REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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UNION BANK OF THE PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7576

Members:

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

Promulgated:

SEP 03 2008 9:40 pm

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RESOLUTION

On June 26, 2008, this Court resolved as follows:

> "**ACCORDINGLY,** the resolution of petitioner's **"Motion to Declare the Petitioner as Immune from the Payment of Taxes"** is hereby **HELD IN ABEYANCE**, pending the filing by petitioner of a Motion to Withdraw Petition for Review together with its submission of the original or certified true copies of the required documents, pursuant to the provisions of Republic Act No. 9480 within fifteen (15) days from receipt hereof. Thereafter, upon filing of the subject motion and submission of the documents, or the expiration of the period granted, petitioner's motion shall be deemed submitted for resolution.
>
> **SO ORDERED.**"

Pursuant thereto, petitioner filed its **"Compliance and Motion"** on July 28, 2008, and submitting certified true copies of the originals of the following documents:

a) Notice of Availment of Tax Amnesty;
b) Tax Amnesty Payment Form (BIR Form No. 0617);
c) Statement of Assets, Liabilities and Networth (SALN) as of December 31, 2005;
d) Tax Amnesty Return (BIR Form No. 2116); and
e) Development Bank of the Philippines BIR Tax Payment Deposit Slip.

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Respondent, on the other hand, argues that petitioner's assessment in this instant petition is not covered by the provisions of Republic Act (R.A.) No. 9480, otherwise known as the Tax Amnesty Act of 2007. Respondent avers that Section 8 of R.A. 9480 provides that cases involving issues ruled with finality by the Supreme Court prior to the effectivity of R.A. 9480 can no longer avail of the benefits afforded therein. For easy reference:

> "**SECTION 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:
>
> a. Withholding agents with respect to their withholding tax liabilities;
>
> b. Those with pending cases falling under the jurisdiction of the Presidential Commission on Good Government;
>
> c. Those with pending cases involving unexplained or unlawfully acquired wealth or under the Anti-Graft and Corrupt Practices Act;
>
> d. Those with pending cases filed in court involving violation of the Anti-Money Laundering Law;
>
> e. 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
>
> **f. Tax cases subject of final and executory judgment by the courts."**
>
> (Emphasis supplied.)

In relation thereto, respondent submits that Revenue Memorandum Circular No. 70-07, issued on November 7, 2007, clarified whether cases under administrative or judicial protest which involve issues which were previously decided by the court with finality are still covered by the benefits under the Tax Amnesty Law in this wise:

> "To clarify these concerns, it is hereby enunciated that these cases are no longer covered by said amnesty law considering that the issues have already been ruled by the Supreme Court with finality and has been applied to other cases under similar circumstances."

This Court does not agree with respondent.

The principle relied upon by respondent is the maxim *"Stare decisis, et non quieta movere."*[1] Stating that when the court has once laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases where the facts are substantially the same.[2]

However, respondent may have forgotten that a "final" judgment or order is one that finally disposes of a case, leaving nothing more for the court to do in respect thereto – such as an adjudication on the merits which, on the basis of the evidence presented at the trial, declares categorically what the rights and obligations of the parties are and which party is in the right, or a judgment or order that dismisses an action on the ground of *res judicata* or prescription, for instance.[3] A "final" judgment or order becomes "final and executory" upon expiration of the period to appeal therefrom where no appeal has been duly perfected or, an appeal therefrom having been taken, but the judgment of the appellate court in turn has become final. It is called a "final and executory" judgment because execution at such point issues as a matter of right.

In this instant case, no final and executory judgment has yet been issued by the Court. In fact, the case is still in the process of being heard and considered by this Court. Thus, Section 8 of R.A. 9480 cannot apply.

As regards respondent's argument on this Court's jurisdiction, Section 7 of Republic Act No. 9282, amending R.A. No. 1125, is very clear, to wit:

> **SECTION 7.** *Jurisdiction.* — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue **or other laws administered by the Bureau of Internal Revenue**; *(Emphasis supplied)*

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[1] "It is best to adhere to decision and not to disturb questions put at rest."
[2] Republic vs. Sandiganbayan 269 SCRA 316, March 7, 1997, per Panganiban, *J.*; Tala Realty Services Corporation vs. Banco Filipino Savings and Mortgage Bank, GR No. 137980, June 20, 2000
[3] Puertollano vs. IAC, 156 SCRA 188 (1987); Investments, Inc. vs. CA, 147 SCRA 334 (1987)

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The appellate jurisdiction of this Court is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the National Internal Revenue Code of 1997 or related laws administered by the Bureau of Internal Revenue.[4]

To give emphasis, Section 2 of R.A. 9480, states:

> **SECTION 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.

Republic Act No. 9480, otherwise known as the Tax Amnesty Law, is *"a law administered by the Bureau of Internal Revenue".* Clearly, this Court has jurisdiction to determine if a taxpayer validly availed of the provisions of the Tax Amnesty Law.

On the other hand, although petitioner has fully complied with the provisions of R.A. 9480, its **"Motion to Declare the Petitioner as Immune from the Payment of Taxes"** filed on April 18, 2008 cannot be granted.

Under the provisions of the Tax Amnesty Law of 2007, it is clear that the law gives the respondent a period of one-year period for investigation or audit of the documents and/or representations made by the taxpayer in connection with his availment of the tax amnesty benefit. In other words, the benefit is still subject to a suspensive condition. What the taxpayer has is merely an inchoate right, which, once it is proven that the taxpayer understated his net worth to the extent of thirty percent (30%), the benefits of the tax amnesty program are deemed automatically cancelled. In this regard, this Court shall treat this instant motion as a "Motion to Withdraw Petition for Review".

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[4] Philippine Journalist, Inc. vs. Commissioner of Internal Revenue, G.R. No. 162852, December 16, 2004

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WHEREFORE, premises considered, petitioner's Petition for Review is hereby deemed **WITHDRAWN.** Accordingly, this instant case is considered **CLOSED** and **TERMINATED**, subject to the provisions of Republic Act No. 9480.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice