REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

GARDENS BY SANDERS, INC. (GBSI),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE, HON. KIM S. JACINTO-HENARES,
Respondent.

CTA CASE NO. 9342

Members:

CASTAÑEDA, JR., *Chairperson, and*
MANAHAN, *JJ.*

Promulgated:
FEB 15 2019 3:30 pm

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RESOLUTION

MANAHAN, ***J.*:**

For the Court's resolution is respondent's **Motion for Reconsideration Re: Decision dated 27 November 2018**, filed on December 13, 2018, with petitioner's **Comment/Opposition (on the Motion for Reconsideration filed by Respondent on 12 December 2018)**, filed on January 8, 2019.

Respondent moves for the reconsideration of the Decision promulgated on November 27, 2018, the dispositive portion of which is quoted as follows:

> "**WHEREFORE**, premises considered, the Petition for Review is **GRANTED**. Accordingly, the Final Decision on Disputed Assessment and the assessment for deficiency income tax and value-added tax, inclusive of surcharge and interest, in the aggregate amount of

₱59,513.350.74 for taxable years 1999, 2000, 2001, 2002, and 2004 are **CANCELLED**, in view of petitioner's availment of the Tax Amnesty Program under Republic Act No. 9480.

SO ORDERED."

Respondent claims that the Court gravely erred when it considered the protest of petitioner as a valid protest under Section 228 of the National Internal Revenue Code (NIRC) of 1997. He further asserts that the Court gravely erred in ruling that petitioner is entitled to tax amnesty under Republic Act (RA) No. 9480.

On the other hand, petitioner argues that the Court has jurisdiction over the present case and that it had already discussed the validity of the submissions of petitioner in length. It further contends that it satisfactorily complied with the requirements as stated in the provisions of RA No. 9480 or the Tax Amnesty Law of 2007.

Respondent's motion lacks merit.

The issues and arguments presented in respondent's motion were already addressed and resolved by the Court in the assailed Decision.

The Court has jurisdiction to resolve the present case. To stress, Section 228 of the NIRC of 1997 provides that the Formal Letter of Demand with Details of Discrepancies and Assessment Notices (FLD/FAN) may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from its receipt. Thereafter, petitioner has also another thirty (30) days from receipt of the Final Decision on Disputed Assessment (FDDA) within which to file its Petition for Review with the Court of Tax Appeals.

A review of the records shows that petitioner filed an administrative protest[1] questioning the basis of the assessment and requesting for the re-opening of the investigation to air its side on

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[1] Exhibit "P-8", Docket, Vol. III, p. 1262.

the matter, on February 5, 2015, which was within thirty (30) days from receipt of the FLD/FAN on January 22, 2015. Moreover, petitioner was able to file its Petition for Review on May 4, 2016, which was also within the thirty-day period from its receipt of the FDDA on April 5, 2016. Hence, the Court has jurisdiction over the case.

Furthermore, pursuant to RA No. 9480 and Department Order No. 29-07 issued by the Department of Finance, taxpayers must file the following documents in order to avail of the tax amnesty: (1) Notice of Availment of Tax Amnesty Form; (2) Tax Amnesty Return Form (BIR Form No. 2116); (3) Statement of Assets, Liabilities and Networth (SALN) as of December 31, 2005; and (4) Tax Amnesty Payment Form (Acceptance of Payment Form or BIR Form No. 0617). It must be noted that the submission of these documentary requirements and payment of the amnesty tax are considered full compliance with RA No. 9480 and the taxpayer can immediately enjoy the immunities and privileges enumerated in Section 6 of the law.

As found in the assailed Decision, petitioner presented the following documents: (1) Notice of Availment of Tax Amnesty Form dated May 5, 2008; (2) Tax Amnesty Return Form (BIR Form No. 2116); (3) SALN as of December 31, 2005; (4) Tax Amnesty Payment Form (Acceptance of Payment Form or BIR Form No. 0617); and (5) Transmittal Letter dated October 12, 2009. Hence, petitioner is entitled to immunity from the payment of taxes, 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.

It is also worthy to note that the SALN is presumed correct unless there is a concurrence of the following: (a) there is under-declaration of net worth by thirty percent (30%); (b) the under-declaration is established in proceedings initiated by parties other than the Bureau of Internal Revenue (BIR); and (c) the proceedings were initiated within one year from the filing of the tax amnesty.

It must be stressed that respondent failed to prove his allegation that the documents submitted by petitioner are inadequate and that there was under-declaration of net worth of petitioner by thirty percent (30%) established in proceedings initiated by parties other than the BIR and initiated within one year from the filing of the tax amnesty documents. The rule is that one who alleges a fact has the burden of proving it.[2] In this case, respondent failed to discharge the burden of proof.

Thus, the Court finds no compelling reason to justify the reversal of the assailed Decision.

WHEREFORE, premises considered, respondent's **Motion for Reconsideration Re: Decision dated 27 November 2018**, is **DENIED** for lack of merit.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

Juanito C. Castañeda, Jr.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

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[2] *Portuguez vs. GSIS Family Bank (Comsavings Bank), et al.*, G.R. No. 169570, March 2, 2007.