REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
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AA COMMERCIAL, INC., *Petitioner,*	**C.T.A. CASE NO. 7509**
	Present:
-versus-	**Acosta, *Chairperson*** **Bautista, and** **Casanova, *JJ.***
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	***Promulgated:*** SEP 02 2009; 4:00pm

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RESOLUTION

ACOSTA, *PJ*:

This resolves the Motion for Reconsideration filed by petitioner on June 30, 2009, with Comment/Opposition (to Petitioner's Motion for Reconsideration) filed by respondent on July 28, 2009. The Motion for Reconsideration seeks the reversal of this Court's Resolution promulgated on June 8, 2009, the dispositive portion of which states:

> "**IN VIEW OF THE FOREGOING**, the Motion to Dismiss filed by *[sic]* respondent is hereby **GRANTED**. Accordingly, the instant Petition for Review is dismissed and the Assessment Notice No. 33-99 issued against petitioner for deficiency income tax and compromise penalties in the amounts of P3,839,411.81 and P25,000.00, respectively, is hereby **DECLARED FINAL** and **EXECUTORY**.
>
> **SO ORDERED.**"

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The instant Motion for Reconsideration prays that this Court reconsider its Resolution dated June 8, 2009; issue an Amended Resolution denying respondent's Motion to Dismiss; and holding that the Assessment Notice No. 33-99 dated September 12, 2003 is null and void for having been issued beyond the three-year prescriptive period provided under Section 203 of the National Internal Revenue Code (NIRC). Alternatively, petitioner prays that this Court issue an Amended Resolution nullifying the said Resolution; taking note of petitioner's availment of the tax amnesty under Republic Act (R.A.) No. 9480 and confirming petitioner's entitilement to all the immunities and privileges under Section 6 of the said law, including immunity from the payment of the alleged deficiency income tax for the year 1999.

Petitioner anchors this Motion on the following arguments: *first*, Assessment Notice No. 33-99 could not ripen into a valid assessment because it is null and void for having been issued beyond the three-year period provided in the Tax Code; and, *second*, the Petition for Review has been rendered moot by petitioner's availment of the Tax Amnesty Program of the Government.

On the other hand, respondent submits that the Motion for Reconsideration should be denied because Assessment Notice No. 33-99 is valid and enforceable, having been issued within the prescriptive period, which ended on September 15, 2003; and that the availment of the benefits under the Tax Amnesty Law does not absolve petitioner from the collectibility of its 1999 deficiency taxes.

The issue of the validity of the assessment had already been exhaustively discussed by this Court in the assailed Resolution, and there being no new matters raised regarding it, this Court stands by its finding that an assessment which is not timely protested becomes final and uncontestable. However, as regards the issue of petitioner's availment of the benefits under the Tax Amnesty Law, the Court finds for petitioner.

As correctly argued by petitioner, in availing of the provisions of the Tax Amnesty Law, it is now immune from the payment of taxes, interests, and penalties arising from failure to pay internal revenue taxes for taxable year 2005 and prior years, pursuant to Section 6(a) thereof; which provides that:

> "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."

Further, petitioner does not fall under any of the exceptions provided in Section 8 of RA No. 9480 which reads:

> **"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:
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> 1. Withholding agents with respects to their withholding tax liabilities;
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> 2. Those with pending cases falling under the jurisdiction of the Presidential Commission on Good Government;
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> 3. Those with pending cases involving unexplained or unlawfully acquired wealth or under the Anti-Graft and Corrupt Practices Act;
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> 4. Those with pending cases filed in court involving violation of the Anti-Money Laundering Law;
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> 5. 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

> 6. Tax cases subject of final and executory judgment by the courts."

At any rate, though this Court agrees with petitioner that taxpayers availing of the Tax Amnesty Program are entitled to the immunities found under Section 6 of R.A. No. 9480, the benefits accorded under the law neither result in the dismissal of the case, nor does the benefit of immunity in itself carry the automatic cancellation of the assessment notice issued against the taxpayer. It bears emphasis that 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 repent a chance to start with a clean slate.[1] Taking this into account, Section 4 of the same Tax Amnesty Law provides that:

> "Section 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 the instance of, parties other that the BIR or its agents: *Provided*, That such proceeding 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."

Based on the foregoing provision, although petitioner may be immune from the payment of taxes, the law still allows a period of one year for the investigation or audit of the documents and/or representations made by petitioner in connection with its availment of the Tax Amnesty Program. In other words, there exists a suspensive condition that once the taxpayer is proven, within one year, to have understated or under-declared his networth, the benefits afforded under the provisions of the Tax Amnesty Law shall be deemed cancelled.

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[1] Commissioner of Internal Revenue vs. Marubeni, G.R. No. 137377, December 18, 2001.

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Under the provisions of R.A. No. 9480, a taxpayer may avail of the benefits of the tax amnesty and pay the amnesty tax due thereon, based on his networth as declared in the Statement of Assets, Liabilities and Networth (SALN) for the period, by filing with the Bureau of Internal Revenue the following documents:

1. Notice of Availment;
2. Statement of Assets, Liabilities and Net Worth which does not show understatement of net worth as of December 31, 2005 to the extent of 30% or more;
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.

Upon consideration of petitioner's submission of the afore-mentioned documents[2] with this Court, and further considering that the same are certified as true copies by Maximo T. Cebrecus, Asst. Revenue District Officer, petitioner has proven to have fully complied with the requisites as enumerated under the provisions of R.A. No. 9480. In effect, petitioner is a duly qualified tax amnesty applicant and thus, this instant Petition for Review is now deemed withdrawn.[3]

IN VIEW OF THE FOREGOING, petitioner's "Motion for Reconsideration" is hereby **GRANTED** in so far as petitioner's entitlement to the benefits and privileges under the Tax Amnesty Law. This instant Petition for Review is hereby **DEEMED WITHDRAWN.** Accordingly, the above-captioned case is now considered **CLOSED** and **TERMINATED**.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

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[2] Exhibits "BB", "CC", "DD"," EE", and "FF".
[3] Dahon Realty Corporation vs Commissioner of Internal Revenue, CTA Case No. 7310, April 21, 2008

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice