**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

## <u>SECOND DIVISION</u>

**PEOPLE OF THE PHILIPPINES,**
Plaintiff,

**- versus -**

**MARILEN Z. SALAMANQUE**
(No. 014-E Castillo Street, Barangay Commonwealth, Quezon City)
-At-Large-,
Accused.

**CTA Crim. Case No. O-884**
(NPS Docket No. XVI-INV-19F-00235)

For: Violation of Section 255 of the NIRC of 1997, as amended.

***Members:***

**UY,** *Chairperson,*
**BACORRO-VILLENA,** and
**CUI-DAVID,** <u>*JJ.*</u>

***Promulgated:***

OCT 20 2022
1:20 p.m.

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# RESOLUTION

For resolution is accused's ***Manifestation/Motion To Dismiss*** filed on February 9, 2022 with plaintiff's ***Comment*** filed on March 14, 2022.

In her *Manifestation/Motion*, accused avers that she has availed of the Tax Amnesty on Delinquencies under Republic Act (RA) No. 11213 or the "*Tax Amnesty Act*", and paid to the Bureau of Internal Revenue (BIR) the amount of ₱2,668,358.22 on March 31, 2021. As such, a Notice of Issuance of Authority to Cancel Assessment was issued by Marivic G. Tulio, Chief of the Collection Division of BIR Revenue Region No. 7A in her favor. Thus, accused prays for the dismissal of the instant case considering the availment of a tax amnesty, her concomitant payment and the issuance of an Authority to Cancel Assessment, the civil and criminal liabilities of the accused have already extinguished.

In its Comment, the plaintiff confirms that the accused availed of the Tax Amnesty on Delinquencies in accordance with RA No. 11213 and that based on record, the Authority to Cancel Assessment attached by the accused in her Motion to Dismiss is a faithful reproduction of the original.

We resolve.

Section 17, Title IV of RA No. 11213[1] provides for the coverage of Tax Amnesty on Delinquencies, which reads as follows:

> **"TITLE IV**
> **TAX AMNESTY ON DELINQUENCIES**
>
> **SECTION 17.** *Coverage.* – **There is hereby authorized and granted a tax amnesty herein called the Tax Amnesty on Delinquencies, which shall cover all national internal revenue taxes such as, but not limited to, income tax**, withholding tax, capital gains tax, donor's tax, **value-added tax**, other percentage taxes, excise tax and documentary stamp tax collected by the Bureau of Internal Revenue, including value-added tax and excise taxes collected by the Bureau of Customs for taxable year 2017 and prior years.
>
> **For purposes of this Act, the Tax Amnesty on Delinquencies may be availed of in the following instances**:
>
> xxx xxx xxx
>
> (b) **Pending criminal cases with** the Department of Justice or **the courts for tax evasion and other criminal offenses under Chapter II of Title X and Section 275 of the National Internal Revenue Code of 1997, as amended, with** or without **assessments duly issued**;
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> xxx xxx xxx"

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[1] REPUBLIC ACT No. 11213 is 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 2017 and Prior Years with Respect to Estate Tax, Other Internal Revenue Taxes, and Tax on Delinquencies.*"

Based on the aforementioned provision, Tax Amnesty on Delinquencies cover all national internal revenue taxes, such as **income tax**, withholding tax, capital gains tax, donor's tax, value-added tax, other percentage taxes, excise tax and documentary stamp tax, and may be availed by those, among others, with pending criminal cases with the courts for tax evasion and other criminal offenses under Chapter II of Title X[2] and Section 275[3] of the NIRC of 1997, as amended.

A perusal of the *Information* filed on May 18, 2021 shows that the accused is charged with violation of Section 255 of the NIRC of 1997, as amended, for her alleged failure to pay deficiency income tax in the amount of ₱3,616,232.69, exclusive of surcharge and interest, for taxable year 2010, despite final assessment notice, including prior and post notices and demands to pay, the latest being in the nature of a Demand Before Suit dated December 6, 2017, to the damage and prejudice of the Government of the Republic of the Philippines.[4]

The foregoing allegations sufficiently show that the instant case falls within the coverage of Section 17 of RA No. 11213 considering that the subject tax in this case is income tax and that the charge against the accused is for violation of Section 255 of the NIRC of 1997, as amended, which is a crime that falls under Chapter II of Title X of the NIRC of 1997, as amended.

With regard to the entitlement and availment of the Tax Amnesty on Delinquencies, Sections 18 and 19, Title IV of RA No. 11213 set the conditions on how to avail of the Tax Amnesty on Delinquencies, to wit:

> "**SECTION 18**. *Entitlement of Tax Amnesty on Delinquencies.* – Any person may enjoy the immunities and privileges of the Tax Amnesty on Delinquencies and pay the following tax amnesty rates:
>
> **<u>(c) Pending criminal cases with criminal information filed with the Department of Justice or the courts for tax evasion and other criminal offenses under Chapter II of Title X and Section 275 of the National Internal Revenue Code of</u>**

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[2] Title X is titled as "*Statutory Offenses and Penalties*", which covers Chapter II, titled as "*Crimes, Other Offenses and Forfeitures*". The provisions covered are from Sections 253 to 268.
[3] Violation of Other Provisions of this Code or Rules or Regulations in General.
[4] Information, Docket, p. 5.

> **<u>1997, as amended, with assessments duly issued and otherwise excluded in Titles II and III hereof – 60% of the basic tax assessed</u>**;
>
> xxx xxx xxx
>
> **SECTION 19.** *Availment of the Tax Amnesty on Delinquencies; When and Where to File and Pay.* – **Any person, natural or juridical, who wishes to avail of the Tax Amnesty on Delinquencies shall, within one (1) year from the effectivity of the Implementing Rules and Regulations of this Act, file** with the appropriate office of the Bureau of Internal Revenue, which has jurisdiction over the residence or principal place of business of the taxpayer, **a sworn Tax Amnesty on Delinquencies Return accompanied by a Certification of Delinquency.** The payment of the amnesty tax shall be made at the time the Return is filed:
>
> *Provided*, That the Revenue District Officer shall issue and endorse an **Acceptance Payment Form**, in such form as may be prescribed in the Implementing Rules and Regulations of this Act **authorizing the authorized agent bank, or in the absence thereof, the revenue collection agent or municipal treasurer concerned, to accept the amnesty tax payment**:
>
> *Provided, further,* That the availment of the Tax Amnesty on Delinquencies and the issuance of the corresponding Acceptance Payment Form do not imply any admission of criminal, civil or administrative liability on the part of the availing taxpayer." (*Emphases and Underscoring Ours*)

Based on the foregoing, the Tax Amnesty on Delinquencies may be availed of: (a) by filing with the appropriate office of the BIR a sworn Tax Amnesty on Delinquencies Return accompanied by a Certification of Delinquency, within a period of one (1) year from the effectivity of the Implementing Rules and Regulations of RA No. 11213; and (b) by paying, *inter* alia, 60% of the basic tax assessed, for those with pending criminal cases for tax evasion and other criminal offenses under Chapter II of Title X and Section 275 of the NIRC of 1997, as amended.

Relative thereto, Sections 5 and 6 of Revenue Regulation (RR) No. 04-19[5] or the "*Implementing Rules and Regulations of Republic Act No. 11213, Otherwise Known as the "Tax Amnesty Act*", provides further the manner of availment of Tax Amnesty on Delinquencies, *viz*:

> "**SECTION 5. MANNER OF AVAILMENT OF TAX AMNESTY ON TAX DELINQUENCIES**. Any person, whether natural or juridical, who wishes to avail of the Tax Amnesty on Delinquencies shall file, within one (1) year from the effectivity of these Regulations, an application therefor in accordance with the procedures set forth below.
>
> A. **DOCUMENTARY REQUIREMENTS**: The taxpayer shall submit the following:
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> 1. Tax Amnesty Return (TAR) (BIR Form No. 2118-DA, Annex "A"), completely and accurately accomplished and made under oath;
>
> 2. Acceptance Payment Form (APF) (BIR Form No. 0621-DA, Annex "B") duly validated by the Authorized Agent Banks (AABs) or APF duly stamped "received" with accompanying bank deposit slip duly validated by the concerned AABs or Revenue Official Receipt (ROR) issued by the Revenue Collection Officers (RCOs);
>
> 3. Certificate of Tax Delinquencies/Tax Liabilities issued by concerned BIR offices (Annex "C"); and
>
> 4. In case of applications under Section 3(A)(2) of these Regulations, a copy of the assessment found in the FAN/FDDA: *Provided that,* in cases of applications under Section 3(D), either delinquent account or not, with or without FAN/FDDA, the Preliminary Assessment Notice (PAN)/Notice for Informal Conference or equivalent document is sufficient.
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> B. **PLACE OF FILING** – The Tax Amnesty Return and other documentary requirements shall be filed with the following BIR offices:

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[5] Issued on April 5, 2019.

| Classification | Place of Filing |
|---|---|
| Non-Large Taxpayer | Revenue District Office (RDO) where applicant-taxpayer is registered |
| Large Taxpayers – Cebu or Davao | Large Taxpayers Division (LTD) Office where applicant-taxpayer is registered |
| Large Taxpayers – Excise and Regular | Large Taxpayers Collection Enforcement Division (LTCED) |

C. **PROCEDURES** – The taxpayer-applicant shall:

Step 1. **Secure the Certificate of Delinquency/Tax Liabilities from the concerned BIR Office** as specified below:

| Nature of Tax Liabilities | Large Taxpayer | Non-Large Taxpayer |
|---|---|---|
| Tax liabilities covered by a pending criminal cases filed with the DOJ/ Prosecutor's Office/ Courts | Prosecution Division of the National Office | a. Legal Division – For taxpayer-applicants under the jurisdiction of Revenue Region (RR) Nos. 5,6,7 and 8 (Caloocan, Manila, Quezon City and Makati, respectively);<br>b. Legal Division of the Regional Office or Prosecution Division in the National Office which handled the case - For taxpayer-applicants under the jurisdiction of Revenue Regions other than RRs mentioned under (a) hereof. |

Step 2. **Present the duly accomplished TAR made under oath and APF, together with the other required documents, to the concerned RDO/LTD/LTCED for endorsement of the APF and pay the tax amnesty amount with the AABs or RCOs, whichever is applicable, by presenting the RDO/LTD/LTCED-endorsed or approved APF**: *Provided,* that if no payment is required as in the case when assessment consists only of unpaid penalties due to either late filing or payment, the phrase "no payment required" shall be indicated in the APF.

Step 3. **Submit/file immediately to the RDO/LTD/LTCED where the taxpayer is registered, in triplicate copies, the duly accomplished TAR, made under oath, together with the complete documentary requirements and proof of payment, which in no case shall be beyond the one (1) year availment period.** The taxpayer/applicant shall be furnished with a copy, stamped as received, of said TAR and APF.

**Availment of Tax Amnesty on Delinquencies shall be considered fully complied with upon completion of the above enumerated steps within the one (1) year availment period.**

**SECTION 6. ISSUANCE OF AUTHORITY TO CANCEL ASSESSMENT (ATCA) AND LIFTING OF THE VALIDITY OF THE ISSUED NOTICES AND WARRANTS.** – The Notice of Issuance of Authority to Cancel Assessment (NIATCA) shall be issued by the BIR to the taxpayer availing of the Tax Amnesty on Delinquencies within fifteen (15) calendar days from submission of the APF and TAR. Otherwise, the stamped-"received" duplicate copies of the APF and TAR shall be deemed as sufficient proof of availment."

Relative to the aforequoted legal requirements, records show that accused submitted certified true copies of the following documents to show her compliance therewith, and to prove her entitlement and availment of the Tax Amnesty on Delinquencies pursuant to R.A. 11213, to wit:

1) Certificate of Tax Delinquencies/Tax Liabilities issued on March 29, 2021 by Marlon M. Mendoza, Chief, Legal Division, Bureau of Internal Revenue, Revenue Region No. 7A – Quezon City[6];

2) Tax Amnesty Return on Delinquencies (BIR Form No. 2118-DA) for the payment of Income Tax and Value-Added Tax in the total amount of ₱2,666,358.22[7] for the taxable year 2010 with stamp received by the BIR on March 31, 2021;[8]

3) Acceptance Payment Form – Tax Amnesty on Delinquencies (BIR Form No. 0621-DA) for the payment of Income Tax and Value-Added Tax for taxable year 2010 in the total amount of ₱2,666,358.22, endorsed by Revenue District Officer Rodel S. Buenaobra, and with stamp received by the BIR on March 31, 2021;[9] and

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[6] Docket, p. 162.
[7] Composed of Income Tax - ₱2,169,739.61 and VAT - ₱496,618.61.
[8] Docket, pp. 163 to 165.
[9] Docket, p. 166.

4) PBCOM BIR Tax Payment Slip dated March 31, 2021 in the amount of ₱2,666,358.22[10];

After careful consideration of the foregoing documents, the Court finds that accused complied with the necessary documents mandated by the provisions under the Tax Amnesty on Delinquencies of RA No. 11213 and RR 4-2019.

To recapitulate, the accused paid the Tax Amnesty on Delinquencies on March 31, 2021 in the aggregate amount of ₱2,666,358.2, which covers the subject tax in this case, income tax, in the amount of ₱2,169,739.61 for taxable year 2010, an equivalent of sixty percent (60%) of her alleged basic income tax liability amounting to ₱3,616,232.69. Thereafter, accused was able to file the Tax Amnesty Return on Delinquencies, Acceptance Payment Form and proof of payment with the BIR on the same date which is within the effectivity of the availment period.

In this regard, it must be noted that RR No. 4-2019, the IRR of RA No. 11213, initially took effect on April 24, 2019.[11] However, the availment period provided under Section 3[12] of RR No. 4-2019 was extended until April 23, 2020 pursuant to RR No. 5-2020;[13] and was further extended until December 31, 2020 in view of RR No. 15-2020.[14] Finally, the availment period was later extended until **June 30, 2021** by virtue of RR No. 32-2020.[15]

Clearly, the payment of the corresponding amnesty tax by the accused, and submission/filing of the duly accomplished Tax Amnesty Return, Acceptance Payment Form and proof of payment made on March 31, 2021, are well within the extended period provided under RR No. 32-2020.

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[10] Docket, p. 167.

[11] RR No. 4-2019 took effect on April 24, 2019, after fifteen (15) days from the publication thereof in the Malaya Business Insight on April 9, 2019.

[12] SECTION 3. *Coverage.* – All persons, whether natural or juridical, with internal revenue tax liabilities covering taxable year 2017 and prior years, may avail of Tax Amnesty on Delinquencies within one (1) year from the effectivity of these Regulations, xxx xxx xxx.

[13] SUBJECT: AMENDS REVENUE REGULATION NO. 4-2019 ON TAX AMNESTY ON DELINQUENCIES.

[14] SUBJECT: FURTHER AMENDMENTS TO REVENUE REGULATION NO. 4-2019, AS AMENDED, ON TAX AMNESTY ON DELINQUENCIES.

[15] SUBJECT: FURTHER AMENDMENTS TO REVENUE REGULATION NO. 4-2019, AS AMENDED, ON TAX AMNESTY ON DELINQUENCIES.

Notably, on the part of the BIR through Marivic G. Tulio, Chief, Collection Division of Revenue Region No. 7A, Quezon City, a Notice of Issuance of Authority to Cancel Assessment[16] was issued in favor of accused, stating that the tax liabilities covered by the Tax Amnesty Return in the total amount of ₱2,666,358.22 representing tax amnesty payment have already been cancelled through the approved Authority to Cancel Assessment, with details as follows:

| Tax liabilities Covered by Tax Amnesty | | | | | ATCA | |
|---|---|---|---|---|---|---|
| **Taxable Year** | **Tax Types** | **Amount per FAN/FLD/FDDA** | **Amount Paid** | **Amount Cancelled** | **Date** | **Number** |
| 2010 | IT/VAT | ₱9,634,861.80 | ₱2,666,358.22 | ₱6,968,503.58 | 05/19/2021 | ACA-201900025337 |

Section 20 of RA No. 11213 and Section 8 of RR No. 4-2019 provides that upon full compliance with all the conditions set forth in RA No. 11213, as well as those enumerated in RR No. 4-2019, the taxpayer's alleged liability is considered settled, and the criminal case in connection with said liability is deemed terminated, to wit:

> "**SECTION 20**. *Immunities and Privileges.* – **The tax delinquency of those who avail of the Tax Amnesty on Delinquencies and have fully complied with all the conditions set forth in this Act and upon payment of the amnesty tax shall be considered settled and the criminal case under Section 18(c) and its corresponding civil or administrative case, if applicable, be terminated, and the taxpayer shall be immune from all suits or actions, including the payment of said delinquency or assessment, as well as additions thereto, and from all appurtenant civil, criminal, and administrative cases, and penalties under the National Internal Revenue Code of 1997, as amended**, as such relate to the taxpayer's assets, liabilities, networth, and internal revenue taxes that are subject of the tax amnesty, and from such other investigations or suits insofar as they relate to the assets, liabilities, networth and internal revenue taxes that are subject of the tax amnesty" *Provided,* That any notices of levy, attachments and/or warrants of garnishment issued against the taxpayer shall be set aside pursuant to a lifting of notice of levy/garnishment duly issued by the Bureau of Internal Revenue or its authorized representative: *Provided, further,* That the Authority to Cancel Assessment shall be issued by the Bureau of Internal Revenue in favor of the taxpayer availing of the Tax Amnesty on Delinquencies within fifteen (15) calendar days from submission to the

[16] Docket, p. 172.

Bureau of Internal Revenue of the Acceptance Payment Form and the Tax Amnesty on Delinquencies Return. Otherwise, the duplicate copies stamped as received, of the Acceptance Payment Form, and the Tax Amnesty on Delinquencies Return shall be deemed as sufficient proof of availment: *Provided, furthermore,* That the Tax Amnesty on Delinquencies Return and the Acceptance Payment Form shall be submitted to the Revenue District Officer after complete payment. **The completion of these requirements shall be deemed full compliance with the provisions of this Act.**

**Upon full compliance with all the conditions set forth in this Title and payment of the corresponding tax on delinquency, the tax amnesty granted under this Title shall become final and irrevocable.**"

**SECTION 8. IMMUNITIES AND PRIVILEGES OF AVAILING TAX AMNESTY ON TAX DELINQUENCIES**. <u>The tax delinquency of those who avail of the Tax Amnesty on Delinquencies under these Regulations, upon full compliance with all the conditions set forth hereof, shall be considered settled, and the criminal case in connection therewith and its corresponding civil or administrative case, if applicable, shall be terminated. The taxpayer shall be immune from all suits or actions, including the payment of said delinquency or assessment, as well as additions thereto, and from all appurtenant civil, criminal and administrative cases, and penalties under the 1997 Tax Code, as amended, as such relate to the internal revenue taxes for taxable years that are subject of the tax amnesty availed of</u>.

The availment of the Tax Amnesty on Delinquencies herein provided and the issuance of the corresponding APF do not imply any admission of criminal, civil or administrative liability on the part of the availing taxpayer." (*Emphasis and underscoring supplied*)

Considering that accused is qualified to avail of a Tax Amnesty on Delinquencies under RA No. 11213 and RR No. 4-2019 and has met the conditions set forth therein, as well as the confirmation given by the plaintiff in its Comment, the accused's tax delinquency or delinquent account for income tax for taxable year 2010 is considered settled pursuant to Section 20 of RA No. 11213 and Section 8 of RR No. 4-2019. Furthermore, accused shall be immune from all suits or actions, including the payment of the subject tax assessment, as well as additions thereto, among other immunities and privileges provided under the said provisions.

It bears stressing that a tax amnesty operates as a general pardon or intentional overlooking by the State of its authority to impose penalties on persons otherwise guilty of evasion or violation of a revenue or tax law. It is an absolute forgiveness or waiver by the government of its right to collect what is due it and to give tax evades who wish to relent a chance to start with a clean slate.[17]

**WHEREFORE**, in light of the foregoing considerations, the Manifestation/Motion to Dismiss filed by the accused is hereby **GRANTED**. Accordingly, the instant case is **DISMISSED** and considered **CLOSED AND TERMINATED**.

**SO ORDERED.**

**ERLINDA P. UY**
Associate Justice

(On Official Business)
**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice

**LANEE S. CUI-DAVID**
Associate Justice

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[17] *Commissioner of Internal Revenue vs. Transfield Philippines, Inc.*, G.R. No. 211449, January 16, 2019.