REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
****

FIRST FILIPINAS INSURANCE BROKERS CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. EB NO. 323
(C.T.A. Case No. 6569)

Members:

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

Promulgated:
AUG 0 5 2008 Apolinario 2:10 p.m.

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RESOLUTION

For resolution are:

1. Petitioner's "Manifestation (Availment of Tax Amnesty)" filed on April 24, 2008 alleging its availment of the Tax Amnesty Program under Republic Act No. 9480;

2. Petitioner's "Compliance" filed on May 22, 2008 pursuant to the Court's Resolution dated May 7, 2008 submitting duplicate original copies of the pertinent documents required under the Tax Amnesty Program of Republic Act (R.A.) No. 9480;

3. Respondent's "Motion to Admit Comment/Opposition" filed through registered mail on June 4, 2008, attaching therewith the corresponding "Comment/Opposition" to petitioner's aforementioned Manifestation;

4. Petitioner's "Reply to Respondent's Comment/Opposition" filed on June 27, 2008.

Finding petitioner's Compliance to be in order, the same is hereby **NOTED,** while respondent's "Motion to Admit Comment/Opposition", although filed late, is hereby **GRANTED,** and the "Comment/Opposition" attached thereto is hereby **ADMITTED** considering that petitioner subsequently filed its "Reply to Respondent's Comment/Opposition" on June 27, 2008.

Hence, this resolution.

In the "Manifestation (Availment of Tax Amnesty)" filed on April 24, 2008, under RA 9480 and thus, it is entitled to the benefits and privileges of the law; and as directed by the Court *En Banc,* it subsequently submitted duplicate originals of pertinent and necessary documents in support of its availment.

On the other hand, respondent, in her Comment/Opposition alleges that petitioner is not qualified to avail of tax amnesty, relying on Section 5 of DOF Department Order No. 29-07, the Implementing Rules and Regulations (IRR) of RA 9480 which excepts petitioner as a withholding agent from the coverage of RA 8480; that since the First Division already resolved the issues involved in the instant case in favor of the respondent, petitioner is further excepted from the coverage of the Tax Amnesty Law under the "Basic Guide on the Tax Amnesty Act of 2007" which provides that "issues and cases which were ruled by any court (even without finality) in favor of the BIR prior to amnesty availment of the taxpayer" is one of those instances where a taxpayer cannot avail tax amnesty. Lastly, respondent points out that the tax amnesty documents were received and accepted by a mere employee of the BIR RDO No. 50, South Makati and not by the Revenue District Officer of RDO No. 50, which is allegedly violative of Section 7 of RA 9480.

In Reply thereto, petitioner avers that the assessment on withholding tax was already cancelled and/or withdrawn by the First Division in the Decision dated July 4, 2007, hence, there was no more withholding tax assessment to speak of. Moreover, both the IRR and RA 9480 expressly mention that those excepted from availment of tax amnesty are only "tax cases subject of final and executory judgment by the courts"; thus, the Basic Guide on the Tax Amnesty Act of 2007 is contrary to the law and the IRR in indicating that tax cases which have not yet attained finality are not covered. Finally, petitioner maintains that the submission of tax amnesty related documents to RDO staff is substantial compliance with IRR.

We find merit in petitioner's contentions.

As correctly pointed out by petitioner, the assessment for withholding taxes has already been ruled upon by the First Division of this Court wherein it ordered the cancellation and withdrawal of the deficiency expanded withholding tax assessment for 1997 due to prescription. As respondent did not appeal this portion of the Court *a quo's* decision, the same has already become final and executory and can no longer be questioned by respondent. Therefore, the exception pertaining to a withholding agent finds no application herein.

Respondent's argument that RA 9480 also excepts from its coverage cases which have already been decided in favor of the BIR although have not attained finality, is likewise without legal basis.

Republic Act No. 9480 provides that:

> *"SEC. 8. Exceptions- The tax amnesty provided under Section 5 hereof shall not extend to the following persons or cases existing as of the effectivity of this Act.*
>
> *Xxx*

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

Under the above-quoted provision, only those tax cases which have become final and executory are excluded from the coverage of the Tax Amnesty Law. In the case at bench, the assailed Decision herein has not yet become final and executory because petitioner has seasonably filed an appeal before the CTA E*n Banc*, through the instant petition for review.

With regard to the contention that petitioner's documents were received by a mere RDO employee and not the RDO officer, this Court finds the same argument as misplaced. Section 7 of RA 9480 did not limit the persons that should accept the application for tax amnesty to an RDO Officer. In fact, the said provision merely provides that the application for tax amnesty shall be filed at the RDO which has jurisdiction over the business of the taxpayer. The mention of the Revenue District Officer refers to the duty to issue an acceptance of payment form for the bank, collection agent or municipal treasurer to accept payment.

More importantly, this Court would like to stress that a taxpayer desiring to avail of the benefits of a tax amnesty must conform to the requirements specified under Section 2 of R.A. No. 9480 which provides:

> "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) <u>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.</u>" *(Underscoring Ours)*

Additionally, under the Implementing Rules and Regulations,[1] and as further outlined in Revenue Memorandum Circular (RMC) No. 19-2008 entitled "Circularizing the Full Text of 'A Basic Guide on the Tax Amnesty Act of 2007' for Taxpayers Who Wish to Avail of the Tax Amnesty Pursuant to Republic Act No. 9480 (Tax Amnesty Act of 2007)", a taxpayer availing of the program must present in the original or in certified true copy the following documents:

Forms to be submitted are:
- Notice of Availment of Tax Amnesty
- Statement of Assets, Liabilities and Networth (SALN)
- Tax Amnesty Return (BIR Form No. 2116)
- Payment Form (BIR Form No. 0617)

A perusal of the records of the case shows that the following duplicate original documents were already submitted on May 22, 2008 by petitioner marked and attached to its "Compliance":

1. Notice of Availment of Tax Amnesty[2]	Annex "A"
2. Statement of Assets, Liabilities and Net Worth as of December 31, 2005[3]	Annex "B"
3. Tax Amnesty Payment Form[4]	Annex "C"
4. Tax Amnesty Return for Taxable Year 2005[5]	Annex "D"

Further, in its "Manifestation"[6] filed on April 24, 2008, petitioner attached a photocopy of the bank receipt[7] which was marked as Annex "D" as proof that it already paid its tax amnesty due. The bank receipt was machine validated in the amount of P25,000.00 on March 4, 2008 to the account of the Bureau of Internal Revenue thru Equitable PCI Bank, Makati Branch. The photocopy of the bank receipt together with the bank stamps on the other duplicate originals submitted by petitioner substantially prove that petitioner paid its tax amnesty due.

The above documents show sufficient compliance with the provisions of R.A. No. 9480 and its implementing rules and regulations. Hence, considering that petitioner has fully satisfied the requisites of the tax amnesty law, and is deemed a duly qualified tax amnesty applicant, the subject tax deficiencies in the case at bench are extinguished provided that petitioner's SALN as of December 31, 2005 is not understated to the extent of the thirty percent (30%) or more as may be established in proceedings to be initiated by, or at the instance of, parties other than the BIR or its agents within a period of one (1) year from availment of the amnesty program.[8]

WHEREFORE, in view of the foregoing considerations, the **Manifestation** is hereby considered as a Motion to Withdraw the Petition. Accordingly, said motion is hereby **GRANTED.** The instant Petition for Review filed on November 26, 2007 is hereby deemed **WITHDRAWN,** and the case is considered **CLOSED** and **TERMINATED**, subject to the provisions of R.A. No. 9480.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

[2] Docket, p. 90.
[3] Ibid., at pp. 91-92.
[4] Id., at p. 93.
[5] Id., at pp. 94-96.
[6] Id., at p. 78.
[7] Id., at p. 86.

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