REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

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TECHNOPEAK CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 7751

Members:

ACOSTA, *PJ, Chairperson*
BAUTISTA, *and*
CASANOVA, *JJ.*

Promulgated:
JUN 28 2011 ; 4:30 pm

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AMENDED DECISION

CASANOVA, *J.*:

For resolution is petitioner's "***Verified Motion for Reconsideration*** *(of the Decision rendered on February 26, 2010) with Motion to Re-Open Hearing (For the reception of additional evidence to establish compliance by Petitioner with the requirements of Tax Amnesty Program under R.A. 9480)*[1] " filed on March 24, 2010, without respondent's comment/opposition thereto despite notice.

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[1] Docket, pp. 324-342.

The instant Motion seeks reconsideration of this Court's Decision[2] promulgated on February 26, 2010, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED**.
>
> **SO ORDERED**."

In support thereof, petitioner states the following grounds[3]:

> "a) The Honorable Court overlooked the admission of respondent that petitioner filed a protest on the Formal Letter of Demand and Assessment Notice made by the respondent, within the allowable 30-day period;
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> b) On March 12, 2009, petitioner received a copy of letter dated March 07, 2008, which should also be considered a decision denying the protested assessment. Hence, the petition for review was seasonably filed on April 8, 2008, the date within the 30-day reglementary period. Hence, errors raised by petitioners should be resolved;
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> c) The Honorable Court touched the requirements of Tax Amnesty Program under R.A. 9480, an issue not raised by the parties. The compliance therewith is deemed admitted by respondent. Had it been raised as an issue, petitioner would have presented evidence to prove that it has fully complied with the requirements of said Tax Amnesty Program; and
>
> d) Petitioner had in fact complied with the requirements of the Tax Amnesty Program under R.A. 9480 when it filed a Notice of Availment of Tax Amnesty dated November 21, 2007. Ostensibly, respondent and her subordinates did not question the petitioner's compliance. In fact, the denial of availment of tax amnesty is anchored on Revenue Memorandum Circular 69-2007. Thus, petitioner did not present certain documents evidencing compliance with R.A. 9480 in this case. Should there be a need to introduce further evidence to show compliance, liberality in the rules should allow petitioner to do so in the interest of justice."

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[2] Docket, pp. 311-323.

[3] Grounds for the Allowance of Motions, Verified Motion for Reconsideration (of the Decision rendered on February 26, 2010) with Motion to Re-Open Hearing (For the reception of additional evidence to establish compliance by Petitioner with the requirements of Tax Amnesty Program under R.A. 9480), Docket, pp. 325-336.

In conclusion, petitioner prays, among others, that the assailed Decision be set aside and a new one be issued, declaring that it is entitled to the immunities and privileges under Republic Act (R.A) No. 9480.

It is to be recalled that on June 1, 2010[4] the Court granted petitioner's motion to reopen hearing for the reception of additional evidence to establish compliance with the requirements of the Tax Amnesty Program under R.A. No. 9480. In compliance therewith, petitioner adduced documents during the hearing held on June 15, 2010[5] and Commissioner's Hearing on July 8, 2010[6]. Subsequently, petitioner filed its "Supplemental Formal Offer of Evidence"[7] on July 22, 2010 consisting of Exhibits "H-3," "H-4," "H-5," "H-6," "H-7," "H-8," "H-9," "I-1," "I-2," "O," and "O-1", which was admitted in a Resolution[8] dated October 21, 2010.

On January 19, 2011[9] this Court, after examination of the admitted evidence, ordered the petitioner to present the duly validated bank deposit slip which is required by R.A. No. 9480. In response thereto, petitioner presented and marked the said document as Exhibits "P" to "P-4" in the hearing held on February 1, 2011[10]. Thereafter, it filed its "Additional Supplemental Formal Offer of Evidence"[11] on February 9, 2011, which was admitted in a Resolution[12] dated May 16, 2011.

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[4] Resolution, Docket, pp. 356-357.
[5] Minutes of Hearing, Docket, p. 358.
[6] Commissioner's Report, Docket, pp. 361-363.
[7] Docket, pp. 364-368.
[8] Docket, pp. 371-372.
[9] Resolution, Docket, pp. 375-377.
[10] Minutes of the Hearing, Docket, p. 378.
[11] Docket, pp. 379-383.
[12] Docket, pp. 388-389.

With the submission of documentary evidence relative to petitioner's availment of tax amnesty, this Court finds the instant Motion for Reconsideration to be meritorious.

The tax amnesty granted under R.A. No. 9480 covers all national internal revenue taxes for the taxable year 2005 and prior years that have remained unpaid as of December 31, 2005 but does not cover the following persons or cases,[13] *viz.*:

> 1. Withholding agents with respect to their withholding tax liabilities;
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> 2. Those with pending cases falling under the jurisdiction of the Presidential Commission on Good Government;
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> 3. Those with pending cases involving unexplained or unlawfully acquired wealth or under the Anti-Graft and Corrupt Practices Act;
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> 4. Those with pending cases filed in court involving violation of the Anti-Money Laundering Law;
>
> 5. Those with pending criminal cases for tax evasion and other criminal offenses under Chapter II of Title X of the National Internal Revenue Code of 1997, as amended, and the felonies of frauds, illegal exactions and transactions, and malversation of public funds and property under Chapters III and IV of Title VII of the Revised Penal Code; and
>
> 6. Tax cases subject of final and executory judgment by the courts.

To avail of the tax amnesty, the concerned taxpayer must submit the following documents, namely: a) Notice of Availment of Tax Amnesty; b) Statements of Assets, Liabilities and Networth (SALN); c) Tax Amnesty Return

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[13] Sections 1 and 8 of R.A. No. 9480.

(BIR Form No. 2116); and d) Payment Form (BIR Form No. 0617).[14] In addition thereto, it is required that the taxpayer must present proof of payment of tax amnesty. This is because payment of the amnesty tax and the submission of the pertinent forms shall be deemed full compliance with the provisions of R.A. No. 9480.[15]

Based on the provision of the law, petitioner is a qualified tax amnesty applicant. The disputed value-added tax for taxable year 2002 in the amount of P5,127,928.60 falls within the coverage of the tax amnesty program and the instant case is, likewise, not among the exceptions enumerated by law.

A scrutiny of the admitted evidence reveals that petitioner complied with the documentary requirements of the tax amnesty program. Petitioner offered as evidence its Notice of Availment of Tax Amnesty dated November 21, 2007 and filed on November 26, 2007[16]; **Balance Sheet** as of December 31, 2005 and 2004[17], which is an alternative of the required SALN[18]; Tax Amnesty Return (BIR Form No. 2116)[19]; Tax Amnesty Payment Form dated November 26, 2007 (BIR Form No. 0617)[20]; and Philtrust Bank BTR-BIR

[14] Section 6 of Department of Finance, Department Order No. 29-07, and Revenue Memorandum Circular No. 019-08.
[15] Covanta Energy Philippine Holdings vs. Commissioner of Internal Revenue, CTA Case Nos. 7338 and 7365, July 27, 2010 *citing Sec. 6(3), Revenue Memorandum Circular No. 55-2007.*
[16] Exhibits "H to H-1"; Exhibits "I" to "I-1", Docket, p. 210-211.
[17] Exhibits "H-3" and "H-4"; Docket, p. 343.
[18] Balance Sheet may be used as an alternative of SALN as reflected in the Tax Amnesty Payment Form (BIR Form No. 0617, Exhibit I), and Tax Amnesty Return (BIR Form No. 2116, Exhibit H-5) under the portion: Computation of Tax Amnesty Payment. The two forms of the BIR suggest that the tax amnesty payment may be based on whether the taxpayer is "with previous SALN/Balance Sheet" or "without previous SALN/Balance Sheet". The amount of tax amnesty in this case per Tax Amnesty Return is computed under the column "with previous SALN/Balance Sheet".
[19] Exhibit "H-5" to "H-7"; Docket, p. 344.
[20] Exhibits "I" to "I-1"; Docket, p. 211.

Deposit Slip[21] where it is shown that petitioner paid the amount of P173,044.47 as its amnesty tax.

In addition, more than one year had lapsed following the date of the filing of the tax amnesty return on November 26, 2007, no one except the BIR has challenged the correctness of petitioner's Balance Sheet, hence, the same is already presumed correct pursuant to Section 4 of R.A. No. 9480.[22]

Consequently, pursuant to Section 6(1) of R.A. No. 9480[23] and following the ruling in *Philippine Banking Corporation (Now: Global Business Bank, Inc.) vs. Commissioner of Internal Revenue*,[24] petitioner should be deemed immune from the payment of the disputed tax, and additions thereto, as well as the appurtenant civil, criminal or administrative penalties under the National Internal Revenue Code of 1997, as amended.

Considering petitioner's entitlement to the immunities and privileges under R.A. No. 9480, this Court deems it no longer necessary to resolve the other grounds/issues presented in this Motion for Reconsideration.

WHEREFORE, premises considered, the *Verified Motion for Reconsideration* filed on March 24, 2010 is hereby **GRANTED**. Accordingly, this Court's *Decision* dated February 26, 2010 is hereby **RECALLED** and **SET**

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[21] Exhibits "P" to "P-4".

[22] 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.

[23] Sec. 6. *Immunities and Privileges.* xxx 1. The taxpayer shall be immune from the payment of taxes, as well as addition 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.

[24] G.R. No. 170574, January 30, 2009.

ASIDE and the *Petition for Review* filed on April 8, 2008 is hereby **GRANTED.** Accordingly, the assessed deficiency VAT (with interest) in the aggregate amount of P5,127,928.60 for taxable year 2002 is hereby **CANCELLED** and **SET ASIDE** in view of petitioner's availment of the Tax Amnesty Program under R.A. No. 9480.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Amended 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
Chairperson, First Division

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