

REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SPECIAL SECOND DIVISION

LA FLOR DELA ISABELA, INC.,
Petitioner,

C.T.A. CASE NO. 7779

Members:

-versus-

CASTAÑEDA, Chairperson,
UY, and
PALANCA-ENRIQUEZ, JJ.

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

Promulgated:

MAR 17 2010

X -----X

DECISION

PALANCA-ENRIQUEZ, J.:

A tax amnesty is a general pardon or the intentional overlooking by the State of its authority to impose penalties on persons otherwise guilty of violation of a tax law. It partakes of an absolute waiver by the government of its right to collect what is due it and to give tax evaders who wish to relent a chance to start with a clean slate (*Metropolitan Bank and Trust Co. vs. Commissioner of Internal Revenue*, 595 SCRA 254).

THE CASE

This is a Petition For Review (With Prayer for the Issuance of an Order to Suspend Collection of Taxes and Restraint the Enforcement of

pal

Warrant of Distraint and/or Levy) filed by La Flor Dela Isabela, Inc., (hereafter "petitioner La Flor") praying: (1) to declare null and void (1.a) Assessment LTAID II XS-05-00083 imposing on petitioner deficiency excise tax of P738,216.60 for taxable year 2005, and (1.2) the undated Warrant of Distraint and/or Levy No. 116-08-005 in the amount of P722,216.60; and (2) to order the Commissioner of Internal Revenue ("CIR") to refund to petitioner the amount of P1,051,871.26.

THE PARTIES

Petitioner La Flor is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with office address at KM 14, West Service Road, South Superhighway, Merville, Parañaque City.

Respondent, on the other hand, is the public officer authorized under the NIRC to examine the books of accounts of any taxpayer and to assess and collect the correct amount of tax, with office address at the BIR, National Office Building, BIR Road, Diliman, Quezon City.

THE FACTS

The facts, as admitted by the parties, are as follows:

"1.3. La Flor availed of the Tax Amnesty Program of the government under Republic Act ("RA") No. 9480 and submitted its Notice of Availment to the BIR Large Taxpayers Audit and Investigation Division II – Excise Tax on 08 October 2007.



1.4. On 23 November 2007, La Flor received a Final Assessment Notice/Letter of Demand dated 20 September 2007 and Assessment Notice No. LTAID II XS-05-00083 dated 27 September 2007 (collectively the 'Assessments') from the BIR, through LTAID II – Excise Tax, demanding the immediate settlement of the alleged deficiency excise taxes, a tax which is covered by the Tax Amnesty Program, for the calendar year 2005 amounting to P738,215.60, inclusive of increments.

1.5. On 11 January 2008, La Flor informed the BIR that it availed of the Tax Amnesty Program of the government pursuant to Republic Act ('RA') No. 9480 as early as 08 October 2007. Appended in the letter is the Application for Tax Amnesty as well as the Notice of Availment and proof of payment.

1.6. On 28 March 2008, respondent served a letter dated 03 March 2008 informing La Flor that its immunity from assessment and collection of taxes under RA 9480 does not extend to the Assessment because:

'Therefore, the availment of the amnesty will not have an effect on assessments against taxpayer whose said assessment have become final and executory prior to the availment of amnesty considering that these assessment are already accounts receivable of the BIR or assets of the government.'

1.7. Respondent issued an 'undated' Warrant of Distrainment and/or Levy No. 116-08-005 (the 'Warrant') against La Flor for Assessment Notice No. XS-05-00083 dated 27 September 2007 for deficiency excise tax for the taxable year 2005. The amount of excise tax sought to be collected by the Warrant was P722,215.60.

1.8. Respondent was able to garnish the deposits of Petitioner with its two (2) depository banks in the total amount of P278,694.15, details to wit:



Bank/Branch	Amount
Land Bank of the Philippines, Makati	P181,232.01
Banco de Oro, Southmall Las Piñas	97,462.14
Total	P278,694.15

1.9. On 25 June 2008, the Honorable Court issued an Order granting La Flor's request for the issuance of an injunctive order. In the same Order, the Honorable Court required La Flor to secure and submit to the Honorable Court a surety bond in the amount of P738,215.60.

1.10. On 11 July 2008, La Flor filed a Motion for Clarification requesting the Honorable Court to clarify the nature of the surety bond as the bonding companies duly accredited with the Supreme Court required La Flor to provide security in a form of cash deposit or other properties to cover the amount of the surety. It was the impression of the bonding companies that the surety bond to be posted by La Flor is akin to a *supersedeas* bond so that it may be called upon to satisfy whatever deficiency taxes that may be adjudged against La Flor.

1.11. During the hearing of La Flor's Motion for Clarification last 17 July 2008, La Flor manifested to the Honorable Court its intention to pay under protest the alleged deficiency excise tax.

The parties further stipulated the following facts:

2.1. Petitioner filed the Petition for Review for the instant case on 28 April 2008.

2.2. Petitioner offered BIR to pay under protest the unpaid portion of the Assessments. The offer was made because the amount of the injunctive bond (P738,215.60) to support the suspension of the collection of taxes is more than the unenforced portion of the Warrant and Assessments (P443,521.45).



2.3. Pursuant to such offer, BIR computed the deficiency tax still due from petitioner (*sic*) as follows:

Particulars	Amount
Deficiency Excise Tax	P472,722.87
Add: Interest	249,492.73
Total	722,215.60
Add: 25% Surcharge	180,553.90
Interest 10.01.07-06.13.08	<u>101,044.17</u>
Total	1,019,813.67
Less: Payment 06.13.08 (LBP)	<u>181,232.01</u>
Balance as of 06.24.08	741,119.52
Add: Interest 06.13.08-07.18.08	16,057.59
Compromise Penalty	16,000.00
Amount Still Due for Collection	P773,177.11

2.4. On 22 July 2008, Petitioner paid under protest the aforesaid alleged deficiency excise tax for the taxable year 2005 amounting to P773,177.11.

2.5. Accordingly, Petitioner paid the BIR the total amount of P1,051,871.26.

2.6. Existence, genuineness and due execution of the following documents which were attached in the Amended Petitioner for Review:

Particulars	Annex
La Flor's Tax Amnesty Return (BIR Form 2116) under RA 9480	A
Development Bank of the Philippines Tax Payment Deposit Slip	B
La Flor's Notice of Availment of Tax Amnesty	C
Final Assessment Notice/Letter of Demand dated 20 September 2007	D
Assessment Notice No. LTAID II XS-05-00083 dated 27 September 2007	E
La Flor's letter to the BIR dated 11	

one

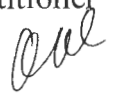
January 2008	F
Warrant of Dstraint and/or Levy No. 116-08-005	G
Letter of Land Bank of the Philippines – Makati Branch to La Flor	H
Letter of Banco de Oro – Makati Branch to La Flor	I
BIR letter dated 03 March 2008	J
La Flor's letter to the BIR dated 22 July 2008	K
BIR computation of La Flor's alleged deficiency excise tax still due	L
BIR Payment Form 0605	M
Development Bank of the Philippines' BIR Tax Payment Deposit Slip	N

In addition to the foregoing, the Parties further stipulate the due existence, genuineness and due execution of La Flor's Tax Amnesty Payment Form (BIR Form 0617) which is attached herewith as Annex "A".

On July 4, 2008, respondent filed his answer.

On August 7, 2008, petitioner filed a "Motion for Leave of Court (To Admit Amended Petition for Review with Prayer to Reset Pre-Trial Conference)", which the Court granted, and the "Amended Petition for Review" was admitted in a Resolution dated November 5, 2008.

In the "Amended Petition for Review", petitioner alleged that since its day to day operations were severely affected and hampered as it encountered difficulty transacting with its suppliers, customers and the banks because of the Warrant, in order to salvage what was remaining of petitioner's business and due to the urgency of the situation, petitioner



decided, and was forced, to pay the alleged deficiency taxes under protest. Hence, on July 22, 2008, petitioner formally informed respondent CIR of its decision to pay under protest the alleged deficiency excise tax and requested BIR to recompute the amount of the alleged deficiency excise tax still due. On the same date, petitioner paid to the BIR the total amount of P773,177.11, inclusive of increments, to fully pay the alleged deficiency excise tax. The assessment and warrant are bereft of any legal and factual bases considering that petitioner duly availed of the tax amnesty program of the government. Hence, petitioner prayed that the BIR be ordered to refund to it the total amount of P1,051,871.26, representing the alleged deficiency excise tax for January 2005 that was unlawfully and illegally collected from it.

On December 12, 2008, respondent filed a "Manifestation with Motion to Admit Attached Answer", together with the "Amended Answer", which the Court granted, and the "Amended Answer" was admitted in a Resolution dated January 5, 2009.

In the "Amended Answer", respondent alleged that petitioner's payment under protest of the amount of P773,177.11, representing its alleged deficiency excise tax, instead of posting a surety bond, and the amount of P278,694.15, which respondent garnished from petitioner's bank deposits, were lawfully and legally collected. It is of petitioner's



volition to pay respondent its alleged deficiency excise tax for taxable year 2005, instead of posting a surety bond to comply with the order of this Court granting petitioner's motion for injunctive relief in order to enjoin respondent from enforcing its undated Warrant of Distrain and/or Levy and collecting the tax subject of the instant case. Respondent likewise alleged that the bank deposits garnished by him were not unlawfully and illegally collected. The bank deposits were garnished due to petitioner's defiance of the Final Assessment Notice/Letter of Demand to pay the subject tax and respondent has to safeguard the interest of the government by using the administrative remedies for the collection of the subject deficiency taxes of petitioner, pursuant to *Sections 205, 206, 207(A) and 208 of the NIRC of 1997, as amended*.

Petitioner presented documentary evidence only, marked as *Exhibits "A" to "F", "H", "N" and "S" to "V"*, which were all admitted by the Court, in a Resolution dated June 19, 2009.

On the other hand, respondent manifested that he will not present any evidence. Thereafter, both parties were granted thirty (30) days, within which to file their simultaneous memoranda.

Both parties having filed their respective "Memorandum" on August 24, 2009, the case was deemed submitted for decision on August 28, 2009.



Hence, this decision.

ISSUES

As stipulated upon by the parties, the following are the issues for this Court's consideration:

I

WHETHER OR NOT PETITIONER IS LIABLE FOR DEFICIENCY EXCISE TAXES IN THE AMOUNT OF P722,216.60.

II

WHETHER OR NOT THE ASSESSMENT AGAINST PETITIONER HAS BECOME FINAL AND EXECUTORY.

III

WHETHER OR NOT PETITIONER IS ENTITLED TO A CLAIM FOR REFUND IN THE AMOUNT OF P1,051,871.26.

IV

WHETHER OR NOT THE ASSESSMENTS AND THE WARRANT HAVE LEGAL AND FACTUAL BASES.

V

ON THE ASSUMPTION THAT THE ASSESSMENT AND THE WARRANT WERE VALIDLY ISSUED, WHETHER OR NOT PETITIONER'S AVAILMENT OF THE TAX AMNESTY PROGRAM OF THE GOVERNMENT UNDER REPUBLIC ACT NO. 9480 DID NOT EXONERATE PETITIONER FROM THE DEFICIENCY EXCISE TAX FOR THE TAXABLE YEAR 2005.



VI

ON THE ASSUMPTION THAT THE ASSESSMENTS WERE VALIDLY ISSUED AND PETITIONER'S AVAILMENT OF THE TAX AMNESTY PROGRAM OF THE GOVERNMENT UNDER REPUBLIC ACT NO. 9480 DID NOT EXONERATE PETITIONER FROM THE DEFICIENCY EXCISE TAX FOR THE TAXABLE YEAR 2005, WHETHER OR NOT RESPONDENT CORRECTLY COMPUTED THE AMOUNT OF DEFICIENCY EXCISE TAX STILL DUE (P773,177.11) FOR THE ASSESSMENTS.

Principal Issue

The foregoing issues boil down to the principal issue of whether or not petitioner's availment of the Tax Amnesty Program under RA 9480 exonerates petitioner from deficiency excise tax for taxable year 2005.

THE COURT'S RULING

The petition is meritorious.

Petitioner's Availment of the
Tax Amnesty under RA 9480
Exonerates It from Tax
Liability

Petitioner contends that it availed of the Tax Amnesty under RA 9480 prior to the issuance and service of the assessment notice; hence, its availment of the Tax Amnesty exonerates it from any deficiency tax liabilities for taxable year 2005 and prior years.

Respondent, on the other hand, counter-argues that petitioner's availment of the Tax Amnesty will not have an effect on the assessment

one

against petitioner, considering that the assessment had already become final, executory and demandable, when petitioner did not file a protest after it received the assessment, and considering further that under *Revenue Memorandum Circular No. 69-2007*, implementing *RA 9480*, accounts receivables of the BIR or assets of the government are no longer covered by the protective ambit of the Tax Amnesty Law.

We rule for the petitioner.

Section 1 of RA 9480 provides for the coverage of the tax amnesty, as follows:

“SEC. 1. Coverage. – There is hereby authorized and granted a tax amnesty which shall cover all national internal revenue taxes for the taxable year 2005 and prior years, with or without assessments duly issued therefore, that have remained unpaid as of December 31, 2005: Provided, however, That the amnesty hereby authorized and granted shall not cover persons or cases enumerated under Section 8 hereof.”

As provided in *Section 1*, the tax amnesty covers all internal revenue taxes for the taxable year 2005 and prior years, with or without assessments duly issued thereof, that have remained unpaid as of December 31, 2005.

Records show that on October 8, 2007 petitioner availed of the Tax Amnesty under *RA 9480*. However, as stipulated by the parties, on November 23, 2007, petitioner received a Final Assessment Notice/Letter



of Demand dated September 20, 2007 (*Annex "D", Petition for Review*) and Assessment Notice No. LTAID II XS-05-00083 dated September 27, 2007 (*Annex "E", Petition for Review*), assessing petitioner of deficiency excise tax due on removal of cigars for the month of January 2005 by using the old rate of P1.12, instead of applying the 10% *ad valorem* tax on the net retail price, as provided in *RA 9334*, which took effect on January 1, 2005.

In the instant case, since what was assessed against petitioner is an excise tax, which is an internal revenue tax, for the month of January 2005, which is within taxable year 2005, and which at that time remained unpaid; clearly, Assessment Notice No. LTAID II XS-05-00083 dated September 27, 2007 is covered by petitioner's availment of the Tax Amnesty under *RA 9480* on October 8, 2007.

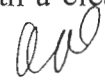
Respondent's contention that the assessment has become final, executory and demandable when petitioner did not file a protest after it received the assessment is without merit. Records show that petitioner availed of the tax amnesty on October 8, 2007, before it received the Final Assessment Notice/Letter of Demand and Assessment Notice on November 23, 2007. It is clear that at the time petitioner availed of the tax amnesty on October 8, 2007, it has not yet received the Final



Assessment Notice. Therefore, the assessment cannot become final and executory.

Likewise, the rule that failure of the taxpayer to protest the assessment, within thirty days from receipt thereof, will make the assessment final, cannot be applied to petitioner. Here, petitioner availed of the Tax Amnesty under *RA 9480* on October 8, 2007, even before the thirty-day period to file protest commences to run. As provided for in *Section 228 of the NIRC of 1997, as amended*, the assessment may be protested by the taxpayer thirty days from receipt of the assessment. As borne by the records, petitioner received the Final Assessment Notice on November 23, 2007 only. Hence, under *Section 228*, the thirty-day period will commence to run only from November 23, 2007. Considering, however, that petitioner had already availed of the Tax Amnesty as early as October 8, 2007, then protest to the assessment is unnecessary.

It must be emphasized that a tax amnesty is a general pardon or the intentional overlooking by the State of its authority to impose penalties on persons otherwise guilty of violation of a tax law (*Metropolitan Bank and Trust Co. vs. Commissioner of Internal Revenue, supra*). It partakes of an absolute waiver by the government of its right to collect what is due to it and to give tax evaders who wish to relent a chance to start with a clean



slate. Hence, the moment petitioner availed of the Tax Amnesty on October 8, 2007, the government is deemed to have waived its right to collect the excise tax due from petitioner.

Respondent's contention that the excise tax assessment against petitioner is considered an account receivable of the BIR or assets of the government; hence, no longer covered by the protective ambit of the Tax Amnesty Law is likewise bereft of merit. *Section 8 of RA 9480* enumerates the persons or cases that are not covered by the Tax Amnesty Law, 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;

(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.”

The instant case does not fall under any one of the above enumerated exceptions. Petitioner is not being assessed as a withholding agent, nor does the instant case fall under the jurisdiction of the PCGG, or involves violations of the Anti Graft and Corrupt Practices Act and the Anti-Money Laundering Act, or criminal cases for tax evasion, felonies of frauds, illegal exaction and malversation of public funds and property. Likewise, as heretofore stated, the assessment against petitioner has not yet become final and executory.

Respondent’s contention that the excise tax assessment against petitioner partakes of an account receivable considered as assets of the BIR or the government is likewise devoid of merit.

First, in the case of *Philippine Banking Corporation (now Global Business Bank, Inc.) vs. Commissioner of Internal Revenue*, 577 SCRA 393, the Supreme Court declared as misplaced the 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. RA 9480* expressly provides that the exceptions to the tax amnesty program include “tax cases subject of final



and executory judgment by the courts”. Considering that the exception invoked by respondent in the instant case is provided only in *RMC 19-2008*, specifically “delinquent accounts/account receivable considered as assets of the BIR/Government, including self assessed tax”, an exception which is not provided in *RA 9480*, respondent’s contention is clearly without basis.

It is an elementary rule of construction that when the language of the law is clear and unequivocal, the law must be taken to mean exactly what it says (*Banawa vs. Miranon*, 97 SCRA 533). Its literal meaning should be followed (*Tan Lin vs. Republic*, 2 SCRA 386); to depart from the meaning expressed by the words is to alter the statute (*Commissioner of Internal Revenue vs. Central Luzon Drug Corporation*, 492 SCRA 581). Equally settled is the rule that the law cannot be amended by a mere regulation. An administrative agency may not enlarge, alter or restrict the provisions of the statute being administered (*Pilipinas Kao, Inc. vs. Court of Appeals*, 372 SCRA 573). It may not engraft additional non-contradictory requirements on the statute which were not contemplated by the legislature. In fact, a regulation that ‘operates to create a rule out of harmony with the statute is a mere nullity’ (*Commissioner of Internal Revenue vs. Central Luzon Drug Corporation*, *supra*, 582). Considering that *RA 9480* specifically enumerated the persons and cases that are not covered by the Tax Amnesty Law,



those enumerated therein cannot be enlarged or restricted by a mere Revenue Memorandum Circular. Otherwise, the Revenue Memorandum Circular will alter the statute it seeks to implement.

Second, under *Section 2(a) of Revenue Regulations 17-86*, a “delinquent account” is defined as the amount of tax due on or before December 31, 1985 from a taxpayer who failed to pay the same, within the time prescribed for its payment arising from (1) a self assessed tax, whether or not a tax return was filed, or (2) a deficiency assessment issued by the BIR which has become final and executory. From the foregoing definition, it is evident that the excise tax assessment against petitioner for the month of January 2005 is not a delinquent account. It is not due on or before December 31, 1985 from which petitioner failed to pay the same, within the time prescribed by law. The assessment against petitioner arose as a result of the passage of *RA 9334*, otherwise known as “An Act Increasing The Excise Tax Rates Imposed On Alcohol and Tobacco Products, Amending for the Purpose Sections 131, 141, 142, 143, 144, 145 and 288 of the National Internal Revenue Code of 1997, as Amended” increasing the tax rate of P1.12 on removals of cigar to 10% *ad valorem* tax on the net retail price per cigar, which became effective only on January 1, 2005. Furthermore, as we already ruled, the



assessment against petitioner has not yet become final and executory at the time petitioner availed of the Tax Amnesty Program under *RA 9480*.

Considering that the excise tax assessment against petitioner is not one of the covered exceptions under *Section 8 of RA 9480*, and petitioner has complied with the requisites prescribed in said law; the Court has no alternative, but to grant petitioner immunity from taxes.

Section 6 of RA 9480 expressly provides that those who availed themselves of the tax amnesty under *Section 5* hereof, and have fully complied with all its conditions, shall be entitled to the following immunities and privileges:

“(a) The taxpayers shall be immune from the payment of taxes, as well as additions thereto, and the appurtenant civil, criminal or administrative penalties under the National Internal Revenue Code of 1997, as amended, arising from the failure to pay any and all internal revenue taxes for taxable year 2005 and prior years.”

Applying the foregoing law, in the case of *Metropolitan Bank and Trust Co. vs. Commissioner of Internal Revenue*, supra 262, the Supreme Court cancelled the assessment issued against the taxpayer therein, solely in view of the taxpayer's availment of the Tax Amnesty Program under *RA 9480*.

Considering petitioner's compliance with the Tax Amnesty Law, the subject tax deficiency is hereby extinguished. Accordingly,



Assessment Notice No. LTAID II XS-05-00083 issued against petitioner is hereby ordered cancelled, solely in view of petitioner's availment of the Tax Amnesty Program under RA 9480.

With the cancellation of Assessment Notice No. LTAID II XS-05-00083, the undated Warrant of Dstraint and/or Levy No. 116-08-005 has no longer legal basis, and is hereby declared null and void and likewise ordered cancelled.

Petitioner's Tax Liability Having Been
Cancelled, It is Entitled to a Refund of
the Amount Paid To the BIR

While this case was pending with this Court, on July 17, 2008, during the hearing of petitioner's "Motion for Clarification", petitioner manifested in open Court that it will pay under protest its alleged deficiency excise tax (*Joint Stipulation of Facts and Statements of the Issues, par. 1.11*). Petitioner averred that its day to day operations were severely affected and hampered as it encountered difficulty transacting with its suppliers, customers and the banks because of the warrant; hence, in order to salvage what was remaining of its business and due to the urgency of the situation, it was forced to pay under protest the alleged deficiency excise tax liability.

On July 22, 2008, petitioner informed respondent CIR of its decision to pay under protest the alleged deficiency excise tax and



requested the BIR to recompute the amount of its alleged deficiency excise tax still due (*Exhibit "T"*). The BIR computed petitioner's deficiency excise tax liability, as follows:

Per Formal Letter of Demand		Amount
Deficiency Excise Tax		P472,722.87
Add: Interest		249,492.73
Compromise penalty		<u>16,000.00</u>
Total Deficiency with Increments		P738,215.60
Computation of Delinquency Interest:		
Deficiency Excise Tax		P472,722.87
Add: Interest		249,492.73
		722,215.60
Add: 25% Surcharge	P180,553.90	
20%Interest 10/1/07 to 6/13/08 (0.1399086)	<u>101,044.17</u>	281,598.07
Total		P1,019,813.67
Less: Payment on 6/13/08 (LBP Check #000000005497)		<u>181,232.01</u>
Balance as of 06/14/08		P838,581.66
Less: Payment on 7/24/08 (BDO)		<u>97,462.14</u>
Balance as of 6/24/08		P741,119.52
Add: Interest from 06/14/08 to 7/18/08 (0.0243378)		16,057.59
Compromise Penalty		<u>16,000.00</u>
Amount Still Due for Collection		P773,177.11
Interest per day if not paid on or before 7/18/08 (0.0005479)		P479.41

(*Exhibit "S"*)

On the same date, petitioner paid the amount of P773,177.11 to the BIR, as evidenced by BIR Payment Form 0605 (*Exhibit "U"*) and Development Bank of the Philippines Deposit Slip (*Exhibit "V"*). Based on the above computation of the BIR and the evidence on record,



petitioner paid to the BIR the total amount of P1,051,871.26, consisting of the following:

Particulars	Amount
Land Bank of the Philippines, Makati account, payment made on 6/13/08 (<i>Joint Stipulation of Facts and Statement of the Issues, par. 1.8</i>)	P181,232.01
Banco de Oro, Southmall Las Piñas account, payment made on 7/24/08 (<i>ibid</i>)	97,462.14
Payment made on July 22, 2008 (<i>Exhibits "U" and "V"</i>)	773,177.11
Total Payment made to the BIR	P1,051,871.26

In the Amended Petition for Review, petitioner prayed that the BIR be ordered to refund petitioner the total amount of P1,051,871.26, which the BIR received from petitioner.

In the case of *Treasurer-Assessor vs. University of the Philippines*, 38 SCRA 519-520, the Supreme Court ruled that "when the law vested the Court of Tax Appeals with the power to declare an assessment illegal or unreasonable, in the exercise of its appellate jurisdiction, it follows that said court is also given the power to grant the relief arising from its findings that the appealed assessment is illegal or unreasonable. The law could not have intended that after the Court of Tax Appeals had decided that a tax assessment is invalid or unreasonable, the aggrieved taxpayer would still have to go to another court to seek the refund of the realty taxes illegally collected from him on the basis of the assessment that was declared invalid or unreasonable. To hold the view that the Court of Tax



Appeals, after declaring a tax assessment invalid, cannot order the refund of the taxes illegally collected under invalid assessment, but has to order the aggrieved taxpayer to go to the regular courts to seek a refund, would be to sanction multiplicity of suits.”

Also, in the more recent case of *Vda. De San Agustin vs. Commissioner of Internal Revenue*, 364 SCRA 808, the Supreme Court ruled, as follows: “To hold that the taxpayer has now lost the right to appeal from the ruling on the disputed assessment, but must prosecute his appeal under *Section 306 (now 229)* of the Tax Code, which requires a taxpayer to file a claim for refund of the taxes paid as a condition precedent to his right to appeal, would in effect require him to go through a useless and needless ceremony that would only delay the disposition of the case, for the Collector (now Commissioner) would certainly disallow the claim for refund in the same way as he disallowed the protest against the assessment. The law, should not be interpreted as to result in absurdities”.

Since we declared petitioner’s deficiency excise tax liability extinguished and cancelled Assessment Notice No. LTAID II XS-05-00083, in view of petitioner’s availment of the Tax Amnesty Program under *RA 9480*, then the Court has the power to grant the relief prayed for



by petitioner, as a consequence of its order declaring Assessment Notice No. LTAID II XS-05-00083 cancelled.

In *Genova vs. Castro*, 407 SCRA 177, the Supreme Court citing the ruling in *Panay Electric Co., Inc. vs. The Collector of Internal Revenue*, 103 Phil. 819, even ordered the Government to refund the overpayment of franchise taxes to a taxpayer despite its non-compliance with the requisites before suit could be maintained for the recovery thereof, based on moral and equitable grounds. From a moral stand point, it was ruled that the Government would be enriching itself at the expense of the taxpayer.

For all the foregoing, it follows that the amount of P1,051,871.26 paid by petitioner to the BIR was not legally due to the government. Morality and equity, therefore, demand that the government must return said amount to petitioner, as the government cannot enrich itself at the expense of petitioner. Thus, we order respondent CIR to refund petitioner the amount of P1,051,871.26, representing its payment for deficiency excise tax for the month of January 2005.

WHEREFORE, premises considered, the present Petition for Review is hereby **GRANTED**. Accordingly:

(1) Assessment LTAID II XS-05-00083, imposing on petitioner La Flor deficiency excise tax for taxable year 2005, is hereby ordered



CANCELLED, solely in view of petitioner's availment of the Tax Amnesty Program under RA 9480;

(2) The undated Warrant of Dstraint and/or Levy No. 116-08-005 issued by respondent CIR is hereby declared null and void; and

(3) Respondent Commissioner of Internal Revenue is hereby ordered to refund to petitioner La Flor the amount of P1,051,871.26.

SO ORDERED.


OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:


JUANITO C. CASTAÑEDA, JR.
Associate Justice


ERLINDA P. UY
Associate Justice

A T T E S T A T I O N

I attest 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's Division.


JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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.


ERNESTO D. ACOSTA
Presiding Justice