REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

GLORIA F. TUYAY,
Accused.

C.T.A. CRIM. NO. O-154
For: Violation of Section 255 of the National Internal Revenue Code (NIRC)

Members:

BAUTISTA, Chairperson
PALANCA-ENRIQUEZ, and
COTANGCO-MANALASTAS, JJ.

Promulgated:
OCT 4 2011
ABFernando 3:16 p.m.

x -- x

RESOLUTION

PALANCA-ENRIQUEZ, J.:

This resolves accused Gloria F. Tuyay's "Motion for Reconsideration" of the Resolution dated August 9, 2011, filed on August 22, 2011. The prosecution failed to file its comment despite notice.

The motion is anchored on the following grounds:

1) the accused is not disqualified under RA 9480 as the term "criminal cases" under Section 8 of said law refers to cases pending before the courts;

342

2) the DOF and BIR exceeded their powers in adding the phrase "filed in court or in the Department of Justice" in Department Order No. 29-07; and

3) injustice would result to the accused should the State be allowed to prosecute her under the circumstances.

After taking a second hard look on the facts of the case and the applicable law and jurisprudence, we are constrained to reconsider our Resolution dated August 9, 2011 in view of the discrepancy between Section 8 (e) of RA 9480 and Section 5 (e) of Rule II of Department Order No. 29-07 (Rules and Regulations to Implement RA 9480).

Section 8 (e) of RA 9480 provides that the tax amnesty provided in Section 5 shall not extend to the following persons or cases existing as of the effectivity of this Act, to wit:

> "**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**:
>
> 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;

ow

343

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)

On the other hand, Section 5 (e), Rule II of Department Order No. 29-07 provides that the Tax Amnesty shall not extend to the following persons or cases existing as of the effectivity of RA 9480:

"**SEC. 5.** *Exceptions.* – **The tax amnesty shall not extend to the following persons or cases existing as of the effectivity of RA 9480**:

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, revenue or income 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 filed in court or in the Department of Justice for tax evasion and other criminal offenses under Chapter II of Title X of the National Internal Revenue Code of 1997, as amended**.

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

ON

Evidently, there is a discrepancy between *Section 8 (e) of RA 9480* and *Section 5 (e), Rule II of Department Order No. 29-07,* since Section 5 (e), Rule II of Department Order No. 29-07 expanded the coverage of the persons who are not covered by the Tax Amnesty Law to those with pending criminal cases in the Department of Justice, which is not found in Section 8 (e) of RA 9480.

But the law, RA 9480, is clear. Only those with pending criminal cases for tax evasion and other criminal offenses under Chapter II of Title X of the NIRC 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 are excluded from the coverage of said law.

It is well settled that administrative regulations adopted under legislative authority by a particular department must be in harmony with the provisions of the law, and should be for the sole purpose of carrying into effect its judicial provisions. By such regulations, of course, the law itself cannot be extended. Equally settled is the rule that in case of discrepancy between the basic law and a rule or regulation issued to implement said law, the basic law prevails because said rule or

OV

345

regulation cannot go beyond the terms and provisions of the basic law *(People vs. Maceren, 79 SCRA 450, 460).*

Pursuant to settled jurisprudence, we rule, that the basic law, RA 9480, should prevail.

It must be stressed that criminal complaints filed with the Department of Justice are for preliminary investigation and are merely inquisitorial for the sole purpose of obtaining information on what future action of a judicial nature may be taken *(Atty. Alice Odchigue-Bondoc vs. Tan Tiong Bio A.K.A. Henry Tan, G.R. No. 186652, October 6, 2010).*

In this case, records show that the original criminal complaint against the accused was filed with the Department of Justice on June 3, 2005. On May 17, 2007, an amended complaint was filed against the accused with the Department of Justice. On February 21, 2008, however, the accused availed of the Tax Amnesty while the criminal complaint was still pending preliminary investigation with the Department of Justice. It is clear, therefore, that when the accused availed of the Tax Amnesty on February 21, 2008, there was yet no criminal case filed against the accused. For basic is the rule that criminal cases commence from the filing of an information or complaint in court.

As a consequence thereof, the accused is entitled to the benefits

Q/v

346

and privileges provided by *RA 9480* since she is not one of those excluded from the coverage of said law.

WHEREFORE, premises considered, accused Gloria Tuyay's "Motion for Reconsideration" is hereby **GRANTED**. Accordingly, our Resolution dated August 9, 2011 is hereby **RECALLED** and **SET ASIDE**, and a new one is hereby entered **DISMISSING** C.T.A. Crim. Case No. O-154 solely in view of accused's availment of the Tax Amnesty Program under *RA 9480* (Tax Amnesty Act).

SO ORDERED.

(Inhibited)
LOVELL R. BAUTISTA
Associate Justice

OLGA PALANCA ENRIQUEZ
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

347