Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB CASE NO. 564** (CTA Case No. 7509) For: Cancellation of Assessment for Deficiency Income Tax and Compromise Penalty
-versus-	Present: ACOSTA, P.J., CASTAÑEDA, JR. BAUTISTA UY CASANOVA PALANCA-ENRIQUEZ FABON-VICTORINO MINDARO-GRULLA COTANGCO-MANALASTAS, JJ.
AA COMMERCIAL, INC., Respondent.	Promulgated: APR 06 2011 4:05 pm

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision is a Petition for Review filed by the Commissioner of Internal Revenue (CIR for brevity)) as petitioner against AA Commercial, Inc. (AA for brevity) as respondent, for the Court *en banc* under Rule 4, Section 2(a)(1), in relation to Rule 8, Section 4(b) of the 2005 Revised Rules of the Court of Tax Appeals

(RRCTA)[1], as amended, of the Resolution[2] dated September 2, 2009, and its Resolution[3] dated November 3, 2009, denying petitioner's (CIR) Motion for Reconsideration thereon.

Herein petitioner CIR (respondent in CTA Case No. 7509) seeks a reversal of both Resolutions, the dispositive portions of which, respectively, read as follows:

Resolution dated September 2, 2009:

> "**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 This instant Petition for Review is hereby **DEEMED WITHDRAWN**.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**.

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[1] Sec. 2. *Cases within the jurisdiction of the Court en banc.*- The Court en banc shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:

(1) Cases arising from administrative agencies- Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;

xxx xxx xxx

Sec. 4. *Where to appeal; mode of appeal.*-

(a) xxx.

(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court en banc shall act on the appeal.

(c) xxx.

[2] En banc Docket, pp.60-65.

[3] Ibid. pp. 72-75.

SO ORDERED."

Resolution dated November 3, 2009:

"**WHEREFORE**, the Motion for Reconsideration filed by respondent is hereby **DENIED** for lack of merit.

SO ORDERED."

The antecedent facts culled from the records[4] are undisputed:

"On October 15, 2003, AA received Assessment Notice No. 33-99 dated September 12, 2003, issued by BIR Revenue Region No. 6 for deficiency Value-added Tax and Income Tax for the year 1999 in the amounts of P3,838,105.55 and P6,766,581.19, respectively, plus compromise penalty.

On October 21, 2003, AA filed a letter manifesting receipt of the said assessment notice and asking for additional time within which to submit the necessary documents to refute the assessment. It filed a protest against the assessment on November 20, 2003.

On June 26, 2006, AA received a Preliminary Letter from CIR dated June 6, 2006, demanding payment of its alleged deficiency income tax liability of P3,839,411.81 and compromise penalty of P25,000.00.

AA maintains that it did not receive the June 11, 2004 letter of the Bureau of Internal Revenue, which withdrew the deficiency VAT assessment and partially cancelled the deficiency income tax assessment nor did it receive Assessment Notice No. 30-99 dated November 4, 2004. According to AA, the thirty (30) day period for the filing of an appeal to this Court

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[4] Ibid. pp. 22-24, Resolution dated June 8, 2009 (AA Commercial, Inc. (AA) and Commissioner of Internal Revenue (CIR) were the petitioner and respondent, respectively, in the Petition for Review before the Division level. In this Petition for Review before this Court En banc, CIR is the petitioner while AA is the respondent.) ✓

should be reckoned from June 26, 2006, the date of its receipt of the Preliminary Letter. AA avers that the Petition for Review (before this Court's Division) was timely filed on July 26, 2009. It involves the prayer for the cancellation of the deficiency assessment against petitioner for income tax and compromise penalty in the amounts of P3,839,411.81 and P25,000, respectively.

On September 27, 2006, CIR filed an Answer raising [the] several Affirmative and Special Defenses:

> '10. The petition failed to state that [the] AA had full knowledge of the ongoing examination of the books of accounts and other pertinent business records at the time of its transfer to Quezon City, making it its responsibility and duty to communicate regularly with CIR's examiners as to the outcome of the examination of its 1999 business records and to receive and/or cause to secure communications sent to the former address;
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> 11. Considering that the thirty-day statutory period within which to protest the assessment ended in (sic, on) November 14, 2003 having received CIR's assessment notice on October 15, 2003, the filing of the said letter on November 20, 2003 did not bar the prescriptive period from running, therefore, this instant tax case had become final and executory;
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> 12. The assessment is in accordance with law;
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> 13. The assessment is prima facie correct and made in good faith;
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> 14. The Burden *(sic)* of proof is upon the petitioner to prove that the assessment issued was null and void;
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> 15. The assessment notices were issued and sent to the petitioner in accordance with well-established procedures upheld by the Courts.

On January 31, 2007, the parties filed their Joint Stipulation of Facts and Issues, agreeing to submit the following issues for this Court's Division resolution:

1. Whether or not CIR's right to assess petitioner for deficiency income taxes for CY 1999 had already prescribed.
2. Assuming *arguendo* that CIR's right to assess AA has not yet prescribed, whether or not the deficiency income tax assessment arising from the disallowance of AA's bad debts expenses is valid.
3. Whether or not the imposition of 'compromise penalty on income tax' in the amount of P25,000.00 is valid.
4. Whether or not the assessments for deficiency income tax and compromise penalties against [the] AA for CY 1999 are valid and correct.

In the course of trial the instant "Motion to dismiss" was filed/anchored on the ground that the court has no jurisdiction over the case due to AA's failure to seasonably protest the assessment. "

On June 8, 2009, this Court's former First Division in a Resolution[5] dismissed the Petition for Review and held that the Assessment Notice No. 33-99 was final and executory. AA filed a motion for reconsideration therefrom and argued that the Assessment Notice No. 33-99 was null and void, the same having been made beyond the three-year prescriptive period and that the petition was rendered moot since AA availed of the tax amnesty.

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[5] Ibid. pp.21-30.

On September 2, 2009, this Court's former First Division issued the subject Resolution which granted the said motion for reconsideration, and which held that the validity of the assessment had already been exhaustively discussed and that the same was final and uncontested, but AA had duly complied with the requirements of the Tax Amnesty Law.

On November 3, 2009, this Court's former First Division issued the other subject Resolution which denied the motion for reconsideration filed by CIR from the Resolution dated September 2, 2009, hence, this Petition.

In assailing the Resolutions of this Court's former First Division, CIR assigns the following errors:

1. The Honorable Court's First Division failed to determine that the respondent's availment of the Tax Amnesty Law failed to comply with the requirements of the law, tantamount to non-availment thereof ; and

2. The Honorable Court's First Division erred in considering that the final and executory unpaid account of respondent subject matter of this case is the one covered by Republic Act No. 9480, otherwise known as The Tax Amnesty Law.

The crux of this Petition is whether AA had complied with the requirements of the Tax Amnesty Law, particularly, the payment of the correct amount of the amnesty tax and whether an assessment which has become final, executory and demandable is covered by the Tax Amnesty Law.

CIR contends that AA is not qualified under the Tax Amnesty Law for failure to pay the correct amount of the amnesty tax in order to be entitled to the immunities and benefits of the Tax Amnesty Law, that is, instead of P100,000.00, the amount of P9,492,591.00 should have been paid. CIR further argues that the final, executory and demandable tax liabilities are inherently not among those intended to be covered by the Tax Amnesty Law.

However, AA maintains that it has complied with and it has validly availed of the benefits of the Tax Amnesty Law. AA states that even assuming that the deficiency income tax assessment has already become final and executory, the subject assessment is still covered by the immunities and privileges under the Tax Amnesty Law.

The petition is bereft of merit.

CIR claims the amnesty tax due should be P9,492,591.00, which is 5% of the corrected net worth while AA maintains that it should be P100,000.00 as the minimum amount of the amnesty tax prescribed, computed as follows:

per CIR		per AA	
Total Net worth as of December 31, 2005	P189,685,089.00	Total Net worth per Amended Return	P189,851,839.00
Total Net worth per Amended Return	189,851,839.00 ---------------------	LESS: Total Net worth as of Dec. 31, 2005 (per original balance sheet)	189,685,089.00 -----------------------
Total increase in Net worth	P 166,750.00 ============	Total increase in Net worth	P 166,750.00 ============
5% of amended Net worth(5%of P189,851,839.00)	P 9,492,591.00 ============	5% of Increase of Net worth (5% of P166,750.00	P 8,337.5 ============
Minimum Absolute Amount	100,000.00 ============= 9,492,591.00	Minimum Amnesty Tax	P 100,000.00 ============
AMNESTY TAX DUE	**P 9,492,591.00** ============	**AMNESTY TAX DUE**	**P 100,000.00** =============

The pertinent provisions of Republic Act No. 9480 [6] and Department Order No. 29 "Rules and Regulations to Implement Republic Act No. 9480" regarding the determination of the correct amount of tax amnesty due read as follows:

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[6] 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

Section 5 (d) of RA 9480

SEC. 5. *Grant of Tax Amnesty.* — Except for the persons or cases covered in Section 8 hereof, any person, whether natural or juridical, may avail himself of the benefits of tax amnesty under this Act, and pay the amnesty tax due thereon, based on his net worth as of December 31, 2005 as declared in the SALN as of said period, in accordance with the following schedule of amnesty tax rates and minimum amnesty tax payments required:

(a) Individuals (whether resident or nonresident citizens, including resident or nonresident aliens), Trusts and Estates	5% or P50,000, whichever is higher
(b) Corporations	
(1) With subscribed capital of above P50 Million	5% or P500,000 whichever is higher
(2) With subscribed capital of above P20 Million up to P50 Million	5% or P250,000, whichever is higher
(3) With subscribed capital of P5 Million to P20 Million	5% or P100,000, whichever is higher
(4) With subscribed capital of below P5 Million	5% or P25,000, whichever is higher
(c) Other juridical entities, including, but not limited to, cooperatives and foundations, that have become taxable as of December 31, 2005 whichever is higher	5% or P50,000,

(d) Taxpayers who filed their balance sheet/SALN, together with their income tax returns for 2005, and who desire to avail of the tax amnesty under this Act shall amend such previously filed statements by including still undeclared assets and/or liabilities and **pay an amnesty tax equal to five percent (5%) based on the resulting increase in net worth: Provided, That such taxpayers shall likewise be categorized in accordance with, and subjected to the minimum amounts of amnesty tax prescribed under the provisions of this Section.** (Emphasis ours)

<u>Section 7(4), Rule III of the Rules and Regulations to Implement Republic Act No. 9480</u>

Sec. 7. Tax Amnesty Rates. – In order to enjoy the benefits of the tax amnesty program, the qualified taxpayers are required to pay an amnesty tax equivalent to five percent (5%) of their total declared net worth as of December 31, 2005, as declared in the SALN as of the said period, or resulting increase in net worth by amending such previously filed statements for purposes of this tax amnesty, thereby including still undeclared assets and/or liabilities, as the case may be, as of December 31, 2005, or the absolute minimum amnesty payment, whichever is higher, in accordance with the following schedule:

(1) Individuals (whether resident or nonresident citizens, including resident or nonresident aliens), Trusts and Estates	5% or P50,000, whichever is higher
(2) Corporations	
(a) With subscribed capital of above P50 Million	5% or P500,000 whichever is higher
(b) With subscribed capital of above P20 Million up to P50 Million	5% or P250,000, whichever is higher
(c) With subscribed capital of P5 Million to P20 Million	5% or P100,000, whichever is higher
(d) With subscribed capital of below P5 Million	5% or P25,000, whichever is higher
(3) Other juridical entities, including, but not limited to, cooperatives and foundations, that have become taxable as of December 31, 2005 whichever is higher.	5% or P50,000,
(4)Taxpayers who filed their balance sheets/SALN, together with their income tax returns for 2005, and who desire to avail of the tax amnesty under this Act by amending such previously file statements thereby including still undeclared assets and/or liabilities	**5% based on the resulting increase in net worth or the minimum absolute amounts of amnesty tax prescribed above, whichever is higher.** (Emphasis ours)

In implementing Section 5 (d) of Rep. Act No. 9480, taxpayers who previously filed their balance sheet/SALN, together with their income tax returns for 2005, particularly the provision which states: **"xxx *pay an amnesty tax equal to five percent (5%) based on the resulting increase in net worth: Provided, That such taxpayers shall likewise be categorized in accordance with, and subjected to the minimum amounts of amnesty tax prescribed under the provisions of this Section.",*** the Secretary of Finance issued Department Order 29-07[7] which provides that the tax base be the ***"5% of the resulting increase in net worth or the minimum absolute amounts of amnesty tax prescribed above, whichever is higher."***

Concomitantly, a taxpayer who desires to avail of the tax amnesty under Republic Act No. 9480 but has already filed the balance sheet/SALN, together with the income tax return for 2005, the taxpayer shall amend such previously filed statement by including still undeclared assets and/or liabilities and the amnesty tax is the higher amount between:

[7] Rules and Regulations to Implement Republic Act No. 9480.

1. five percent (5%) based on the resulting increase in net worth; or

2. the minimum amount of amnesty tax prescribed under Section 5 of Republic Act No. 9480 (which in this case is 5% based on the resulting increase in net worth or the minimum absolute amount of amnesty tax (P100,000.00) whichever is higher, in accordance with Section 7(4), Rule III of the Rules and Regulations to Implement Republic Act No. 9480).

Evidently, between the amount of P8,337.5 as the 5% of increase of Net worth (5% of P166,750.00) and the amount of P100,000.00 as the minimum absolute amount of amnesty tax prescribed under AA's category on the schedule provided by Republic Act No. 9480, AA timely and correctly paid the amount of P100,000.00 as amnesty tax.

As to CIR's argument that final, executory, demandable and uncontested tax liabilities are inherently not among those intended to be covered by the Tax Amnesty Law , We find the same to be without merit.

Also, in CIR's perspective, with regard to the validity of the assessment, We do agree and We find that there is no reason to disturb the finding of this Court's former First Division in its Resolution dated September 2, 2009 which AA neither questioned nor seek to be reconsidered. As aptly pointed out by this Court's former First Division:

> "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"[8]

Thus, the controversy lies on whether this assessment or tax liability which has become final and demandable is covered by Republic Act No. 9480. Said assessment having become final, executory and demandable, AA is now barred from disputing the correctness of the assessment or from invoking any defense that would reopen the question of its liability on the merits.

But CIR argues that AA's tax liability is now considered a collectible or receivable account and it is not a disputed deficiency assessment which is not covered by Republic Act No. 9480 because it pertains only to pending assessments, disputed assessments and tax liabilities that have not yet been administratively assessed but voluntarily declared by the tax amnesty applicant. AA disagrees.

[8] Supra note 2.

The pertinent provisions as to taxes and persons covered or excluded from the application of Republic Act. 9480, read as follows:

> **SECTION 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.
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> xxx xxx xxx.
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> **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
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> 6. Tax cases subject of final and executory judgment by the courts.

Based on the foregoing provisions, nowhere is it specifically or indirectly provided that only pending assessments, disputed assessments and tax liabilities that have not yet been administratively assessed but voluntarily declared by the tax amnesty applicant shall be covered. Also, nowhere is it stated that only those tax liabilities which are not yet final or are still contestable are covered. What is clear is that Republic Act No. 9480 **"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".**

A perusal of the exception in Section 8 of Republic Act No. 9480 reveals that nowhere can we infer directly or indirectly that an assessment which has become final, executory and demandable is excluded from the privileges and immunities of Republic Act No. 9480, except final and executory judgment by the Courts.

If, as petitioner CIR argues, final and executory tax liabilities are incontestable burdens which are bound to be paid to the government, and constituted as receivable accounts and considered as assets of the government whose claim of ownership is established by law and could not be the subject of disposition or alienation by general amnesty, the law could have simply so provided in its exclusionary clauses. Unfortunately, it did not. The conclusion is unavoidable, that assessment which has become final and demandable is not one of those excluded in the coverage of Republic Act No. 9480.

In the Philippine Banking Corporation Case[9], the Supreme Court reiterates that:

> A tax amnesty is a general pardon or the intentional overlooking by the State of its authority to impose penalties on persons otherwise guilty of violation of a tax law. It partakes of an absolute waiver by the government of its right to collect what is due it and to give tax evaders who wish to relent a chance to start with a clean slate. A tax amnesty, much like a tax exemption, is never favored nor presumed in law. The grant of a tax amnesty, similar to a tax exemption, must be construed strictly against the taxpayer and liberally in favor of the taxing authority.

The records[10] would show that AA submitted and filed the necessary document to avail of the benefits of tax amnesty- Notice of Availment of Tax Amnesty, Tax Amnesty Return(BIR Form No. 2116), Tax Amnesty Payment Form(BIR Form No. 0617) and Balance Sheets as of December 31,2005 (original and amended). In sum, AA has complied with the requisites and entitled to the benefits of Republic Act No. 9480. L

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[9] Philippine Banking Corporation (Now: Global Business Bank, Inc.) vs. CIR, G.R. No.170574, January 30, 2009.
[10] Exhibits "BB", "CC", "DD", "EE" and "FF", Division Docket, pp. 299-306.

WHEREFORE premises considered, the petition is hereby **DENIED**. The Resolution of this Court's former First Division in CTA Case No. 7509, dated September 2, 2009, and its Resolution, dated November 3, 2009, are **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
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

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation among the members of the Court En Banc before the case was assigned to the writer of the opinion of the Court En Banc.

ERNESTO D. ACOSTA
Presiding Justice