REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

INTERNATIONAL EXCHANGE BANK (now Union Bank of the Philippines),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7875

Members:

ACOSTA, *Chairperson*
UY, and
FABON-VICTORINO, *JJ.*

Promulgated:

OCT 18 2011 ; 1:33pm

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DECISION

***Fabon-Victorino, J.*:**

This Petition for Review seeks for the cancellation of the four (4) deficiency internal revenue tax assessments issued by respondent against petitioner in the total amount of Php16,013,275.65 allegedly representing deficiency withholding taxes and documentary stamp taxes for the calendar year 2004.

Petitioner International Exchange Bank (now Union Bank of the Philippines) is a duly organized commercial banking corporation with principal office address at 21st Floor, Union Bank

Plaza, Meralco Avenue corner Onyx Street, Ortigas Center, Pasig City.[1]

Respondent, on the other hand, is Commissioner of the Bureau of Internal Revenue (BIR), with authority to decide disputed assessments. She holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

On June 11, 2008, it received a Preliminary Assessment Notice[2] (PAN) dated May 19, 2008 issued by the BIR, assessing it for the following deficiency taxes:

ASSESSMENT NO.	TAX TYPE	AMOUNT
WE-04-000220	Expanded Withholding Tax	P 1,879,510.95
WF-04-000065	Final Withholding Tax (FCDU)	164,721.60
FT-04-000066	Final Withholding Tax (Onshore)	7,617,776.50
DS-04-000076	Documentary Stamp Tax	6,351,266.60
TOTAL		**P16,013,275.65**

On June 26, 2008, petitioner filed its letter reply to the PAN.[3] The following day, June 27, 2008, petitioner received the Formal Letter of Demand (FLD) dated June 26, 2008 reflecting

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[1] Par. 1.1, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), docket, pp. 152-153.
[2] Exhibit "N".
[3] Exhibit "O".

the same deficiency taxes alleged in the PAN dated May 19, 2008.[4]

Petitioner claims that after evaluation of the assessments against it, it voluntarily paid on June 30, 2008 the deficiency Expanded Withholding Taxes (EWT) and Final Withholding Taxes (FWT) on its FCDU account in the amounts of Php1,879,510.95 and Php164,721.60, respectively.

On July 24, 2008, petitioner, pursuant to Section 228 of the 1997 Tax Code, filed a formal letter of protest[5] disputing the FLD dated June 26, 2008 with the information that it already settled the claimed deficiency EWTs and FWTs on its FCDU account. Insofar as the alleged deficiency FWT (onshore) and DSTs, petitioner invoked its availment of the tax amnesty program under Republic Act (RA) No. 9480,[6] as implemented by Department of Finance Order (DFO) No. 29-07 and Revenue Memorandum Circular (RMC) No. 69-07. w

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[4] Exhibit "P".
[5] Exhibit "Q".
[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.

Respondent however failed to act on petitioner's protest prompting the latter to file the instant Petition for Review on February 19, 2009.

In her Answer[7] filed on April 13, 2009, respondent interposes the following Special and Affirmative Defenses:

> "4. Respondent hereby reiterates and repleads the preceding paragraphs of this answer as part of his Special and Affrimative Defenses.
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> 5. The assessments were issued in accordance with law and regulations.
>
> 6. **The assessments against petitioner for deficiency Withholding Tax and Expanded Withholding Tax on its FCDU should not be cancelled as petitioner has to prove payment of the same.**
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> xxx xxx xxx
>
> 7. **Petitioner did not submit documents that will substantiate its alleged availment of tax amnesty.**
>
> xxx xxx xxx
>
> 8. **Suppose that petitioner availed of the Tax Amnesty Program of the government, the assessments against petitioner for deficiency Final Withholding Tax on its On-shore Income and Documentary Stamp Tax should not be cancelled as petitioner's availment of tax amnesty has not become incontestable.**

[7] Docket, pp. 91-98.

xxx xxx xxx

9. **The power to cancel assessments is within the province of respondent's authority.**

xxx xxx xxx

10. **Respondent's period to assess has not prescribed.**

xxx xxx xxx"

After filing their respective Pre-Trial Briefs, the parties submitted their Joint Stipulation of Facts and Issues (JSFI) which the Court approved on August 4, 2009.[8]

During the trial, petitioner presented its Senior Tax Officer Arminda M. Cabacoy. She testified by way of Judicial Affidavit that as a Senior Tax Officer, she primarily facilitates compliance with existing and new tax laws and BIR regulations by all units and branches of petitioner. In connection with petitioner's availment of the tax amnesty program, it submitted the Notice of Availment of Tax Amnesty[9], Tax Amnesty Payment Form[10], Tax

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[8] Docket, p. 164.
[9] Exhibit "A".
[10] Exhibit "B".

Amnesty Return[11] and Statement of Assets, Liabilities, and Net Worth[12].

The witness further testified that respondent erroneously presumed that the alleged DST due under Section 180 of the 1997 Tax Code on time deposits and bills payable of petitioner had been passed-on and had already been collected from its customers, hence, not covered by the Tax Amnesty Law. The truth however is that petitioner did not pass-on or collect any DST on time deposits and bills payable from its customers, either in the form of deduction from the proceeds of the loan or as addition to the payable amount of the borrower. By virtue of Revenue Regulations No. 10-76 and Presidential Decree 1035 that exempt net income of FCDU from all taxes, petitioner believes that it is not liable to "other taxes", which include the DST assessed against it.

With regard to petitioner's alleged deficiency FWT – onshore, the witness clarified that petitioner is being assessed in its capacity as the "income-earner" and not as a withholding

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[11] Exhibit "C".
[12] Exhibit "D".

agent. Respondent cannot validly argue that the subject tax, being in the nature of withholding tax, is not covered by the Tax Amnesty Law.

Furthermore, petitioner had already paid the deficiency assessments for EWT and FWT on its FCDU account for the year 2004, as evidenced by the different payment forms and BIR's confirmation of payments.[13]

After the testimony of its lone witness Arminda M. Cabacoy, petitioner rested and formally offered its evidence which were admitted per Resolutions of June 18, 2010[14] and June 25, 2010[15].

On August 31, 2010, respondent, through counsel manifested that she will no longer present any evidence in support of her defense.[16]

In the Resolution dated November 3, 2010,[17] the Court deemed the case submitted for decision with respondent's filing

[13] Exhibits "I", "J", "K" and "L".
[14] Docket, pp. 289-290.
[15] Docket, p. 298.
[16] Minutes of the August 31, 2010 hearing, docket, p. 301.
[17] Docket, p. 345.

of her Memorandum[18] on September 28, 2010 and that of petitioner's on November 2, 2010.[19]

THE ISSUES.

The parties submitted the following issues[20] for the resolution of the Court, to wit:

> "A.
>
> WHETHER OR NOT THE ASSESSMENTS AGAINST THE PETITIONER FOR DEFICIENCY EXPANDED WITHHOLDING TAX AND FINAL WITHHOLDING TAX ON ITS FCDU SHOULD ALREADY BE CANCELLED.
>
> B.
>
> WHETHER OR NOT THE ASSESSMENTS AGAINST THE PETITIONER FOR DEFICIENCY FINAL WITHHOLDING TAX ON ITS ON-SHORE INCOME AND DOCUMENTARY STAMP TAX SHOULD ALREADY BE CANCELLED IN VIEW OF ITS AVAILMENT OF THE TAX AMNESTY PROGRAM UNDER THE TAX AMNESTY LAW.

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[18] Docket, p. 304-314.
[19] Docket, pp. 321-342.
[20] Docket, pp. 160.

C.

WHETHER OR NOT THE PERIOD TO ASSESS BY RESPONDENT HAD PRESCRIBED"

Petitioner's Arguments:

Petitioner argues that the assessments for deficiency EWT and FWT on FCDU should be cancelled on the ground that they were already been paid by petitioner. As to the other tax assessments, petitioner invokes immunity from payment of taxes and penalties having availed of the tax amnesty program under Republic Act (RA) No. 9480.

Besides, respondent's right to assess petitioner had already prescribed. Petitioner posits that respondent specifically denied in her Answer that it executed a waiver of the three-year prescriptive period. By so doing, respondent effectively waived the defense of prescription that could extend the three-year prescriptive period for which respondent could assess petitioner for its internal revenue tax liabilities for the year 2004. Since there is no evidence or allegation by respondent that petitioner has not filed or was delayed in the filing of the returns, the three-year period is counted from the dates prescribed in the law for the filing of the returns. Counting three years from these dates, the end of the three-year period had already lapsed when the assessment was issued on June 26, 2008.

Respondent's Arguments:

Respondent counters that the Court has the discretion to scrutinize petitioner's Statement of Assets, Liabilities and Networth (SALN) to determine its compliance with the other documentary requirements of the tax amnesty program notwithstanding the lapse of the one-year period provided under RA No. 9480. This one-year period refers only to the administrative stage of the availment of the tax amnesty and not to the court proceedings. The tax amnesty law is a partial surrender of the power to tax by the State thus should be strictly construed.

Respondent also asseverates that petitioner's tax amnesty documents cannot be admitted as evidence on the ground that petitioner is not eligible to avail of the benefits under the Tax Amnesty Law. For one, petitioner failed to fully comply with the mandatory requirements of Section 2 of RA No. 9480, in relation to paragraphs (1)(a)(b)(c) and (2) of Section 8 of Rule IV of Department Order No. 29-07.[21]

Moreover, her right to assess petitioner has not prescribed since petitioner failed to declare certain tax payments it was incumbent to withhold and remit to the BIR. Thus, the statutory period of limitation found in Section 222(a) of the National Internal Revenue Code (NIRC) of 1997, which provides for a period of ten (10) years from discovery of the falsity, fraud or non-filing of the return that applies.

THE COURT'S RULING

The Court finds merit in the Petition.

The record shows that petitioner was assessed for deficiency expanded withholding, final withholding, and documentary stamp taxes for taxable year 2004, broken down as follows:

[21] Rules and Regulations To Implement Republic Act No. 9480.

TAX TYPE	BASIC	SURCHARGE	INTEREST	COMPROMISE	AMOUNT
Expanded Withholding Tax	P1,094,563.78		P759,947.17	P25,000.00	P 1,879,510.95
FWT-FCDU	90,138.86		62,582.74	12,000.00	164,721.60
FWT-Onshore	4,481,385.41		3,111,391.09	25,000.00	7,617,776.50
Documentary Stamp Tax	3,249,184.78	812,296.19	2,264,785.63	25,000.00	6,351,266.60
TOTAL	8,915,272.83	812,296.19	6,198,706.63	87,000.00	**P16,013,275.65**

Admittedly, petitioner availed of the tax amnesty program under R.A. No. 9480 on February 4, 2008. In connection with the availment, petitioner presented its Notice of Availment of Tax Amnesty,[22] Tax Amnesty Payment Form,[23] Tax Amnesty Return,[24] and Statement of Assets, Liabilities and Networth,[25] all of which are the documents required to be illegible for tax amnesty.

Significantly, petitioner's availment of the tax amnesty program has already been settled in the case of *International Exchange Bank vs. Commissioner of Internal Revenue,* docketed as C.T.A. Case No. 7848. The Decision in the said case promulgated by the Court in Division on May 6, 2010 states, thus:

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[22] Exhibit "A".
[23] Exhibit "B".
[24] Exhibit "C".
[25] Exhibit "D".

> "An examination of the documents presented shows that petitioner sufficiently complied with the provisions of the Tax Amnesty Law. Consequently, petitioner should thereafter be immune from the payment of taxes, as well as the appurtenant civil, criminal or administrative penalties under the NIRC of 1997, as amended, arising from the failure to pay any and all internal revenue taxes for taxable year 2005 and prior years, as held in the case of Philippine Banking Corporation (Now: Global Business Bank, Inc.) vs. Commissioner of Internal Revenue. Moreover, the one-year period provided under Section 4 of R.A. No. 9480 had already lapsed without anyone challenging the correctness of petitioner's SALN. Therefore, the same continues to bear the presumption of correctness as provided for under R.A. No. 9480. Considering all the foregoing, petitioner may now enjoy the immunities provided for by the said law."

With that favorable ruling, petitioner may rightfully claim the immunities and privileges provided in Section 6 of RA No. 9480, which reads as follows:

> "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.**" *(Emphasis supplied)*

Accordingly, the deficiency documentary stamp tax assessment, being among the types of tax covered by the tax amnesty law, should be cancelled and terminated.

The final withholding tax assessment on the onshore income should as well be cancelled inasmuch as the exception of "withholding agents with respect to their withholding tax liabilities" found in Section 8(a) of RA No. 9480 does not apply to petitioner's onshore income.

As aptly pointed out by petitioner, the assessment is being imposed on the alleged onshore income of petitioner. However under the law, petitioner has no obligation to withhold tax on its own income. It is the withholding agent that has the obligation to deduct and remit the same to the BIR. The withholding tax system is a system designed for the deduction and remittance of taxes on the payments of income, not on the receipt of income.

The assessment of deficiency tax on onshore income against petitioner should be premised on its status as the income earner, not as the withholding agent. Section 8(a) of the tax amnesty law which refers to withholding agent with respect to their tax liabilities is therefore not applicable. Having availed of the tax amnesty program, the deficiency tax assessment issued against petitioner on its onshore income must as well be cancelled.

With the foregoing, the succeeding discussion shall be confined only to the remaining issue pertaining to the assessments of deficiency expanded withholding tax and final withholding tax on its FCDU.

Petitioner claims that it already paid the deficiency assessments for expanded withholding tax and final withholding tax on its FCDU in the amounts of P1,879,510.95 and P164,721.60, respectively. Allegedly, after evaluation of the assessment issued against it, petitioner voluntarily paid the deficiency expanded withholding taxes and final withholding taxes on its FCDU for taxable year 2004 on June 30, 2008.

the same amount of deficiency final withholding tax on its FCDU being assessed by respondent against petitioner. The reference number indicated in the BIR EFPS Payment Confirmation corresponds to Payment Form bearing Reference No. 290800002320400 of which the actual amount paid was P164,721.60. Patently, the evidence presented proves that petitioner paid the deficiency expanded withholding tax and final withholding tax on its FCDU in the amounts of P1,879,510.95 and P164,721.60, respectively.

With the foregoing, the remaining issue pertaining to prescription of the period to assess is deemed moot.

WHEREFORE, the instant *Petition for Review* filed by International Exchange Bank (now Union Bank of the Philippines), is hereby **GRANTED**.

Accordingly, the Assessment Notice Nos. WE-04-000220 and WF-04-000065 assessing petitioner of deficiency Expanded Withholding Tax and Final Withholding Tax – FCDU, respectively, are hereby **CANCELLED** and **SET ASIDE** having been paid by petitioner. The Assessment Notice Nos. FT-04-000066 and DS-04-000076, assessing petitioner of deficiency Final Withholding

To prove this contention, petitioner adduced in evidence BIR Form No. 0605 (Payment Form)[26] and BIR EFPS Payment Confirmations[27].

For the deficiency expanded withholding tax, Payment Form bearing Reference No. 290800002320390[28] indicates the amount of basic tax of P1,094,563.78, interest of P759,947.17, and compromise penalty of P25,000.00 or in the aggregate amount of P1,879,510.95. This amount jibes with the assessment on deficiency withholding tax issued by respondent against petitioner. Moreover, the BIR EFPS Payment Confirmation,[29] indicates the actual amount paid as P1,879,510.95, with Payment Transaction No. 80656604 and which corresponds to Payment Form bearing Reference No. 290800002320390.

On the other hand, the Payment Form bearing Reference No. 290800002320400,[30] indicates the amount of basic tax of P90,138.86, interest of P62,582.74, and compromise penalty of P12,000.00 or in the aggregate amount of P164,721.60. This is

[26] Exhibits "I" and "K".
[27] Exhibits "J" and "L".
[28] Exhibit "I".
[29] Exhibit "J".
[30] Exhibit "K".

Tax – Onshore and Documentary Stamp Tax, respectively, are as well **CANCELLED** and **SET ASIDE,** in view of petitioner's availment of the Tax Amnesty Program under R.A. No. 9480.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

ERNESTO D. ACOSTA
Presiding Justice

ERLINDA P. UY
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's Division.

ERNESTO D. ACOSTA
Presiding Justice