Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

NORTHERN MINDANAO TRANSPORT CO., INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

EB Case No. 428
(CTA Case No. 7077)

Members:
ACOSTA, PJ,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, JJ.

Promulgated:
JUL 30 2009 Apolinario 1:00 p.m.

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DECISION

CASANOVA, J.:

This is an appeal, by way of Petition for Review, filed by petitioner-Northern Mindanao Transport Co., Inc., from the Resolution[1] dated August 20, 2008 (*the First Assailed Resolution*) declaring CTA Case No. 7077 closed and terminated and the Petition for Review deemed withdrawn and from the Resolution[2] dated October 6, 2008 (*the Second Assailed Resolution*) denying petitioner's Motion for Clarification and/or Reconsideration[3].

The facts of the case, as culled from the records of the case, are as follows:

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[1] Division Docket, p. 392
[2] Ibid, p. 402
[3] Id, pp. 393-399

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office located at Level 3, Phinma Plaza, Rockwell Center, Makati City.[4]

Respondent is the government official duly charged with the duty to assess and collect internal revenue taxes, as well as the power to cancel disputed assessments with office address at BIR National Office Building, Diliman, Quezon City.[5]

On December 29, 2003, petitioner received from the respondent a Formal Assessment Notice with attached "Details of Discrepancies" and two (2) Assessment Notices with the following Assessment Numbers: IT-97098-99-03-538 for income tax and VT-97098-99-03-538 for VAT, all dated December 29, 2003, and signed by Mr. Anselmo G. Adriano, Acting Regional Director, Revenue Region No. 8, Makati City, covering taxable year 1999. The total assessment amounts to ₱145,387,173.48, inclusive of surcharge and interest.[6]

On January 27, 2004, petitioner, through counsel, filed a protest requesting the withdrawal and cancellation of the said assessments.[7]

Due to respondent's inaction on its protest, petitioner filed a Petition for Review[8] on October 15, 2004, seeking judgment ordering the cancellation and withdrawal of the assessments against the petitioner for deficiency income tax and value-added tax (VAT) including surcharges and interest thereon, in the total amount of ₱145,387,173.48.

In his Answer[9] filed on January 19, 2005, respondent interposed the following Special and Affirmative defenses:

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[4] Petitioner for Review, par. 1, En Banc Rollo, p. 18
[5] Joint Stipulation of Facts & Issues (JSFI), par. 2, En Banc Rollo, pp. 89 & 90
[6] Ibid, par. 3, p. 150
[7] Id., par. 7, p. 153
[8] Division Docket, pp. 1-11
[9] Ibid, pp. 46-50

"4. He reiterates and repleads the preceding paragraphs of this answer as part of his Special and Affirmative defenses;

5. Section 228 of the 1997 Tax Code, partly provides:

> '**Sec. 228. Protesting of Assessment.** – Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted, otherwise, the assessment shall become final.' (Emphasis supplied)

Implementing the aforesaid provision, Section 3, 3.1.5 of Revenue Regulations No. 12-99 provides that the taxpayer shall submit the required documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final, executory and demandable. The phrase 'submit the required documents' includes submission or presentation of the pertinent documents for scrutiny and evaluation by the Revenue Officer conducting the audit and the said Revenue Officer shall state this fact in his report of investigation.

In the instant case, since the petitioner failed to submit the required documents scrutiny and evaluation by the Revenue Officer who conducted the audit examination of its 1999 tax case, within sixty (60) days from filing its protest, the subject assessment have already become final, executory and demandable.

6. Since the subject assessment have become final, executory and demandable this Honorable Court has no jurisdiction on the instant petition.

7. Assuming arguendo that this Honorable Court has jurisdiction to act on the instant petition, petitioner was assessed for deficiency income tax and value-added tax for taxable year 1999, since during the administrative investigation of its tax case by the BIR examiners, the following were disclosed:

a. Petitioner failed to provide any supporting documents or evidence to substantiate its claimed expenses as deduction in violation of Section 34(A)(1)(c) of the Tax Code which states that 'x x x. No deduction from gross income shall be allowed under this subsection (A) hereof, unless the taxpayer shall substantiate with sufficient evidence, such as official receipts or adequate records: (1) the amount of the expenses being deducted . . . x x x.' Thus, following the ruling in the case of Mariano vs. Collector of Internal Revenue and BIR regulations under Section 2.4(c) of RMC 23-2000, which states that '. . . if there is a showing that expenses have been incurred but the exact amount thereof cannot be ascertained due to the absence of supporting documentary evidence, it is the duty of the BIR to make an estimate of the deduction that may be allowable in computing the taxpayer's income, bearing heavily against the taxpayer whose inexactitude is of his own making . . .,' hence, 50% of the claimed various expenses of petitioner should be disallowed.

b. Petitioner's business operations per Income Tax Return for taxable year 1999 showed a taxable income in the amount of P39,043,589.00, instead of Net Operating Loss as previously claimed. Considering that the amount of NOLCO has already been forwarded to the succeeding periods as provided for under Section 34(D)(3) of NIRC, which provides that '. . . the net operating loss of the business or enterprise for any taxable year immediately preceding the current taxable year, which had not been previously offset as deduction from gross income shall be carried over as a deduction from gross income for the next three (3) consecutive taxable years immediately following the year of such loss,' the same should be disallowed.

c. Petitioner failed to support by concrete evidence the claimed creditable withholding tax in the amount of ₱1,415,193.00, in violation of Section 2.58.3 of Revenue Regulations No. 2-98, as amended. Said amount was disallowed since the same was already taken up as carried forward to the succeeding years.

d. Petitioner failed to pay in full the value-added tax due for taxable year 1999, based on its gross receipts amounting to ₱301,653,761.80, in violation of Section 105 of the NIRC, which states that, '. . . any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and who import goods shall be subject to the VAT imposed in Section 106 and 108 of this Code. The rate imposed shall be 10% of the gross receipts derived from the sale or exchanged (sic) of services, including the use or lease of properties.'

The term 'Gross Receipts' means the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advanced payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding VAT. [Section 108(A) of the NIRC, as amended.]

e. Petitioner failed to substantiate with official receipts or sales invoices the claimed input tax, hence, the same were disallowed pursuant to Section 110 of the Tax Code, which provides that 'any input tax evidence (sic) by a VAT Invoice or Official Receipts issued in accordance with Section 113 hereof shall be creditable against the output tax.'

8. Considering all the reasons in the preceding paragraphs, the deficiency income tax and deficiency VAT assessments issued by the BIR to petitioner were made within the prescriptive period, pursuant to Section 222 of the 1997 Tax Code, which provides that 'in case of a false or fraudulent return, the tax may be assessed at anytime within ten (10) years after the discovery of the falsity, fraud or omission in relation to Section 248(B) of the same Code, which provides that 'the failure of the taxpayer to report its sales or receipts by more than thirty (30%)

percent of the actual deductions shall render the taxpayer liable for substantial under declaration of sales, receipts or overstatement of deductions constitutes a prima facie evidence of a false or fraudulent return.'

9. The assessments issued by the BIR to petitioner, for deficiency income tax and VAT for taxable year 1999, covered under Letter of Demand and Formal Assessment Notice Nos. IT-97098-99-03-538 and VT-97098-99-03-538, both dated December 29, 2003, were made in accordance with existing laws and regulations.

13. All presumptions are in favor of the correctness of tax assessments. (sic)"[10]

On May 5, 2005, the parties submitted their Joint Stipulation of Facts and Issues[11] which was approved by the Court per Resolution[12] dated May 16, 2005.

The parties stipulated on the following issues to be resolved by the Court:[13]

1. Whether or not the deficiency income tax and deficiency VAT assessments for the taxable year 1999 are void for having been made beyond the prescriptive period prescribed by the Tax Code:

a. Whether or not the subject assessments involve a false or fraudulent return.

b. Whether or not the fifty percent (50%) surcharge imposed upon Petitioner under the deficiency income tax and VAT assessments for taxable year 1999 has legal basis.

2. Whether or not Petitioner is liable for deficiency income tax for the taxable year 1999:

a. Whether or not it was proper for Respondent to make a wholesale disallowance of fifty percent (50%) of

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[10] Id., pp 46-49
[11] JSFI, Division Docket, pp. 89-97
[12] Division Docket, p. 98
[13] JSFI, Division Docket, p. 95-97

the total amount of expenses claimed by the Petitioner in its Annual Income Tax Return for the year 1999.

b. Whether or not it was proper for Respondent to impute an additional income of ₱39,043,589.00 on Petitioner for the year 1999, which amount represents the net loss declared by the Petitioner in its Annual Income Tax Return for the year 1999 and validly claimed by the Petitioner as a Net-Operating Loss Carry Over (NOLCO) deduction from gross income in succeeding taxable years.

c. Whether or not Petitioner properly claimed the amount of ₱1,415,193.00 for the creditable withholding taxes of the Petitioner for the year 1999.

d. Whether or not the creditable withholding tax claimed by the Petitioner for the year 1999 is valid and supported by the appropriate withholding tax certificates.

3. Whether or not Petitioner is liable for alleged deficiency VAT for taxable year 1999:

a. Whether or not Petitioner's transactions, consisting of time-charter agreements with non-resident corporations wherein the vessels subject of the time-charter agreements involved services rendered overseas and therefore, not subject to VAT.

b. Whether or not Petitioner's gross receipts from its sale of fuel to domestic vessels are exempt from VAT.

c. Whether or not Petitioner is liable to pay in full the VAT due for taxable year 1999 based on the amount of approximately ₱301,653,761.80.

d. Whether or not Petitioner's claimed input tax for taxable year 1999 may be disallowed for failure to fully substantiate the same with official receipts or sales invoices.

4. In the alternative, whether or not assessments for deficiency income tax and VAT issued by the BIR for taxable year 1999 already became final and executory.

After petitioner's presentation and filing of its Formal Offer of Evidence[14] but, pending respondents presentation of its evidence, petitioner filed a Manifestation and Motion[15] on March 24, 2008, stating therein that it had availed of the tax amnesty authorized and granted under Republic Act ("RA") No. 9480 on March 6, 2008, with the following prayer:

> "WHEREFORE, Petitioner respectfully prays that this Honorable Court issue a Resolution taking note of Petitioner's availment of the tax amnesty under RA No. 9480, and confirming that Petitioner is entitled to all the immunities and privileges under Section 6 of RA No. 9480 and is immune from the payment of deficiency income tax and VAT assessments for the year 1999, which form the subject matter of the present case.
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> x x x x x x x x x."

On April 28, 2008, respondent filed her Comment/Opposition (To Petitioner's Motion To Withdraw Petition for Review).[16]

On July 22, 2008, the Court issued a Resolution[17] taking note of petitioner's Motion/Manifestation and ordering the petitioner to submit the originals or certified true copies of the following:

(a) Notice of Availment of Tax Amnesty;
(b) Tax Amnesty Payment Form (BIR Form No. 0617);
(c) Tax Amnesty Return (BIR Form No. 2116);
(d) Statement of Assets, Liabilities and Net Worth (SALN) as of December 31, 2005; and
(e) Proof of Payment of Tax.

[14] Division Docket, pp. 254-281
[15] Ibid, pp. 299-303
[16] Ibid, pp. 312-314
[17] Ibid, pp. 332-333

after submission of which petitioner's Motion/Manifestation shall be deemed submitted for resolution.

On August 11, 2008, petitioner filed a Compliance and Motion for Comparison[18] submitting the documents required by the Court in its Resolution dated July 22, 2008.

In the hearing of August 13, 2008, respondent's counsel manifested that the documents attached to petitioner's Motion to Withdraw Petition filed on March 24, 2008 are faithful reproductions of the originals and that he has no objection to petitioner's Motion to Withdraw Petition.[19]

On August 20, 2008, the Court promulgated a Resolution[20] the dispositive portion of which reads as follows:

> "**WHEREFORE**, premises considered, the Petition for Review in the above-captioned case is deemed **WITHDRAWN**. Accordingly, the case is hereby considered as **CLOSED** and **TERMINATED**, subject to the provisions of RA No. 9480.
>
> SO ORDERED."

Not satisfied with the above resolution, petitioner filed, on September 4, 2008, a Motion for Clarification and/or Reconsideration[21] which was subsequently denied by the Court for lack of merit per Resolution[22] promulgated on October 6, 2008.

On November 7, 2008, petitioner filed the instant Petition for Review[23] praying that the August 20, 2008 and October 6, 2008 Resolutions, rendered by

[18] Id., pp. 335-338
[19] Minutes of hearing, Id., p. 334
[20] Docket, p. 392
[21] Ibid, pp. 393-400
[22] Ibid, pp. 402-403
[23] Id., pp. 429-458

the Second Division, be reversed and set aside and that a new Resolution be promulgated:

> "(a) Taking note of Petitioner's availment of the tax amnesty under RA No. 9480, and confirming that Petitioner is entitled to all the immunities and privileges under Section 6 of RA No. 9480 and further, that it is immune from the payment of deficiency income tax and VAT assessments for the year 1999, which form the subject matter of CTA Case No. 7077.
>
> (b) Declaring CTA Case No. 7077 closed and terminated, but without stating that the Petition for Review be deemed withdrawn.
>
> (c) Clarifying the procedural rights and remedies of parties whose cases are terminated due to availment of the tax amnesty under RA No. 9480, more specifically, that taxpayer's right to seek the continuation of the petition should it be declared not to be entitled to the benefits of the Tax Amnesty under RA No. 9480 within the one-year period prescribed by the law."[24]

On November 10, 2008, petitioner filed a Supplemental Petition for Review.[25]

On January 19, 2009, the Court promulgated a Resolution[26] giving due course to the Petition for Review and requiring the parties to submit their respective memorandum within a non-extendible period of thirty (30) days from receipt of the Resolution.

On March 12, 2009, the Court promulgated another Resolution[27] submitting the case for resolution *sans* respondent's Memorandum.

On March 6, 2009, the one-year period to assail the correctness of petitioner's Statement of Assets, Liabilities and Networth (SALN) as of December

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[24] Petition for Review, "Wherefore" portion, En Banc Rollo, pp. 44-45
[25] CTA En Banc Rollo, pp. 232-242
[26] Ibid, p. 331
[27] Ibid, p. 371

31, 2005, submitted pursuant to the Tax Amnesty under RA No. 9480, has already elapsed.

After a careful and thorough evaluation of the case, as well as the jurisprudence[28] on the matter, this Court finds petitioner's contention/s to be meritorious.

The provisions of the Tax Amnesty Law or RA No. 9480 applicable in the instant case are the following:

> "**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 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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> x x x x x x x x x
>
> **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:
>
> > (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.
>
> x x x x x x x x x
>
> **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.

[28] *Philippine Banking Corporation (now Global Business Bank, Inc.) vs. Com. of Internal Revenue*, G.R. No. 170574, January 30, 2009

(a) Withholding agents with respect with 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 frauds, illegal exactions and transactions, and malversation of public funds and property under Chapters III and VII of the Revised Penal Code; and

(f) Tax cases subject of final and executory judgment by the courts.

x x x x x x x x x"

Subsequently, Department Order No. 29-07 (DO-29-07), the "Rules and Regulations To Implement R.A. No. 9480," was issued by the Department of Finance, Section 6.3 of which provides thus:

"**SEC. 6. Method of Availment of Tax Amnesty. –**

3. Payment of Amnesty Tax and Full Compliance. – Upon filing of the Tax Amnesty Return in accordance with Sec. 6(2) hereof, the taxpayer shall pay the amnesty tax to the

> authorized agent bank or in the absence thereof, the collection agent or the Treasurer of the city or municipality in which such person has his legal residence or principal place of business.
>
> The RDO shall issue sufficient Acceptance of Payment Forms, as may be prescribed by the BIR for the use of – or to be accomplished by – the bank, the collection agent or the Treasurer, showing the acceptance by the amnesty tax payment. In case of the authorized agent bank, the branch manager or the assistant branch manager shall sign the acceptance of payment form. 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. <u>The completion of these requirements shall be deemed full compliance with the provisions of RA 9480</u>." (Underscoring supplied)

Petitioner manifested that on March 6, 2008, it had availed of the Tax Amnesty Program granted and authorized under RA No. 9480 and, in support thereof, submitted the following documents:

> 1. Notice of Availment of Tax Amnesty dated March 3, 2008[29]
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> 2. Tax Amnesty Payment Form (BIR Form No. 0617) stamped "Received" by RDO 49 on March 6, 2008 and Metrobank Urdaneta Village Branch stamped "Received" by Elizabeth B. Aguila, Branch Manager[30]
>
> 3. Tax Amnesty Return stamped "Received" by the Bureau of Internal Revenue on March 6, 2008[31]
>
> 4. Statement of Assets, Liabilities and Networth as of December 31, 2005[32] and

[29] Annex "A" of Compliance and Motion For Comparison ("CMFC"), Docket, p. 339
[30] Annex "B" of "CMFC", Ibid, p. 340
[31] Annex "C" of "CMFC", Id. p. 341
[32] Annex "D" of "CMFC", Id. p. 342

5. Proof of Payment of Tax[33]

In the hearing held by the CTA Second Division on August 13, 2008, respondent's counsel manifested that the above-enumerated documents are faithful reproductions of the originals.

In view of the foregoing, petitioner's completion of the required documents shall be deemed full compliance with the Tax Amnesty Program pursuant to the provision of Section 6.3 of DO-29-07.

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**, the Second Assailed Resolution dated October 6, 2008 is hereby **SET ASIDE** and the first Assailed Resolution dated August 20, 2008 is hereby **MODIFIED**, in so far as the dispositive portion thereof, as follows:

> "**WHEREFORE**, premises considered, the Petition for Review in the above-captioned case is hereby considered **CLOSED** and **TERMINATED** pursuant to RA 9480.
>
> **SO ORDERED.**"

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

[33] Annex "E", of "CMFC", Id. p. 340

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
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.

ERNESTO D. ACOSTA
Presiding Justice