REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

TUTUBAN PROPERTIES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6570

Members:

CASTAÑEDA, JR., Chairperson
UY, and
PALANCA-ENRIQUEZ, JJ.

Promulgated:

APR 2 1 2008
1:25 p.m.

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PARTIAL AMENDED DECISION

PALANCA-ENRIQUEZ, J.:

This resolves:

1) (a) petitioner's "Motion For Reconsideration" filed on January 7, 2008;

(b) petitioner's "Supplemental Motion" filed on January 31, 2008 praying that it be granted leave to present evidence in support of the allegations and arguments in its Motion for Reconsideration; and

(c) respondent's "Comment" to petitioner's Motion for Reconsideration and Supplemental Motion filed on February 8, 2008.

2) (a) respondent's "Motion For Partial Reconsideration" filed on January 10, 2008; and

(b) petitioner's "Opposition To Respondent's Motion for Partial Reconsideration" filed on January 23, 2008.

3) (a) petitioner's "Motion for Partial Withdrawal of Petition" filed on March 13, 2008;

(b) respondent's "Comment" to petitioner's Motion for Partial Withdrawal of Petition filed on March 17, 2008; and

(c) petitioner's "Comment" to respondent's comment to petitioner's Motion for Partial Withdrawal of Petition filed on March 24, 2008.

On December 20, 2007, this Court rendered a Decision in the above-captioned case partially granting the Petition For Review, and finding petitioner liable for deficiency taxes in the reduced amount of P133,594,612.30, the dispositive portion of which reads as follows:

> "**WHEREFORE**, premises considered, the present Petition For Review is **PARTIALLY GRANTED**. Accordingly, petitioner is hereby **ORDERED** to pay respondent Commissioner of Internal Revenue the reduced amounts of ONE HUNDRED FOUR MILLION FIVE HUNDRED SEVENTY ONE THOUSAND NINE HUNDRED NINETY SIX AND 38/100 PESOS (P104,571,996.38), representing deficiency income tax, FIVE HUNDRED SIXTY EIGHT THOUSAND SIX HUNDRED FIFTY FIVE AND 18/100 PESOS (P568,655.18), representing deficiency EWT, and TWENTY EIGHT MILLION FOUR HUNDRED FIFTY THREE THOUSAND NINE HUNDRED SIXTY AND 74/100 PESOS (P28,453,960.74), representing deficiency value-added tax, or the total amount of ONE HUNDRED THIRTY THREE MILLION FIVE HUNDRED NINETY FOUR THOUSAND SIX HUNDRED TWELVE AND 30/100 PESOS (P133,594,612.30), broken down as follows:

	DEFICIENCY TAX DUE			
	Income Tax	**EWT**	**VAT**	**TOTAL**
Basic	P 50,857,799.71	P 284,288.65	P 14,225,031.73	P 65,367,120.09
Surcharge	25,428,899.85	142,144.32	7,112,515.87	32,683,560.04
Interest	28,285,296.82	142,222.21	7,116,413.14	35,543,932.17
Total	**P 104,571,996.38**	**P 568,655.18**	**P 28,453,960.74**	**P133,594,612.30**

> In addition, petitioner is hereby **ORDERED** to pay respondent 20% delinquency interest per annum on the total amount of P133,594,612.30, computed from December 13,

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2002 until full payment thereof, pursuant to *Section 249(C) of the NIRC of 1997, as amended.*

SO ORDERED."

Petitioner's
Motion for Partial
Withdrawal of Petition

Before resolving petitioner's "Motion for Reconsideration" and "Supplemental Motion", and respondent's "Motion for Partial Reconsideration", We deem it necessary to first resolve petitioner's "Motion for Partial Withdrawal of Petition".

Pursuant to *RA 9480,* "An Act Enhancing Revenue Administration and Collection by Granting an Amnesty on all Unpaid Internal Revenue Taxes Imposed by the National Government for Taxable Year 2005 and Prior Years", 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 *(Section 2 of RA 9480)*.

Section 5 of RA 9480 prescribes for the amnesty tax rates, as follows:

> "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 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:

(a) Individuals (whether resident or non-resident citizens, including resident or non-resident aliens), Trusts and Estates	5% or P50,000, whichever is higher
(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 of 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
(c) Other juridical entities, including, but not limited to, cooperatives and foundations,	5% or P50,000, whichever is higher

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that have become taxable as of December 31, 2005	
(d) Taxpayers who filed their balance sheets/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.	

Pursuant to the aforesaid law, a taxpayer who filed its balance sheet/SALN, together with its income tax return for 2005, who desires to avail of tax amnesty shall amend its previously filed statement by including undeclared assets and/or liabilities and pay an amnesty tax equal to 5% of the resulting increase in networth.

A perusal of petitioner's "Motion for Partial Withdrawal of Petition" shows that on March 6, 2008, petitioner availed of the Tax Amnesty Law under *RA 9480*. Attached to said motion are Development Bank of the Philippines BIR Tax Payment Deposit Slip amounting to P500,000.00, Tax Amnesty Payment Form/Acceptance of Payment Form (BIR Form 0617), showing the tax amnesty payable in the amount of P500,000.00, Notice of Availment of Tax Amnesty indicating with previous SALN/Balance Sheet, Statement of Assets and Liabilities and Networth as of June 30, 2005, received on March 6, 2008, Statement of Assets Liabilities and Networth as of June 30, 2005 (Restated), also received on March 6, 2008, and Tax Amnesty Return (BIR Form 2116), showing the amnesty tax due of P500,000.00.

It must be noted that the amount of tax amnesty due paid by petitioner was on the pretext that it had previously filed a balance sheet/SALN, together with its income tax return for 2005. However, a perusal of the documents attached by the petitioner to its Motion for Partial Withdrawal of Petition shows that the SALN dated June 30, 2005 was filed only on March 6, 2008, the same date when petitioner applied for tax amnesty. Also, petitioner did not attach its 2005 income tax return. Said requirements are necessary to determine the increase in petitioner's networth considering that petitioner paid the tax amnesty using the amnesty rate under *paragraph (d), Section 5 of RA 9480*, which is 5% of the alleged increase in its networth. Since petitioner failed to comply with the prescribed requirements of the law, petitioner cannot base the 5% rate on the alleged net increase of its networth, which is

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allegedly P708,922.00, but it should be based on the networth of its June 2005 SALN. Considering that petitioner's networth in its June 2005 SALN amounts to P437,042,785.00, the amount of petitioner's tax amnesty should be P21,852,139.25 (P437,042,785.00 multiplied by 5%), and not only P500,000.00. Since petitioner only paid the amount of P500,000.00, which is the higher amount vis-à-vis P35,446.10 (5% of the increase in networth amounting to P708,922.00), the amount of P500,000.00 cannot be considered as complete payment of petitioner's tax amnesty.

In this regard, *Section 3 of Department Order No. 29-07*, otherwise known as the "Rules and Regulations To Implement Republic Act No. 9480", provides:

> "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 Form, 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

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> payment. In case of the authorized agent bank, the branch manager or the assistant branch manager shall sign the acceptance of payment form.
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> 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."

Considering that petitioner only paid the amount of P500,000.00 and not the full amount of P21,852,139.25, petitioner cannot be considered to have fully complied with the requirements of *RA 9480*. Thus, in the case of *Banas, Jr. vs. Court of Appeals,325 SCRA 273-274*, the Supreme Court ruled as follows:

> "xxx Tax amnesty is a general pardon to taxpayers who want to start a clean tax slate. It also gives the government a chance to collect uncollected tax from tax evaders without having to go through the tedious process of a tax case. To avail of a tax amnesty granted by the government, and to be immune from suit on its delinquencies, the taxpayer must have voluntarily disclosed his previously untaxed income and must have paid the corresponding tax on such previously untaxed income."

The settled rule is that tax amnesty is in the nature of tax exemption; hence, it must be construed strictly against the applicant. In

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the case of *Commissioner of Internal Revenue vs. Marubeni Corporation, 372 SCRA 588-589*, the Supreme Court held:

> "Moreover, E.O. Nos. 41 and 64 are tax amnesty issuances. A tax amnesty is a general pardon or intentional overlooking by the State of its authority to impose penalties on persons otherwise guilty of evasion or violation of a revenue or tax law. It partakes of an absolute forgiveness or 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. If granted, the terms of the amnesty, like that of a tax exemption, must be construed strictly against the taxpayer and liberally in favor of the taxing authority. For the right of taxation is inherent in government. The State cannot strip itself of the most essential power of taxation by doubtful words. He who claims an exemption (or an amnesty) from the common burden must justify his claim by the clearest grant of organic or state law. It cannot be allowed to exist upon a vague implication. If a doubt arises as to the intent of the legislature, that doubt must be resolved in favor of the state."

For the foregoing reasons, petitioner's "Motion for Partial Withdrawal of Petition" as regards its deficiency assessments for income and value added taxes must perforce be denied.

<u>Respondent Commissioner of Internal Revenue's Motion for Partial Reconsideration</u>

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A perusal of the "Motion for Partial Reconsideration" shows that respondent's allegations are mere general averments. Although respondent begs to differ with this Court's Decision in reducing the amount of the assessment made by respondent covering petitioner's deficiency income tax in the amount of P368,413,118.23, deficiency expanded withholding tax in the amount of P5,146,610.62, and deficiency value-added tax in the amount of P111,963,078.85, or in the aggregate amount of P485,522,807.69 for fiscal year ended June 30, 1998, respondent did not present any cogent reason why she disagrees with this Court's Decision. With respondent's pro-forma motion, We find no justification to compel a modification or reversal of Our decision dated December 20, 2007. We, therefore, deny respondent's "Motion for Partial Reconsideration" for lack of merit.

<u>Petitioner Tutuban Properties, Inc.'s Motion for Reconsideration on Income and Value-Added Taxes Deficiency Assessments</u>

Going now to petitioner's "Motion for Reconsideration" on its Income and Value-Added Taxes Deficiency Assessments, considering that the issues raised in the motion had already been sufficiently passed

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upon and threshed out in the decision sought to be reconsidered, We sustain Our findings as to petitioner's liability for deficiency Income and Value-Added Taxes.

Petitioner Tutuban Properties, Inc.'s Motion for Reconsideration on EWT Deficiency Assessment

As regards petitioner's deficiency EWT, in our Decision dated December 20, 2007, We ruled as follows:

> "In sum, petitioner is liable to pay deficiency EWT for fiscal year 1998 in the amount of P568,655.18, computed as follows:

1.	Professional Fees	P18,900.00	
	Multiply by Tax Rate	0.10	P1,890.00
2.	Accrued Commissions	P3,975,795.40	
	Multiply by Tax Rate	0.05	198,789.77
3.	Advertising Expense	P1,672,177.50	
	Multiply by Tax Rate	0.05	83,608.88
TOTAL WITHHOLDING TAX STILL DUE			P 284,288.65
Add: 50% Surcharge			142,144.32
20% Interest (1/25/99 to 7/25/01)			142,222.21
TOTAL AMOUNT STILL DUE			**P568,655.18**

After taking a second hard look at the motion, the Court finds that there was an error in using the 5% rate, instead of the 1% rate in showing the computation of petitioner's deficiency EWT on advertising. Pursuant

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to Revenue Regulations No. 02-98, the EWT rate for advertising income is 1%. This Court, therefore, amends its Decision dated December 20, 2007 in so far as petitioner's deficiency EWT on advertising is concerned. The deficiency EWT on advertising is hereby recomputed as follows:

Advertising Expense	P 1,672,177.50
Multiply by Tax Rate	**1%**
Basic Deficiency EWT on Advertising	**P 16,721.78**

Therefore, prescinding from the foregoing, petitioner should be held liable to pay deficiency EWT in the reduced amount of P434,743.52, computed as follows:

DEFICIENCY EWT

1. Professional Fees	P 18,900.00	
Multiply by Tax Rate	0.10	P 1,890.00
2. Accrued Commission	P3,975,795.40	
Multiply by Tax Rate	0.05	P198,789.77
3. Advertising Expense	P 1,672,177.50	
Multiply by Tax Rate	**0.01**	**P16,721.78**
DEFICIENCY EWT		**P 217,401.54**
Add: 50% Surcharge		**108,700.77**
20% Interest (1/25/99 to 7/25/01)		**108,641.21**
TOTAL EWT STILL DUE		**P 434,743.52**

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WHEREFORE, foregoing premises considered:

1) Petitioner Tutuban Properties, Inc.'s "Motion for Partial Withdrawal of Petition" is hereby **DENIED**;

2) Respondent Commissioner of Internal Revenue's "Motion for Partial Reconsideration" is hereby **DENIED** for lack of merit; and

3) Petitioner Tutuban Properties, Inc.'s "Supplemental Motion" is hereby **DENIED.**

As regards petitioner Tutuban Properties, Inc.'s "Motion For Reconsideration" of the Decision dated December 20, 2007, the motion is hereby **PARTIALLY GRANTED**, but only in so far as petitioner's deficiency EWT on advertising is concerned. Accordingly, the dispositive portion of Our Decision dated December 20, 2007 is hereby partially **AMENDED** to read as follows:

> "WHEREFORE, premises considered, the present Petition For Review is PARTIALLY GRANTED. Accordingly, petitioner is hereby ORDERED to pay respondent Commissioner of Internal Revenue the reduced amounts of ONE HUNDRED FOUR MILLION FIVE HUNDRED SEVENTY ONE THOUSAND NINE HUNDRED NINETY SIX AND 38/100 PESOS (P104,571,996.38), representing deficiency income tax,

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FOUR HUNDRED THIRTY FOUR THOUSAND SEVEN HUNDRED FORTY THREE AND 52/100 PESOS (P434,743.52), representing deficiency EWT, and TWENTY EIGHT MILLION FOUR HUNDRED FIFTY THREE THOUSAND NINE HUNDRED SIXTY AND 74/100 PESOS (P28,453,960.74), representing deficiency value-added tax, or the total amount of **ONE HUNDRED THIRTY THREE MILLION FOUR HUNDRED SIXTY THOUSAND SEVEN HUNDRED AND 64/100 PESOS (P133,460,700.64)**, broken down as follows:

	DEFICIENCY TAX DUE			
	Income Tax	EWT	VAT	TOTAL
Basic	P50,857,799.71	**P217,401.54**	P14,225,031.73	**P65,300,232.98**
Surcharge	25,428,899.85	**108,700.77**	7,112,515.87	**32,650,116.49**
Interest	28,285,296.82	**108,641.21**	7,116,413.14	**35,510,351.17**
Total	**P104,571,996.38**	**P434,743.52**	**P28,453,960.74**	**P133,460,700.64**

In addition, petitioner is hereby ORDERED to pay respondent 20% delinquency interest per annum on the total amount of **P133,460,700.64**, computed from December 13, 2002 until full payment thereof, pursuant to *Section 249 (C) of the NIRC of 1997, as amended.*

SO ORDERED".

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(On Official Business)
ERLINDA P. UY
Associate Justice

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A T T E S T A T I O N

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

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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

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