REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

LA FLOR DELA ISABELA, INC.,
Respondent.

CTA EB CASE NO. 653
(CTA Case No. 7779)

Present:
Acosta, P.J.
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, JJ.

Promulgated:
MAR 16 2012

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DECISION

BAUTISTA, J.:

The Case

Before the Court *En Banc* is a Petition for Review[1] filed by the Commissioner of Internal Revenue ("CIR") on July 26, 2010, pursuant to Section 3(b) of Rule 8 the Revised Rules of the Court of Tax Appeals, assailing the Decision promulgated by the Former Second Division of the Court ("Court in Division") on March 17, 2010,[2] which cancelled Assessment Notice No. LTAID II XS-05-00083, and declared null

[1] *Rollo*, CTA EB Case No. 653 (CTA Case No. 7779), pp. 8-58, with Annexes.
[2] Penned by Associate Justice Olga Palanca-Enriquez, with Associate Justices Juanito C. Castañeda, Jr., and Erlinda P. Uy, concurring; *Ibid.*, pp. 25-49; *Annex "A."*

and void the undated Warrant of Distraint and/or Levy No. 116-08-005 issued against respondent La Flor Dela Isabela, Inc. ("La Flor"); and its Resolution issued on June 18, 2010,[3] which denied the CIR's Motion for Reconsideration.

Antecedent Facts

The relevant antecedents are succinctly recited by the Court in Division in its Decision dated March 17, 2010, as follows:

> **THE PARTIES**
>
> Petitioner[4] La Flor is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with office address at KM 14, West Service Road, South Superhighway, Merville, Parañaque City.
>
> Respondent,[5] on the other hand, is the public officer authorized under the NIRC to examine the books of accounts of any taxpayer and to assess and collect the correct amount of tax, with office address at the BIR, National Office Building, BIR Road, Diliman, Quezon City.
>
> **THE FACTS**
>
> The facts, as admitted by the parties, are as follows:
>
> > "1.3. La Flor availed of the Tax Amnesty Program of the government under Republic Act ('RA') No. 9480 and submitted its Notice of Availment to the BIR Large Taxpayers Audit and Investigation Division II – Excise Tax on 08 October 2007.
> >
> > 1.4. On 23 November 2007, La Flor received a Final Assessment Notice/Letter of Demand dated 20 September 2007 and Assessment Notice No. LTAID II XS-05-00083 dated 27 September 2007 (collectively the 'Assessments') from the BIR, through LTAID II – Excise Tax, demanding the immediate settlement of the alleged deficiency excise

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[3] *Ibid.*, pp. 50-55; *Annex "B."*
[4] Herein respondent.
[5] Herein petitioner.

taxes, a tax which is covered by the Tax Amnesty Program, for the calendar year 2005 amounting to ₱738,215.60, inclusive of increments.

1.5. On 11 January 2008, La Flor informed the BIR that it availed of the Tax Amnesty Program of the government pursuant to Republic Act ('RA') No. 9480 as early as 08 October 2007. Appended in the letter is the Application for Tax Amnesty as well as the Notice of Availment and proof of payment.

1.6. On 28 March 2008, respondent served a letter dated 03 March 2008 informing La Flor that its immunity from assessment and collection of taxes under RA 9480 does not extend to the Assessment because:

> 'Therefore, the availment of the amnesty will not have an effect on assessments against taxpayer whose said assessment have become final and executory prior to the availment of amnesty considering that these assessment are already accounts receivable of the BIR or assets of the government.'

1.7. Respondent issued an 'undated' Warrant of Distraint and/or Levy No. 116-08-005 (the 'Warrant') against La Flor for Assessment Notice No. XS-05-00083 dated 27 September 2007 for deficiency excise tax for the taxable year 2005. The amount of excise tax sought to be collected by the Warrant was ₱722,215.60.

1.8. Respondent was able to garnish the deposits of [p]etitioner with its two (2) depository banks in the total amount of ₱278,694.15, details to wit:

Bank/Branch	Amount
Land Bank of the Philippines, Makati	₱181,232.01
Banco de Oro, Southmall Las Piñas	97,462.14
Total	₱278,694.15

1.9. On 25 June 2008, the Honorable Court issued an Order granting La Flor's request for the issuance of an injunctive order. In the same Order, the Honorable Court required La Flor to secure and submit to the Honorable Court a surety bond in the amount of ₱738,215.60.

1.10. On 11 July 2008, La Flor filed a Motion for Clarification requesting the Honorable Court to clarify the nature of the surety bond as the bonding companies duly accredited with the Supreme Court required La Flor to provide security in a form of cash deposit or other properties to cover the amount of the surety. It was the impression of the bonding companies that the surety bond to be posted by La Flor is akin to a *supersedeas* bond so that it may be called upon to satisfy whatever deficiency taxes that may be adjudged against La Flor.

1.11. During the hearing of La Flor's Motion for Clarification last 17 July 2008, La Flor manifested to the Honorable Court its intention to pay under protest the alleged deficiency excise tax.

The parties further stipulated the following facts:

2.1. Petitioner filed the Petition for Review for the instant case on 28 April 2008.

2.2. Petitioner offered BIR to pay under protest the unpaid portion of the Assessments. The offer was made because the amount of the injunctive bond (₱738,215.60) to support the suspension of the collection of taxes is more than the unenforced portion of the Warrant and Assessments (₱443,521.45).

2.3. Pursuant to such offer, BIR computed the deficiency tax still due from petitioner *(sic)* as follows:

Particulars	Amount
Deficiency Excise Tax	₱472,722.87
Add: Interest	249,492.73
Total	722,215.60
Add: 25% Surcharge	180,553.90
Interest 10.01.07 - 06.13.08	101,044.17
Total	1,019,813.67
Less: Payment 06.13.08 (LBP)	181,232.01
Balance as of 06.24.08	741,119.52

Add: Interest 06.13.08 – 07.18.08	16,057.59
Compromise Penalty	16,000.00
Amount Still Due for Collection	**₱773,177.11**

2.4. On 22 July 2008, [p]etitioner paid under protest the aforesaid alleged deficiency excise tax for the taxable year 2005 amounting to ₱773,177.11.

2.5. Accordingly, [p]etitioner paid the BIR the total amount of ₱1,051,871.26.

2.6. Existence, genuineness and due execution of the following documents which were attached in the Amended Petitioner for Review:

Particulars	**Annex**
La Flor's Tax Amnesty Return (BIR Form 2116 under RA 9480	*"A"*
Development Bank of the Philippines Tax Payment Deposit Slip	*"B"*
La Flor's Notice of Availment of Tax Amnesty	*"C"*
Final Assessment Notice/Letter of Demand dated 20 September 2007	*"D"*
Assessment Notice No. LTAID II XS-05-00083 dated 27 September 2007	*"E"*
La Flor's [L]etter to the BIR dated 11 January 2008	*"F"*
Warrant of Distraint and/or Levy No. 116-08-005	*"G"*
Letter of Land Bank of the Philippines – Makati Branch to La Flor	*"H"*
Letter of Land Bank of the Philippines – Makati Branch to La Flor	*"I"*
BIR [L]etter dated 03 March 2008	*"J"*
La Flor's [L]etter to the BIR dated 22 July 2008	*"K"*
BIR computation of La Flor's alleged deficiency excise tax still due	*"L"*
BIR Payment Form 0605	*"M"*
Development Bank of the Philippines' BIR Tax Payment Deposit Slip	*"N"*

In addition to the foregoing, the [p]arties further stipulate the due existence, genuineness and due execution of La Flor's Tax Amnesty Payment Form (BIR Form 0617) which is attached herewith as *Annex 'A.'"*

On July 4, 2008, respondent filed his answer.

On August 7, 2008, petitioner filed a "Motion for Leave of Court (To Admit Amended Petition for Review with Prayer to Reset Pre-Trial Conference)," which the Court granted, and the "Amended Petition for Review" was admitted in a Resolution dated November 5, 2008.

In the "Amended Petition for Review," petitioner alleged that since its day to day operations were severely affected and hampered as it encountered difficulty transacting with its suppliers, customers and the banks because of the Warrant, in order to salvage what was remaining of petitioner's business and due to the urgency of the situation, petitioner decided, and was forced, to pay the alleged deficiency taxes under protest. Hence, on July 22, 2008, petitioner formally informed respondent CIR of its decision to pay under protest the alleged deficiency excise tax and requested BIR to recompute the amount of the alleged deficiency excise tax still due. On the same date, petitioner paid to the BIR the total amount of ₱773,177.11, inclusive of increments, to fully pay the alleged deficiency excise tax. The assessment and warrant are bereft of any legal and factual bases considering that petitioner duly availed of the tax amnesty program of the government. Hence, petitioner prayed that the BIR be ordered to refund to it the total amount of ₱1,051,871.26, representing the alleged deficiency excise tax for January 2005 that was unlawfully and illegally collected from it.

On December 12, 2008, respondent filed a "Manifestation with Motion to Admit Attached Answer," together with the "Amended Answer," which the Court granted, and the "Amended Answer" was admitted in a Resolution dated January 5, 2009.

In the "Amended Answer," respondent alleged that petitioner's payment under protest of the amount of ₱773,177.11, representing its alleged deficiency excise tax, instead of posting a surety bond, and the amount of ₱278,694.15, which respondent garnished from petitioner's bank deposits, were lawfully and legally collected. It is of petitioner's volition to pay respondent its alleged deficiency excise tax for taxable year 2005, instead of posting a surety bond to comply with the order of this Court granting petitioner's motion for injunctive relief in order to enjoin respondent from enforcing its undated Warrant of Distraint and/or Levy and collecting the tax subject of the instant case. Respondent likewise alleged that the bank deposits garnished by him were not unlawfully and illegally collected. The bank deposits were garnished due to petitioner's defiance of the Final Assessment Notice/Letter of Demand to pay the subject tax and respondent has to safeguard the interest of the government by using the administrative remedies for the collection of the subject deficiency taxes of petitioner, pursuant to *Sections 205, 206, 207(A) and 208 of the NIRC of 1997, as amended.*

Petitioner presented documentary evidence only, marked as *Exhibits "A"* to *"F," "H," "N"* and *"S"* to *"V,"* which were all admitted by the Court, in a Resolution dated June 19, 2009.

On the other hand, respondent manifested that he will not present any evidence. Thereafter, both parties were granted thirty (30) days, within which to file their simultaneous memoranda.

Both parties having filed their respective "Memorandum" on August 24, 2009, the case was deemed submitted for decision on August 28, 2009.[6]

The Ruling of the Court in Division

On March 17, 2010, the Court in Division issued a Decision in favor of La Flor, ruling that:

> **WHEREFORE**, premises considered, the present Petition for Review is hereby **GRANTED**. Accordingly:
>
> (1) Assessment LTAID II XS-05-00083, imposing on petitioner La Flor deficiency excise tax for taxable year 2005, is hereby ordered **CANCELLED**, solely in view of petitioner's availment of the Tax Amnesty Program under *RA 9480*;
>
> (2) The undated Warrant of Distraint and/or Levy No. 116-08-005 issued by respondent CIR is hereby declared null and void; and
>
> (3) Respondent Commissioner of Internal Revenue is hereby ordered to refund to petitioner La Flor the amount of ₱1,051,871.26.
>
> **SO ORDERED.**[7]

Aggrieved, the CIR filed a Motion for Reconsideration on April 6, 2010, which was denied for lack of merit by the Court in Division in its Resolution promulgated on June 18, 2010.[8]

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[6] *Rollo*, pp. 26-32.
[7] *Ibid.*, pp. 47-48.

The Issues

Hence, the present Petition for Review, where the CIR assigns the following errors:

I. THE FORMER SECOND DIVISION OF THE HONORABLE CTA ERRED IN GRANTING RESPONDENT'S PETITION FOR REVIEW [BY] CANCELLING ASSESSMENT NOTICE LTAID II XS-05-[0]0083 IMPOSING (*sic*) ON RESPONDENT LA FLOR DEFICIENCY EXCISE TAX FOR TAXABLE YEAR 2005, [AND] CANCELLING THE UNDATED WARRANT OF DISTRAINT AND/OR LEVY NO. 116-08-005; and

II. THE FORMER SECOND DIVISION OF THE HONORABLE CTA ERRED IN ORDERING PETITIONER COMMISSIONER OF INTERNAL REVENUE TO REFUND (*sic*) RESPONDENT THE AMOUNT OF ₱1,051,871.26.[9]

The CIR's Arguments

The CIR claims that since La Flor failed to file a timely protest on the assessment, it instead availed of the Tax Amnesty Program under Republic Act No. 9480.[10] The Court in Division then failed to address in the assailed Decision and Resolution that La Flor has fully complied with the requirements prescribed under the Tax Amnesty Program, in relation to the Department of Finance Department Order No. 29-07 and Revenue Memorandum Circular No. 69-2007. Thus, for failure to timely file a protest on the assessment, La Flor cannot effectively avail of the Tax Amnesty Program.

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[8] *Ibid.*, p. 55.
[9] *Ibid.*, p. 6.
[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, which lapsed into law on May 24, 2007.

Also, the CIR asserts that since La Flor failed to file a prior written claim for refund as required under Section 229 of the 1997 National Internal Revenue Code ("NIRC"), as amended, the Court has no jurisdiction to order for the refund of the amount of ₱1,051,871.26, representing the payment for the deficiency taxes.

La Flor's Counter-arguments

La Flor counters that the issues on its qualification to avail the Tax Amnesty Program, and entitlement for refund were never raised during the trial proper or in the CIR's Motion for Reconsideration. In addition, since the CIR failed to append a duly notarized Certification against Forum Shopping to her Petition for Review, it thus posits that the case should be dismissed.

La Flor further maintains that since it had effectively availed of the Tax Amnesty Program, the Court in Division properly cancelled the subject assessment and ordered the consequent refund thereof.

The Ruling of the Court En Banc

The Petition for Review is meritorious.

Republic Act ("RA") No. 9480,[11] entitled *"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,"* provides for the coverage of the Tax Amnesty Law of 2007, *viz.*:

> SEC. 1. *Coverage.* – There is hereby authorized and granted a tax amnesty which shall cover all national internal revenue taxes for the

[11] Lapsed into law on May 24, 2007.

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.

xxx xxx xxx

SEC. 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.

Corollary thereto, Department Order ("DO") No. 29-07, issued by the Department of Finance, embodying the "*Rules and Regulations to Implement Republic Act No. 9480,*" issued on August 15, 2007, states the following:

RULE II
COVERAGE

SEC. 3. *Taxes Covered.* – The tax amnesty shall cover all national internal revenue taxes imposed by the National Government for the taxable year 2005 and prior years, with or without assessments duly issued therefor, that have remained unpaid as of December 31, 2005.

xxx xxx xxx

SEC. 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;

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.

From the foregoing, Section 1 of RA No. 9480, as implemented by Section 3 of DO No. 29-07, expressly states that the Tax Amnesty Law of 2007 covers all national internal revenue taxes for the taxable year 2005 and prior years, with the only exceptions enumerated under Section 8 of RA No. 9480, and Section 5 of DO No. 29-

07. Thus, the Court *En Banc* agrees with the Court in Division when it pointed out in the assailed Decision dated March 17, 2010 the following:

> The instant case does not fall under any one of the above enumerated exceptions. Petitioner is not being assessed as a withholding agent, nor does the instant case fall under the jurisdiction of the PCGG, or involves violations of the Anti Graft and Corrupt Practices Act and the Anti-Money Laundering Act, or criminal cases for tax evasion, felonies of frauds, illegal exaction and malversation of public funds and property. Likewise, as heretofore stated, the assessment against petitioner has not yet become final and executory.
>
> Respondent's contention that the excise tax assessment against petitioner partakes of an account receivable considered as assets of the BIR or the government is likewise devoid of merit.
>
> First, in the case of *Philippine Banking Corporation (now Global Business Bank, Inc.) vs. Commissioner of Internal Revenue, 577 SCRA 393*, the Supreme Court declared as misplaced the inclusion of "issues and cases which were ruled by any court (even without finality) in favor of the BIR prior to amnesty availment of the taxpayer," as one of the exceptions in *RMC 19-2008*. *RA 9480* expressly provides that the exceptions to the tax amnesty program include "tax cases subject of final and executory judgment by the courts." Considering that the exception invoked by respondent in the instant case is provided only in RMC *19-2008*, specifically "delinquent accounts/account receivable considered as assets of the BIR/Government, including self assessed tax," an exception which is not provided in RA 9480, respondent's contention is clearly without basis.
>
> It is an elementary rule of construction that when the language of the law is clear and unequivocal, the law must be taken to mean exactly what it says *(Banawa vs. Mirano, 97 SCRA 533)*. Its literal meaning should be followed *(Tan Lin vs. Republic, 2 SCRA 386)*; to depart from the meaning expressed by the words is to alter the statute *(Commissioner of Internal Revenue vs. Central Luzon Drug Corporation, 492 SCRA 581)*. Equally settled is the rule that the law cannot be amended by a mere regulation. An administrative agency may not enlarge, alter or restrict the provisions of the statute being administered *(Pilipinas Kao, Inc. vs. Court of Appeals, 372 SCRA 573)*. It may not engraft additional non-contradictory requirements on the statute which were not contemplated by the legislature. In fact, a regulation that 'operates to create a rule out of harmony with the statute is a mere nullity' *(Commissioner of Internal*

Revenue vs. Central Luzon Drug Corporation, supra, 582). Considering that *RA 9480* specifically enumerated the persons and cases that are not covered by the Tax Amnesty Law, those enumerated therein cannot be enlarged or restricted by a mere Revenue Memorandum Circular. Otherwise, the Revenue Memorandum Circular will alter the statute it seeks to implement.

Second, under *Section 2(a) of Revenue Regulations 17-86,* a "delinquent account" is defined as the amount of tax due on or before December 31, 1985 from a taxpayer who failed to pay the same, within the time prescribed for its payment arising from (1) a self assessed tax, whether or not a tax return was filed, or (2) a deficiency assessment issued by the BIR which has become final and executory. From the foregoing definition, it is evident that the excise tax assessment against petitioner for the month of January 2005 is not a delinquent account. It is not due on or before December 31, 1985 from which petitioner failed to pay the same, within the time prescribed by law. The assessment against petitioner arose as a result of the passage of *RA 9334*, otherwise known as "An Act Increasing the Excise Tax Rates Imposed on Alcohol and Tobacco Products, Amending for the Purpose Sections 131, 141, 142, 143, 144, 145 and 288 of the National Internal Revenue Code of 1997, as Amended" increasing the tax rate of ₱1.12 on removals of cigar to 10% *ad valorem* tax on the net retail price per cigar, which became effective only on January 1, 2005. Furthermore, as we already ruled, the assessment against petitioner has not yet become final and executory at the time petitioner availed of the Tax Amnesty Program under *RA 9480*.[12]

And to avail of the Tax Amnesty Program, Section 2 of RA No. 9480 states:

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.

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[12] *Rollo*, pp. 39-43.

From the afore-quoted provision, any person intending to avail of the Tax Amnesty Program shall: (a) file a notice and tax amnesty return with its SALN as of December 31, 2005; and (b) pay the applicable tax to the BIR.

Based on the records of the case, the parties stipulated on the following:

> 2.6. Existence, genuineness and due execution of the following documents which were attached in the Amended Petitioner for Review:

Particulars	Annex
La Flor's Tax Amnesty Return (BIR Form 2116 under RA 9480	*"A"*
Development Bank of the Philippines Tax Payment Deposit Slip	*"B"*
La Flor's Notice of Availment of Tax Amnesty	*"C"*
Final Assessment Notice/Letter of Demand dated 20 September 2007	*"D"*
Assessment Notice No. LTAID II XS-05-00083 dated 27 September 2007	*"E"*
La Flor's [L]etter to the BIR dated 11 January 2008	*"F"*
Warrant of Distraint and/or Levy No. 116-08-005	*"G"*
Letter of Land Bank of the Philippines - Makati Branch to La Flor	*"H"*
Letter of Land Bank of the Philippines - Makati Branch to La Flor	*"I"*
BIR [L]etter dated 03 March 2008	*"J"*
La Flor's [L]etter to the BIR dated 22 July 2008	*"K"*
BIR computation of La Flor's alleged deficiency excise tax still due	*"L"*
BIR Payment Form 0605	*"M"*
Development Bank of the Philippines' BIR Tax Payment Deposit Slip	*"N"*

> In addition to the foregoing, the [p]arties further stipulate the due existence, genuineness and due execution of La Flor's Tax Amnesty Payment Form (BIR Form 0617) which is attached herewith as *Annex 'A.'"*

With the foregoing enumerations of documents, the Court *En Banc* notes, however, that La Flor failed to present its SALN as of December 31, 2005.

The Court *En Banc* has previously resolved that taxpayers found to have fully complied with the documentation requirements of RA No. 9480 are entitled to the immunities as found under Section 6 thereof.[13] More importantly, in the case of *Philippine Banking Corporation (Now: Global Business Bank, Inc.) v. Commissioner of Internal Revenue*,[14] (*"Philippine Banking Corporation Case"*) the Supreme Court declared that the completion of these requirements shall be deemed full compliance with the tax amnesty program, and the law mandates that the taxpayer shall thereafter be immune from the 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.

The importance of the submission of the SALN as of December 31, 2005 cannot be downgraded. Upon the filing of the required documents and payment of the tax, Section 4 of the Tax Amnesty Law provides for the presumption accorded to the SALN, to wit:

> SEC. 4. *Presumption of Correctness of the SALN.* — The SALN as of December 31, 2005 shall be considered as true and correct except where the amount of declared networth is understated to the extent of thirty percent (30%) or more as may be established in proceedings initiated by, or at the instance of, parties other than the BIR or its agents: *Provided*, That such proceedings must be initiated within one year following the date of the filing of the tax amnesty return and the SALN. Findings of or admission in congressional hearings, other administrative agencies of government, and/or courts shall be admissible to prove a thirty percent (30%) under-declaration.

Clearly, upon its filing, the presumption of correctness applies to the SALN of the taxpayer. The afore-quoted provision, also sets a limit to the period within

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[13] Metropolitan Bank and Trust Company *v.* Commissioner of Internal Revenue, CTA EB Case No. 354 (CTA Case No. 7154), August 29, 2008; Commissioner of Internal Revenue *v.* PILMICO Foods Corporation, CTA EB Case No. 430 (CTA Case No. 6868), March 31, 2009.
[14] G.R. No. 170574, January 30, 2009, 597 SCRA 366.

which a proceedings to challenge the presumption may be initiated, *i.e.*, within one year following the date of the filing of the tax amnesty return and the SALN.

Thus, La Flor merely filed its Tax Amnesty Return,[15] Tax Amnesty Payment Form,[16] Notice of Availment of Tax Amnesty,[17] and Development Bank of the Philippines Payment Deposit Slip,[18] *sans* the required SALN, and for such failure, it cannot avail of the benefits provided under Section 6 of RA No. 9480, which states that:

> 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.

With this, the thirty (30)-day period within which to file a protest, pursuant to Section 228 of the 1997 National Internal Revenue Code, as amended, continued to run from the time La Flor received the subject assessments on November 23, 2007, making the same final, executory and demandable, to quote:

> SEC. 228. *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however,* That a preassessment notice shall not be required in the following cases:
>
> xxx xxx xxx

[15] *Exhibit "A."*
[16] *Exhibit "B."*
[17] *Exhibit "D."*
[18] *Exhibit "C."*

> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> 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 within 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.

Therefore, this Court has no jurisdiction to grant any relief to La Flor when it filed the Petition for Review (With Prayer for the Issuance of an Order to Suspend Collection of Taxes and Restrain the Enforcement of Warrant of Distraint and/or Levy) only on April 28, 2008.

And perusal of the records of the case reveals that the amount still due is ₱773,177.11. Nevertheless, the Payment Form dated July 22, 2008,[19] and Development Bank of the Philippines BIR Tax Payment Deposit Slip of even date,[20] show that La Flor paid in full the said deficiency tax.

[19] *Exhibit "U."*
[20] *Exhibit "V."*

However, the ₱773,177.11 amount still due and collectible, if not paid on or before July 18, 2008, bears an interest of ₱479.41 per day.[21] Considering that La Flor merely paid the deficiency taxes only on July 22, 2008, or four (4) days beyond the July 18, 2008 computation, it is still liable for unpaid interest thereof.

WHEREFORE, the Petition for Review is hereby **GRANTED**. Accordingly, the impugned Decision dated March 17, 2010, and Resolution dated June 18, 2010 is hereby **REVERSED** and **SET ASIDE**.

La Flor Dela Isabela, Inc., is hereby **ORDERED** to **PAY** the amount of **₱1,917.64**, representing unpaid interest.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

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[21] *Exhibit "S."*

See attached Separate Concurring and Dissenting Opinion

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ERNESTO D. ACOSTA
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY
EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**C.T.A. EB NO. 653** **(C.T.A. CASE NO. 7779)**
	Present:
-versus-	ACOSTA, Presiding Justice, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, PALANCA-ENRIQUEZ, FABON-VICTORINO, MINDARO-GRULLA, and COTANGCO-MANALASTAS, JJ.
LA FLOR DELA ISABELA, INC., ***Respondent.***	**Promulgated:** MAR 16 2012

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SEPARATE CONCURRING OPINION

PALANCA-ENRIQUEZ, J.:

After taking a second hard look on the pertinent facts of the case and the applicable law and jurisprudence, I am constrained to agree with the majority that we cannot dispense with the requirement of Statement of Assets, Liabilities and Networth ("SALN") in the availment of the tax amnesty under RA 9480.

Sections 2 and 6 of RA 9480, provide:

"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.

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SEC. 6. Immunities and Privileges. — Those who have 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.

(b) The taxpayer's Tax Amnesty Returns and the SALN as of December 31, 2005 shall not be admissible as evidence in all proceedings that pertain to taxable year 2005 and prior years, insofar as such proceedings relate to internal revenue taxes, before judicial, quasi-judicial or administrative bodies in which he is a defendant or respondent, and except for the purpose of ascertaining the networth beginning January 1, 2006, the same shall not be examined, inquired or looked into by any person or government office. However, the taxpayer may use this as a defense, whenever appropriate, in cases brought against him.

(c) The books of accounts and other records of the taxpayer for the years covered by the tax amnesty availed of shall not be examined: Provided, That the Commissioner of Internal Revenue may authorize in writing the examination of the said books of accounts and other records to verify the validity or correctness of a claim for any tax refund, tax credit (other than refund or credit of taxes withheld on wages), tax incentives, and/or exemptions under existing laws.

All these immunities and privileges shall <u>not</u> apply where the person failed to file a SALN and the Tax Amnesty Return, or where the amount of networth as of December 31, 2005 is proven to be understated

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to the extent of thirty percent (30%) or more, in accordance with the provisions of Section 3 hereof." (Emphasis ours)

Corollary thereto, Rule III of Department Order No. 29-07, implementing RA 9480, provides for the requirements for the availment and full compliance with the provisions of RA 9480, to wit:

"RULE III
AVAILMENT AND PAYMENT OF AMNESTY

Sec. 6. Method of Availment of Tax Amnesty. –

1. Forms/Documents to be filed. – To avail of the general tax amnesty, concerned taxpayers shall file the following documents/requirements:

   a. Notice of Availment in such forms as may be prescribed by the BIR.

   b. Statement of Assets, Liabilities and Networth (SALN) as of December 31, 2005 in such forms, as may be prescribed by the BIR.

   c. Tax Amnesty Return in such form as may be prescribed by the BIR.

2. Place of Filing of Amnesty Tax Return. – The Tax Amnesty Return, together with the other documents stated in Sec. 6 (1) hereof, shall be filed as follows:

   a. Residents shall file with the Revenue District Officer (RDO)/Large Taxpayer District Office of the BIR which has jurisdiction over the legal residence or principal place of business of the taxpayer, as the case may be.

   b. Non-residents shall file with the office of the Commissioner of the BIR, or with the RDO.

   c. At the option of the taxpayer, the RDO may assist the taxpayer in accomplishing the forms and computing the taxable base and the amnesty tax payable, but may not look into, question or examine the veracity of the entries contained in the Tax Amnesty Return, Statement of Assets, Liabilities and Networth, or such other documents submitted by the taxpayer.

> 3. Payment of Amnesty Tax and Full Compliance. - Upon filing of the Tax Amnesty Return in accordance with Sec. 6 (2) hereof, the taxpayer shall pay the amnesty tax to the authorized agent bank or in the absence thereof, the Collection Agents or duly authorized Treasurer of the city or municipality in which such person has his legal residence or principal place of business.
>
> The RDO shall issue sufficient Acceptance of Payment Forms, as may be prescribed by the BIR for the use of-or to be accomplished by – the bank, the collection agent or the Treasurer, showing the acceptance by the amnesty tax payment. In case of the authorized agent bank, the branch manager or the assistant branch manager shall sign the acceptance of payment form.
>
> The Acceptance of Payment Form, the Notice of Availment, the SALN, and the Tax Amnesty Return shall be submitted to the RDO, which shall be received only after complete payment. ***<u>The completion of these requirements shall be deemed full compliance with the provisions of RA 9480.</u>***
>
> 4. Time for Filing and Payment of Amnesty Tax. – The filing of the Tax Amnesty Return, together with the SALN, and the payment of the amnesty tax shall be made within six (6) months from the effectivity of these Rules." (Emphasis ours)

Pursuant thereto, the SALN is a mandatory requirement in the availment of the tax amnesty to be entitled to the immunities and privileges under RA 9480.

A careful perusal of the records shows that respondent La Flor's availment of the tax amnesty was not accompanied by any SALN or Balance Sheet. For failure of respondent La Flor to submit the SALN, said respondent has not fully complied with the provisions of RA 9480. Therefore, respondent La Flor is not entitled to the immunities and privileges of said Act.

For all the foregoing, I am constrained to join the majority and vote to reverse and set aside the Decision dated March 17, 2010 and Resolution dated June 18, 2010 of the Special Second Division, and accordingly, to GRANT the Petition For Review filed by the CIR in C.T.A. EB No. 653.

OLGA PALANCA-ENRIQUEZ
Associate Justice