

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

SPECIAL FIRST DIVISION

ASIATRUST DEVELOPMENT BANK,
Petitioner,

C.T.A. CASE NO. 6209

Members:

- versus -

ACOSTA, Chairperson
BAUTISTA, and
CASANOVA, JJ

**COMMISSIONER OF INTERNAL
REVENUE,**
Respondent.

Promulgated:

MAR 16 2010 ; 7:25 am

x - - - - -

AMENDED DECISION

CASANOVA, JJ:

For resolution is petitioner's *Motion for Reconsideration* filed on February 11, 2009, seeking the reconsideration of this Court's *Decision* promulgated on January 20, 2009, the dispositive portion of which states:

"**WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, Assessment Notices issued against petitioner for deficiency documentary stamp, final withholding, expanded withholding, and fringe benefits tax assessments the fiscal year ended June 30, 1996 are **VOID** for being issues beyond the prescriptive period allowed by law.

The Assessment Notices issued by respondent against petitioner for deficiency income, documentary stamp – regular, documentary stamp – trust, and fringe benefits tax assessments for the fiscal years ended June 30, 1997 & 1998 are hereby ordered **CANCELLED** and **WITHDRAWN**. Moreover, petitioner's deficiency documentary stamp tax – IBCL 

assessment for the fiscal year ended June 30, 1997 is ordered **CANCELLED** and **WITHDRAWN**.

However, petitioner's deficiency documentary stamp tax – Special Savings Account assessments for the fiscal years ended June 30, 1997 & 1998, and deficiency documentary stamp tax – IBCL and deficiency final withholding tax – trust assessments for the fiscal year ended June 30, 1998, in the aggregate amount of **P142,777,785.91** are hereby **AFFIRMED**. The said amount is broken down as follows:

Fiscal Year 1997	
Documentary Stamp Tax – Industry Issue	P 39,163,539.57
Fiscal Year 1998	
Final Withholding Tax - Trust	10,183,367.80
Documentary Stamp Tax - Industry Issue	<u>93,430,878.54</u>
Total Deficiency Tax	<u>P142,777,785.91</u>

SO ORDERED."

Petitioner moves for the reconsideration of the assailed *Decision* based on the following grounds:

- "I. THIS HONORABLE COURT DID NOT GIVE CREDENCE TO THE PETITIONER'S STATEMENT THAT IT FILED APPLICATIONS FOR THE ABATEMENT AND PAYMENT OF THE BASIC FINAL WITHHOLDING TAX ON TRUST DEPARTMENT PLACEMENTS
- II THIS HONORABLE COURT DID NOT GIVE CREDENCE TO THE PETITIONER'S STATEMENT THAT IT HAD AVAILED OF THE TAX AMNESTY LAW UNDER REPUBLIC ACT NO. 9480
- III CONSIDERING THAT PETITIONER CAN SUBMIT PROOF THAT IT HAD AVAILED OF THE TAX AMNESTY LAW, IT IS THEREFORE IMMUNIZED FROM THE ALLEGED DOCUMENTARY TAX ASSESSMENTS RAISED BY THE BIR"

Petitioner likewise attached documents as annexes to its *Motion for Reconsideration*, particularly, photocopies of its Tax Amnesty Return, Tax Amnesty Payment Form, Bureau of Internal Revenue (BIR) Official Receipt, Notice of Availment of Tax Amnesty, and Statement of Assets and Liabilities and Networth 

(SALN) as of June 30, 2005,¹ in support of the second and third assigned errors.

In a *Resolution* promulgated on July 6, 2009, this Court found the first assigned error unmeritorious, but allowed petitioner to present and to formally offer to the Court the said documents attached to its *Motion* for evaluation and consideration. Consequently, the resolution of the second and third assigned errors was held in abeyance.

A hearing was then set for the presentation and for the marking of petitioner's additional documentary evidence. Petitioner presented Exhibits "F" to "I", which are certified true copies of the original documents.²

Petitioner filed its *Formal Offer of Evidence* on September 22, 2009, submitting Exhibits "F" (Tax Amnesty Return), "G" (Tax Amnesty Payment Form), "H" (DBP BTR-BIR Tax Payment Deposit Slip), and "I" (Notice of Availment of Tax Amnesty). Respondent filed his *Comment (On Petitioner's Formal Offer of Evidence)* on October 20, 2009, manifesting his lack of objection to the admission of petitioner's additional evidence. This Court admitted Exhibits "F" to "I" and ordered petitioner's *Motion for Reconsideration* submitted for resolution in *Resolution* dated November 10, 2009.

In a *Resolution* dated December 3, 2009, this Court again held in abeyance the resolution of petitioner's *Motion for Reconsideration* to enable petitioner to mark, identify, and formally offer its Statement of Assets, Liabilities and Networth (SALN) as of June 30, 2005.

Petitioner filed its *Supplemental Formal Offer of Evidence* on February 2, 2010, offering as additional evidence Exhibits "I-1" (Statement of Assets, Liabilities

¹ Annexes "F", "G", "H", and "I", *Motion for Reconsideration*

² Docket, p. 836

and Networth as of June 30, 2005) and "J" (Certification issued by the Bureau of Internal Revenue dated August 20, 2009). Respondent manifested, in his *Comment (On Petitioner's Supplemental Formal Offer of Evidence)* filed on February 4, 2010, that he has no objection to the admission of Exhibits "I-1" and "J".

The Court admitted Exhibits "I-1" and "J" and ordered petitioner's *Motion for Reconsideration* submitted for resolution via *Resolution* dated February 25, 2010.

Hence, this *Amended Decision*.

Since the first assigned error was already found by this Court as untenable in the *Resolution* dated July 6, 2009, only the afore-quoted second and third grounds will be resolved.

In order to prove its claim that it had properly availed of the Tax Amnesty Program of the government, petitioner presented and formally offered the following documents:

1. Notice of Availment of Tax Amnesty dated March 6, 2008;
2. Tax Amnesty Return (BIR Form No. 2116) dated March 6, 2008;
3. DBP BTR-BIR Tax Payment Deposit Slip dated March 6, 2008;
4. Tax Amnesty Payment Form (BIR Form No. 0617) dated March 6, 2008; and
5. Statement of Assets, Liabilities and Networth (SALN) as of June 30, 2005.

These documents demonstrate that on March 6, 2008, petitioner availed of the Tax Amnesty Program; paid the amnesty tax based on its Networth as of June 30, 2005; and filed the corresponding documents required for the availment of the tax amnesty under Republic Act (R.A.) No. 9480. Consequently, petitioner is 

entitled to the immunities and privileges granted in Section 6 of the Tax Amnesty Law, to wit:

"Sec. 6. *Immunities and Privileges.* – 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:

1. The taxpayer shall be immune from the payment of taxes, as well as addition 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.

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xxx"

These immunities and privileges have been affirmed by the Supreme Court in the case of *Philippine Banking Corporation (now: Global Business Bank, Inc.) vs. Commissioner of Internal Revenue*³, when it held that:

"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."

Inasmuch as petitioner has fully complied with the prescribed requisites of R.A. No. 9480, it is deemed a duly qualified tax amnesty applicant; consequently, petitioner's deficiency documentary stamp tax liabilities are extinguished, while its deficiency final withholding tax liability stays, since it is specifically excluded by R.A. No. 9480.⁴ 

³ G.R. No. 170574, January 30, 2009

⁴ "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:

1. Withholding agents with respects to their withholding tax liabilities;"

WHEREFORE, premises considered, petitioner's *Motion for Reconsideration* is hereby **PARTIALLY GRANTED** and this Court's *Decision* dated January 20, 2009 is hereby **MODIFIED**. Accordingly, the above-captioned case as regards petitioner's liability for deficiency documentary stamp tax is **CLOSED** and **TERMINATED**, subject to the provisions of R.A. No. 9480. However, petitioner's liability for deficiency final withholding tax assessment for fiscal year ended June 30, 1998, subject of this litigation, in the amount of P10,183,367.80, is hereby **REAFFIRMED**.

SO ORDERED.



CAESAR A. CASANOVA
Associate Justice

WE CONCUR:



ERNESTO D. ACOSTA
Presiding Justice



LOVELL R. BAUTISTA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division