Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

IMS HEALTH PHILIPPINES, INC.
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

EB Case No. 445
(CTA Case No. 6600)
Members:
ACOSTA, PJ,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, JJ.

Promulgated:

SEP 0 1 2009

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DECISION

CASANOVA, J.:

This is an appeal, by way of Petition for Review, filed by petitioner IMS Health Philippines, Inc., from the Resolution[1] dated August 20, 2008 (*First Assailed Resolution*) declaring CTA Case No. 6600 closed and terminated and the Petition for Review deemed withdrawn, and from the Resolution[2] dated November 27, 2008 (*Second Assailed Resolution*) denying petitioner's Motion for Clarification and/or Reconsideration[3].

The facts of the case, as culled from the records of the case, are as follows:

> "Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the

[1] Division Docket, pp. 779-780
[2] Ibid, pp. 790-791
[3] Id, pp. 781-784

Philippines, with principal office located at 2nd Floor, DPSI Business Center, 210 Nicanor Garcia St., Bel-Air Village, makati City.[4]

Respondent is the duly-appointed Commissioner of Internal Revenue, vested under the appropriate laws with authority to carry out functions, duties and responsibilities of said office, including, *inter alia*, the power to decide disputed assessments, cancel, and abate tax liabilities, pursuant to the provisions of the National Internal Revenue Code of 1997 (the '1997 Tax Code') and other tax laws, rules and regulations. Respondent holds office at the Bureau of Internal Revenue, BIR National Office Building, Diliman, Quezon City, where he may be served with summons and other necessary court process.[5]

On April 15, 2002, petitioner received from the respondent two (2) Formal Assessment Notices ('FAN') covering the following Assessment Numbers: IT-0015375-FY-98-02-999, and VT-0015375-FY-98-02-999, both issued on April 15, 2002, alleging that for fiscal year ending November 30, 1998, petitioner has outstanding deficiency tax liabilities, inclusive of increments, in the amount of P2,208,399.83 as deficiency income tax and P9,781,643.42 as deficiency value-added tax ('VAT'), as set forth in the FANs and the corresponding Letter of Demand and Details of Discrepancies.[6]

On May 14, 2002, petitioner, through SyCip Gorres Velayo and Company ('SGV&Co.'), duly filed an administrative protest against the subject tax assessment with the Regional Director's Office of Respondent's Revenue Region No. 8.[7]

On July 12, 2002, petitioner, through SGV&Co., duly submitted with the Office of the Regional Director of Revenue Region No. 8, a supplemental protest, reiterating its disagreement with the subject deficiency income tax and VAT assessments and submitting thereupon all relevant documents to support its position against the subject deficiency tax assessments.[8]

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[4] Petitioner for Review, par. 3, En Banc Rollo, p. 11
[5] Ibid, par. 4, pp. 11-12
[6] Ibid, par. 5, p. 12
[7] Id., par. 7, p. 13
[8] Id., par. 8, p. 13

On January 8, 2003, the one hundred eighty (180)-day period counted from July 12, 2002, expired without any decision from the respondent on petitioner's administrative protest.[9]

Due to respondents inaction on its protest, petitioner filed a Petition for Review[10] on February 6, 2003, with the Second Division of the Court of Tax Appeals praying that judgment be rendered ordering the cancellation and withdrawal of the deficiency tax assessments for: a) income tax in the amount of ₱2,208,399.83, and b) value added tax in the amount of ₱9,781,643.42, issued by respondent against herein petitioner for taxable year 1998.

In his Answer[11] filed on April 8, 2003, respondent interposed the following Special Defenses:

> '3. The assessments in question were made and issued in accordance with law, rules and regulations. In the Details of Discrepancies the accompanying the Demand Letter, it is expressly indicated therein the failure of petitioner to substantiate the subject amounts pertaining to expenses for representation and maintenance and communication and water, including the provision of the law upon which it is based (Sec. 34(A)(1)(b) of the NIRC) and for which reason, the subject expense was disallowed;
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> 4. Contrary to petitioner's claim that the 180-day period granted the Respondent within which to act on Petitioner's protest, counted from submission of the relevant supporting documents last July 12, 2002, expired last January 8, 2003 without any action on the part of Respondent. Under Section 228 of the National Internal Revenue Code (NIRC) of 1997 exactly the same law where petitioner anchored its claim, states that:
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>> 'Such assessment may be protested administratively by filing a request for reconsideration and reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by

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[9] Id., par. 9 p. 14
[10] Division Docket, pp. 2-10
[11] Division Docket, pp. 31-35

> implementing rules and regulations. Within sixty days from filing of the protests, ALL relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.' (Emphasis supplied)

Herein Petitioner failed to submit ALL relevant supporting documents required by Respondent. Upon verification of the attachment in the docket in support of their position, the same contains only schedule of expenses, statement of accounts and a service invoice, all of which do not constitute full compliance to the requirements of Sec. 34(A)(1)(b) of the NIRC which provides that:

> 'Substantiation Requirements. – No deduction from gross income shall be allowed under Subsection (A) hereof unless the taxpayer shall substantiate with sufficient evidence, such as OFFICIAL receipts or other adequate records: (i) the amount of the expenses being deducted, and (ii) development, management, operation and/or conduct of the trade, business or profession of the taxpayer.' (Emphasis supplied)

Despite such failure, petitioner was given time to present additional substantiation on their expenses as evidenced by a letter from Respondent dated July 31, 2003 which however remain unanswered as of this time.

No deduction from gross income shall be allowed unless the taxpayer shall substantiate with sufficient evidence the amount of expense being deducted, and the direct connection or relation of the expense being deducted to the development, management, operation and/or conduct of the trade, business or profession of the taxpayer. (Gancayco vs. CIR, 1 SCRA 980)

5. The right of Respondent to issue the subject income tax assessment has not prescribed and is definitely not barred by prescription under Section 203 of the NIRC as being claimed by Petitioner. Through a letter dated March 15, 1999, Petitioner made a request upon the Respondent for authority to change its accounting period for purposes of the filing income tax return (for taxable

year 1998) from Fiscal Year ending November 30th to Calendar Year ending December 31st. In reply thereto, Respondent, through a letter dated April 12, 1999, duly signed by then Assistant Regional Director Norberto R. Odulio, granted said request and indicating therein that the change of accounting period into calendar year shall be granted EFFECTIVE CALENDAR YEAR JANUARY 1, 1998 to DECEMBER 31, 1998, pursuant to Section 46 and 47 of the NIRC as implemented by Section 172 and 173 of Revenue Regulations No. 2, as amended. In the said letter, petitioner was even required to file a transitory short period income tax return covering the period from December 1, 1998 to December 31, 1998 on or before April 15, 1999, which further requirement petitioner failed to comply with. The deficiency income tax assessment, issued by Respondent on April 15, 2002 is therefore valid and legal.

6. Petitioner's alleged undeclared gross receipts consisting of published books which are exempt from Value-Added Tax citing Section 109 (Exempt Transaction) of the NIRC is patently and grossly misplaced. The taxpayer had a willful intent to evade the payment of VAT. It is very clear that they are rendering services their clients in the form of research works, and in their contracts, the services rendered are exclusively for their individual clients, also noteworthy is the fact that their works cannot be divulged, reprint or used by others. The research works which petitioner primarily provides to its clients are conveniently presented in the form of books as finished products.

Their research works comes in two forms, either in software (disk) or in books. Petitioner pay VAT on their services rendered if it is in diskette form while if it is in book bind, they do not pay VAT. They depend their cost of services on the contract prices of pharmaceutical companies. Therefore, petitioner's sale of services does not fall under any of the of the enumerated VAT exempt transactions under Section 109 of the NIRC;

7. Since petitioner committed substantial underdeclaration of its taxable (VAT) gross receipts which resulted from its alleged sale of books deemed exempt from VAT, the taxpayer thereby entitled the respondent to

avail of the remedies granted under Section 222(a) of the NIRC, which provides that;

> 'Sec. 222.(a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission xxx.'

The right therefore of respondent to issue the Deficiency Value-Added Tax assessment is not prescribed. It is legal and proper and clearly made within the period allowed by the Tax Code.

This provision of the NIRC is further qualified by Section 248(B) which categorized the substantial underdeclaration of taxable sales/receipts of petitioner as prima facie evidence of a false or fraudulent returns. Section 248(B) of the NIRC sates:

> 'Sec. 248. (B) In case of willful neglect to file the return within the period prescribed by this Code or by rules and regulations, or in case of a false or fraudulent return is willfully made, the penalty to be imposed shall be fifty percent (50%) of the tax or the deficiency tax, in case any payment has been made on the basis of such return before the discovery of the falsity or fraud: Provided, a substantial underdeclaration of TAXABLE sales, receipts or income, or a substantial overstatement of deductions, as determined by the Commissioner pursuant to the rules and regulations to be promulgated by the Secretary of Finance, shall constitute prima facie evidence of a false or fraudulent return: Provided, further, That failure to report sales, receipts or income in an amount exceeding thirty percent (30%) of that declared per return, and a claim of deductions in an amount exceeding thirty percent (30%) of actual deductions, shall render the taxpayer liable for substantial underdeclaration of sales, receipts or income or for overstatement of deductions, as mentioned herein.' (Emphasis supplied)

The mandate of the law is clear and unequivocal, any substantial underdeclaration of taxable sales or receipts shall constitute *prima facie* evidence of the false or fraudulent return. Therefore even assuming that petitioner reported all of its gross sales and receipts, the taxpayer shall be deemed falling under the provisions of Section 248(B) of the Tax Code, and the concomitant fifty (50%) percent penalty must be imposed.

8. All presumptions are in favor of the correctness of tax assessments (Interprovincial Autobus vs. Collector of Internal Revenue, 98 Phil. 290).'[12]

On June 20, 2003, the parties submitted their Joint Stipulation of Facts and Issues[13] which was approved by the Court per Resolution[14] dated June 24, 2003.

The parties stipulated on the following issues to be resolved by the Court:

'1. Whether or not the assessments were made and issued in accordance with existing laws, rules and regulations;

2. Whether or not Petitioner's sale of its published books is exempt from Value Added Tax;

3. Whether or not the right of Respondent to issue the deficiency income tax assessment for taxable year 1998 is barred by prescription;

4. Whether or not the right of Respondent to issue the deficiency value-added tax assessment for 1998 is barred by prescription;

5. Whether or not the expenses for repairs and maintenance are properly sustained by supporting documents;

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[12] Id., pp. 31-34
[13] Division Docket, pp. 87-90
[14] Division Docket, p. 91

6. Whether or not the expenses for communication, light and water are properly substantiated by supporting documents; and

7. Whether or not Petitioner's income tax payments for the taxable year ending November 30, 1998 amounts to P14,806,030.00.'

After petitioner's presentation and filing of its Formal Offer of Evidence[15] but, pending respondents presentation of its evidence, petitioner filed a Manifestation and Motion[16] on March 19, 2008, stating therein that it had availed of the tax amnesty authorized and granted under Republic Act ('RA') No. 9480 on March 3, 2008, with the following prayer:

> "**WHEREFORE**, Petitioner respectfully prays that this Honorable Court issue a Resolution taking note of Petitioner's availment of the tax amnesty under RA No. 9480, and confirming that Petitioner is entitled to all the immunities and privileges under Section 6 of RA No. 9480 and with specific reference to the present case, it is immune from the payment of deficiency income tax and VAT assessments for the year 1998, which is the subject matter of the present case.
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> x x x x x x x x x."

On May 27, 2008, the Court issued a Resolution[17] submitting petitioner's Manifestation and Motion for resolution without any objection thereto from respondent despite notice and ordering the petitioner to submit the originals or certified true copies of the following:

(a) Notice of Availment of Tax Amnesty under RA No. 9480[18];

(b) Statement of Assets and Liabilities and Networth as of December 31, 2005[19];

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[15] Division Docket, pp. 542-549
[16] Ibid, pp. 724-726
[17] Id., pp. 751- 752
[18] Annex "A" of Compliance and Motion For Comparison ("CMFC"), Division Docket, p. 757
[19] Annex "B" of "CMFC", Ibid, p. 758

(c) Tax Amnesty Return (BIR Form No. 2116)[20];

(d) Tax Amnesty Payment Form/Acceptance of Payment Form (BIR Form 0617)[21]; and

(e) Land Bank of the Philippines BIR Tax Payment Deposit Slip[22].

after submission of which petitioner's Motion/Manifestation shall be deemed submitted for resolution.

On June 18, 2008, petitioner filed a Compliance and Motion for Comparison[23] submitting the documents required by the Court.

On July 23, 2008, the Court issued a Resolution[24] granting petitioner's Compliance and Motion for Comparison[25], and setting the case for commissioner's hearing on July 30, 2008. In the said hearing, the said exhibits were found to be faithful reproductions of the original documents.

On August 20, 2008, the Court promulgated the *First Assailed Resolution,* the dispositive portion of which reads as follows:

> '**WHEREFORE**, premises considered the Petition for Review in the above-captioned case is deemed **WITHDRAWN**. Accordingly, the case in caption is hereby considered **CLOSED and TERMINATED**, subject to the provisions of RA 9480.
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> **SO ORDERED.'**

Not satisfied with the above resolution, petitioner filed, on September 11, 2008, a "Motion for Clarification"[26] which was subsequently denied by the Court

[20] Annex "C" of "CMFC", Id., p. 770
[21] Annex "D" of "CMFC", Id., p. 771
[22] Annex "E" of "CMFC", Id., p. 772
[23] Id., pp. 753-755
[24] Id., p. 774
[25] Supra note 19
[26] Id., pp. 781-784

for lack of merit in the *Second Assailed Resolution* promulgated on November 27, 2008.

On December 22, 2008, petitioner filed the instant Petition for Review[27] praying that the *First* and *Second Assailed Resolutions*, rendered by the Second Division of the Court of Tax Appeals, be reversed and set aside and that a new Resolution be promulgated:

> "(a) Taking note of Petitioner's availment of the tax amnesty under RA No. 9480, and confirming that Petitioner is entitled to all the immunities and privileges under Section 6 of RA No. 9480 and further, that it is immune from the payment of deficiency income tax and VAT assessments for the year 1999, which form the subject matter of CTA Case No. 6600.
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> (b) Declaring CTA Case No. 6600 closed and terminated, but without stating that the Petition for Review be deemed withdrawn.
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> (c) Clarifying the procedural rights and remedies of parties whose cases are terminated due to availment of the tax amnesty under RA No. 9480, more specifically, that taxpayer's right to seek the continuation of the petition should it be declared not to be entitled to the benefits of the Tax Amnesty under RA No. 9480 within the one-year period prescribed by the law."[28]

On January 12, 2009, the Court promulgated a Resolution[29] giving due course to the Petition for Review and ordered the respondent to file his comment within ten (10) days from receipt thereof.

On February 25, 2009, the Court promulgated another Resolution[30] giving due course to the Petition for Review and requiring the parties to submit their respective memorandum within a non-extendible period of thirty (30) days from receipt of the Resolution.

On March 30, 2009, petitioner filed its Memorandum[31].

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[27] Id., pp. 800-831
[28] Petition for Review, En Banc Rollo, p.39
[29] En Banc Rollo, pp. 138-139
[30] Ibid, pp. 142-143
[31] Id., pp. 144-178

On April 30, 2009, the Court promulgated a Resolution[32] submitting the case for decision *sans* respondent's memorandum.

After a careful and thorough evaluation of the case, as well as the jurisprudence[33] on the matter, this Court finds petitioner's contention/s to be meritorious.

The provisions of the Tax Amnesty Law or RA No. 9480 applicable in the instant case are the following:

> "**SEC. 1. Coverage. –** There is hereby authorized and granted a tax amnesty which shall cover all national internal revenue taxes for the taxable year 2005 and prior years, with or without assessments duly issued therefore, 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.
>
> x x x x x x x x x
>
> **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:
>
> > (a) The taxpayer shall be immune from the payment of taxes as well as additions thereto, and the appurtenant civil, criminal or administrative penalties under the National Internal Revenue Code of 1997, as amended, arising from the failure to pay any and all internal revenue taxes for taxable year 2005 and prior years.
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> x x x x x x x x x

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[32] Id., p. 183

[33] *Philippine Banking Corporation (now Global Business Bank, Inc.) vs. Com. of Internal Revenue*, G.R. No. 170574, January 30, 2009

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 with 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 frauds, illegal exactions and transactions, and malversation of public funds and property under Chapters III and VII of the Revised Penal Code; and

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

x x x x x x x x x"

Subsequently, Department Order No. 29-07 (DO-29-07), the "Rules and Regulations To Implement R.A. No. 9480," was issued by the Department of Finance, Section 6.3 of which provides thus:

"**SEC. 6. Method of Availment of Tax Amnesty. –**

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 agent or the 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>." (Underscoring supplied)

As stated above, petitioner manifested that on March 3, 2008, it had availed of the Tax Amnesty Program granted and authorized under RA No. 9480 and, in support thereof, submitted the following documents:

(a) Notice of Availment of Tax Amnesty under RA No. 9480;

(b) Statement of Assets and Liabilities and Networth as of December 31, 2005;

(c) Tax Amnesty Return (BIR Form No. 2116);

(d) Tax Amnesty Payment Form/Acceptance of Payment Form (BIR Form 0617); and

(e) Land Bank of the Philippines BIR Tax Payment Deposit Slip.

In the hearing held by the CTA Second Division on July 30, 2008, respondent's counsel manifested that the above-enumerated documents are faithful reproductions of the originals.

In view of the foregoing, petitioner's completion of the required documents shall be deemed full compliance with the Tax Amnesty Program pursuant to the provision of Section 6.3 of DO-29-07, especially considering that since its availment on March 3, 2008, more than one (1) year has lapsed without any third party assailing the validity of the assessment.

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**, the *Second Assailed Resolution* dated November 27, 2008 is hereby **SET ASIDE**, and the *First Assailed Resolution* dated August 20, 2008 is hereby **MODIFIED**, in so far as the dispositive portion thereof, as follows:

> "**WHEREFORE**, premises considered, the Petition for Review in the above-captioned case is hereby considered **CLOSED** and **TERMINATED** pursuant to RA 9480.
>
> **SO ORDERED**"

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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.

ERNESTO D. ACOSTA
Presiding Justice