

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL
REVENUE,

Petitioner,

CTA EB NO. 552
(CTA Case No. 7511)

Present:

-versus-

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

APO CEMENT CORPORATION,
Respondent.

Promulgated:

JUN 24 2010

*Apolinario
3:25 p.m.*

X-----X

DECISION

BAUTISTA, J.:

The Case

Before the Court *En Banc* is a Petition for Review¹ filed by the Commissioner of Internal Revenue ("CIR") on November 19, 2009 pursuant to Section 18 of Republic Act No. 1125, as amended by Republic Act No. 9282, and Section 3(b) of the Revised Rules of the Court of Tax Appeals, assailing the Resolution promulgated by

¹ *Rollo*, CTA EB No. 552 (CTA Case No. 7511), pp. 7-34, with Annexes.



the Second Division of the Court ("Court in Division") on June 11, 2009, which granted respondent Apo Cement Corporation's ("ACC") Motion to Cancel Tax Assessment (With Motion to Admit Attached Formal Offer of Evidence);² and its Resolution dated October 19, 2009, denying the CIR's Motion for Reconsideration.³

Antecedent Facts

The relevant antecedents as culled from the records of the case are as follows:

Petitioner CIR is the duly appointed Commissioner of Internal Revenue who is vested with authority to administer and enforce national internal revenue laws.

Respondent ACC is a domestic corporation existing under and by virtue of Philippine laws, with principal office at 25th Floor, Petron Mega Plaza, 358 Sen. Gil Puyat Avenue, Makati City.

On September 1, 2003, the Bureau of Internal Revenue (BIR) through the Large Taxpayers Service (LTS) sent a Final Assessment Notice (FAN) to ACC containing deficiency taxes for the taxable year 1999 with the following particulars:

DEFICIENCY TAXES	AMOUNT
Income Tax	P 479,977,176.22
Value-Added Tax	181,345,963.86
VAT Withholding	23,536,374.48
Withholding Tax on Compensation	15,595,098.12
Unremitted Withholding Tax on Compensation	10,388,757.86
Expanded Withholding Tax	17,642,981.74
Unremitted Expanded Withholding Tax	3,510,390.71
Final Withholding Tax	53,808,355.59
Fringe Benefits Tax	167,337.31
Documentary Stamp Tax	52,480,372.77
Administrative Penalties	25,000.00

² Annex "A."

³ Annex "B."

On October 10, 2003, ACC filed a protest on the said Final Assessment. The protest letter and supporting documents were filed and received by the LTS on the same date.

On July 7, 2006, ACC received the Final Decision on Disputed Assessment dated June 15, 2006, denying its protest, with the following deficiency tax assessments, *viz.*:⁴

DEFICIENCY TAXES	AMOUNT
Income Tax	P 9,305,697.74
Value-Added Tax	1,610,070.51
Withholding Tax on Compensation	20,916,611.66
Unremitted Withholding Tax on Compensation	13,479,061.25
Expanded Withholding Tax	23,664,416.39
Unremitted Expanded Withholding Tax	4,549,677.32
Final Withholding Tax	3,095,786.45
Fringe Benefits Tax	213,656.36
Documentary Stamp Tax	67,433,862.97
Administrative Penalties	25,000.00
Total	P 144,293,840.65

On August 3, 2006, pursuant to Section 228 of the National Internal Revenue Code ("NIRC") of 1997, ACC filed a Petition for Review⁵ with this Court. The case was raffled to the Second Division of the Court and docketed as CTA Case No. 7511.

On October 10, 2006, the CIR filed his Answer.⁶ In his Answer, the CIR admitted, *inter alia*, that ACC paid the final deficiency assessed taxes except the deficiency Documentary Stamp Taxes ("DST") in the amount of P67,433,862.97. The CIR argued that the deficiency DST was based on ACC's real property transactions consisting of the following: (a) the assignment of several parcels of land with mineral deposits to Apo Land and Quarry Corporation (ALQC), a wholly-owned subsidiary;

⁴ Records, CTA Case No. 7511, pp. 749-751.

⁵ *Id.*, at pp. 1-119, with Annexes.

⁶ *Id.*, at pp. 137-140.

and (b) the land acquisitions made during the year 1999. He asserted that ACC's assignment of real property to ALQC was based on zonal valuation for regular residential property; however, upon verification by the BIR examiners, the valuation should be based on property with mineral/quarry content. The zonal value of the land assigned to ALQC amounted to P1,723,800,000.00, and the cost of the land purchased by ACC during the year 1999 amounted to P42,374,167.00. Hence, the issuance of the assessment for deficiency DST in the amount of P67,433,862.97 pursuant to Section 196 of the NIRC of 1997.

On December 13, 2006, the parties entered their Joint Stipulation of Facts and Issues, which the Court in Division approved in a Resolution dated December 21, 2006.⁷

During ACC's presentation of evidence, the parties filed an Amended Joint Stipulation of Facts and Issues on February 19, 2009.⁸ The same was approved by the Court in Division in a Resolution dated February 24, 2009.⁹

On April 17, 2009, ACC filed a Motion to Cancel Tax Assessment (With Motion to Admit Attached Formal Offer of Evidence), with attached Formal Offer of Evidence.¹⁰ The CIR filed its Opposition (Re: Motion to Cancel Tax Assessments with Motion to Admit attached Formal Offer of Evidence) on April 27, 2009.¹¹

On June 11, 2009, the Court in Division promulgated the assailed Resolution, granting ACC's Motion to Cancel Tax Assessment.

⁷ *Id.*, at p. 169.

⁸ *Id.*, at pp. 749-753.

⁹ *Id.*, at p. 759.

¹⁰ *Id.*, at pp. 793-891, with Annexes.

¹¹ *Id.*, at pp. 892-905.



The Ruling of the Court in Division

On June 11, 2009, the Court in Division issued a Resolution in favor of ACC, ruling that:¹²

As regards the “**Motion to Cancel Tax Assessment**,” records reveal that petitioner, a qualified tax amnesty applicant, has availed of the tax amnesty on January 25, 2008, and has fully complied with the requirements set forth in RA 9480, Department Order No. 29-07, and Revenue Memorandum Circular No. 19-2008; and the one (1)-year period provided under Section 4 of RA 9480 had lapsed.

Pursuant to the decision of the Supreme Court in the *Philippine Banking Corporation (now Global Business Banking) vs. Commissioner of Internal Revenue* (G.R. No. 170574, January 30, 2009), petitioner’s “**Motion to Cancel Tax Assessment**” is hereby **GRANTED**.

As regards petitioner’s prayer to cancel the rest of the assessment notices for other deficiency taxes for the taxable year 1999 on the ground that petitioner had already paid the same, as shown in paragraph 7 of the Summary of Admitted Facts in the parties’ “**Joint Stipulation of Facts and Issues**,” finding the same to be well taken, the same is **GRANTED**.

WHEREFORE, premises considered:

- 1) the Assessment Notices for deficiency Documentary Stamp Taxes for taxable year 1999 issued against petitioner are hereby **CANCELLED** and **SET ASIDE**, solely in view of petitioner’s availment of the Tax Amnesty under RA 9480;
- 2) the Assessment Notices for deficiency Income Tax, Value-Added Tax, VAT Withholding Tax, Withholding Tax on Compensation, Unremitted Withholding Tax on Compensation, Expanded Withholding Tax, Unremitted Expanded Withholding Tax, Final Withholding Tax, and Fringe Benefits Tax are **CANCELLED** and **SET ASIDE** in view of petitioner’s payment of said taxes.

Accordingly, the above-captioned case is hereby considered **CLOSED** and **TERMINATED**.

SO ORDERED.

¹² Rollo, pp. 27-28, Annex “A.”



Aggrieved, the CIR filed a Motion for Reconsideration on July 2, 2009, which was denied for lack of merit by the Court in Division in its Resolution promulgated on October 19, 2009.¹³

The Issue

Hence, the present Petition for Review, where the CIR assigns the sole issue that:

THE HONORABLE COURT SECOND DIVISION ERRED IN GRANTING RESPONDENT'S MOTION TO CANCEL TAX ASSESSMENT WITH MOTION TO ADMIT FORMAL OFFER OF EVIDENCE ON ITS DEFICIENCY DOCUMENTARY STAMP TAXES FOR TAXABLE YEAR 1999.¹⁴

The CIR's Arguments

The CIR argues that the mere filing of tax amnesty documents and payment of the applicable amnesty tax as provided under Republic Act ("R.A.") No. 9480 does not automatically entitle the tax amnesty applicant to the immunities and privileges granted by the said law. The tax amnesty documents must likewise conform to all the conditions and/or requirements enumerated under R.A. No. 9480, and its implementing rules and regulations. He claims that based on ACC's admission before the Court in Division, it has shares of stock that it acquired from ALQC in exchange for several parcels of land. The said shares of stock are noticeably absent from ACC's Statement of Assets, Liabilities, and Networth ("SALN"). He posits then that ACC did not disclose the same in violation of Section 3 of R.A. No. 9480 in relation to Section 8 of Department Order ("D.O.") No. 29-07.

¹³ *Id.*, at pp. 29-31, Annex "B."

¹⁴ *Id.*, at p. 11.



Hence, ACC's SALN does not contain a correct and complete declaration of its assets, and therefore, cannot be deemed to have fully complied with the provisions of the Tax Amnesty Law.

The CIR asserts as well that ACC is not entitled to the immunities and privileges under R.A. No. 9480. He maintains that since ACC failed to comply with Sections 3 and 5(d) of R.A. No. 9480, the one-year period of limitation within which proceedings may be initiated to dispute the presumption of correctness of the SALN did not commence. Only those tax amnesty applicants who fully complied with the requirements/conditions provided under the Tax Amnesty Law can avail of the one-year limitation period. Further, he asseverates that the said period applies only to bar administrative proceedings. The one-year period of limitation does not apply insofar as proceedings in courts are concerned. Thus, the immunities shall not apply in the present case before this Court.

The CIR finally avers that ACC breaks the rule of equity when it belatedly presented its tax amnesty documents. Considering that ACC availed of the tax amnesty program as early as January 25, 2008, it filed the Motion to Cancel Tax Assessment (With Motion to Admit Attached Formal Offer of Evidence) before the Court in Division only on April 17, 2009, without any explanation on the delay. Thus, he points out that ACC acted in bad faith for deliberately waiting for the lapse of the one-year period before filing the said motion in such a way that it not only eluded administrative investigation but also flaunts immunity from judicial scrutiny as well.



ACC's Counter-arguments

ACC argues that R.A. No. 9480 directly prohibits the BIR and its agents from disputing the presumption of correctness of the SALN in tax amnesty applications. Section 4 of the Tax Amnesty Law explicitly denies the BIR of any personality or authority to dispute the presumption of correctness of the SALN, unlike in the case of *Bañas, Jr. v. Court of Appeals*,¹⁵ as invoked by the CIR which does not have such parallel provisions. Further, even granting that the alleged P1,723,800,000.00 exists, it contends that the said understatement only constitutes seventeen percent (17%) of its networth, short of the thirty percent (30%) threshold provided under R.A. No. 9480.

ACC further advances that the non-declaration or non-inclusion of the shares of stock in its SALN is proper. It asserts that as early as 2002, it already divested its shares in ALQC. It then attached copies of the cancelled certificates of stock as *Annex "A,"* and the pertinent pages of ALQC Stock and Transfer Book as *Annex "B,"* in its Memorandum, which proves the cancellation of its certificate of ALQC stock, the transfer of ownership to Edgewater Ventures Corporation and Cemex Asia Holdings, Incorporated, and the assignees' ownership of the transferred shares; hence, the non-inclusion of the ALQC shares of stock in its 2005 SALN.

ACC also avers that the one-year period in Section 4 applies to any proceeding which seeks to establish that the amount of declared networth is understated to the extent of thirty percent (30%) or more. The Tax Amnesty Law does not distinguish whether the proceeding is administrative or judicial. It

¹⁵ G.R. No. 102967, February 10, 2000, 325 SCRA 259.



asseverates as well that under the said provision the findings or admission shall only be admissible to prove the underdeclaration, but does create an exception to the one-year period within which to initiate such proceedings.

Lastly, ACC maintains that it fully complied with the requirements in its availment of the tax amnesty program pursuant to the ruling in the case of *Philippine Banking Corporation, (now Global Business Banking) v. Commissioner of Internal Revenue*.¹⁶ Since it does not fall under any of those disqualified under Section 8 of R.A. No. 9480, and has presented the documents in connection with its Motion to Cancel Assessment, ACC posits that it is entitled to the immunities and privileges under Section 6 of R.A. No. 9480, including the cancellation of the deficiency assessments.

The Ruling of the Court En Banc

The Petition for Review is bereft of merit.

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 to 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.¹⁷

¹⁶ G.R. No. 170574, January 30, 2009, 577 SCRA 366.

¹⁷ Commissioner of Internal Revenue v. Marubeni Corporation, G.R. No. 137377, December 18, 2001, 372 SCRA 588.

203



R.A. No. 9480,¹⁸ 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 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.

¹⁸ Lapsed into law on May 24, 2007.

Corollary thereto, D.O. No. 29-07 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 R.A. No. 9480, as implemented by Section 3 of D.O. 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 R.A. No. 9480, and Section 5 of D.O. No. 29-07. Thus, DST which is the subject of the present case is within its coverage, and ACC, not falling within any of the exceptions thereof, is qualified to avail of the tax amnesty program.

To avail of the tax amnesty program, Section 2 of the Tax Amnesty Law 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.

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 an SALN as of December 31, 2005; and (b) pay the applicable tax to the BIR. The Court in Division in resolving the CIR's Motion for Reconsideration on October 19, 2009, correctly ruled as follows:

From the foregoing, it is clear that it is the Bureau of Internal Revenue who is primarily responsible for the implementation of the Tax Amnesty Law.

Corollary thereto, Section 6(3) of Rule III of Department Order No. 20-07, or the "Implementing Rules and Regulations of Republic Act No. 9480," provides:

"RULE III
Availment and Payment of Amnesty



206

Section 6. Method of Availment of Tax Amnesty. –

xxx xxx xxx

3. Payment of Amnesty Tax and Full Compliance. – xxx

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. The completion of these requirements shall be deemed full compliance with the provisions of RA 9480.

xxx xxx xxx"

Evidently, the RDO concerned shall only receive the above-mentioned requirements after complete payment. The submission of all the requirements and complete payment of amnesty tax shall be deemed full compliance.

Clearly, the law presumes that the BIR sufficiently passed upon the taxpayer's compliance thereto, much more the details of the SALN, before its acceptance of the applicable amnesty tax payment.

It is to be noted further that since the CIR ought to know the tax records of all taxpayers,¹⁹ he could have easily denied the acceptance of ACC's availment of the tax amnesty.

As required, ACC submitted the following documents to the Court in Division on April 17, 2009, as attached to its Motion to Cancel Tax Assessment (With Motion to Admit Attached Formal Offer of Evidence):

- a) Letter to the Commissioner of Internal Revenue, addressed to the Chief-LT Audit and Investigation Division II, Ms. Olivia O. Lao, received on January 25, 2008;²⁰

¹⁹ BPI Family Savings Bank v. Court of Appeals, G.R. No. 122480, April 12, 2000, 330 SCRA 507.

- b) Notice of Availment of Tax Amnesty;²¹
- c) Tax Amnesty Payment Form/Acceptance of Payment Form (BIR Form No. 0617);²²
- d) Tax Amnesty Return (BIR Form No. 2116);²³
- e) Statement of Assets, Liabilities and Networth;²⁴
- f) Annual Income Tax Return for the taxable year 2005 with Audited Financial Statements for the year 2005;²⁵ and
- g) Development Bank of the Philippines BIR Tax Payment Deposit Slip in the amount of P3,668,951.06.²⁶

Upon the filing of the required documents and payment of the tax, Section 4 of the 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.

²⁰ Exhibit "V."

²¹ Exhibit "W."

²² Exhibit "X."

²³ Exhibit "Y."

²⁴ Exhibit "Z."

²⁵ Exhibit "AA."

²⁶ Exhibit "BB."



It may not be amiss to note that while the Tax Amnesty Law explicitly confers a presumption of correctness on the SALN, the same provision of the law provides as well when the said presumption will not apply. Section 4 of R.A. No. 9480 expressly states that the SALN as of December 31, 2005 shall be considered as true and correct except where the amount of the declared networth is understated to the extent of thirty percent (30%) or more.

The Court *En Banc*, in unison with the pronouncement of the Court in Division, emphasizes that the presumption of correctness of the SALN applies even against the CIR, for he is not the proper party to question the correctness of the SALN of a tax amnesty applicant. Thus, the thirty percent (30%) threshold can be established in proceedings initiated by, or at the instance of, parties *other than the BIR or its agents*. Further, findings of or admission in congressional hearings, other administrative agencies of government, and/or courts shall be considered admissible to prove the thirty percent (30%) under-declaration.

However, Section 4 also sets a limit to the period within which such proceedings may be initiated, *i.e.*, within one year following the date of the filing of the tax amnesty return and the SALN.

Based on the records of the case, ACC availed of the tax amnesty program on January 25, 2008, and the one-year period stated in Section 4 of the law for the investigation or audit of the documents and/or representations made by the taxpayer in connection with its availment of the tax amnesty benefit had already lapsed. Further, there is nothing in the records which would show that proceedings have been filed under the said section.



Considering that the one-year period provided under Section 4 of R.A. No. 9480 had lapsed without any proceeding, the Court in Division, thus, correctly ordered the cancellation and setting aside of the Assessment Notices for deficiency DST for the taxable year 1999 solely in view of the ACC's availment of the tax amnesty program. ACC therefore, is entitled to the benefits under Section 6 of R.A. No. 9480, which states:

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.

The Court *En Banc* has previously resolved that taxpayers found to have fully complied with the documentation requirements of R.A. No. 9480 are entitled to the immunities as found under Section 6 thereof.²⁷ More importantly, the Court *En Banc* agrees with the Court in Division when it applied the ruling in the case of *Philippine Banking Corporation (Now: Global Business Bank, Inc.) v. Commissioner of Internal Revenue*,²⁸ (“*Philippine Banking Corporation Case*”) wherein 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

²⁷ Metropolitan Bank and Trust Company v. Commissioner of Internal Revenue, CTA EB No. 354 (CTA Case No. 7154), August 29, 2008; Commissioner of Internal Revenue v. PILMICO Foods Corporation, CTA EB No. 430 (CTA Case No. 6868), March 31, 2009.

²⁸ G.R. No. 170574, January 30, 2009, 597 SCRA 366.

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.

Further, in a similar case involving the same parties, the Court *En Banc* in a Resolution dated February 12, 2009, ruled as follows:²⁹

After carefully evaluating the documents submitted, the Court *En Banc* is convinced that petitioner duly complied with the requirements of the Tax Amnesty Program, especially considering that the one (1) year period within which the Tax Amnesty availed of may be questioned has already lapsed. The effect thereof is stated under Section 6 (a) of the law, viz:

"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."

IN VIEW OF THE FOREGOING, petitioner's "Petition for Review" filed on February 9, 2007 is deemed **WITHDRAWN**, and the afore-entitled case is considered **CLOSED** and **TERMINATED**.

SO ORDERED.

The foregoing ruling is the law of the case, and thus laid to rest the issue posed by the CIR. In the case of *People v. Pinuila*,³⁰ the Supreme Court held that whatever is once irrevocably established as the controlling legal rule of decision between the same parties in the same case continues to be the law of the case, so long as the facts on which such decision was predicated continue to be the facts of the case before the

²⁹ Apo Cement Corporation v. Commissioner of Internal Revenue, CTA EB No. 256 (CTA Case No. 6710).

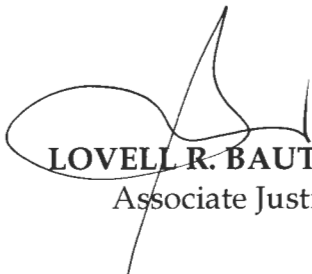
³⁰ 103 Phil. 929 (1958).

court, for the presumption is that all the facts in the case bearing on the point decided have received due consideration. Thus, the Court *En Banc* sees no reason in this case to deviate from the said ruling, especially in the light of the High Tribunal's ruling in the *Philippine Banking Corporation Case*.

In fine, since ACC duly complied with the requisites enumerated under R.A. No. 9480, the Court *En Banc* finds no compelling reason to warrant a modification of the assailed Resolutions.

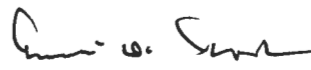
WHEREFORE, the Petition for Review is hereby **DISMISSED**. Accordingly, the impugned Resolution of the Court in Division dated June 11, 2009 and its Resolution dated October 19, 2009, in C.T.A. Case No. 7511 are hereby **AFFIRMED**.

SO ORDERED.

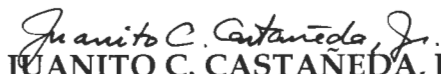


LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:



ERNESTO D. ACOSTA
Presiding Justice



JUANITO C. CASTAÑEDA, JR.
Associate Justice



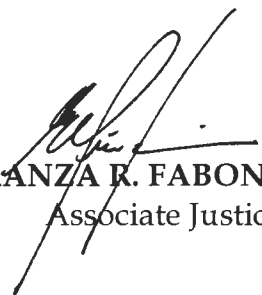
ERIANDA P. UY
Associate Justice



CAESAR A. CASANOVA
Associate Justice



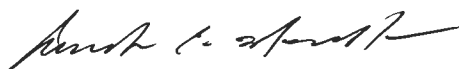
OLGA PALANCA-ENRIQUEZ
Associate Justice



ESPERANZA R. FABON-VICTORINO
Associate Justice

(On Leave)

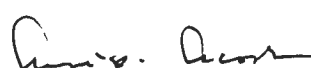
CIELITO N. MINDARO-GRULLA
Associate Justice



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