REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

WARNER LAMBERT PHILIPPINES, INC. (NOW PFIZER, INC.),
Respondent.

C.T.A. E.B. NO. 380
(C.T.A. CASE NO. 6925)

Present:

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

Promulgated:
MAR 2 5 2009 [illegible] 1:20 p.m.

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DECISION

UY, J.:

This is a Petition for Review before the Court of Tax Appeals *En Banc* filed on April 21, 2008 seeking a review of the Decision dated December 14, 2007[1], and Resolution dated March 5, 2008,[2] rendered by the First Division of this Court (Court in Division) in CTA Case No. 6925, entitled "Warner Lambert Philippines, Inc. (now, Pfizer, Inc.) vs. Commissioner of Internal Revenue" wherein the Petition for Review in said case was granted by the Court in Division, and the motion for the reconsideration of the same, was denied for lack of merit.

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[1] Ponencia of Associate Justice Lovell R. Bautista concurred by Presiding Justice Ernesto D. Acosta and Associate Justice Caesar A. Casanova. Docket, pp. 21 – 28.
[2] Docket, pp. 29 – 30.

THE FACTS

The factual[3] antecedents of the case are not in dispute.

Petitioner Commissioner of Internal Revenue is the officer of the Bureau of Internal Revenue vested with the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR.

Respondent, on the other hand, is a corporation organized and existing under Philippine laws with office address at 23rd Floor, Ayala Life-FGU Center, 6811 Ayala Avenue, Makati City 1200, and is engaged in the business of manufacturing, preparing, buying, acquiring, owning, processing, selling, distributing, exporting and importing goods of every kind, including, but not limited to, chemical, pharmaceutical, medicinal, and biological products. On January 18, 2001, Warner Lambert Philippines, Inc. (Warner Lambert) merged with Pfizer, Inc., with the latter as the surviving entity. All assets and liabilities of Warner Lambert were transferred to, and absorbed by Pfizer, Inc.

On April 14, 2000, respondent, formerly Warner Lambert, filed its Annual Income Tax Return (ITR) for taxable year 1999, reflecting net losses in the amount of P110,218,381.00.

On June 4, 2003, respondent received a Preliminary Assessment Notice (PAN) dated April 2, 2003, together with the Details of Discrepancies, informing it about its alleged internal revenue tax liability of P208,876,361.00

[3] Docket, pp. 21 – 24.

representing deficiency income, value-added, and expanded withholding taxes, inclusive of interest and compromise penalties, computed as follows:

INCOME TAX		
Taxable Income per Return		(110,218,381.00)
Add:		
Severance and Termination Cost Accrued in 1998		156,000,000.00
Provision for Inventory Obsolescence		46,718,185.28
Disallowed Expenses - Prior Period / Others		16,704,158.81
Additional Income Arising from Discrepancy in Sales Report		
Per VAT	1,657,613,646.55	
Per Financial Statement		
Net Sales	1,563,836,809.00	
Proceeds from Sale of PPE	41,935,847.00	
Sale of Scrap	37,989.56	
	1,605,810,645.56	51,803,000.99
Building Written Off		66,224,000.00
Income Payment Not Subject to EWT	19,986,956.91	19,986,956.91
Adjusted Taxable Income		357,436,301.99
Tax Rate		33%
Tax Due		117,953,979.66
Add: Disallowed Tax Credit		8,022,993.62
Total		125,976,973.61
Add		
Interest from April 16, 2000 to May 16, 2003		78,107,583.43
Compromise Penalty		25,000.00
Total Amount Due		204,109,557.04

VALUE-ADDED TAX (VAT)		
Taxable sales per VAT returns		1,651,374,804.60
Value-Added Tax @ 10%		165,137,480.46
Less:		
VAT Input	117,581,527.90	
Disallowed input	(1,812,796.71)	
Input allocated to exempt sales	(442,547.37)	
Monthly payments	23,882,763.67	
Quarterly payments	20,123,238.81	
Tax credit certificate	3,549,950.00	162,882,136.30
Deficiency VAT		2,255,344.16
Add:		
Interest from January 25, 2000 to May 25, 2003		1,511,080.59
Compromise Penalty		25,000.00
Total Amount Due		3,791,424.75

EXPANDED WITHHOLDING TAX (EWT)		
Tax Due		9,314,885.35
Tax Remitted		8,744,598.20
Basic Tax Due		570,287.15
Add: Interest from January 25, 2000 to May 25, 2003	382,092.39	
Compromise	20,000.00	402,092.39
Total Amount Due		972,379.54

On June 19, 2003, respondent protested the PAN in a Letter dated June 16, 2003. On June 23, 2003, respondent received Final Assessment Notice Nos. 99-000063, 99-000070 and 99-000077, together with the corresponding Formal Letters of Demand and Details of Discrepancies, all dated June 15, 2003. The assessments were summarized as follows:

Tax Type	Income Tax	EWT	VAT	Total
Assessment Notice No.	99-000063	99-000070	99-000077	
Basic	125,979,973.28	570,287.15	2,255,344.16	
Interest	82,932,616.41	399,201.01	1,578,740.91	
Compromise Penalty	25,000.00	20,000.00	25,000.00	
Total	**208,937,589.69**	**989,488.16**	**3,859,085.07**	**213,786,162.92**

On July 18, 2003, respondent protested these assessments and subsequently on September 15, 2003, submitted its relevant documents in support of the protest. On April 12, 2004, due to petitioner's inaction and failure to issue a final decision on the disputed assessments, and after the lapse of one hundred eighty days from submission of documents to support the protest, respondent filed with the Court in Division a Petition for Review as the petitioner in CTA Case No. 6925 praying for the cancellation of the assessments in the aggregate amount of P213,786,162.92.

A Final Decision on Disputed Assessment (FDDA) dated March 29, 2004 was rendered by the Commissioner of Internal Revenue, and the same was received by herein respondent on April 22, 2004 reflecting a reduced deficiency tax in the amount of P66,221,237.74, broken down as follows:

Type of Tax	For Collection	For Assessment	Total
Income Tax	401,549.44	65,471,465.25	65,873,014.69
VAT	215,864.62		215,864.62
EWT	132,358.43		132,358.43
Total	**749,772.49**	**65,471,465.25**	**66,221,237.74**

On April 30, 2004, respondent paid the total amount of P749,772.49 to Land Bank of the Philippines – East Avenue Branch for the amounts declared in the FDDA as subject "For Collection."

In view of the subsequent developments from the filing of CTA Case No. 6925 on April 12 2004, Warner Lambert Philippines, Inc. filed its Supplement (To Petition for Review, dated 29 March 2004), on May 17, 2004 questioning only the deficiency income tax assessment in the amount of P65,471,465.25. Thereafter, a Supplemental Joint Stipulation of Facts was submitted by the parties therein on May 2, 2007 admitting the existence and execution of the Final Assessment Notice dated June 15, 2003 for deficiency income tax and Final Decision on Disputed Assessment dated March 29, 2004.

The Court in Division, in its assailed Decision dated December 14, 2007, held that the assessment for deficiency income tax against should fail for lack of factual and legal basis considering that there is no deficiency tax to speak of. A simple perusal of the assessment, as contained in the FDDA shows that petitioner erroneously computed the deficiency income tax while respondent's net loss in the amount of P110,218,381.00 was completely ignored, thus resulting to a deficiency income tax.

We juxtapose the erroneous and correct computation for easier appreciation, to wit:

Income Tax	**BIR Assessment**		**Court in Division's Computation**	
Taxable Income per Return		(110,218,381.00)		(110,218,381.00)
Provision for Inventory Obsolescence				
Total	46,725,970.15		46,725,970.15	
Claim duly supported by BIR Certificate	2,769,735.72		2,769,735.72	
Disallowed	43,956,234.43	43,956,234.43	43,956,234.43	43,956,234.43
Building Written Off		66,224,000.00		66,224,000.00
Total		110,180,234.43		(38,146.57)
Tax Rate		33%		33%
Tax Due		36,359,477.36		-
Add:				
Interest from April 16, 2000 to April 15, 2004		29,087,317.89		-
Compromise Penalty		25,000.00		-
Total		65,471,795.25		-

Dissatisfied, petitioner filed his "Motion for Partial Reconsideration" on January 29, 2008 while respondent filed its "Opposition to Partial Motion for Reconsideration" on February 18, 2008. Finding no compelling reason to either modify or alter the assailed Decision, the Court in Division denied respondent's said motion in the assailed Resolution dated March 5, 2008.

Hence, this recourse before the Court *En Banc* praying that the assailed Decision dated December 14, 2007 and the assailed Resolution dated March 5, 2008 be reversed and set aside.

As directed by the Court[4], respondent filed its "Comment (On Petition for Review)"[5] on June 2, 2008 and a Submission on August 6, 2008.[6] On September 25, 2008, petitioner filed its Reply (Re: Submission dated 06 August 2008)[7] in compliance with the Court's Resolution dated September 5,

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[4] Resolution dated April 30, 2008, Docket, pp. 36 – 37. Respondent received a copy of petitioner's Petition for Review on May 7, 2008, and on May 19, 2008, it filed a Motion for Extension of Time requesting for an additional period of fifteen (15) days from May 17, 2008 or on or before June 1, 2008 within which to file comment.
[5] Docket, pp. 45 – 59.
[6] Docket, pp. 70 – 77. In compliance with the Court's Resolution dated July 18, 2008, respondent filed its Submission dated August 6, 2008 with the proper documents to prove that it has actually availed of the tax amnesty program in accordance with the provisions of R.A. No. 9480 as well as RMC No. 19-2008.
[7] Docket, pp. 85-89

2008.[8] And on October 27, 2008, the instant case was deemed submitted for decision.[9]

THE ISSUE

Petitioner submits the lone issue of whether or not respondent's assessment of deficiency income tax should include the net loss of respondent in the amount of P110,218,381.00.

On the other hand, respondent's Comment to the instant petition for review submits the additional issue as to whether or not respondent's availment of the tax amnesty under RA 9480[10] and full compliance thereof effectively cancels the subject assessment and render petitioner's present appeal moot and academic.

Petitioner's Arguments

Petitioner maintains that the Court in Division erred in ruling that the assessment of income tax should include the net loss of respondent in the amount of P110,218,381.00; that the doctrine of exhaustion of administrative remedies ensures an orderly procedure which favors a preliminary sifting process, with respect to matters peculiarly within the competence of the administrative agency. After the sifting process, judicial review of administrative decisions comes into play wherein the court examines the methods by which the decision was arrived at, and finding no error, leaves the administrative decision to stand. Hence, the matter in issue is a matter peculiarly within the competence of the administrative agency.

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[8] Docket, p. 79
[9] Resolution dated October 27, 2008, Docket, p. 91
[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.

According to petitioner, considering that the issues passed upon in the administrative proceedings and decided in the FDDA were the provision on "inventory obsolescence" and the building that was written off, the Court in Division, should have confined Its Decision to those issues – along with the issue of prescription as raised by herein respondent. The net loss of respondent, not being an issue passed upon in the administrative proceedings, petitioner argues that the Court in Division erroneously decided on the same.

Assuming *arguendo* however that the Court in Division can validly rule on the issue of net loss, the assailed Decision is allegedly still erroneous based on the argument that assessments are prima facie presumed to be correct and made in good faith and the taxpayer has the duty of proving otherwise. While it is a stipulated fact that petitioner declared a loss in its ITR for 1999, the truth of such declaration was allegedly never part of such stipulation as the stipulation was only limited to the fact that respondent reflected a loss in its 1999 ITR. Thus, respondent has the burden of proving that the losses were actually sustained during the taxable year and it was not compensated for by insurance or other forms of indemnity.

On the availment by respondent of the benefits of R.A. No. 9480, petitioner maintains that availment of the tax amnesty *per se*, is not tantamount to extinguishment of all liabilities arising from the failure to pay internal revenue taxes as it is allegedly incumbent upon respondent to wait for the lapse of the one-year period under Section 4 of R.A. No. 9480 before the matter can be considered closed and terminated; that respondent must not merely initiate the prescribed administrative relief, but must also pursue it to its appropriate conclusion before seeking judicial intervention in order to give that administrative agency an opportunity to decide the matter by itself correctly and prevent unnecessary and premature resort to the court (Jariol vs. Commission on Election, 270 SCRA 255). Furthermore, respondent cannot ask for the cancellation of the assessment and extinguishment of all liabilities arising from tax because the Court itself is inhibited from entertaining such prayers under the doctrine of exhaustion of administrative remedies.

Respondent's Counter-Arguments

In its Comment, respondent states that having availed of the tax amnesty and having fully complied with the conditions under RA No. 9480 and Department of Finance Order (DO) 029-07[11], it is now immune from taxes, additions and other penalties arising from its supposed failure to pay income taxes assessed by petitioner for taxable year 1999. Moreover, such availment and consequent immunity from taxes, additions and other penalties not only effectively cancel the subject assessment, but also render petitioner's present appeal moot and academic. The foregoing is allegedly consistent with the Court's Resolution dated March 28, 2008 in Metropolitan Bank and Trust Company vs. Commissioner of Internal Revenue[12].

In addition, even without respondent's tax amnesty availment, it is not liable for the alleged deficiency income tax because its net loss, as reflected in its ITR for 1999, will not be affected after adding back the deductions disallowed by petitioner's examiners.

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[11] Rules and Regulations to Implement Republic Act No. 9480.
[12] C.T.A. EB No. 269 (C.T.A. Case No. 6504).

On the issue raised by petitioner that the net loss as reflected in respondents 1999 ITR should not have been considered by the Court in Division, respondent contends that the said return necessarily opened up for review the items and figures reported therein; and the Court in Division, in order that it may properly and completely rule upon the case, had to verify the correctness of petitioner's assessment and take cognizance of the net loss to determine resolving whether the assessment has factual and legal basis.

Moreover, respondent contends that it does not have the burden of proving the factual basis of the net loss that it declared in its income tax return since it is a settled jurisprudence that the detailed proof of the truthfulness of each and every item in the income tax return is not required; that the function is lodged in the Commissioner of Internal Revenue by the National Internal Revenue Code (NIRC) of 1997. Therefore, in case the validity or truthfulness of the items in the tax returns is at issue, it is the BIR and not the taxpayer, who has the responsibility to delve into the details of the figures reflected in the returns.

Finally, respondent prays that the Petition for Review filed by petitioner be denied due course; declare that the subject 1999 Notice of Assessment as devoid of factual and legal basis and accordingly order its withdrawal and cancellation; and declare the instant case as considered close and terminated.

THE COURT EN BANC'S RULING

The petition is bereft of merit.

Section 267 of the NIRC of 1997 provides that:

> **Sec. 267. Declaration under penalties or perjury.** — Any declaration, return and other statements required under this Code, shall, in lieu of an oath, contain a written statement that they are made under the penalties of perjury. Any person who willfully files a declaration, return or statement containing information which is not true and correct as to every material matter shall, upon conviction, be subject to the penalties prescribed for perjury under the Revised Penal Code.

Inasmuch as respondent's return were prepared under the penalties of perjury, based on the above mentioned provision, the figures appearing therein are presumed to be true and correct in the absence of contrary evidence. As held in the case of Citibank N.A. v. Court Of Appeals and Commissioner Of Internal Revenue[13], detailed proof of the truthfulness of each and every item in the income tax return is not required. It is a part of the function of the Commissioner of Internal Revenue to assess internal revenue taxes within three years after the last day prescribed by law for the filing of the return as indicated in the NIRC of 1997.

It must be noted that petitioner was accorded all the opportunity to conduct an investigation to ascertain the veracity of the net loss, as reflected in respondent's 1999 ITR, while in the process of assessing respondent, and thereafter, during the course of the proceedings before the Court in Division. Thus, the failure of BIR law enforcement officers or revenue examiners to conduct a complete investigation of the subject returns, despite all the opportunity afforded them so to do, may be considered as an implied admission that the contents of such returns are true and correct.

With respect to the issue raised by respondent, We find merit in its argument that its availment of the tax amnesty and full compliance with the

[13] G.R. No. 107434, October 10, 1997.

conditions under R.A. No. 9480, makes it immune from taxes, additions and other penalties arising from its supposed failure to pay income taxes assessed by petitioner for taxable year 1999.

Republic Act No. 9480 (RA No. 9480), 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 that "any person, natural or juridical, who wishes to avail himself of the tax amnesty authorized and granted under said 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".[14]

Additionally, Section 4 of RA No. 9480 provides thus:

> **"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 of its agents: <u>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"</u>.*(Underscoring supplied)"*

[14] Section 2 of Republic Act No. 9480

Records show that respondent is not disqualified from availing of the tax amnesty provided under RA No. 9480[15], and that it has appropriately complied with the requirements set forth under said law. Moreover, to date, the contestability period of one (1) year from the time of respondent's availment of the tax amnesty law on February 27, 2008 had elapsed. Correspondingly, it is fully entitled to the immunities and privileges mentioned under Section 6 of RA No. 9480, which reads:

> "**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 addition 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.
>
> 2. 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.

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[15] SEC. 8 of Republic Act No. 9480 mentions the ***Exceptions***, as follows— 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 respects 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.

> 3. 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."

The foregoing is bolstered by the recent ruling of the Supreme Court in ***Philippine Banking Corporation (now Global Business Bank, Inc.) vs. Commissioner of Internal Revenue,*** wherein it held that:

> "Considering that the completion of these requirements shall be deemed full compliance with the tax amnesty program, the law mandates that the taxpayer shall thereafter be immune from 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.[16]

WHEREFORE, in view of the foregoing considerations, the instant Petition for Review is **DISMISSED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

[16] *G.R. No. 170574, January 30, 2009.*

CERTIFICATION

Pursuant to Section 13, Article VIII 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 *En Banc*.

ERNESTO D. ACOSTA
Presiding Justice