to "F-6"*
VT-03-000224	VAT	2003	95,349,213.09	9,534,921.31	*"G" to "G-5"*
DST-04-000078	DST	2004	9,283,094.17	928,309.42	*"H" to "H-6"*
TOTAL			**₱292,214,367.65**	**₱85,496,054.64**	

B. International Exchange Bank Tax Assessments

Assessment Notice/ Case No.	Type of Tax	Taxable Year	Amount of Basic Tax Assessed	Amount Paid	Exhibit
(GR No. 171266)	DST	1996	₱14,768,246.70	₱14,768,246.70	*"I" to "I-5"*
(GR No. 171266)	DST	1997	42,036,359.51	42,036,359.51	*"J" to "J-5"*
ES-DST-2002-0468	DST	2002	29,605,831.12	2,960,583.11	*"K" to "K-6"*
ES-DST-2003-0469	DST	2003	24,664,066.54	2,466,406.65	*"L" to "L-6"*
TOTAL			**₱111,074,503.87**	**₱62,231,595.97**	

The relevant provisions of the aforementioned revenue regulations state as follows:

SECTION 1. *Scope.* – Pursuant to Section 244 in relation to Section 204(b) of the National Internal Revenue Code (NIRC) of 1997, these Regulations are hereby issued to expand the coverage of the Abatement Program under Revenue Regulations No. 15-2006.

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SECTION 4. *Who May Avail.* – Any person/taxpayer, natural or juridical, may settle thru the abatement program any delinquent account or disputed assessment where the Assessment Notice has been released as of November 30, 2006, by paying an amount equal to One Hundred Percent (100%) or

> more of the Basic Tax assessed with the Accredited Agent Bank (AAB) of the Revenue District Office (RDO)/Large Taxpayers Service (LTS)/Large Taxpayers District Office (LTDO) that has jurisdiction over the taxpayer. In the absence of an AAB, payment may be made with the Revenue Collection Officer/Deputized Treasurer of the RDO that has jurisdiction over the taxpayer. After payment of the basic tax, the assessment for penalties/surcharge and interest shall be cancelled by the concerned BIR Office following existing rules and procedures. Thereafter, the docket of the case shall be forwarded to the Office of the Commissioner, thru the Deputy Commissioner for Operations Group, for issuance of Termination Letter.
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> This Abatement Program shall include taxpayers who have already paid any portion of the increments (surcharge, interest, *etc.*) on their tax liabilities, provided, they will waive any claim for refund of paid amount in excess of 100% of the basic tax paid.
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> Taxpayers with existing tax case(s) on which the Presidential Commission on Good Government has/have an interest are not covered by this Program.

As cited by petitioner, denial by inaction stated in the afore-quoted provision may be read in relation to Sections 204(C) and 229 of the 1997 NIRC, as amended, scilicet:

> SECTION 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –
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> xxx xxx xxx
>
> (C) **Credit or refund taxes erroneously or illegally received or penalties imposed without authority**, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund **within two (2) years after the payment of the tax or penalty**: *Provided, however,* That a return filed showing an

> overpayment shall be considered as a written claim for credit or refund.
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> xxx xxx xxx
>
> SECTION 229. *Recovery of Tax Erroneously or Illegally Collected.* – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been **erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected**, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, no such suit or proceeding shall be filed after the expiration of **two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment**: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. (*Boldfacing supplied.*)

The 1997 NIRC, as amended, explicitly prescribes that claim must be made within two (2) years from payment of the tax or penalty. As expressly stated, the said period applies for recovery of erroneously or illegally collected tax; in a recovery of internal revenue taxes, or sums erroneously, excessively, illegally or wrongfully collected, the term "erroneous or illegal tax" is defined "as one levied without statutory authority."[24]

And in the case of *Commissioner of Internal Revenue (CIR) v. Insular Lumber Co.*,[25] and *CIR v. Central Azucarera Don Pedro*,[26] the Supreme Court held that Sections 306 [*now Section 229*] and 309 [*now Section 204*] of the old National Internal Revenue Code were intended to govern all kinds of refunds of internal revenue taxes — those taxes

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[24] Commissioner of Internal Revenue *v.* Philippine National Bank, G.R. No. 161997, October 25, 2005, *citing Black's Law Dictionary*, 8th Ed, pp. 1496-1497.
[25] L-24221, December 11, 1967, 21 SCRA 1237.
[26] L-28467, February 28, 1973, 49 SCRA 474.

imposed and collected pursuant thereto. Hence, refund of taxes initially collected legally, but later becomes refundable to the taxpayer by the happening of a supervening cause is within the scope of Sections 229 and 204 of the 1997 NIRC, as amended.

As borne by the records, petitioner filed with respondent twelve (12) applications for administrative abatement under Revenue Regulations (RR) No. 15-06, as amended by RR No. 3-07, and paid the total amount of ₱147,727,650.61 on June 29, 2007. [27] However, on August 28, 2007, respondent issued letters of denial on four (4) of its applications;[28] while the other eight (8) applications were not acted upon until present.

On May 24, 2007, RA No. 9480 lapsed into law, which provides that a taxpayer who availed of the tax amnesty is entitled to immunities and privileges, such as, immunity from the payment of taxes, as well as additions thereto and the appurtenant civil, criminal or administrative penalties under the 1997 NIRC, arising from the failure to pay any and all internal revenue taxes for taxable year 2005 and prior years.

And on February 4, 2008, petitioner filed for amnesty with respect to the tax liabilities of the former International Exchange Bank;[29] while on February 19, 2008, it filed for tax amnesty with respect to its own tax liabilities.[30]

Thus, initially, the tax sought to be refunded may be considered as collected legally by virtue of the application for abatement; however due to the happening of a supervening cause, *i.e.*, respondent's non-acceptance of petitioner's application for abatement, and the subsequent availment of the tax amnesty law, the same gave rise to petitioner's entitlement to a tax refund. Nevertheless, the reckoning of the two (2)-year prescriptive period is still from the date of payment pursuant to Section 229 of the 1997 NIRC, as amended, regardless of any supervening cause that may arise after payment.

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[27] *Exhibits "A" to "L,"* with submarkings.
[28] *Exhibits "M" to "N,"* with submarkings.
[29] *Exhibit "O,"* with submarkings.
[30] *Exhibit "P,"* with submarkings.

And records show that petitioner's administrative claim for refund and/or issuance of tax credit certificate filed on March 4, 2009,[31] was made well within the two (2)-year prescriptive period. On the other hand, due to respondent's inaction on petitioner's claim for refund and/or issuance of tax credit certificate, petitioner filed the present Petition for Review on June 29, 2009,[32] likewise within the two (2)-year prescriptive period.

Therefore, this Court has jurisdiction over the subject matter.

To continue, RR No. 15-06, as amended by RR No. 03-07, provides a One-Time Administrative Abatement for taxpayers to settle their delinquent accounts or assessments, preliminary and final, disputed or not, by way of application for abatement of all penalties, including surcharge and interest, under Section 204 of the 1997 NIRC, as amended. Any taxpayer may settle thru this abatement program any delinquent account or assessment which has been released as of June 30, 2006,[33] by paying an amount equal to one hundred percent (100%) of the basic tax assessed.

And on June 29, 2007, petitioner filed with respondent, twelve (12) applications for abatement and paid the total amount of ₱147,727,650.61; from the twelve (12) applications for abatement, respondent denied four (4) applications, to wit:

A. Union Bank Tax Assessments

Assessment Notice / Case No.	**Type of Tax**	**Taxable Year**	**Basic Tax**	**Amount Paid**
DST2-99-000031 (CTA Case No. 7017)	DST	1999	27,080,031.25	10,832,012.50
DST2-03-000071 (CTA Case No. 7576)	DST	2003	65,258,112.86	26,103,254.14

In a letter signed by then OIC-CIR Lilian B. Hefti, dated August 28, 2007,[34] the above applications were denied since petitioner paid

[31] *Exhibit "Q,"* with submarkings.
[32] *Records*, pp. 4-17.
[33] Period extended to November 30, 2006 by Revenue Regulations No. 03-07.
[34] *Exhibits "M"* and *"M-1."*

the amounts less than one hundred percent (100%) of the basic tax as required by RR No. 15-06. In the same letter, nevertheless, petitioner was informed that the payments made may be treated as partial or installment payments of the assessments upon proper application in the event that this Court will decide in favor of the government.

B. International Exchange Bank Tax Assessments

Assessment Notice / Case No.	Type of Tax	Taxable Year	Basic Tax Per BIR Assessment	Basic Tax Per CTA Decision	Amount Paid
G.R. No. 171266	DST	1996	20,144,393.72	14,768,246.70	14,768,246.70
G.R. No. 171266	DST	1997	60,307,001.24	42,036,359.51	42,036,359.51

In a letter signed by then OIC-CIR Lilian B. Hefti dated August 28, 2007,[35] the above applications were likewise denied since petitioner paid the amounts based on the decision of this Court, or less than one hundred percent (100%) of the basic tax as required by RR No. 15-06; *Q17* and *A17* of RMC No. 66-06[36] clarified that the amount to be paid for purposes of the abatement program shall be based on the original assessment or the court's decision, whichever is higher. Nevertheless, in the same letter, petitioner was informed that the payments made may be treated as partial or installment payments of the assessments upon proper application in the event that the Supreme Court will decide in favor of the government.

On November 23, 2007, petitioner filed a letter-reply, arguing that *Q17* and *A17* of RMC No. 66-06 are not applicable to its case.[37] Respondent did not act on petitioner's letter-reply.

On the other hand, the other eight (8) applications for abatement were not acted upon.[38] Section 4 of RR No. 15-06, as amended by RR No. 03-07, provides that "*[A]fter payment of the basic tax, the assessment for penalties/surcharge and interest shall be cancelled by the concerned BIR Office following existing rules and procedures. Thereafter, the docket of the case shall be forwarded to the Office of the Commissioner, thru the Deputy Commissioner for Operations Group,* ***for***

[35] *Exhibits "N"* and *"N-1."*
[36] Clarification to Revenue Regulations No. 15-2006 Implementing Section 204 (B) of the Tax Code, as amended, dated October 26, 2006.
[37] *Exhibit "S-2."*
[38] *Supra*, note 17; Joint Stipulation of Facts and Issues, par. 9.

***issuance of Termination Letter.*"** However, no Termination Letter or Authority to Cancel Assessment was issued to petitioner.

In the case of *CIR v. Asiatrust Development Bank, Inc.*,[39] the Court *En Banc* held that a Termination Letter is a requirement to establish that the taxpayer concerned availed of the Abatement Program under RR No. 15-06. As the name suggests, it will punctuate or write *finis* to the whole process of cancellation of the assessment issued against the taxpayer.

Moreover, in the case of *Philippine Veterans Bank v. CIR*,[40] the Court *En Banc* held that without the issuance of the required Authority to Cancel Assessment ("ATCA"), the application for abatement is not yet final, *to wit*:

> A careful scrutiny of the provisions of Revenue Memorandum Order No. (RMO) 23-2006 issued on October 6, 2006 prescribing the guidelines and procedures on the one-time administrative abatement of all penalties/ surcharges and interest on delinquent accounts and assessments (preliminary or final, disputed or not) as of June 30, 2006 as implemented by Revenue Regulations 15-2006, readily reveals that the procedures in the availment of the abatement program require the issuance of the ATCA. Section 4 of RMO 23-2006 categorically provides the following procedures to be observed:
>
> "SECTION 4. *PROCEDURES IN THE AVAILMENT OF THE ABATEMENT PROGRAM.* –
>
> xxx xxx xxx
>
> 4.7 Within fifteen (15) days after payment of the basic tax, the following procedures shall be followed:
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> xxx xxx xxx
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> 4.7.2 Prepare Termination Letter (*Annex B*) for every tax type for the signature of the Commissioner of Internal Revenue;

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[39] CTA EB Case Nos. 614 & 677, November 16, 2011, affirmed in a Resolution dated April 16, 2012.
[40] CTA EB Case No. 613, Resolution dated July 6, 2011.

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> 4.7.3 Prepare Authority to Cancel Assessment (*Form 17.58-ATCA*) to cancel assessments for penalties (surcharge, interest and compromise penalty), following the existing rules and procedures in RDAO 6-2001, to be signed only after the Termination Letter has been issued;
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> xxx xxx xxx"

Furthermore, the importance of the issuance of ATCA was emphasized under subsequent regulations issued by the Secretary of Finance with the recommending approval of the Commissioner of Internal Revenue implementing Section 204(B) of the National Internal Revenue Code (NIRC) of 1997, as amended. More particularly, RR 15-2007 was promulgated on November 29, 2007 containing an abatement of penalties/surcharges and interest on disputed/litigated assessments, covering assessment notices duly issued as of November 29, 2007, involving taxable year ending December 31, 2005 and prior years. Section 5 of said regulation states:

> "SEC. 5. *APPROVAL OF ABATEMENT.* -- . . .
> Upon approval by the Commissioner, the tax case is accordingly terminated through the issuance of a Termination Letter (*Annex "B"*), and Authority to Cancel Assessment (ATCA) pertinent to that portion of the assessment (*i.e.*, the penalties/interest) abated. The Termination Letter and the Authority to Cancel Assessment shall be signed by the BIR Official who signs the same on audit cases that have been protested administratively or judicially."

Thus, without the issuance of the required ATCA, the application for abatement is not yet final.

Applying the foregoing, petitioner's application for abatement is not yet final; there was no acceptance on the part of respondent on the offer for abatement made by petitioner. Therefore, the payments made by petitioner on its offer for abatement should consequently be

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returned based on the principle of *solutio indebiti* under Article 2154 of the Civil Code of the Philippines.[41]

In the case of *CIR v. Fortune Tobacco Corporation*,[42] the Supreme Court recognized that a tax refund may be based on the principle of *solutio indebiti*, to wit:

> A claim for tax refund may be based on statutes granting tax exemption or tax refund. In such case, the rule of strict interpretation against the taxpayer is applicable as the claim for refund partakes of the nature of an exemption, a legislative grace, which cannot be allowed unless granted in the most explicit and categorical language. The taxpayer must show that the legislature intended to exempt him from the tax by words too plain to be mistaken.
>
> Tax refunds (or tax credits), on the other hand, are not founded principally on legislative grace but on the legal principle which underlies all quasi-contracts abhorring a person's unjust enrichment at the expense of another. The dynamic of erroneous payment of tax fits to a tee the prototypic quasi-contract, *solutio indebiti*, which covers not only mistake in fact but also mistake in law.
>
> The Government is not exempt from the application of *solutio indebiti*. Indeed, the taxpayer expects fair dealing from the Government, and the latter has the duty to refund without any unreasonable delay what it has erroneously collected. If the State expects its taxpayers to observe fairness and honesty in paying their taxes, it must hold itself against the same standard in refunding excess (or erroneous) payments of such taxes. It should not unjustly enrich itself at the expense of taxpayers. And so, given its essence, a claim for tax refund necessitates only preponderance of evidence for its approbation like in any other ordinary civil case.
>
> Under the Tax Code itself, apparently in recognition of the pervasive quasi-contract principle, a claim for tax refund may be based on the following: (a) erroneously or illegally assessed or collected internal revenue taxes; (b) penalties imposed without

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[41] ART. 2154. If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises.
[42] G.R. Nos. 167274-75, July 21, 2008.

authority; and (c) any sum alleged to have been excessive or in any manner wrongfully collected.

Further, as mentioned earlier, petitioner availed of the Tax Amnesty Program under RA No. 9480. Petitioner, thus, proffered the following documents:

a) Notice of Availment of Tax Amnesty for International Exchange Bank;[43]
b) Tax Amnesty Return (BIR Form No. 2116);[44]
c) Statement of Assets, Liabilities and Networth as of December 31, 2005;[45]
d) Tax Amnesty Payment Form (Acceptance of Payment Form) (BIR Form No. 0617);[46]
e) Development Bank of the Philippines, BIR Tax Payment Deposit Slip, dated February 4, 2008;[47]
f) Notice of Availment of Tax Amnesty for Union Bank of the Philippines;[48]
g) Tax Amnesty Return (BIR Form No. 2116);[49]
h) Statement of Assets, Liabilities and Networth as of December 31, 2005;[50]
i) Tax Amnesty Payment Form (Acceptance of Payment Form) (BIR Form No. 0617);[51] and
j) Development Bank of the Philippines, BIR Tax Payment Deposit Slip dated February 19, 2008.[52]

The Court also takes judicial notice of the following:

<u>CTA Case No. 7017</u>[53] Union Bank of the Philippines *v.* CIR	June 23, 2008	Resolution considering the case **CLOSED** and **TERMINATED**, solely in view of petitioner's availment of the Tax Amnesty Program under RA No. 9480.
	August 28, 2008	Entry of Judgment

[43] *Exhibit "O."*
[44] *Exhibit "O-1."*
[45] *Exhibit "O-2."*
[46] *Exhibit "O-3."*
[47] *Exhibit "O-4."*
[48] *Exhibit "P."*
[49] *Exhibit "P-1."*
[50] *Exhibit "P-2."*
[51] *Exhibit "P-3."*
[52] *Exhibit "P-4."*
[53] *Exhibit "KK."*

CTA Case No. 7576[54] Union Bank of the Philippines *v.* CIR	September 3, 2008	Resolution considering the case **CLOSED** and **TERMINATED**, solely in view of petitioner's availment of the Tax Amnesty Program under RA No. 9480.
	September 26, 2008	Entry of Judgment
CTA Case No. 7674 Union Bank of the Philippines *v.* CIR	July 3, 2008	Resolution considering the case **CLOSED** and **TERMINATED**, solely in view of petitioner's availment of the Tax Amnesty Program under RA No. 9480.
CTA Case No. 7663[55] International Exchange Bank *v.* CIR	July 23, 2008	Resolution considering the case **CLOSED** and **TERMINATED**, solely in view of petitioner's availment of the Tax Amnesty Program under RA No. 9480.
	August 13, 2008	Entry of Judgment

With this, as well as the records of the case, laid to rest petitioner's entitlement to the benefits under Section 6 of RA No. 9480, which states:

> 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:
>
> 1. 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.

The same is in accordance with the pronouncement made in the case of *People v. Pinuila,*[56] wherein the Supreme Court held that whatever is once irrevocably established as the controlling legal rule of decision between the same parties in the same case continues to be

[54] *Exhibit "II."*
[55] *Exhibit "JJ."*
[56] 103 Phil. 929 (1958).

the law of the case, so long as the facts on which such decision was predicated continue to be the facts of the case before the court, for the presumption is that all the facts in the case bearing on the point decided have received due consideration.

As for the application for abatement concerning G.R. No. 169169, petitioner presented a Certification issued by the Supreme Court, stating that as of August 15, 2011, the said case entitled *"Union Bank of the Philippines versus Commissioner of Internal Revenue"* is still pending before the Supreme Court.[57]

However, respondent argues that petitioner can not avail of the Tax Amnesty Program under RA No. 9480 due to *Q-57* and *A-57* of RMC No. 69-07,[58] to quote:

> *Q-57* Are tax cases covered by compromise agreement and/or abatement agreement in accordance with existing revenue regulations relative to the compromise settlement program and abatement program of the Bureau covered by the tax amnesty?
>
> *A-57* No, such cases which have been covered by the compromise program or abatement program of the Bureau can no longer avail of the tax amnesty insofar as the tax subject of the compromise/abatement is concerned.

The Court does not agree.

As earlier discussed, without the required Termination Letter and ATCA, the application for abatement is not yet final; hence, petitioner cannot be said to be covered by the abatement program.

Moreover, abatement cases are not included in the exceptions provided for by RA No. 9480. Section 8 thereof provides that:

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[57] *Exhibit "NN."*
[58] Clarification of Issues Concerning the Tax Amnesty Program Under Republic Act No. 9480 as Implemented by Department Order No. 29-07.

> 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.

Even Section 5 of DOF Order No. 29-07,[59] as published by RMC No. 55-07,[60] did not include as an exception to the availment of tax amnesty those tax cases covered by abatement programs, *viz*:

> SECTION 5. *Exceptions.* – The tax amnesty shall not extend to the following persons or cases existing as of the effectivity of RA 9480:
>
> 1. Withholding agents with respect to their withholding tax liabilities;
> 2. Those with pending cases falling under the jurisdiction of the Presidential Commission on Good Government;
> 3. Those with pending cases involving unexplained or unlawfully acquired wealth, revenue or income under the Anti-Graft and Corrupt Practices Act;

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[59] Rules and Regulations to Implement Republic Act No. 9480.
[60] Publishing the Full Text of Department Order No. 29-07 Dated August 15, 2007, "Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9480," Otherwise Known as "Tax Amnesty Act of 2007."

4. Those with pending cases filed in court involving violation of the Anti-Money Laundering Law;

5. Those with pending criminal cases filed in court or in the Department of Justice for tax evasion and other criminal offenses under Chapter II of Title X of the National Internal Revenue Code of 1997, as amended.

6. Those with pending criminal cases filed in court for 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

7. Tax cases subject of final and executory judgment by the courts.

Under the *maxim expressio unius est exclusio alterius*, the mention of one thing implies the exclusion of another thing not mentioned. Thus, if a statute enumerates the things upon which it is to operate, everything else must necessarily and by implication be excluded from its operation and effect.[61]

Respondent also argues that petitioner can no longer be refunded as its payments are already part of the staggered payments of the taxpayer on its abatement. Section 6 of RR No. 15-06, as amended by RR 03-07, provides:

> SECTION 6. *Mode of Payment.* – xxx xxx xxx
>
> **Staggered payments of the amounts payable under this Abatement Program may be considered on a case to case basis in accordance with the existing regulations of the Bureau upon approval of the Regional Director for regional cases, and concerned ACIR (LTS, Collection, Legal, or Enforcement) for National Office cases.** Nonetheless, cases pending in courts shall not be withdrawn unless the concerned taxpayer fully pays one hundred percent (100%) of the basic tax.
>
> If the amount, as abated, is not paid as required herein, the approved staggered payment is automatically nullified and the delinquent account or assessment shall be reverted to the original assessed amount plus the statutory increments incident to delinquency, which shall be collected thru the summary

[61] CIR *v.* Michel J. Lhuiller Pawnshop, Inc., G.R. No. 150947, July 15, 2003.

remedies and/or judicial processes provided for by law." *(Boldfacing supplied.)*

Based on the foregoing, a taxpayer may be allowed to pay the basic tax on a staggered or installment basis instead of paying the full amount at the time of the application, but subject to the approval of the concerned officials of respondent. There is nothing in the records to show that petitioner had requested to pay in a staggered basis and the same has been approved by the concerned official. Therefore, the payments made herein cannot be considered as staggered payments.

With regard to G.R. No. 171266, the Supreme Court has already rendered a decision on April 4, 2007; the same became final and executory on October 2, 2007. Hence, pursuant to Section 8(f) of RA No. 9480, the tax amnesty will not be extended to this case. Consequently, the refund pertaining to this case, or the total amount of ₱56,804,606.21 (₱14,768,246.70 and ₱42,036,359.51) should be denied. However, as stated in the letter denying petitioner's application for abatement pertaining to the said amounts,[62] the payments made may be treated as partial or installment payments of the assessments upon proper application in the event the Supreme Court will decide in favor of the government.

In sum, petitioner is entitled to the reduced amount of ₱90,923,044.40 (₱147,727,650.61 less ₱56,804,606.21).

WHEREFORE, the Petition for Review is hereby is **PARTLY GRANTED**. Accordingly, respondent is hereby **ORDERED** to **REFUND** or **ISSUE a TAX CREDIT CERTIFICATE,** in favor of petitioner, the reduced amount of ₱90,923,044.40, representing the amount paid in connection with the applications for abatement of tax assessments.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

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[62] *Exhibits "N"* and *"N-1."*

I CONCUR:

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 Section 13 of Article VIII 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice