REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

KEPPEL FELS ENERGY, INC.
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE
Respondent.

CTA Case No. 6826

Members:

CASTAÑEDA JR.,
CASANOVA,
MINDARO-GRULLA, *JJ.*

Promulgated:

JUL 2 1 2011

11:25 a.m.

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DECISION

Casanova, J.:

This is a Petition for Review[1] filed by petitioner **Keppel Fels Energy, Inc.** (Keppel), praying for the cancellation and/or the withdrawal of the deficiency tax assessment for the taxable year ended December 31, 1999, in the amount of P 86,551,132.34, allegedly representing deficiency income tax, value-added tax ("VAT"), expanded withholding tax ("EWT") and donor's tax.

THE FACTS

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

[1] Petition for Review, Division Docket, pp. 1-6.

Petitioner Keppel Fels Energy, Inc. ("Keppel")[2] is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines.[3]

Respondent Commissioner of Internal Revenue is the public officer authorized under the Tax Code to examine any taxpayer and to assess the correct amount of tax. He may be served with summons and other court processes at the Bureau of Internal Revenue ("BIR"), National Office Building, Diliman, Quezon City.[4]

On January 18, 1993, the National Power Corporation ("Napocor") entered into an Energy Conversion Agreement ("ECA") with Polar Energy, Inc. ("Polar") regarding the design, construction and operation of three (3) diesel-engined power barges which will be stationed in Calaca, Batangas. Polar will operate the power barges exclusively to convert fuel supplied by Napocor into electricity and shall collect from Napocor energy fees for the delivered electricity, based on agreed rates by both parties.[5]

On June 7, 1993, Polar assigned its rights, benefits and obligations under the ECA to petitioner for an agreed and sufficient consideration which was approved by Napocor.[6]

On July 13, 1993, petitioner was registered with the Board of Investments as "New Operator of Power Plant (90 MW)" on a pioneer status, under the Omnibus Investments Code of 2987, otherwise known as Executive Order No. 226. Under its registration, petitioner was entitled to income tax holiday for six (6) years and such other incentives indicated in its registration.[7]

On January 28, 2003, petitioner received a pre-assessment notice from the Bureau of Internal Revenue ("BIR") in relation to the tax returns filed for the taxable year 1999.

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[2] Formerly FELS Energy, Inc.
[3] *Id.*, pp. 1-2.
[4] *Id.*, p. 2.
[5] *Id.*
[6] *Id.*
[7] *Id.*

On February 5, 2003, petitioner received two (2) formal letters of demand[8] and five (5) unnumbered assessment notices[9] (collectively referred to as "Assessment"), assessing the following deficiency taxes:

Tax Deficiency	Amount
Income Tax	P 83,401,903.06[10]
Value-Added Tax ("VAT")	1,642,763.29[11]
Expanded Withholding Tax ("EWT")	322,389.06[12]
Donor's Tax	1,184,076.93[13]
TOTAL	**P 86,551,132.34**

The details of the deficiency taxes are as follows:

A. Income Tax

Basic	P53,089,805.75
Interest (20% up to 2-24-03)	30,312,097.31
Amount Due & Collectible	**P83,401,903.06**

B. Value Added Tax

Basic	P1,016,285.76
Interest (20% up to 2-24-03)	626,477.53
Amount Due & Collectible	**P1,642,763.29**

C. Expanded Withholding Tax

Basic	P199,444.08
Interest (20% up to 2-24-03)	122,944.98
Amount Due & Collectible	**P322,389.06**

[8] Annex "A"- "A-2" & "B" of Petition for Review, Division Docket, pp. 7-10.
[9] Annexes "C" to "G" of Petition for Review, Division Docket, pp. 11-15.
[10] Annex "C" of Petition for Review, Division Docket, p.11.
[11] Annex "D" of Petition for Review, Division Docket, p. 12.
[12] Annex "E" of Petition for Review, Division Docket, p. 13.
[13] Composed of Deficiency Donor's Tax in the amount of P1,164,076.93, Annex "F", Petition for Review, Division Docket, p. 14 and Compromise Penalty on Non-Filing/Payment of Donor's Tax in the amount of P20,00.00, Annex "G", Petition for Review, Division Docket, p.15.

D. Donor's Tax	
Basic	P571,590.06
Surcharge	142,897.51
Interest (20% up to 2-24-03)	449,589.36
Amount Due & Collectible	**P1,164,076.93**

E. Non-filing/payment of Donor's Tax	
Compromise	**P20,000.00**

On March 7, 2003, petitioner, duly filed an administrative protest[14] against the subject Assessment with the Regional Director's Office of respondent's Revenue Region No. 7. On May 6 and 8, 2003, petitioner submitted relevant documents in support of its protest against the subject tax deficiency Assessments.

The one hundred eighty day (180) period reckoned from the date of filing within which to decide on the administrative protest expired without any ruling from the respondent.

Due to the inaction of the respondent, petitioner filed the instant Petition for Review[15] on December 2, 2003, before the Court of Tax Appeals Former Second Division.

In her Answer[16] dated February 11, 2004, respondent interposed the following special and affirmative defenses:

> "7. As of the Deficiency Income Tax assessed against the petitioner, the following were the findings made by the respondent's examiner in the conduct of their examination:
>
> 7.1 Undeclared Cash Receipts (160,878,199.25) – Verifications made by the respondent's examiners disclosed that this amount represents cash claimed from your insurance company as a result from your operation's loss and properties damaged.

[14] Division Docket, pp. 18-39.
[15] *Id.*, pp. 1-6.
[16] *Id.*, pp. 53-55.

7.2 Net Operating Loss Carry-over (P33,260,347.00) – Section 34(D)(3) of the Tax Code states among others 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 deduction from gross income for the next three (3) consecutive taxable years immediately following the year of such loss. The net loss per financial statement of P33,260,347.00 was not considered in determining the income tax deficiency during the investigation;

8. As to the Deficiency Value added Tax assessed against the petitioner, verification disclosed that undeclared receipts of P11,549,145.99 represents proceeds from several income generating activities of the petitioner but were not subjected to the 10% VAT pursuant to Section 108 of the Tax Code;

9. As to the Deficiency Expanded Withholding Tax, verification disclosed that the petitioner failed to fully withhold the expanded withholding tax on various income payments as required under RR No. 2-98, as amended;

10. As to the Deficiency Donor's Tax, verification made by respondent's examiners disclosed that the petitioner made a donation to the Municipality of Calaca, Batangas, thus, taxable under the donor's tax pursuant to Section 98 of the Tax Code;

11. The Assessment for deficiency taxes against the petitioner is valid and in accordance with law;

12. Assessments are presumed correct and made in good faith;

13. The burden of proof is upon the petitioner to prove that the assessment issued by the respondent is indeed null and void;

14. All assessments and pre-assessment notices are issued and sent to the petitioner in accordance with well-established procedures."

On September 24, 2004, the parties submitted their Joint Stipulation of Facts and Statement of the Issues[17], which was approved by this Court in a Resolution[18] dated September 30, 2004.

The parties stipulated the following issues to be resolved:

[17] *Id.*, pp. 85-89.
[18] *Id.*, p. 90.

"3.1.1 Whether or not the Petitioner is liable to pay the assessed amount of P86,551,132.34 as deficiency income tax, Value Added Tax, Expanded Withholding Tax, and Donor's Tax, inclusive of penalties for the taxable year 1999.

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3.2.1 Whether or not the Assessment Notices were issued in violation of Petitioner's right to due process considering that Respondent issued them before Petitioner could comment on the Pre-Assessment Notice.

3.2.2 On the assumption that the Assessment is valid, whether or not the proceeds amounting to P160,878,199.25 from insurance claims on Petitioner's losses and damaged properties arising from its operations are subject to income tax.

3.2.3 On the assumption that the Assessment is valid, whether or not the net loss incurred by Petitioner for the calendar year 1999 (the period subject to the deficiency tax assessment), which Respondent considered as net loss carry over of Petitioner, should be added back to the sum of the net loss incurred and the adjustments per investigation in computing the taxable income.

3.2.4 On the assumption that the Assessment is valid, whether or not the right of Respondent to issue assessment against Petitioner for deficiency Value Added Tax and Expanded Withholding Tax had already prescribed.

3.2.5 On the assumption that the Assessment is valid, whether or not the proceeds from the sale of scrap (OR#347) and second hand car and the proceeds from civil works (OR#311) totaling P642,038.99 are subject to VAT.

3.2.6 On the assumption that the Assessment is valid, whether or not services rendered by Petitioner to National Power Corporation amounting to P10,907,107.00 is subject to VAT.

3.2.7 Whether or not the Assessment for the alleged deficiency expanded withholding tax was issued in violation of Section 3.1.4 of Revenue Regulations No. 12-99 in relation to Section 228 of the Tax Code for failure to state the facts and law on which the assessment is based.

3.2.8 On the assumption that the Assessment is valid, whether or not donations to the Municipality of Calaca, Batangas in the amount of P1,905,300.23 is subject to donor's tax."

After presentation of its testimonial and documentary evidence, petitioner filed its Formal Offer of Evidence[19] on September 15, 2006 and its Memorandum[20] on December 14, 2007.

In the hearing on January 21, 2009, petitioner, through counsel, manifested that it has availed of the tax amnesty pursuant to Republic Act (RA) 9480. This Court ordered the petitioner to file a Partial Motion to Withdraw and to submit certified true copies of the documents as required by RA 9480. Respondent was also required to file its Comment to the said Motion, after which the Motion shall be deemed submitted for resolution.

On February 5, 2009, this Court issued an Order[21] granting petitioner an extension of ten (10) days from January 31, 2009 or until February 10, 2009, within which to file an appropriate motion relative to its availment of tax amnesty and to submit certified true copies of the documents in support thereof.

On February 10, 2009, petitioner filed its Motion to Present Additional Evidence[22], praying that it be allowed to submit in evidence certified true copies or duplicate originals of their tax amnesty documents. In the hearing on February 23, 2009, this Court held that considering that the respondent has no objection to petitioner's Motion, the Court granted the same and directed the parties to submit a Joint Stipulation regarding petitioner's availment of tax amnesty.

On March 16, 2009, petitioner filed a Compliance[23] pursuant to the Order of this Court dated February 5, 2009, submitting the following certified true copies of the documents in support of its tax amnesty availment:

(a) Notice of Availment of Tax Amnesty under RA No. 9480[24];

(b) Statement of Assets and Liabilities and Networth as of December 31, 2005 with previous SALN/Balance Sheet [25]; ea

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[19] *Id.*, pp. 256-279.
[20] Division Docket, Vol. II., pp. 889-921.
[21] *Id.*, p. 980.
[22] *Id.*, pp. 981-986.
[23] *Id.*, pp. 988-989.
[24] Annex "A" of Compliance, Division Docket, Vol. II, p. 990.

(c) Tax Amnesty Return (BIR Form No. 2116)[26]; and

(d) Tax Amnesty Payment Form/Acceptance of Payment Form (BIR Form 0617)[27].

Respondent, in a Manifestation and Motion[28] dated December 14, 2009 and Amended Manifestation and Motion[29] dated December 15, 2009, prayed that the documents intended to be offered in evidence be denied admission/due course on the ground that petitioner failed to comply with requirements of tax amnesty availment because the tax base used by petitioner in paying the tax amnesty is the increase in net worth and not the total net worth as per Amended SALN. On January 18, 2010, petitioner filed its Opposition (To Amended Manifestation and Motion)[30], alleging that the intent of the law is to apply the amnesty tax rate to the increase in networth for taxpayers who had previously filed financial statements.

On March 22, 2010, this Court issued a Resolution[31] ordering respondent to submit her Formal Offer of Evidence, considering the manifestation of respondent's counsel that he has no additional evidence to present.

On April 21, 2010, respondent submitted its Formal Offer of Evidence[32] while petitioner filed its Comment to Formal Offer of Evidence[33] on May 11, 2010.

On April 29, 2010, petitioner submitted its Formal Offer of Evidence[34] on the tax amnesty availment. Respondent earlier manifested, in the hearing dated April 14, 2010, of her intention not to file comment to petitioner's Formal Offer of Evidence.

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[25] Annex "B" of Compliance, Division Docket, Vol. II, pp. 991-1006.
[26] Annex "C" of Compliance, Division Docket, Vol. II, p. 1007.
[27] Annex "D" of Compliance, Division Docket, Vol. II, p. 1008.
[28] Division Docket, Vol. II, pp. 1020-1024.
[29] *Id.*, pp. 1030-1034.
[30] *Id.*, pp. 1041-1049.
[31] *Id.*, p. 1064.
[32] *Id.*, pp. 1094-1096.
[33] *Id.*, pp. 1125-1129.
[34] *Id.*, pp. 1097-1100.

In a Resolution[35] dated May 27, 2010, this Court admitted as evidence, petitioner's Exhibits "IIIIIII" to "NNNNNNNN-1" while holding the resolution of respondent's Formal Offer of Evidence in abeyance pending the return of the BIR Records that the respondent borrowed from this Court.

On August 5, 2010, this Court issued a Resolution[36] admitting respondent's Exhibits "1" to "5" and the sub-markings thereon. This Court further ordered both parties to submit their respective Memorandum within thirty (30) days from receipt hereof. Upon receipt of the parties' memoranda or the expiry of the period granted, the case shall be submitted for decision.

Petitioner filed its Memorandum[37] on October 7, 2010. Respondent failed to file her Memorandum. On October 11, 2010, this Court issued a Resolution[38] submitting this case for Decision.

In the resolution of the issues submitted before this Court in the instant Petition, it is duly noted that, during the pendency of the proceedings in this case, petitioner availed of the tax amnesty under RA 9480.

Hence, this Court finds it imperative to resolve first the preliminary issue as to the entitlement of petitioner to all the immunities and privileges provided under RA 9480.

After a careful and thorough evaluation of the case, as well as the jurisprudence on the matter, this Court finds petitioner's availment of the tax amnesty valid and in order.

"A tax amnesty is a general pardon or the intentional overlooking by the State of its authority to impose penalties on persons otherwise guilty of violation of a tax law. It partakes of an absolute waiver by the government of its right to collect what is due it and to give tax evaders who wish to relent a chance to start with a clean slate. A tax amnesty, much like a tax exemption, is never favored nor presumed in law. The grant of a tax amnesty, similar to

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[35] *Id.*, pp. 1131-1132.
[36] *Id.*, pp. 1136-1137.
[37] *Id.*, pp. 1142-1185.
[38] *Id.*, p. 1186.

a tax exemption, must be construed strictly against the taxpayer and liberally in favor of the taxing authority."[39]

Petitioner availed of tax amnesty under RA 9480, which grants amnesty on all unpaid internal revenue taxes imposed by the national government for the taxable year 2005 and prior years. The pertinent provisions of RA 9480 are as follows:

> "SECTION 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 therefor, 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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> SEC. 2. Availment of the Amnesty. — Any person, natural or juridical, who wishes to avail himself of the tax amnesty authorized and granted under this Act shall file with the Bureau of Internal Revenue (BIR) a notice and Tax Amnesty Return accompanied by a Statement of Assets, Liabilities and Networth (SALN) as of December 31, 2005, in such form as may be prescribed in the implementing rules and regulations (IRR) of this Act, and pay the applicable amnesty tax within six months from the effectivity of the IRR.
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> 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.
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> SEC. 5. Grant of Tax Amnesty. — Except for the persons or cases covered in Section 8 hereof, any person, whether natural or juridical, may avail himself of the benefits of tax amnesty under this Act, and pay the amnesty tax due thereon, based on his networth as

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[39] Commissioner of Internal Revenue v. Marubeni Corp., G.R. No. 137377, December 18, 2001; Philippine Banking Corporation vs. Commissioner of Internal Revenue, G.R. No. 170574, January 30, 2009; Metropolitan Bank and Trust Co. vs. Commissioner of Internal Revenue, G.R. No. 178797, August 4, 2009.

of December 31, 2005 as declared in the SALN as of said period, in accordance with the following schedule of amnesty tax rates and minimum amnesty tax payments required:

xxx xxx xxx

(b) Corporations

(1) With subscribed capital of above P50 Million	5% or P500,000, whichever is higher
(2) With subscribed capital of above P20 Million up to P50 Million	5% or P250,000, whichever is higher
(3) With subscribed capital P5 Million to P20 Million	5% or P100,000, whichever is higher
(4) With subscribed capital of below P5 Million	5% or P25,000, whichever is higher

xxx xxx xxx

(d) Taxpayers who filed their balance sheet/SALN, together with their income tax returns for 2005, and who desire to avail of the tax amnesty under this Act shall amend such previously filed statements by including still undeclared assets and/or liabilities and pay an amnesty tax equal to five percent (5%) based on the resulting increase in networth: Provided, That such taxpayers shall likewise be categorized in accordance with, and subjected to the minimum amounts of amnesty tax prescribed under the provisions of this Section.

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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.

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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 3 hereof.

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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:

1. Withholding agents with respect to their withholding tax liabilities;
2. Those with pending cases falling under the jurisdiction of the Presidential Commission on Good Government;
3. Those with pending cases involving unexplained or unlawfully acquired wealth or under the Anti-Graft and Corrupt Practices Act;
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.

On August 15, 2007, the Department of Finance issued Department Order (DO) No. 29-07, otherwise known as the implementing rules of RA 9480. The salient provisions of DO 29-07 state:

Sec. 6. Method of Availment of Tax Amnesty. –

1. Forms/Documents to be filed. – To avail of the general tax amnesty, concerned taxpayers shall file the following documents/requirements:

a. Notice of Availment in such forms as may be prescribed by the BIR.

b. Statement of Assets, Liabilities and Networth (SALN) as of December 31, 2005 in such forms, as may be prescribed by the BIR.

c. Tax Amnesty Return in such form as may be prescribed by the BIR.

2. Place of Filing of Amnesty Tax Return. – The Tax Amnesty Return, together with the other documents stated in Sec. 6 (1) hereof, shall be filed as follows:

a. Residents shall file with the Revenue District Officer (RDO)/Large Taxpayer District Office of the BIR which has jurisdiction over the legal residence or principal place of business of the taxpayer, as the case may be.

b. Non-residents shall file with the office of the Commissioner of the BIR, or with the RDO.

c. At the option of the taxpayer, the RDO may assist the taxpayer in accomplishing the forms and computing the taxable base and the amnesty tax payable, but may not look into, question or examine the veracity of the entries contained in the Tax Amnesty Return, Statement of Assets, Liabilities and Networth, or such other documents submitted by the taxpayer.

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 Agents or duly authorized 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. The completion of these requirements shall be deemed full compliance with the provisions of RA 9480.
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> Sec. 7. Tax Amnesty Rates. – In order to enjoy the benefits of the tax amnesty program, the qualified taxpayers are required to pay an amnesty tax equivalent to five percent (5%) of their total declared networth as of December 31, 2005, as declared in the SALN as of the said period, or resulting increase in networth by amending such previously filed statements for purposes of this tax amnesty, thereby including still undeclared assets and/or liabilities, as the case may be, as of December 31, 2005, or the absolute minimum amnesty payment, whichever is higher xxx
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> xxx xxx xxx

The aforequoted provisions of RA 9480 and DO 29-07 state that to avail of the tax amnesty on national internal revenue taxes for the taxable year 2005 and prior years, the taxpayer must file with the BIR a notice of availment, tax amnesty return, SALN, and must pay the applicable amnesty tax.

In the case of *Metropolitan Bank & Trust Co. vs. Commissioner of Internal Revenue*[40], the Supreme Court, interpreting the Tax Amnesty Law (RA 9480) and its implementing rules and regulations, ruled as follows:

> "Records show that Metrobank, a qualified tax amnesty applicant, has duly complied with the requirements enumerated in RA 9480, as implemented by DO 29-07 and RMC 19-2008. Considering that the completion of these requirements shall be deemed full compliance with the tax amnesty program, the law mandates that the taxpayer shall thereafter be immune from the 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 the failure to pay any and all internal revenue taxes for taxable year 2005 and prior years."

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[40] G.R. 178797, August 4, 2009.

Thus, it is clear that submission of the pertinent documents provided in the law and the payment of the amnesty tax due shall be deemed as full compliance with the tax amnesty program which shall entitle the taxpayer availing of the tax amnesty the immunity and privileges stated in RA 9480 and DO 29-07.

In the instant case, records show that on March 6, 2008, petitioner duly filed its Notice of Availment of Tax Amnesty[41], Statement of Assets, Liabilities and Networth (SALN) as of December 31, 2005[42], with previous SALN/Balance Sheet[43], Tax Amnesty Return (BIR Form No. 2116)[44]; and paid the applicable amnesty tax in the amount of P532,280.06, as stated in the Tax Amnesty Payment Form/Acceptance of Payment Form (BIR Form No. 0617)[45].

Petitioner determined the amount paid as amnesty tax as follows:

Total Networth as of December 31, 2005	P186,374,040.00
Total Networth per Amended Return	P197,019,641.22
Increase in Networth	P10,645,601.22
Applicable tax rate	5%
Computed Amount	P532,280.06
Minimum Absolute Amount	P500,000.00
Amnesty Tax Due	**P532,280.06**

In her Manifestation and Motion[46] and Amended Manifestation and Motion[47], respondent questioned the validity of petitioner's availment of the tax amnesty on the ground that petitioner failed to pay the correct amount of amnesty tax. Respondent alleged that petitioner should have used the Total

[41] Exhibit "E[8]", Division Docket, Vol. II, p. 990.
[42] Exhibit "F[8]", *Id.*, pp. 991-992.
[43] Exhibit "F[8]-1", *Id.*, pp. 993-1006
[44] Exhibit "G[8]", *Id.*, p. 1007.
[45] Exhibit "H[8]", *Id.*, p. 1008.
[46] *Id.*, pp. 1020-1024.
[47] *Id.*, pp. 1030-1034.

Networth per Amended Return as the tax base in computing the amnesty tax, and not the increase in networth.

Petitioner contends that its use of the increase in networth as the tax base in computing the amnesty tax is in accordance with the provisions of RA 9480 and jurisprudence.

This Court finds the contention of petitioner meritorious. Section 5(d)[48] of RA 9480 and Section 7[49] of DO 29-07 clearly provide that in case there is an amendment in the SALN of the taxpayer where previously undeclared assets are now reported, the amnesty tax due shall be determined by applying the tax rate of 5% to the resulting increase in networth, comparing it with the absolute minimum amount of P500,000.00 and paying whichever is higher of the two amounts.

In view of the foregoing, this Court finds that petitioner is deemed to have fully complied with the legal requirements for the availment of tax amnesty under RA 9480. Consequently, petitioner shall be entitled to the immunities and privileges provided under Section 6 of the same law, making it 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, arising from the failure to pay any and all internal revenue tax for the taxable year 2005 and prior years.[50]

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[48] SEC. 5. Grant of Tax Amnesty.- Except for the persons or cases covered in Section 8 hereof, any person, whether natural or juridical, may avail himself of the benefits of tax amnesty under this Act, and pay the amnesty tax due thereon, based on his net worth as of December 31, 2005 as declared in the SALN as of said period, in accordance with the following schedule of amnesty tax rates and minimum amnesty tax payments required:

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(d) Taxpayers who filed their balance sheet/SALN, together with their income tax returns for 2005, and who desire to avail of the tax amnesty under this Act shall amend such previously filed statements by including still undeclared assets and/or liabilities and pay an amnesty tax equal to five percent (5%) based on the resulting increase in net worth; Provided, That such taxpayers shall likewise be categorized in accordance with, and subjected to the minimum amounts of amnesty tax prescribed under the provisions of this Section.

[49] SEC. 7. Tax Amnesty Rates.- In order to enjoy the benefits of the tax amnesty program, the qualified taxpayers are required to pay an amnesty tax equivalent to five percent (5%) of their total declared net worth as of December 31,2 005, as declared in the SALN as of the said period, or resulting increase in net worth by amending such previously filed statements for purposes of this tax amnesty, thereby including still undeclared assets and/or liabilities, as the case may be, as of December 31, 2005, or the absolute minimum amnesty payment, whichever is higher, xxx

[50] Section 6, RA 9480.

Accordingly, the assessments against petitioner for alleged deficiency income tax, VAT and donor's tax for the taxable year 1999, as well as the surcharges, interests, and compromise penalties imposed thereon shall be cancelled and set aside.

Notwithstanding petitioner's availment of the tax amnesty, the assessment against it for alleged deficiency expanded withholding taxes, in the amount of P322,389.06, including interest and surcharge imposed thereon subsists as withholding tax liability is among the exceptions enumerated under Section 8(1) of RA 9480.

> 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:
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> 1. Withholding agents with respect to their withholding tax liabilities;
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> xxx xxx xxx

Thus, with the petitioner's availment of tax amnesty, the validity of the assessment against the petitioner for deficiency expanded withholding tax is the remaining issue submitted for this Court's evaluation.

In the Joint Stipulation of Facts and Issues[51], several issues involving deficiency expanded withholding tax has been brought before this Court. For a more orderly discussion, these issues will be considered *in seriatim*:

The Assessment Notice on Deficiency Withholding Tax was issued beyond the three year period for Assessment and Collection of taxes, therefore it had already prescribed.

Petitioner contends that the Assessment Notice on deficiency withholding tax is invalid on the ground of prescription. Section 203 of the

[51] Division Docket, pp. 85-89.

1997 NIRC provides for the limitation of the period within which to assess and collect taxes, it states:

> "SEC. 203. ***Period of Limitation Upon Assessment and Collection.*** — Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day."

Thus, the CIR may only assess and issue notices for alleged deficiency taxes within the period of three (3) years after the last day prescribed by law for the filing of the return or from the day the return was filed, whichever comes later.

Petitioner presented its monthly expanded withholding tax returns to support its contention that the Assessment for deficiency withholding taxes was issued beyond the prescriptive period of three (3) years. Based on the evidence presented and the period prescribed under the abovequoted provision of the 1997 NIRC, the CIR has until the following dates within which to issue its Assessment Notice:

1999	Exhibit	Date Filed	Last Day to File the Return	Last Day to Issue Assessment
January	M	02/10/1999	02/10/1999	02/10/2002
February	Q	03/10/1999	03/10/1999	03/10/2002
March	T	04/08/1999	04/10/1999	04/10/2002
April	W	05/10/1999	05/10/1999	05/10/2002
May	Y	06/09/1999	06/10/1999	06/10/2002
June	Z	07/09/1999	07/10/1999	07/10/2002

July	CC	08/10/1999	08/10/1999	08/10/2002
August	FF	09/10/1999	09/10/1999	09/10/2002
September	II	10/08/1999	10/10/1999	10/10/2002
October	LL	11/10/1999	11/10/1999	11/10/2002
November	OO	12/10/1999	12/10/1999	12/10/2002
December	RR	01/24/2000	01/25/2000	01/25/2003

After a close scrutiny of the foregoing documentary evidence, this Court finds that except as regards the December 1999 Withholding Tax Return, the Assessment Notice on deficiency withholding tax was issued beyond the three year prescriptive period provided under Section 203 of the 1997 NIRC. Respondent issued the Assessment Notice on January 24, 2003, well beyond the period within which to assess and issue notice for deficiency expanded withholding tax for the months of January to November 1999. As for the December Withholding Tax Return, the Assessment Notice was issued within the prescriptive period.

Thus this Court finds that the assessment for deficiency expanded withholding tax for the months of January to November 1999 is already barred by prescription. Only the assessment for the deficiency withholding tax for the month of December 1999 subsists for the consideration of this Court.

The Assessment Notice on Deficiency Withholding Tax violates petitioner's right to due process as it failed to comply with the twin requirements of notice and hearing.

Petitioner likewise questions the validity of the Assessment Notice on the ground that it violated its right to due process. It failed to state the factual and legal bases for its assessment. Furthermore, petitioner was not given the opportunity to present its defenses and the pieces of evidence to support the same.

The essential elements of procedural due process are notice and opportunity to be heard. There is no hard and fast rule as to how a person's right to due process is deemed protected. What is important is that there is a reasonable opportunity to put forward one's defenses and to submit various pieces of evidence that will support one's position.

The 1987 Constitution of the Philippines, under the Bill of Rights, explicitly states that the right to due process must be duly respected. It provides:

ARTICLE III
BILL OF RIGHTS

> Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

The Supreme Court consistently held that the essence of due process lies in the opportunity to be heard and to submit evidence to support one's defense. In the case of *Rizal Commercial Commercial Banking Corporation vs. Commissioner of Internal Revenue*[52], the Supreme Court held that:

> "It is basic that as long as a party is given the opportunity to defend his interests in due course, he would have no reason to complain, for it is this opportunity to be heard that makes up the essence of due process. In *Batongbakal v. Zafra*, the Court held that:
>
> There is no question that the 'essence of due process is a hearing before conviction and before an impartial and disinterested tribunal" but due process as a constitutional precept does not, always and in all situations, require a trial-type proceeding. The essence of due process is to be found in the reasonable opportunity to be heard and submit any evidence one may have in support of one's defense. **'To be heard' does not only mean verbal arguments in court; one may be heard also through pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process.** (Emphasis supplied)"

[52] G.R. No. 168498, June 16, 2006 *citing* Estares v. Court of Appeals, G.R. No. 144755, June 8, 2005 and Batongbakal v. Zafra, G.R. No. 141806, January 17, 2005, 448 SCRA 399, 410.

Due process is likewise given emphasis in the field of taxation. The 1997 NIRC provides that in cases where the Commissioner or his duly authorized representative finds that an assessment of proper taxes is imperative, the taxpayer concerned should be sufficiently apprised of the legal and factual bases of the assessment. Furthermore, the concerned taxpayer should be given ample opportunity to present his defenses, along with the supporting documents thereof. Section 228 states that:

CHAPTER III
PROTESTING AN ASSESSMENT, REFUND, ETC.

> **SEC. 228.** ***Protesting of Assessment.*** **-** When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however,* That a preassessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> 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.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

Revenue Regulations (RR) No. 12-85 further discusses the procedure for administrative protests before the BIR. In the case of *Bank of the Philippine Islands vs. Commissioner of Internal Revenue*, this Court held that:

> "Revenue Regulations No. 12-85 provides for the procedure covering the Administrative Protests on Assessments of the BIR. Under the said Revenue Regulation, a post-reporting notice is sent to the taxpayer for an informal conference when there are findings of deficiency taxes. Subsequent to this notice is the issuance of the pre-assessment notice upon findings of the Commissioner that an assessment for deficiency taxes should be issued. However, such pre-assessment notice may or may not be protested by the taxpayer. In fact, Section 5 of the same Revenue Regulation provides that "In the event that the taxpayer fails to respond to the pre-assessment notice within the prescribed period . . . he should be informed of such fact and the report of investigation shall be given due course."[53]

Thus, it is clear that the law intends that the taxpayer's right to due process be amply protected, and that to ensure that the taxpayer enjoy this right, the twin requirement of notice and hearing should always be complied with. We will discuss both requirements in the case at bench.

The Assessment Notice on Deficiency Withholding Tax failed to state its factual and legal bases, thus should be declared as invalid.

Petitioner alleges that the Assessment Notice for alleged deficiency expanded withholding tax is invalid on the ground that it was issued in violation of Section 3.1.4 of RR No. 12-99 in relation to Section 228 of the 1997 NIRC for failure to state the facts and law on which the assessment is based.

Section 228 of the NIRC provides that the taxpayer shall be informed in writing of the law and the facts on which the assessment is made. Otherwise, the assessment is void.[54] Section 3.1.4 of RR No. 12-99 states:

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[53] CTA Case No. 7397, April 9, 2008.
[54] Commissioner of Internal Revenue vs. Raul M. Gonzalez, et. al., G.R. No.177279, October 13, 2010.

> "3.1.4 **Formal Letter of Demand and Assessment Notice.** — The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void (see illustration in ANNEX B hereof). The same shall be sent to the taxpayer only by registered mail or by personal delivery. If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof."

The Supreme Court, in the case of *Commissioner of Internal Revenue vs. Enron Subic Power Corp.*[55] confirms the mandatory requirement of stating the factual and legal bases of the assessment of deficiency taxes. It held:

> "A notice of assessment is:
>
> [A] declaration of deficiency taxes issued to a [t]axpayer who fails to respond to a Pre-Assessment Notice (PAN) within the prescribed period of time, or whose reply to the PAN was found to be without merit. The Notice of Assessment shall inform the [t]axpayer of this fact, and that the report of investigation submitted by the Revenue Officer conducting the audit shall be given due course.
>
> The formal letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the fact, the law, rules and regulations or jurisprudence on which the assessment is based, otherwise the formal letter of demand and the notice of assessment shall be void. (emphasis supplied)

After a careful study of the documents proffered by both parties, this Court finds that the respondent failed to sufficiently inform the petitioner of the basis of the assessment on deficiency expanded withholding tax issued against it.

The Revenue Officers of the respondent, in the issuance of the FAN, did not state the factual basis of its assessment of deficiency expanded withholding tax. It did not provide a sufficient explanation as to the details of

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[55] G.R. No.166387, January 19, 2009.

the computation of the alleged tax deficiency. The Details of Assessment and Discrepancies[56] merely state that their verification disclosed that petitioner failed to fully withhold the expanded withholding tax on various income payments pursuant to RR 2-98, as amended and hence, the latter is being assessed for the deficiency tax due thereon.

As stipulated by the respondent herself, in the Joint Stipulation of Facts and Statement of Issues[57], the assessment for the alleged deficiency expanded withholding tax failed to specify the recipients of the income payments made by petitioner from which it allegedly failed to withhold the necessary withholding taxes.

Respondent clearly violated Section 228 of the NIRC as it failed to comply with the requirement set forth in the law. Thus, this Court finds the Assessment Notice invalid on the ground that it failed to state the factual and legal bases on which the assessment on deficiency expanded withholding tax was made.

The Assessment Notice on Deficiency Withholding Tax was issued before petitioner could comment on the Pre-Assessment Notice, thus violating petitioner's right to due process.

Petitioner impugns the validity of the Assessment Notice on the deficiency expanded withholding tax on the ground that it was issued before the lapse of the period given to the petitioner to file its Comment on the Pre-Assessment Notice (PAN). Records show that petitioner received the PAN on January 28, 2003. Said PAN stated that petitioner is given fifteen (15) days from the receipt thereof within which to file its Comment. On February 5, 2003, or eight (8) days after the service of PAN, petitioner received two formal letters of demand and five unnumbered Final Assessment Notices

[56] Schedule 1 of the Formal Letter of Demand, Division Docket, p. 9.
[57] Division Docket, pp. 85-89.

(FAN), all dated January 24, 2003. Petitioner alleges that respondent violated Section 228 of the NIRC and RR No. 12-99 in the issuance of the assessments by disregarding the mandatory procedural requirements provided therein. Petitioner further alleges that respondent issued the FAN without giving the petitioner the opportunity to respond to the PAN, thus, effectively violating the former's right to procedural due process.

Petitioner's contention has no merit.

Pursuant to Section 228 of the 1997 NIRC and RR 12-85, a protest against the PAN, unlike the protest against the FAN, is not indispensable. "In fact, a preliminary assessment notice may or may not even be protested to by the taxpayer, and the fact of non-protest shall not in any way make the preliminary assessment notice final and unappealable. What is clear from Section 319-A of the Tax Code of 1977, as amended, is that failure on the part of the taxpayer to protest or reply to a preliminary assessment notice paves the way for the issuance of a final assessment notice."[58]

It is clear from the foregoing that what the law requires is the filing of the protest against the FAN, failure to do so will cause the same to become final and executory.

In the instant Petition, it is undeniable that the essential elements of due process which are notice and opportunity to be heard, were aptly accorded to petitioner. Although only a few days apart, both the PAN and the FAN were served upon it. That petitioner was not able to take advantage of the full fifteen (15) days given for it to file its Comment on the FAN cannot override the fact that petitioner was still given enough opportunity to defend itself against the assessments. To further bolster the fact that it has been given adequate opportunity to refute the charges against it, petitioner was able to timely file its administrative protest before the respondent. It was able to extensively discuss its position on the deficiencies being assessed against

[58] Security Bank Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6564, November 28, 2006.

it. In sum, it is evident that petitioner's right to a hearing was sufficiently observed and protected.

Based on the foregoing, the Assessment Notices on deficiency expanded withholding tax issued to petitioner failed to comply with the mandatory requirements provided under Section 228 of the 1997 NIRC and its implementing rules. The twin requirements of notice and hearing must be complied with in order to ensure that the taxpayer's right to due process is amply protected. In the case at bench, respondent failed to sufficiently apprise the petitioner of the facts and the law on which the assessment on deficiency taxes was made. Petitioner may have been given enough opportunity to present its defenses and the documents in support thereof, however, the fact remains that the notice requirement was simply not complied with. Hence, petitioner's right to due process was violated. Consequently, this Court declares the Assessment Notice on deficiency expanded withholding taxes for the month of December 1999 invalid.

WHEREFORE, the instant Petition for Review is hereby **GRANTED**. Accordingly, the assessments for deficiency income tax, VAT, donor's tax, as well as the surcharges, interests, and compromise penalties imposed thereon, for the taxable year 1999 are hereby **CANCELLED** and **SET ASIDE** in view of petitioner's availment of the Tax Amnesty Program under Republic Act No. 9480. In addition, the assessments for deficiency expanded withholding tax, as well as the surcharges, interests, and compromise imposed penalties thereon, for the period of January to November 1999 are hereby **CANCELLED** and **SET ASIDE** on the ground of prescription. Finally, the assessment for deficiency expanded withholding tax, as well as surcharges, interests, and compromise penalties imposed thereon, for the month of December 1999 is hereby **CANCELLED** and **SET ASIDE** on the ground that the Assessment Notice was invalid for failing to state the factual and legal bases on which it was made.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

ATTESTATION

I attest 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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

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