REPUBLIC OF THE PHILIPPINES
**Court of Tax Appeals**
QUEZON CITY

*EN BANC*

| | |
|---|---|
| **COMMISSIONER OF INTERNAL REVENUE,** Petitioner, | **CTA EB NO. 934** (CTA Case No.7862) |
| | *Present:* |
| - versus - | DEL ROSARIO, *PJ,* CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, RINGPIS LIBAN, *JJ.* |
| **ORIENTAL ASSURANCE CORPORATION,** Respondent. | Promulgated: JUN 17 2013 1:30 p.m. |

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# DECISION

***DEL ROSARIO, PJ:***

## *THE CASE*

This is a Petition for Review filed by the Commissioner of Internal Revenue under Section 11 of Republic Act (RA) No. 9282[1], as amended, in relation to Section 3(b) of Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) seeking the nullification of the Decision dated June 11, 2012 and the Resolution dated August 28, 2012, rendered by the Third Division of this Court (CTA-Third Division) in CTA Case No. 7862, the respective dispositive portions of which read:

[1] An Act Expanding the Jurisdiction of the Court of Tax Appeals.

**Assailed Decision:**

> "**WHEREFORE**, the Petition for Review is hereby **GRANTED**. The Formal Letter of Demand dated May 8, 2008 and the Final Decision on Disputed Assessment dated December 9, 2008 for deficiency Documentary Stamp Taxes for taxable year 2004 issued against petitioner are hereby **CANCELLED** and **SET ASIDE**, solely in view of petitioner's availment of the Tax Amnesty under RA No. 9480.
>
> **SO ORDERED**."

**Assailed Resolution:**

> "**WHEREFORE**, respondent's "Motion for Reconsideration (Re: Decision Promulgated 11 June 2012)" is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**."

## *THE PARTIES*

Petitioner, Commissioner of Internal Revenue (CIR), is the head of the Bureau of Internal Revenue (BIR), with office address at BIR National Office Building, Diliman, Quezon City.

Respondent, Oriental Assurance Corporation (OAC), is a domestic corporation duly organized and existing under Philippine laws, engaged in insurance business, with principal office at the 2nd Floor, OAC Building, 27 San Miguel Avenue, Ortigas Center, Pasig City.

## *THE ANTECEDENT FACTS*

The antecedent facts, as found by the CTA-Third Division, are as follows:

> "Petitioner received Letter Notice No. 116-DS-04-00023 dated August 23, 2005, issued by respondent, informing the former of its underpayment of documentary stamp tax ("DST") on premiums on direct business/sums assured for the taxable year 2004 based on third-party information from the Insurance Commission.

On October 28, 2005, petitioner then received a Preliminary Assessment Notice ("PAN") dated October 14, 2005, issued by respondent, assessing the former for deficiency DST for taxable year 2004.

On November 14, 2005, petitioner filed its Reply to the aforementioned PAN dated October 14, 2005.

On February 22, 2008, petitioner availed of the Tax Amnesty Program under Republic Act No. 9480.

On June 19, 2008, petitioner received a Formal Letter of Demand dated May 8, 2008, issued by respondent, stating that after investigation, it was found that there was still due from the former deficiency DST on premiums on direct business/sums assured based on Section 184 of the 1997 National Internal Revenue Code ("NIRC"), as amended, for the calendar year 2004. The deficiency tax was computed as follows:

DST due on premiums on Direct Business/Sums:

| | |
|---|---|
| Assured per Insurance Commission Schedule | 65,088,227.88 |
| Add: DST Payable beginning per IC Report | 2,099,508.00 |
| Total DST due | 67,187,735.88 |
| Less: Payments per ITS (BIR database) | 22,760,370.00 |
| Discrepancy | 44,427,365.88 |
| Surcharge | 22,213,682.94 |
| Interest | 30,210,608.80 |
| **Total DST Due** | **96,851,657.62** |

On July 17, 2008, petitioner filed a Protest Letter to the aforesaid Formal Letter of Demand dated May 8, 2008.

On December 24, 2008, petitioner received a Final Decision on Disputed Assessment dated December 9, 2008, denying the former's request for reinvestigation/reconsideration, with the following adjustments:

DST due on premiums on Direct Business/Sums:

| | |
|---|---|
| Assured per Insurance Commission Schedule | 65,088,227.88 |
| Add: DST Payable beginning [p]er IC Report | 2,099,508.00 |
| Total DST due | 67,187,735.88 |
| Less: Payments per ITS | 22,760,370.00 |
| Discrepancy | 44,427,365.88 |
| Surcharge | 22,213,682.94 |
| Interest | 35,746,702.86 |
| **Total DST Due** | **102,387,751.68** |

Thus, on January 22, 2009, petitioner filed the present Petition for Review.

On March 2, 2009, respondent filed her Answer, and interposed the following Special and Affirmative Defenses:

> 9. Respondent hereby reiterates and repleads the preceding paragraphs of this answer as part of [her] Special and Affirmative Defenses;
>
> 10. Petitioner Oriental Assurance Corporation, is liable to pay its deficiency documentary stamp tax on premiums o[n] direct business/sums assured based on Section 184 of the National Internal Revenue Code of 1997, as amended, for calendar year 2004, in the total amount of One Hundred Two Million Three Hundred Eighty Seven Thousand Seven Hundred Fifty One and 68/100 (₱102,387,751.68), including penalties, surcharges and interest for the following reasons:
>
> 10.1 Section 184 of the National Internal Revenue Code of 1997, as amended, (1997 NIRC) states the following:
>
> > Section 184. Stamp Tax on Policies of Insurance Upon Property. – On all policies of insurance or other instruments by whatever name the same may be called, by which insurance shall be made or renewed upon property of any description, including rents or profits, against peril by sea or on inland waters, or by fire or lightning, there shall be collected a documentary stamp tax of Fifty centavos (₱0.50) on each Four pesos (₱4.00), or fractional part thereof, of the amount of premium charged: *Provided, however,* That no documentary stamp tax shall be collected on reinsurance contracts or on any instrument by which cession or acceptance of insurance risks under any reinsurance agreement is effected or recorded.
>
> Considering that petitioner is primarily engaged in the insurance business, it is subject to documentary stamp tax on premiums o[n] direct business/sums assured for taxable year 200[4].
>
> 11. Petitioner incurred an underpayment of documentary stamp tax on premiums o[n] direct business/sums assured for taxable year 200[4] based on third-party information provided by the Insurance Commission;
>
> 12. Petitioner filed its protest to the Formal Letter of Demand and Assessment Notice before the Office of the Large Taxpayers Service on February 16, 2008, however, it failed to substantiate its allegations. Petitioner has not introduced any evidence to overthrow the validity of the assessment;
>
> 13. The assessment for the period January 1, 2004 to December 31, 2004 in the amount of ₱96,851,657.62 was issued in accordance with law and regulations;

> 14. Well-settled is the rule that tax assessments are entitled to the presumption of correctness and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner, and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of the tax assessments (*Sy Po vs. Court of [T]ax Appeals, 164 SCRA 524*). Dereliction on the part of petitioner to satisfactorily overcome the presumption of regularity and correctness of the assessment will justify the judicial upholding of said assessment notices; and
>
> 15. The Petition for Review fails to state a cause of action. Petitioner is not qualified to avail of the Tax Amnesty Program (TAP) under R.A. No. 9480. Pursuant to Revenue Memorandum Circular No. 69-2007 (Q1)(A1), the TAP covers all national internal revenue taxes such as income tax, estate tax, donor's tax, capital gains tax, value-added tax, other percentage taxes, excise taxes and documentary stamp taxes, except withholding taxes and **taxes passed-on and already collected from customers for remittance to the BIR**, these funds are considered funds held in trust for the government. It has been the practice of all non-life insurance companies to include in its bill to customers, aside from yearly premiums, all the necessary expenses like fire, government tax, local tax and documentary stamp tax. Thus, documentary stamp taxes were passed-on taxes, hence, were assessed based on the said provision.
>
> On March 20, 2009, petitioner filed its Reply thereto." (Citations omitted)

After due proceedings, the CTA-Third Division rendered its Decision on June 11, 2012 cancelling and setting aside the Formal Letter of Demand dated May 8, 2008 and the Final Decision on Disputed Assessment dated December 9, 2008 assessing petitioner for deficiency DST for taxable year 2004, solely in view of petitioner's availment of the Tax Amnesty under RA No. 9480.

On June 27, 2012, petitioner CIR filed a "Motion for Reconsideration (RE: Decision Promulgated 11 June 2012)" while respondent OAC filed its "Comment (On Motion for Reconsideration)" by registered mail on July 26, 2012.

On August 28, 2012, the CTA-Third Division issued a Resolution denying petitioner CIR's Motion for Reconsideration for lack of merit.

On September 14, 2012, petitioner CIR filed the instant Petition for Review before this Court *En Banc*, raising the following issues:

***THE ISSUES***

WHETHER OR NOT RESPONDENT IS LIABLE TO PAY THE ALLEGED DEFICIENCY DOCUMENTARY STAMP TAX ON PREMIUMS ON DIRECT BUSINESS/SUMS ASSURED FOR THE TAXABLE YEAR 2004.

WHETHER OR NOT RESPONDENT IS EXEMPT FROM PAYMENT OF ANY AND ALL INTERNAL REVENUE TAXES FOR THE TAXABLE YEAR 2004 AFTER HAVING AVAILED OF THE BENEFITS OF THE TAX AMNESTY UNDER REPUBLIC ACT NO. 9480.

WHETHER OR NOT REVENUE MEMORANDUM CIRCULAR NO. 69-2007 IS CONSISTENT WITH THE PROVISIONS OF REPUBLIC ACT NO. 9480 INSOFAR AS IT EXTENDS THE EXCLUSIONS UNDER THE SAID LAW TO TAXES PASSED ON AND ALREADY COLLECTED FROM THE CUSTOMERS FOR REMITTANCE TO BIR.

Without necessarily giving due course to the Petition for Review, on October 3, 2012, this Court *En Banc* ordered respondent OAC to file its comment, not a Motion to Dismiss, within ten (10) days from notice.

On November 13, 2012, respondent OAC filed its "Comment (On Petition for Review)".

On January 21, 2013, this Court *En Banc* gave due course to the Petition for Review and ordered both parties to file their simultaneous Memoranda, within thirty (30) days from notice; afterwhich, the Petition for Review shall be deemed submitted for resolution.

On February 27, 2013, petitioner CIR filed her Memorandum while respondent OAC filed its Memorandum on March 4, 2013.

On March 20, 2013, this Court *En Banc* issued a Resolution submitting the case for decision.

## *PETITIONER CIR'S ARGUMENTS*

Petitioner CIR alleges that when respondent OAC filed its administrative protest, it failed to substantiate its allegations therein by not introducing any evidence to overthrow the validity of the assessment. Allegedly, Section 3.1.5 of Revenue Regulations (RR) No. 12-99 is mandatory when it requires the submission of documents in support of a protest within sixty (60) days from the filing thereof; otherwise, the assessment shall become final, executory and demandable. The purpose of requiring submission of relevant supporting documents is to give the revenue officer conducting the audit an opportunity to evaluate such documents and subsequently, render a report on the outcome of said investigation. This is the very essence of the doctrine of exhaustion of administrative remedies which rests on the presumption that the administrative body, board or officer, if given the chance to correct its mistake or error, may amend its decision on a given matter and decide it properly. Thus, non-compliance with the condition precedent renders the original petition filed by respondent OAC dismissible.

In addition, petitioner CIR also contends that respondent OAC is assessed for documentary stamp tax (DST) classified under "other taxes passed on and already collected from customers for remittance to the BIR" which is expressly excluded by Revenue Memorandum Circular (RMC) No. 69-2007 from the coverage of the Tax Amnesty Program. Accordingly, failure on the part of respondent OAC to remit to the government the DST passed on to customers will constitute unjust enrichment to the prejudice of the government.

Finally, petitioner CIR posits that in the absence of proof to the contrary, respondent OAC is liable for deficiency DST for calendar year 2004 because the presumption under the law is in favor of the correctness of tax assessments.

## *RESPONDENT OAC'S COUNTER- ARGUMENTS*

Respondent OAC claims that its administrative protest, which was supported by documents and made available to respondent CIR, is not *pro forma*. The protest contained all relevant documents in support of respondent OAC's claim that it availed of the Tax Amnesty Program under RA No. 9480, and therefore immune from payment of all internal revenue taxes for the year 2005 and prior years. As early as July 17, 2008, when petitioner

filed its protest letter, the BIR was already notified of respondent OAC's full compliance with the provisions of RA No. 9480 relative to its availment of the Tax Amnesty Program. The assessment made by petitioner CIR for deficiency DST against respondent OAC necessarily becomes arbitrary and capricious because despite respondent OAC's valid availment of the Tax Amnesty Program, it is still being assessed the amount of Php102,387,751.68.

Respondent OAC further posits that DST is expressly covered by the Tax Amnesty Program as the wording of the latter is plain and unambiguous when it authorized and granted a tax amnesty which shall cover all national and internal revenue taxes for taxable year 2005 and prior years; that there is no question that DST is an internal revenue tax.

Respondent OAC insists that even RMC No. 69-2007 clearly includes DST as one of the taxes covered by the Tax Amnesty Program. Petitioner CIR's attempt to distinguish between DST under the Tax Amnesty Program and DST that is passed-on to customers of taxpayers must fail as there is only one type of DST under our tax laws and there is no DST that is passed-on or which the law requires taxpayers to withhold and remit to the BIR. While petitioner CIR cannot amend RA No. 9480 by creating another type of DST in order to deny respondent OAC the statutory right to avail of the Tax Amnesty Program, neither RA No. 9480 nor any of our tax laws designates a taxpayer as collecting/withholding agent of documentary stamp taxes.

In conclusion, respondent OAC claims that since it has fully complied with all the requirements to avail of the benefits of the Tax Amnesty Program, the CTA-Third Division correctly held that respondent OAC is qualified to avail of the Tax Amnesty Program.

## *THE COURT EN BANC'S RULING*

The petition is devoid of merit.

**Requirement to submit "relevant supporting documents" under Section 228 of the 1997 NIRC, as amended, and as implemented by Section 3.1.5 of RR No. 12-99**

Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides for the procedure in issuing tax assessments as well as in protesting the same, thus:

> "**SEC. 228.** *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, That a preassessment notice shall not be required in the following cases:
>
> Xxx xxx xxx
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. **Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.**
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable." (Emphasis supplied)

Relative thereto, RR No. 12-99, more particularly, Section 3.1.5, provides for the administrative remedies available to a taxpayer in disputing an assessment. Section 3.1.5 is quoted hereunder:

> "3.1.5 Disputed Assessment. — **The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof.** Xxx xxx xxx.
>
> Xxx xxx xxx.
>
> **The taxpayer shall submit the required documents in support of his protest within sixty (60) days from the date of filing of his letter of protest, otherwise, the assessment shall become final, executory and demandable.** The phrase "submit the required documents" includes submission or presentation of the pertinent

documents for scrutiny and evaluation by the Revenue Officer conducting the audit. The said Revenue Officer shall state this fact in his report of investigation.

**If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable.**

If the protest is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable.

Xxx xxx xxx." (Emphasis supplied.)

In the case of **Commissioner of Internal Revenue vs. First Express Pawnshop Company, Inc.**,[2] the Supreme Court defined the term "relevant supporting document" in this wise:

"We reject petitioner's view that the assessment has become final and unappealable. It cannot be said that respondent failed to submit relevant supporting documents that would render the assessment final because **when respondent submitted its protest, respondent attached the GIS and Balance Sheet**. Further, petitioner cannot insist on the submission of proof of DST payment because such document does not exist as respondent claims that it is not liable to pay, and has not paid, the DST on the deposit on subscription.

**The term "relevant supporting documents" should be understood as those documents necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer. The BIR can only inform the taxpayer to submit additional documents. The BIR cannot demand what type of supporting documents should be submitted. Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit.**

After respondent submitted its letter-reply stating that it could not comply with the presentation of the proof of DST payment, no reply was received from petitioner.

Section 228 states that if the protest is not acted upon within 180 days from submission of documents, the taxpayer adversely affected by the inaction may appeal to the CTA within 30 days from the lapse of the 180-day period. **Respondent, having submitted its supporting documents on the same day the protest was filed, had until 31 July 2002 to wait for petitioner's reply to its protest. On 28 August 2002**

[2] G.R. Nos. 172045-46, June 16, 2009.

> **or within 30 days after the lapse of the 180-day period counted from the filing of the protest as the supporting documents were simultaneously filed, respondent filed a petition before the CTA.**" (Emphasis supplied)

In filing an administrative protest, the documents referred to in Section 228 of the 1997 NIRC, as amended, are those which the taxpayer perceives would be necessary to support the protest and not what the CIR believes should be submitted; otherwise, the taxpayer would always be at the mercy of the BIR which may require production of such documents which the taxpayer could not produce.[3]

In this particular case, records show that after respondent OAC filed its protest letter on July 17, 2008, together with supporting documents, specifically the documents showing that it availed of the Tax Amnesty Program under RA No. 9480, petitioner CIR did not require respondent OAC to submit additional documents. On the other hand, it appears that the BIR found the documents submitted by respondent OAC sufficient to enable it to render a decision on respondent OAC's protest by issuing the Final Decision on Disputed Assessment (FDDA) dated December 9, 2008 denying respondent OAC's protest for lack of factual and legal basis. It is therefore logical and reasonable to conclude that the BIR found the documents submitted by respondent OAC complete and relevant for purposes of acting on and consequently, denying the latter's protest.

It is worthy to note that the FDDA categorically stated that it is a final decision and if respondent OAC disagrees, it may appeal the final decision with the CTA within thirty (30) days from date of receipt; otherwise, the deficiency DST for taxable year 2004 shall become final, executory and demandable. Since the FDDA constitutes the final decision on respondent OAC's protest, the latter correctly availed of the available remedy of appealing the FDDA before the CTA within 30 days from receipt thereof to prevent the assessment from becoming final and executory.

The Court *En Banc* shall now jointly discuss the three (3) issues raised by petitioner CIR in her Petition for Review relative to the validity of respondent OAC's availment of the Tax Amnesty Program

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[3] Commissioner of Internal Revenue v. La Suerte Cigar and Cigarette Factory, Telengtan Brothers and Sons, Inc., CTA EB Case No. 820, June 11, 2012 citing the case of Business One, Inc. v. Commissioner of Internal Revenue, CTA Case No. 6832, October 7, 2008. See also Standard Chartered Bank-Philippine Branches v. Commissioner of Internal Revenue, CTA Case No. 5696, August 16, 2001.

**Availment of the Tax Amnesty Program**

On 24 May 2007, RA No. 9480[4] lapsed into law. Section 8 of R.A. No. 9480 and Section 5 of Rule II of Department of Finance (DOF) Order No. 29-07[5] provide the only exceptions to the application of the Tax Amnesty Law of 2007, to wit:

> 1. *Withholding agents with respect to their withholding tax liabilities*;
>
> 2. Those with pending cases falling under the jurisdiction of the Presidential Commission on Good Government;
>
> 3. Those with pending cases involving unexplained or unlawfully acquired wealth or under the Anti-Graft and Corrupt Practices Act;
>
> 4. Those with pending cases filed in court involving violation of the Anti-Money Laundering Law;
>
> 5. 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
>
> 6. Tax cases subject of final and executory judgment by the courts.

Petitioner CIR argues that respondent OAC is not entitled to avail of the benefits of the Tax Amnesty Program under RA No. 9480 because the assessment against respondent OAC for DST is classified under "other taxes passed-on and already collected from customers for remittance to BIR". Reliance is then made on Q-1 and A-1 of RMC No. 69-2007, relevant portions of which provide:

> "Q-1 What type of taxes and what taxable period/s are covered by the Tax Amnesty Program under RA 9480 as implemented by DO 29-07?
>
> A-1 **The Tax Amnesty Program (TAP) covers all national internal revenue taxes such as** income tax, estate tax, donor's tax and

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[4] 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.
[5] Rules and Regulations to Implement R.A. No. 9480.

> capital gains tax, value added tax, other percentage taxes, excise taxes and **documentary stamp taxes, except withholding taxes and taxes passed-on and already collected from the customers for remittance to the BIR, these taxes/funds being considered as funds held in trust for the government.** Moreover, the time-honored doctrine that "No person shall unjustly enrich himself at the expense of another" should always be observed." (Emphasis supplied)

Petitioner CIR's contention that the subject deficiency DST assessment against respondent OAC is not covered by the Tax Amnesty Program under Republic Act No. 9480 deserves scant consideration.

RA No. 9480 and DOF Order No. 29-07 are the governing law and regulation relative to the subject Tax Amnesty Program, and both explicitly state that the Tax Amnesty Program shall cover "all internal revenue taxes". They also categorically enumerated the exceptions to the application of the Tax Amnesty Program.

In the case of **Philippine Banking Corporation v. Commissioner of Internal Revenue**,[6] the Supreme Court already held that DST is one of the taxes covered by the Tax Amnesty Program under RA No. 9480. The Supreme Court also held that the BIR's inclusion of additional exceptions from the coverage of the Tax Amnesty Program, other than those provided under RA No. 9480, is misplaced. Relevant portions of said decision read:

> "**The DST is one of the taxes covered by the Tax Amnesty Program under RA 9480. As discussed above, petitioner is clearly liable to pay the DST on its SSDA for the years 1996 and 1997.** However, petitioner, as the absorbed corporation, can avail of the tax amnesty benefits granted to Metrobank.
>
> Records show that Metrobank, a qualified tax amnesty applicant, has duly complied with the requirements enumerated in RA 9480, as implemented by DO 29-07 and RMC 19-2008. Considering that the completion of these requirements shall be deemed full compliance with the tax amnesty program, the law mandates that the taxpayer shall thereafter be immune from the payment of taxes, and additions thereto, 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.

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[6] G.R. No. 170574, January 30, 2009, also cited in the case of Philippine Health Care Providers, Inc. vs. Commissioner of Internal Revenue, G.R. No. 167330, September 18, 2009.

> The BIR's inclusion of "issues and cases which were ruled by any court (even without finality) in favor of the BIR prior to amnesty availment of the taxpayer" as one of the exceptions in RMC 19-2008 is misplaced. RA 9480 is specifically clear that the exceptions to the tax amnesty program include "tax cases subject of final and executory judgment by the courts." The present case has not become final and executory when Metrobank availed of the tax amnesty program." (Emphasis supplied)

Here, as aptly pointed out by respondent OAC, DST is expressly included within the coverage of the Tax Amnesty Program under RA No. 9480. Under Section 184 of the 1997 NIRC, as amended, there is only one type of DST imposed on policies of insurance upon property, and there is no law or regulation requiring the withholding of DST by the insured or passing-on of DST to the insured.

In view of the foregoing, and considering that the CTA-Third Division has already found that respondent OAC has fully complied with the documentary requirements relative to its availment of the Tax Amnesty Program, this Court *En Banc* rules that respondent OAC is entitled to the immunities under Section 6 of RA No. 9480. Thus, the CTA-Third Division correctly set-aside the Formal Letter of Demand dated May 8, 2008 and the FDDA dated December 9, 2008 assessing respondent OAC for deficiency DST for taxable year 2004.

There being no reversible error committed by the CTA-Third Division in this case, this Court *En Banc* finds no cogent reason to reverse the impugned Decision dated June 11, 2012 and the Resolution dated August 28, 2012 of the CTA-Third Division.

**WHEREFORE**, premises considered, the Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the assailed Decision promulgated on June 11, 2012 and the impugned Resolution dated August 28, 2012 are hereby **AFFIRMED**.

**SO ORDERED.**

**ROMAN G. DEL ROSARIO**
Presiding Justice

*WE CONCUR:*

**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

**LOVELL R. BAUTISTA**
Associate Justice

**ERLINDA P. UY**
Associate Justice

**CAESAR A. CASANOVA**
Associate Justice

**ESPERANZA R. FABON-VICTORINO**
Associate Justice

**CIELITO N. MINDARO-GRULLA**
Associate Justice

**AMELIA R. COTANGCO-MANALASTAS**
Associate Justice

(No part)
**MA. BELEN RINGPIS LIBAN**
Associate Justice

## CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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 *En Banc*.

**ROMAN G. DEL ROSARIO**
Presiding Justice