REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

BALLAST NEDAM INTERNATIONAL, B.V. PHILIPPINE BRANCH,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. EB NO. 447
(C.T.A. CASE NO. 7051)

Present:

ACOSTA, Presiding Justice
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, JJ.

Promulgated:

SEP 29 2009

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DECISION

PALANCA-ENRIQUEZ, J.:

Once a taxpayer has fully complied with the prescribed requirements of *RA 9480*, as implemented by *DO 29-07* and *RMC 19-2008*, the law mandates that the taxpayer shall thereafter be "immune from payment of taxes, and additions thereto, as well as 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" *(Philippine Banking Corporation vs.*

Commissioner of Internal Revenue, G.R. No. 170574, January 30, 2009). More so in this case, where the one (1) year period to initiate any proceeding to establish under-declaration of the SALN, had already expired without any proceeding initiated by any party to overturn the presumption of correctness of petitioner's SALN, the amnesty granted to petitioner is now final and cannot be questioned in any proceeding involving tax deficiencies for taxable year 2005 and prior years.

THE CASE

This is a Petition for Review filed on January 12, 2009 by Ballast Nedam International, B.V. Philippine Branch (hereafter "petitioner") under *Section 11 of RA 9282 (An Act Expanding the Jurisdiction of the Court of Tax Appeals)*, in relation to *Rule 43* of the *1997 Rules of Civil Procedure, as amended,* which seeks to set aside the Resolutions dated September 3, 2008 and December 8, 2008 rendered by the First Division of this Court in C.T.A. Case No. 7051, the respective dispositive portions of which read, as follows:

> "**WHEREFORE**, premises considered, petitioner's "**Motion for Cancellation of Assessment and Withdrawal of Petition**" filed on April 15, 2008 is **PARTIALLY GRANTED**. Accordingly, petitioner's deficiency income and value-added tax assessments for the calendar year 2000 in the aggregate amount of P68,279,011.12

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are hereby deemed **WITHDRAWN**, and this instant Petition for Review filed on September 15, 2004 is hereby considered **CLOSED** and **TERMINATED,** subject to the provisions of Republic Act No. 9480.

SO ORDERED."

"**WHEREFORE,** premises considered, petitioner's "Motion for Reconsideration (Re: Resolution dated September 3, 2008)" is hereby **DENIED** for lack of merit.

SO ORDERED."

THE PARTIES

Petitioner is the Philippine Branch of Ballast Nedam International B.V., a corporation organized and existing under the laws of Netherlands, duly licensed to engage in business in the Philippines, with principal office at Sta. Rita Power Plant, Sta. Rita, Batangas City.

Respondent, on the other hand, is the Commissioner of Internal Revenue 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, where he may be served with summons and other legal processes.

THE FACTS

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

On January 20, 2004, petitioner received a Formal Letter of Demand and Audit Result/Assessment Notice for Value-Added Tax (VAT) and Audit Result/ Assessment Notice for alleged deficiency income tax and VAT for calendar year 2000 in the aggregate amount of P68,279,011.12, inclusive of interest and penalties.

On February 18, 2004, petitioner, through its tax adviser, SGV & Co., filed a protest requesting for the withdrawal and cancellation of the assessments submitting therewith supporting documents. On April 19, 2004, petitioner filed a supplemental protest letter.

On September 15, 2004, petitioner filed a Petition for Review with the First Division of this Court, due to the alleged inaction of respondent, docketed as C.T.A. Case No. 7051.

Respondent having filed his Answer, the case was set for pre-trial, and upon termination thereof, trial on the merits ensued.

Petitioner presented Nestor Verano, Alvin Catamisan, and Jerome Antonio Constantino, as witnesses, and documentary evidence, marked as *Exhibits "A" to "RR"*, which were all admitted by the Court.

On April 1, 2008, petitioner filed a "Manifestation and Motion" alleging that on March 5, 2008, it availed of the tax amnesty pursuant to

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RA 9480 and moved for the confirmation that it is entitled to all the immunities and privileges under *Section 6 of RA 9480*.

On April 15, 2008, petitioner filed a "Motion for Cancellation of Assessment and Withdrawal of Petition".

In a Resolution dated July 8, 2008, the First Division ordered petitioner to submit the original or certified true copies of petitioner's tax amnesty documents.

In compliance therewith, on August 14, 2008, petitioner filed a "Manifestation and Compliance" submitting the following documents:

1) Certification dated August 4, 2008 issued by the Revenue District Officer of Revenue District Office No. 58 of Batangas City;
2) Notice of Availment of Tax Amnesty;
3) BIR Form 2116 Tax Amnesty Return;
4) BIR Form 0617 Tax Amnesty Payment Form;
5) Land Bank of the Philippines BIR Tax Deposit Slip;
6) Statement of Assets and Liabilities and Net Worth;
7) Report of Independent Auditor-Financial Statements; and
8) 1st Indorsement of Revenue District No. 58, Hilltop, Batangas City.

In a Resolution dated September 3, 2008, the First Division noted petitioner's "Compliance" filed on August 14, 2008, and partially granted petitioner's "Motion for Cancellation of Assessment and Withdrawal of Petition" and considered the deficiency income and VAT assessments for calendar year 2000 as deemed withdrawn, and the Petition for Review closed and terminated.

On September 25, 2008, petitioner filed a "Motion for Reconsideration (Re: Resolution dated September 3, 2008)" praying for the cancellation of deficiency income and VAT assessments for calendar year 2000.

On October 9, 2008, respondent filed his "Opposition (Re: Motion for Reconsideration dated 25 September 2008)", and on October 24, 2008, petitioner filed its "Reply".

In a Resolution dated December 8, 2008, the First Division denied petitioner's "Motion for Reconsideration (Re: Resolution dated September 3, 2008)" stating therein that petitioner's entitlement to the immunities and privileges of *RA 9480* is subject to the one (1) year period within which respondent may still audit and investigate petitioner, pursuant to *Section 6* of said Act.

Not satisfied, petitioner filed the instant Petition for Review raising the following:

ISSUES

I

THE FIRST DIVISION ERRED IN REFUSING TO CANCEL THE DEFICIENCY TAX ASSESSMENTS AGAINST PETITIONER AND TO DECLARE THE EXTINGUISHMENT OF PETITIONER'S DEFICIENCY TAX LIABILITIES DESPITE PETITIONER'S FULL COMPLIANCE WITH THE PROVISIONS OF THE TAX AMNESTY ACT.

II

THE ISSUE ON PETITIONER'S ALLEGED LIABILITY FOR DEFICIENCY INCOME TAX AND VAT HAS BEEN RENDERED MOOT AND ACADEMIC BY PETITIONER'S AVAILMENT OF TAX AMNESTY, ON THE BASIS OF WHICH, THE CASE SHOULD BE CONSIDERED CLOSED AND TERMINATED.

Without necessarily giving due course to the Petition for Review, We required the respondent to file his comment on the petition.

On February 13, 2009, respondent filed his "Comment".

Considering the report of the Judicial Records Division dated February 24, 2009 stating "that no reply to respondent's comment has been filed", the case was deemed submitted for decision on March 5, 2009.

On March 13, 2009, petitioner filed its "Motion for Leave (To File Reply to Respondent's Comment)" and "Reply (Re: Respondent's Comment to Petitioner's Petition for Review)". In the interest of justice, the motion is hereby granted, and the Reply is hereby admitted.

THE COURT *EN BANC'S* RULING

The principal issue in the present case is whether the one (1) year period to question the truthfulness and correctness of the SALN submitted by the taxpayer is another condition for entitlement to the benefits of the amnesty.

We rule in the negative.

Petitioner contends that the Tax Amnesty Act grants privileges to taxpayers, including immunity from payment of taxes, as well as additions thereto, 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; that it has complied with the requirements of the Tax Amnesty Act and administrative implementing regulations; that compliance with the requirements of the Tax Amnesty Act immediately entitles the taxpayer to the benefits, privileges and immunities of the law alleging that the clear intention of the legislature is to give effect to the immunities, benefits and privileges once the taxpayer fully complies with the said requirements; that the issues in this case have clearly been rendered moot by its availment of the tax amnesty under the Tax Amnesty Act, but petitioner deems it proper to file the instant petition to afford itself a judicial remedy later on in case it turns out that petitioner is not entitled to the immunities, privileges and benefits of the Tax Amnesty Act.

Respondent, on the other hand, maintains that the First Division is correct in not cancelling the assessments against petitioner; that the purpose of the one-year period under *Section 4 of RA 9480* is to determine whether or not the presumption will become a certainty and determination shall be had under the auspices of the BIR; the taxpayer cannot ask for the cancellation of the assessment and extinguishment of all liabilities arising from tax because the Court itself is inhibited from entertaining such prayers under the doctrine of exhaustion of administrative remedies.

RA 9480 provides certain requirements before a taxpayer may be entitled to all the immunities, privileges and benefits granted by the amnesty.

Section 6 of RA 9480 provides:

"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 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.**

b. The taxpayer's Tax Amnesty Returns and the SALN as of December 31, 2005 shall not be admissible as evidence in all proceedings that pertain to taxable year 2005 and prior years, insofar as such proceedings relate to internal revenue taxes, before judicial, quasi-judicial or administrative bodies in which he is a defendant or respondent, and except for the purpose of ascertaining the networth beginning January 1, 2006, the same shall not be examined, inquired or looked into by any person or government office. However, the taxpayer may use this as a defense, whenever appropriate, in cases brought against him.

c. The books of accounts and other records of the taxpayer for the years covered by the tax amnesty availed of shall not be examined: Provided, That the Commissioner of Internal Revenue may authorize in writing the examination of the said books of accounts and other records to verify the validity or correctness of a claim for any tax refund, tax credit (other than refund or credit of taxes withheld on wages), tax incentives, and/or exemptions under existing laws.

All these immunities and privileges shall not apply where the person failed to file a SALN and the Tax Amnesty Return, or where the amount of networth as of December 31, 2005 is proven to be understated to the extent of thirty percent (30%) or more, in accordance with the provisions of Section 4 hereof." *(Emphasis supplied)*

Corollary thereto, *Section 4* of the same Act provides:

"*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 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."

Notably, *RA 9480* provides that the only issue that may be raised against a taxpayer after he has availed of the tax amnesty and has fully complied with the requirements is the question of the truthfulness and correctness of the submitted SALN. The aforequoted *Section 4* provides for the manner and procedure by which the presumption in favor of the SALN may be inquired into. Such provision is a procedural rule to encourage taxpayers to be vigilant and to afford any third party to raise possible fraud in the availment of the tax amnesty through the under-declaration of the taxpayer's SALN. Moreover, *Section 4* is a

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mechanism for the protection of both the government and the taxpayer: it is a remedy given as a safety precaution for the government to give a chance to third parties to raise possible fraud committed in relation to availment of the amnesty. The one (1) year period was provided so that issues arising from the availment may end and terminate sometime and somewhere, it being essential to the effective administration of justice. After the expiration of the one (1) year period, no one is allowed perpetually to raise any issue as to the liability of the taxpayer for the taxable period covered by the amnesty, consequently, all issues arising from the availment of the taxpayer's amnesty is terminated. The one (1) year period provided thereof is merely a contestability period, which should not affect the effectivity of the immunity and privileges granted under *Section 6*, without first proving that the taxpayer has under-declared its SALN.

In case there is a report of underdeclaration of the SALN, initiated by a third party, and the SALN is proven by the BIR to be understated, the amnesty granted shall be withdrawn and revoked by the BIR. If the taxpayer is not satisfied with the revocation of the tax amnesty, the remedy of the taxpayer is to file a case with the court of competent jurisdiction to question the said revocation, which will be an entirely new proceeding.

The hornbook doctrine in statutory construction is that where the words of a statute are clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. The provisions of *Section 6* are clear and explicit. *Section 6* did not attach any qualification as to the immunity and privileges, which a taxpayer may be entitled after the submission of the prescribed requirements and payment of the amnesty tax. Hence, We cannot consider the one (1) year period under *Section 4* as a condition nor a qualification for the availment of the benefits of the tax amnesty. In the case of *Philippine Banking Corporation vs. Commissioner of Internal Revenue, G.R. No. 170574, January 30, 2009,* the Supreme Court ruled that "the law mandates that the taxpayer shall thereafter be immune from payment of taxes, and additions thereto, as well as 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", without qualifying the taxpayer's entitlement to the benefits of the Act and without even inquiring whether the one (1) year period has already lapsed. Gf

In this case, as aptly held by the First Division in its Resolution dated September 3, 2008, petitioner is a qualified tax amnesty applicant, which availed of the tax amnesty on March 5, 2008, and in view of its substantial compliance with the requirements provided in *RA 9480*, as implemented by *DO 29-07*, is entitled to the benefits of the tax amnesty.

Therefore, by virtue of the availment of herein petitioner of the Tax Amnesty Program under *RA 9480*, and considering that the one (1) year period to question the validity of the SALN has already lapsed, petitioner is already immune from the payment of taxes, including deficiency income tax and VAT for calendar year 2000, as well as the additions thereto, and is now entitled to the cancellation of the assessments against it. In the recent case of *Metropolitan Bank & Trust Company vs. Commissioner of Internal Revenue* (*G.R. No. 178797, August 4, 2009*), the Supreme Court cancelled the assessments against Metrobank after finding that it has complied with the requirements for its application and was qualified for the tax amnesty under *RA 9480*, and the one (1) year period had already lapsed.

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTLY GRANTED**, only as regards the confirmation of rights of the taxpayer under *RA 9480*, as discussed above.

Accordingly, the assessments for deficiency income tax and value added tax in the total amount of P68,279,011.12 for calendar year 2000 are hereby **CANCELLED** solely in view of petitioner's availment of the Tax Amnesty Program under *RA 9480* (Tax Amnesty Act).

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
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 the Court.

ERNESTO D. ACOSTA
Presiding Justice