



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

LG ELECTRONICS G.R. No. 165451  
PHILIPPINES, INC.,  
Petitioner, Present:

CARPIO, J., Chairperson,  
DEL CASTILLO,  
VILLARAMA, JR.,\*  
MENDOZA, and  
LEONEN, JJ.

-versus-

COMMISSIONER  
INTERNAL REVENUE,  
Respondent.

OF

Promulgated:  
DEC 03 2014

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DECISION

LEONEN, J.:

This case involves the determination of whether petitioner LG Electronics Philippines, Inc. is entitled to the immunities and privileges granted under Tax Amnesty Act of 1997.

This is a Petition for Review on Certiorari<sup>1</sup> assailing the Court of Tax Appeals' Decision<sup>2</sup> dated May 11, 2004 and Resolution<sup>3</sup> dated September 22, 2004.

\* Designated Acting Member per Special Order No. 1888 dated November 28, 2014.

<sup>1</sup> Rollo, pp. 55–82.

<sup>2</sup> Id. at 86–104. The case was docketed as C.T.A. Case No. 5715. The decision was penned by Associate Justice Juanito C. Castañeda, Jr. and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justice Lovell R. Bautista.

<sup>3</sup> Id. at 119–127. The resolution was signed by Presiding Justice Ernesto D. Acosta and Associate Justices Lovell R. Bautista and Associate Justice Juanito C. Castañeda, Jr.

LG Electronics Philippines, Inc. (LG) is a corporation duly organized and existing under the laws of the Philippines.<sup>4</sup>

On March 21, 1998, LG received a formal assessment notice and demand letter from the Bureau of Internal Revenue. LG was assessed deficiency income tax of ₱267,365,067.41 for the taxable year of 1994.<sup>5</sup>

The deficiency was computed on the basis of (a) disallowed interest expenses for being unsupported; (b) disallowed salary expenses for not being subjected to withholding tax on compensation; (c) imputation of alleged undeclared sales; and (d) disallowed brokerage fees for not being subjected to expanded withholding tax.<sup>6</sup> The Commissioner of Internal Revenue computed the deficiency as follows:<sup>7</sup>

Net Business Income		P105,639,471.00
Add: Discrepancies		
Interest Expense-lack of proofs		24,515,117.00
Salaries Expense-unreconciled		9,586,097.35
Undeclared Sales		
Sales per investigation	P844,238,605.12	
Sales per return	<u>836,509,217.00</u>	7,729,388.12
Brokerage, other charges-not subjected to EWT		<u>346,091,296.47</u>
Taxable Income		<u>P493,561,369.94</u>
Tax Due		P172,746,479.48
Less: Tax Paid		<u>36,235,307.00</u>
Deficiency Tax		P136,511,172.48
Add: 25% Surcharge		34,127,793.12
Interest 4-16-95 to 2-16-98		96,701,101.81
Compromise		<u>25,000.00</u>
<b>TOTAL AMOUNT DUE &amp; COLLECTIBLE</b>		<u><b>P267,365,067.41</b></u>

LG, through its external auditor, Sycip Gorres Velayo & Company (SGV), filed on April 17, 1998 an administrative protest with the Bureau of Internal Revenue against the tax assessment.<sup>8</sup>

On June 16, 1998, LG filed a supplemental protest. It requested for a reconsideration and reinvestigation of the tax assessment. It claimed that the

<sup>4</sup> Id. at 58 and 86.

<sup>5</sup> Id. at 86.

<sup>6</sup> Id. at 86–87.

<sup>7</sup> Id. at 87.

<sup>8</sup> Id.

assessment did not have factual and legal bases. LG also subsequently submitted supporting documents.<sup>9</sup>

Without waiting for the Commissioner of Internal Revenue's resolution of the protest, LG filed a Petition for Review before the Court of Tax Appeals on January 11, 1999.<sup>10</sup>

The Commissioner of Internal Revenue argued before the Court of Tax Appeals that the assessment issued was in accordance with law since the interest expenses claimed by LG were unsupported by sufficient proof. LG had undeclared income. Brokerage fees and other charges were not subjected to expanded withholding tax. Moreover, the details in the assessment notice substantially complied with the provisions of Section 228 of the Tax Code, the taxpayer having been informed in writing of the law and the facts on which the assessment was based.<sup>11</sup>

Meanwhile, the Commissioner of Internal Revenue issued the Report dated March 3, 1999, which recommended the reduction of LG's liability for deficiency income tax to ₱10,557,736.28.<sup>12</sup>

In its Decision dated May 11, 2004, the Court of Tax Appeals ruled that LG was liable for the payment of ₱27,181,887.82, representing deficiency income tax for taxable year 1994, including 20% delinquency interest computed from March 18, 1998.<sup>13</sup>

According to the Court of Tax Appeals, "[w]hile petitioner submitted documents to substantiate its interest expense by bank statements, bank debit memoranda and letters of authority to debit its account, computations of interest and bank reconciliation, it failed to submit in evidence a vital document, which is the loan agreement. Except for a photocopy of a pre-marked document . . . [,]the court is unable to find any document purporting to be a loan agreement."<sup>14</sup>

The Court of Tax Appeals summarized LG's deficiency income tax:<sup>15</sup>

Net Business Income	P 105,639,471.00
Add: Discrepancies	
Interest Expense-lack of Proofs	24,515,117.00

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<sup>9</sup> Id. at 87–88.

<sup>10</sup> Id. at 88.

<sup>11</sup> Id.

<sup>12</sup> Id.

<sup>13</sup> Id. at 104.

<sup>14</sup> Id. at 93.

<sup>15</sup> Id. at 103.

Salaries Expense-unreconciled	8,746,877.00
Brokerage, other charges not subjected to EWT	<u>4,292,200.43</u>
Taxable Income	P <u>143,193,665.43</u>

Tax Due	P 50,117,782.90
Less: Tax Paid	<u>36,235,307.00</u>
Deficiency Tax	P 13,882,475.90
Add: 25% Surcharge	3,470,618.98
Interest 4-16-95 to 2-16-98	<u>9,828,792.94</u>
<b>TOTAL AMOUNT DUE &amp; COLLECTIBLE</b>	<b>P <u>27,181,887.82</u></b>

The dispositive portion of the Court of Tax Appeals' decision reads:

Accordingly, petitioner is **ORDERED** to **PAY** the respondent Commissioner of Internal Revenue the amount of ₱27,181,887.82 representing petitioner's deficiency income tax for the taxable year 1994, plus 20% delinquency interest from March 18, 1998 until the amount is fully paid pursuant to Section 249(c)(3) of the 1994 Tax Code.

**SO ORDERED.**<sup>16</sup>

LG filed a Motion for Partial Reconsideration<sup>17</sup> on June 4, 2004. On September 22, 2004, the Court of Tax Appeals partially granted the Motion.<sup>18</sup> It reduced LG's liability to ₱27,054,879.11.<sup>19</sup> The liability was reduced as follows:<sup>20</sup>

Net Business Income		P 105,639,471.00
Add: Discrepancies		
Interest Expense-lack of proofs		24,515,117.00
Salaries Expense-unreconciled		8,746,877.00
Brokerage, Other Charges not subjected to EWT	P 4,292,200.43	
Less: Charges that should not be subjected to EWT	<u>185,333.01</u>	<u>4,106,867.42</u>
Taxable Income		P <u>143,008,332.42</u>

Tax Due	P 50,052,916.35
Less: Tax Paid	<u>36,235,307.00</u>
Deficiency Tax	13,817,609.35

<sup>16</sup> Id. at 104.

<sup>17</sup> Id. at 105–118.

<sup>18</sup> Id. at 127.

<sup>19</sup> Id.

<sup>20</sup> Id. at 126.

Add: 25% Surcharge	3,454,402.34
Interest 4-16-95 to 2-16-96 [sic]	<u>9,782,867.42</u>
<b>TOTAL AMOUNT DUE &amp; COLLECTIBLE</b>	<b><u>P 27,054,879.11</u></b>

On November 18, 2004, LG filed the present Petition for Review on Certiorari.<sup>21</sup> On January 19, 2005, the Commissioner of Internal Revenue was required to file its Comment.<sup>22</sup> This Comment<sup>23</sup> was noted on March 1, 2006.<sup>24</sup> Petitioner was then required to submit its Reply.<sup>25</sup> After receipt of its Reply,<sup>26</sup> this court resolved to require the parties to submit their Memoranda.<sup>27</sup>

Petitioner filed a Manifestation dated January 29, 2008 stating that it availed itself of the tax amnesty provided under Republic Act No. 9480<sup>28</sup> by paying the total amount of ₱8,647,565.50.<sup>29</sup> In addition, the Bureau of Internal Revenue, through Assistant Commissioner James Roldan, issued a ruling<sup>30</sup> on January 25, 2008, which held that petitioner complied with the provisions of Republic Act No. 9480.<sup>31</sup> Petitioner is, thus, entitled to the immunities and privileges provided for under the law including “civil, criminal or administrative penalties under the National Internal Revenue Code of 1997 . . . arising from the failure to pay any and all internal revenue taxes for taxable year 2005 and prior years.”<sup>32</sup>

The following documents were attached to petitioner’s manifestation: (1) Notice of Availment of Tax Amnesty;<sup>33</sup> (2) Tax Amnesty Return (BIR Form No. 2116);<sup>34</sup> (3) Tax Amnesty Payment Form (BIR Form No. 0617);<sup>35</sup> (4) Statement of Assets, Liabilities and Net Worth (SALN);<sup>36</sup> and (5) BTR-BIR deposit slip.<sup>37</sup>

Respondent was required to comment on the Manifestation within 10

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<sup>21</sup> Id. at 55.

<sup>22</sup> Id. at 170.

<sup>23</sup> Id. at 181–185.

<sup>24</sup> Id. at 187.

<sup>25</sup> Id.

<sup>26</sup> Id. at 197–206.

<sup>27</sup> Id. at 208.

<sup>28</sup> 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.

<sup>29</sup> *Rollo*, p. 256. Petitioner stated that it paid ₱500,000.00 on October 26, 2007 and ₱8,147,565.50 on January 14, 2008.

<sup>30</sup> Id. at 267–272.

<sup>31</sup> Id. at 257.

<sup>32</sup> Id.

<sup>33</sup> Id. at 260.

<sup>34</sup> Id. at 261.

<sup>35</sup> Id. at 262.

<sup>36</sup> Id. at 263.

<sup>37</sup> Id. at 264.

days from notice.<sup>38</sup> According to respondent, petitioner cannot claim the tax amnesty provided under Republic Act No. 9480 for the following reasons: (1) accounts receivable by the Bureau of Internal Revenue as of the date of amnesty are not covered since these constitute government property; (2) cases that have already been favorably ruled upon by the trial court or appellate courts prior to the avilment of tax amnesty are not covered; and (3) petitioner's case involves withholding taxes that are not covered by the Tax Amnesty Act.<sup>39</sup>

The parties raised the following original issues in their pleadings:

- (1) Whether questions of fact may be touched upon in a Petition for Review on Certiorari under Rule 45 of the Rules of Court;
  - i. Whether . . . the Honorable Court of Tax Appeals, while holding the amount of ₱120,985.99 as a valid deduction representing a portion of employees benefits, erred in disallowing the amount of ₱1,754,860.36 as deduction from the gross income for alleged failure of the petitioner to properly and substantially support the same by evidence[;] [and]
  - ii. Whether . . . the Honorable Court of Tax Appeals, while holding the amount of ₱185,333.01 as a valid deduction representing brokerage fees not subject to 5% withholding tax, erred in disallowing expenses for allege[d] failure of the petitioner to duly support the claim with official receipts<sup>40</sup>
- (2) Whether the Court of Tax Appeals erred in ruling that interest expense is deductible from gross income only if supported by a written agreement of the indebtedness, which includes a stipulation for the payment of interest; and
- (3) Whether the Court of Tax Appeals erred in ruling that LG Electronics cannot claim the amount of ₱6,989,338.00 as deduction from its gross income for alleged failure to withhold income tax on accrued bonuses.

*However, in view of petitioner's Manifestation stating that it availed of the tax amnesty provided under Republic Act No. 9480, the only issue for disposition is whether petitioner is entitled to the immunities and privileges under the Tax Amnesty Law or Republic Act No. 9480.*

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<sup>38</sup> Id. at 279.

<sup>39</sup> Id. at 287–288.

<sup>40</sup> Id. at 229–230.

We deny the Petition for being moot and academic.

## I

Petitioner claimed that it perfected the availment of tax amnesty under Republic Act No. 9480 when it paid the correct amount and submitted the required documents. It also relied on the Bureau of Internal Revenue's ruling dated January 25, 2008, which categorically ruled on petitioner's tax amnesty. Pertinent provisions of the ruling state:

On the basis of the foregoing, LGE should pay a tax amnesty rate equivalent to five percent (5%) of its total declared networth as of Balance Sheet dated December 31, 2005. Per attached certified true copy of Balance Sheet of LGE dated December 31, 2005, LGE has a total declared networth of *One Hundred Seventy Two Million Nine Hundred Fifty One Thousand Three Hundred Ten Pesos* (₱172,951,310.00). As such, LGE is liable for the amount of *Eight Million Six Hundred Forty Seven Thousand Five Hundred Sixty Five Pesos and Fifty Centavos* (₱8,647,565.50).

It appears that LGE initially paid the amount of *Five Hundred Thousand Pesos* (₱500,000.00) on October 26, 2007 when it first availed of the tax amnesty and it subsequently paid the amount of *Eight Million One Hundred Forty Seven Thousand Five Hundred Sixty Five Pesos and Fifty Centavos* (₱8,147,565.50) on January 11, 2008 when it amended its tax amnesty returns. As such, LGE has fully paid its liabilities under the Act.

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Considering that LGE has paid the amnesty tax due for corporation and has submitted its tax amnesty forms to Revenue District Office No. 47 of the BIR of Pasig City, there is deemed full compliance with the provisions of the Act. As such, LGE is entitled to the immunities and privileges provided for under Section 6 of the Act and Section 10 of RMC No. 55-2007 which provides, among others, immunity from payment of tax liabilities, 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 its failure to pay any and all internal revenue taxes for taxable year 2005 and prior years. This includes immunity from payment of any internal revenue tax liability except those provided for under Section 5 of the Act.<sup>41</sup>

On the other hand, respondent's counsel from BIR Revenue Region No. 7 Legal Division argued that petitioner cannot avail itself of the tax amnesty program under Republic Act No. 9480. In its Comment on the Manifestation dated January 29, 2008, it said that:

Under Question No. 47 of Revenue Memorandum Circular 69-

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<sup>41</sup> Id. at 269–272.

2007, delinquent accounts/ accounts receivable, including unpaid self assessed taxes, in the records of the BIR which are already accounts receivable of the BIR/assets of the government as of date of amnesty are NOT COVERED by the tax amnesty because the same are already properties of the government prior to/upon taxpayer's date of amnesty availment. Further, Question No. 49 of the same revenue issuance likewise states that tax assessments that are disputed administratively or judicially are, as a general rule, covered by the tax amnesty, except those cases excluded from the coverage of the Tax Amnesty Program as discussed in this Circular and those cases involving issues *that have already been ruled by the trial court/appellate court in favor of the BIR/Government prior to the taxpayer's availment of the amnesty law*. It is to be emphasized that the case of the herein Petitioner had already been resolved by the Court of Tax Appeals under CTA Case No. 5715 as early as 11 May 2004[.]

Further, Section 8 of Republic Act No. 9480 specifically provides for the exception to the coverage of the Tax Amnesty Program, one of which is the withholding agents with respect to their withholding tax liabilities. . . .

It is crystal clear from the foregoing provisions of Republic Act No. 9480 that *withholding taxes are not covered by the amnesty program. Since the case of the Petitioner also involves withholding taxes, the Respondent could not claim immunity under Republic Act No. 9480*. The Bureau of Internal Revenue does not have the power to grant immunity for those types of taxes which are not covered by the tax amnesty law.<sup>42</sup> (Emphasis in the original, underscoring supplied)

*This court finds that petitioner has properly availed itself of the tax amnesty granted under Republic Act No. 9480.*

The pertinent provisions on the grant and availment of tax amnesty state:

SECTION 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.

SEC. 2. *Availment of the Amnesty.* – Any person, natural or juridical, who wishes to avail himself of the tax amnesty authorized and granted under this Act shall file with the Bureau of Internal Revenue (BIR) a notice and Tax Amnesty Return accompanied by a Statement of Assets, Liabilities and Networth (SALN) as of December 31, 2005, in such form as may be prescribed in the implementing rules and regulations (IRR) of this Act, and pay the applicable amnesty tax within six months from the

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<sup>42</sup> Id. at 287–288.



*effectivity of the IRR.*

. . . .

SEC. 5. *Grant of Tax Amnesty.* – Except for the persons or cases covered in Section 8 hereof, any person, whether natural or juridical, may avail himself of the benefits of tax amnesty under this Act, and pay the amnesty tax due thereon, based on his networth as of December 31, 2005 as declared in the SALN as of said period, in accordance with the following schedule of amnesty tax rates and minimum amnesty tax payments required:

. . . .

*(b) Corporations*

- |                                      |                     |
|--------------------------------------|---------------------|
| (1) With subscribed capital of above | 5% or ₱500,000      |
| ₱50 Million                          | whichever is higher |

. . . .

(d) Taxpayers who filed their balance sheet/SALN, together with their income tax returns for 2005, and who desire to avail of the tax amnesty under this Act shall amend such previously filed statements by including still undeclared assets and/or liabilities and pay an amnesty tax equal to five percent (5%) based on the resulting increase in networth: *Provided*, That such taxpayers shall likewise be categorized in accordance with, and subjected to the minimum amounts of amnesty tax prescribed under the provisions of this Section. (Emphasis supplied)

Taxpayers who availed themselves of the tax amnesty program are entitled to the immunities and privileges under Section 6 of the law:

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:

(a) The taxpayer 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.

(b) The taxpayer's Tax Amnesty Return and the SALN as of December 31, 2005 shall not be admissible as evidence in all proceedings that pertain to taxable year 2005 and prior years, insofar as such proceedings relate to internal revenue taxes, before judicial, quasi-judicial or administrative bodies in which he is a defendant or respondent, and except for the purpose of ascertaining the networth beginning January 1, 2006, the same shall not be examined, inquired or looked into by any person or government office. However, the taxpayer may use this as a

defense, whenever appropriate, in cases brought against him.

(c) The books of accounts and other records of the taxpayer for the years covered by the tax amnesty availed of shall not be examined: *Provided*, That the Commissioner of Internal Revenue may authorize in writing the examination of the said books of accounts and other records to verify the validity or correctness of a claim for any tax refund, tax credit (other than refund or credit of taxes withheld on wages), tax incentives, and/or exemptions under existing laws.

All these immunities and privileges shall not apply where the person failed to file a SALN and the Tax Amnesty Return, or where the amount of networth as of December 31, 2005 is proven to be understated to the extent of thirty percent (30%) or more, in accordance with the provisions of Section 3 hereof.

In addition to the above provisions of law, BIR Revenue Memorandum Circular (RMC) No. 55-2007,<sup>43</sup> which reproduces the Department of Finance Department Order 29-07,<sup>44</sup> provides:

**SEC. 3. *Taxes Covered.*** – The tax amnesty shall cover all national internal revenue taxes imposed by the National Government for the taxable year 2005 and prior years, with or without assessments duly issued therefor, that have remained unpaid as of December 31, 2005.

**SEC. 4. *Who May Avail of Tax Amnesty.*** – The following may avail of the tax amnesty under RA 9480:

1. Individuals, whether resident or nonresident citizens, or resident or nonresident aliens;
2. Estates and trusts;
3. Corporations;
4. Cooperatives and tax exempt entities that have become taxable as of December 31, 2005; and
5. Other juridical entities including partnerships.

For this purpose, an individual taxpayer in his/her own capacity shall be treated as a different taxpayer when he acts as administrator/executor of the estate of a deceased taxpayer. The pertinent provisions of Sec. 236 of the Tax Code on the registration of the estate of the decedent by the administrator or executor and the issuance of new TIN shall be complied with. Therefore, an individual taxpayer, seeking to avail of the tax amnesty and who at the same time is an executor or administrator of the estate of a deceased taxpayer who would also like to avail of the tax amnesty, shall file two (2) separate amnesty tax returns, one for himself as a taxpayer and the other in his capacity as executor or

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<sup>43</sup> Publishing the Full Text of Department Order No. 29-07 Dated August 15, 2007, “Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9480,” Otherwise Known as “Tax Amnesty Act of 2007.”

<sup>44</sup> Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9480 (2007).

administrator of the estate of the decedent with respect to the revenue and other income earned or received by the estate.

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### **RULE III**

#### *AVAILMENT AND PAYMENT OF AMNESTY*

##### **SEC. 6. Method of Availment of Tax Amnesty. –**

1. ***Forms/Documents to be filed.*** – To avail of the general tax amnesty, concerned taxpayers shall file the following documents/requirements:
  - a. Notice of Availment in such form as may be prescribed by the BIR.
  - b. Statements of Assets, Liabilities and Networth (SALN) as of December 31, 2005 in such form, as may be prescribed by the BIR.
  - c. Tax Amnesty Return in such form as may be prescribed by the BIR.
2. ***Place of Filing of Amnesty Tax Return.*** – The Tax Amnesty Return, together with the other documents stated in Sec. 6 (1) hereof, shall be filed as follows:
  - a. Residents shall file with the Revenue District Officer (RDO)/Large Taxpayer District Office of the BIR which has jurisdiction over the legal residence or principal place of business of the taxpayer, as the case may be.
  - b. Non-residents shall file with the office of the Commissioner of the BIR, or with any RDO.
  - c. At the option of the taxpayer, the RDO may assist the taxpayer in accomplishing the forms and computing the taxable base and the amnesty tax payable, but may not look into, question or examine the veracity of the entries contained in the Tax Amnesty Return, Statement of Assets, Liabilities and Networth, or such other documents submitted by the taxpayer.
3. ***Payment of Amnesty Tax and Full Compliance.*** – Upon filing of the Tax Amnesty Return in accordance with Sec. 6(2) hereof, the taxpayer shall pay the amnesty tax to the authorized agent bank or in the absence thereof, the Collection Agent or duly authorized Treasurer of the city or municipality in which such person has his legal residence or principal place of business.

The RDO shall issue sufficient Acceptance of Payment Forms, as may be prescribed by the BIR for the use of – or to

be accomplished by – the bank, the collection agent or the Treasurer, showing the acceptance of the amnesty tax payment. In case of the authorized agent bank, the branch manager or the assistant branch manager shall sign the acceptance of payment form.

The Acceptance of Payment Form, the Notice of Availment, the SALN, and the Tax Amnesty Return shall be submitted to the RDO, which shall be received only after complete payment. *The completion of these requirements shall be deemed full compliance with the provisions of RA 9480.*

....

## RULE V

### IMMUNITIES AND PRIVILEGES

**SEC. 10. *Immunities and Privileges.*** – Taxpayers who have fully complied with the conditions under RA 9480 and these rules shall be entitled to the following immunities and privileges:

1. The taxpayer 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.
2. The taxpayer's Tax Amnesty Return and the SALN as of December 31, 2005 shall not be admissible as evidence in all proceedings that pertain to taxable year 2005 and prior years, insofar as such proceedings relate to internal revenue taxes, before judicial, quasi-judicial or administrative bodies in which he is a defendant or respondent and, except for the purpose of ascertaining the networth beginning January 1, 2006, the same shall not be examined, inquired or looked into by any person or government office. However, the taxpayer may use this as a defense, whenever appropriate, in cases brought against him.
3. The books of accounts and other records of the taxpayer for the years covered by the tax amnesty availed of shall not be examined by the BIR. However, the Commissioner of Internal Revenue may authorize in writing the examination of the said books of accounts and other records to verify the validity or correctness of a claim for any tax refund, tax credit (other than refund or credit of taxes withheld on wages), tax incentives, and/or exemptions under existing laws.

The above-stated immunities and privileges shall not apply where the person failed to file a SALN and the Tax Amnesty Return, or where the amount of networth as of December 31, 2005 is proven to be understated to the extent of thirty percent (30%) or more, in accordance with the provisions of Section 4 of RA 9480 and Section 9, Rule IV hereof. (Emphasis supplied)

In several cases, this court explained the nature of a tax amnesty. In *Metropolitan Bank and Trust Co. v. Commissioner of Internal Revenue*.<sup>45</sup>

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. A tax amnesty, much like a tax exemption, is never favored or presumed in law. The grant of a tax amnesty, similar to a tax exemption, must be construed strictly against the taxpayer and liberally in favor of the taxing authority.<sup>46</sup>

This court in *Commissioner of Internal Revenue v. Gonzalez*<sup>47</sup> further described the role of tax amnesties in the government's collection of taxes:

Tax amnesty is a general pardon to taxpayers who want to start a clean tax slate. It also gives the government a chance to collect uncollected tax from tax evaders without having to go through the tedious process of a tax case.<sup>48</sup>

Under Republic Act No. 9480 and BIR Revenue Memorandum Circular No. 55-2007, the qualified taxpayer may immediately avail of the immunities and privileges upon submission of the required documents. This is clear from Section 2 of Republic Act No. 9480:

SEC. 2. *Availment of the Amnesty.* – Any person, natural or juridical, who wishes to avail himself of the tax amnesty authorized and granted under this Act shall file with the Bureau of Internal Revenue (BIR) a notice and Tax Amnesty Return accompanied by a Statement of Assets, Liabilities and Networth (SALN) as of December 31, 2005, in such form as may be prescribed in the implementing rules and regulations (IRR) of this Act, and pay the applicable amnesty tax within six months from the effectivity of the IRR. (Emphasis supplied)

Meanwhile, Section 6 of BIR Revenue Memorandum Circular No. 55-2007 and Department of Finance Department Order 20-07 provide:

**SEC. 6. Method of Availment of Tax Amnesty.** –

1. **Forms/Documents to be filed.** – To avail of the general tax amnesty, concerned taxpayers shall file the following

<sup>45</sup> 612 Phil. 544 (2009) [Per J. Chico-Nazario, Third Division].

<sup>46</sup> Id. at 565, citing *Philippine Banking Corporation (Now: Global Business Bank, Inc.) v. Commissioner of Internal Revenue*, 597 Phil. 363, 388 (2009) [Per J. Carpio, First Division].

<sup>47</sup> 647 Phil. 462 (2010) [Per J. Villarama, Jr., Third Division].

<sup>48</sup> Id. at 487, citing *Bañas, Jr. v. Court of Appeals*, 382 Phil. 144, 156 (2000) [Per J. Quisumbing, Second Division].

documents/requirements:

- a. Notice of Availment in such form as may be prescribed by the BIR.
  - b. Statements of Assets, Liabilities and Networth (SALN) as of December 31, 2005 in such form, as may be prescribed by the BIR.
  - c. Tax Amnesty Return in such form as may be prescribed by the BIR.
2. ***Place of Filing of Amnesty Tax Return.*** – The Tax Amnesty Return, together with the other documents stated in Sec. 6 (1) hereof, shall be filed as follows:
- a. Residents shall file with the Revenue District Officer (RDO)/Large Taxpayer District Office of the BIR which has jurisdiction over the legal residence or principal place of business of the taxpayer, as the case may be.
  - b. Non-residents shall file with the office of the Commissioner of the BIR, or with any RDO.
  - c. At the option of the taxpayer, the RDO may assist the taxpayer in accomplishing the forms and computing the taxable base and the amnesty tax payable, but may not look into, question or examine the veracity of the entries contained in the Tax Amnesty Return, Statement of Assets, Liabilities and Networth, or such other documents submitted by the taxpayer.
3. ***Payment of Amnesty Tax and Full Compliance.*** – Upon filing of the Tax Amnesty Return in accordance with Sec. 6(2) hereof, the taxpayer shall pay the amnesty tax to the authorized agent bank or in the absence thereof, the Collection Agent or duly authorized Treasurer of the city or municipality in which such person has his legal residence or principal place of business.

The RDO shall issue sufficient Acceptance of Payment Forms, as may be prescribed by the BIR for the use of – or to be accomplished by – the bank, the collection agent or the Treasurer, showing the acceptance of the amnesty tax payment. In case of the authorized agent bank, the branch manager or the assistant branch manager shall sign the acceptance of payment form.

The Acceptance of Payment Form, the Notice of Availment, the SALN, and the Tax Amnesty Return shall be submitted to the RDO, which shall be received only after complete payment. *The completion of these requirements shall be deemed full compliance with the provisions of RA 9480.* (Emphasis supplied)

In *Philippine Banking Corporation (Now: Global Business Bank, Inc.) v. Commissioner of Internal Revenue*,<sup>49</sup> this court ruled that the completion of the requirements and compliance with the procedure laid down in the law and the implementing rules entitle the taxpayer to the privileges and immunities under the tax amnesty program.<sup>50</sup>

In this case, petitioner showed that it complied with the requirements laid down in Republic Act No. 9480. Pertinent documents were submitted to the Bureau of Internal Revenue and attached to the records of this case. Petitioner's compliance was also affirmed by the Bureau of Internal Revenue in its ruling dated January 25, 2008. Petitioner is, therefore, entitled to the immunities and privileges granted under Section 6 of Republic Act No. 9480.

We now proceed to the arguments against petitioner's availment of tax amnesty raised by respondent.

## II

Respondent erred when it relied on the answers to questions numbered 47 and 49 of BIR Revenue Memorandum Circular No. 69-2007<sup>51</sup> reproduced below:

Q-47 Are Delinquent Accounts/Accounts Receivable, including unpaid self-assessed taxes, in the records of the BIR which are already Accounts Rec[e]ivable of the BIR/assets of the Government as of date of amnesty availment by the taxpayer still covered by such amnesty availment?

A-47 *No. This is so because these are already properties/assets of the Government prior to/upon taxpayer's date of amnesty availment.*

....

Q-49 Are tax assessments that are disputed administratively or judicially still covered by the tax amnesty law?

A-49 *As a rule yes, except those cases excluded from the coverage of the Tax Amnesty Program as discussed in this CIRCULAR and those cases involving issues that have*

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<sup>49</sup> 597 Phil. 363 (2009) [Per J. Carpio, First Division].

<sup>50</sup> Id. at 388. This court held that "[c]onsidering 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."

<sup>51</sup> Clarification of Issues Concerning The Tax Amnesty Program Under Republic Act No. 9480 as Implemented by Department Order No. 29-07.

*already been ruled by the trial court/appellate court in favor of the BIR/Government prior to taxpayer's availment of the amnesty law.* (Emphasis supplied)

The law is clear. Only final and executory judgments are excluded from the coverage of the tax amnesty program, hence:

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:

....

(f) *Tax cases subject of final and executory judgment by the courts.*<sup>52</sup> (Emphasis supplied)

This exception was reproduced in the Implementing Rules and Regulations of the law:

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

....

7. Tax cases subject of final and executory judgment by the courts.<sup>53</sup>

*We hold that only cases that involve final and executory judgments are excluded from the tax amnesty program.*

This court has already ruled on the Bureau of Internal Revenue's unjustified expansion of cases not covered under the tax amnesty program.

In *Philippine Banking Corporation (Now: Global Business Bank, Inc.)*, this court categorically found that “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 . . . is misplaced.”<sup>54</sup> This court said that:

<sup>52</sup> Rep. Act No. 9480, sec. 8.

<sup>53</sup> DOF D.O. 29-07 and BIR RMC No. 55-2007.

<sup>54</sup> *Philippine Banking Corporation (Now: Global Business Bank, Inc.) v. Commissioner of Internal Revenue*, 597 Phil. 363, 389 (2009) [Per J. Carpio, First Division]. This case involved the assessment of deficiency documentary stamp taxes of petitioner Philippine Banking Corporation (Now: Global Business Bank, Inc.) for the taxable years 1996 and 1997. (p. 368) Petitioner availed of the tax amnesty program under Rep. Act No. 9480 during pendency of the case. (p. 387). BIR RMC No. 19-2008, which the court pronounced as erroneous in *Philippine Banking Corporation (Now: Global Business Bank, Inc.) v. Commissioner of Internal Revenue*, is substantially the same as BIR RMC No. 69-2007 with regard to 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 an exception to the coverage of the tax amnesty program, (p. 389) and on which respondent relies on in the present



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.<sup>55</sup>

In the recent case of *CS Garment Inc., v. Commissioner of Internal Revenue*<sup>56</sup> we declared that:

While tax amnesty, similar to a tax exemption, must be construed strictly against the taxpayer and liberally in favor of the taxing authority, it is also a well-settled doctrine that *the rule-making power of administrative agencies cannot be extended to amend or expand statutory requirements or to embrace matters not originally encompassed by the law*. Administrative regulations should always be in accord with the provisions of the statute they seek to carry into effect, and any resulting inconsistency shall be resolved in favor of the basic law. We thus definitively declare that the exception “[i]ssues and cases which were ruled by any court (even without finality) in favor of the BIR prior to amnesty availment of the taxpayer” under BIR RMC 19-2008 is invalid, as the exception goes beyond the scope of the provisions of the 2007 Tax Amnesty Law.<sup>57</sup> (Emphasis supplied, citations omitted)

BIR Revenue Memorandum Circular No. 19-2008, declared by this court as erroneous, is substantially the same as the answers to the questions numbered 47 and 49 in BIR Revenue Memorandum Circular No. 69-2007, which respondent relied upon in the present case. Pertinent provisions of BIR Revenue Memorandum Circular No. 19-2008 are the following:

#### **A BASIC GUIDE ON THE TAX AMNESTY ACT OF 2007**

The following is a basic guide for taxpayers who wish to avail of tax amnesty pursuant of Republic Act No. 9480 (Tax Amnesty Act of 2007).

##### ***Who may avail of the amnesty?***

. . . .

##### **EXCEPT:**

- ☒ Issues and cases which were ruled by any court (even without finality) in favor of the BIR prior to amnesty availment of the taxpayer. (e.g. Taxpayers who have failed to observe or follow BOI and/or PEZA rules on entitlement to Income Tax Holiday

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case.

<sup>55</sup> Id.

<sup>56</sup> *CS Garment, Inc. v. Commissioner of Internal Revenue*, G.R. No. 182399, March 12, 2014, <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/march2014/182399.pdf>> [Per C.J. Sereno, First Division].

<sup>57</sup> Id. at 13–14.

Incentives and other incentives)

....

- ☒ Delinquent Accounts/Accounts Receivable considered as assets of the BIR/Government, including self-assessed tax

Accordingly, answers to the questions numbered 47 and 49 of BIR Revenue Memorandum Circular No. 69-2007 are declared invalid for going beyond the text of the law.

### III

*Furthermore, contrary to respondent's argument, the case does not involve withholding taxes. This is readily seen in Republic Act No. 9480 and BIR Revenue Memorandum Circular No. 55-2007. Section 8 of Republic Act No. 9480 provides:*

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[.]* (Emphasis supplied)

Similarly, BIR Revenue Memorandum Circular No. 55-2007 states:

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

1. Withholding agents with respect to their withholding tax liabilities[.]

Income tax is different from withholding tax, with both operating in distinct systems.

In the seminal case of *Fisher v. Trinidad*,<sup>58</sup> this court defined income tax as “a tax on the yearly profits arising from property, professions, trades, and offices.”<sup>59</sup> Otherwise stated, income tax is the “tax on all yearly profits arising from property, professions, trades or offices, or as a tax on a person’s income, emoluments, profits and the like.”<sup>60</sup>

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<sup>58</sup> 43 Phil. 973 (1922) [Per J. Johnson, En Banc].

<sup>59</sup> Id. at 981.

<sup>60</sup> VICTORINO C. MAMALATEO, REVIEWER ON TAXATION 66 (2nd ed., 2008), *citing* TAX CODE, sec. 43 and *Fisher v. Trinidad*, 43 Phil. 973, 981 (1922) [Per J. Johnson, En Banc].

On the other hand, withholding tax is a method of collecting income tax in advance.<sup>61</sup> “In the operation of the withholding tax system, the payee is the taxpayer, the person on whom the tax is imposed, while the payor, a separate entity, acts no more than an agent of the government for the collection of the tax in order to ensure its payment. Obviously, the amount thereby used to settle the tax liability is deemed sourced from the proceeds constitutive of the tax base.”<sup>62</sup>

There are three reasons for the utilization of the withholding tax system: “first, to provide the taxpayer a convenient manner to meet his probable income tax liability; second, to ensure the collection of income tax which can otherwise be lost or substantially reduced through failure to file the corresponding returns[;] and third, to improve the government’s cash flow.”<sup>63</sup>

In *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*,<sup>64</sup> this court ruled that “the liability of the withholding agent is independent from that of the taxpayer.”<sup>65</sup> Further:

The [withholding agent] cannot be made liable for the tax due because it is the [taxpayer] who earned the income subject to withholding tax. The withholding agent is liable only insofar as he failed to perform his duty to withhold the tax and remit the same to the government. The liability for the tax, however, remains with the taxpayer because the gain was realized and received by him.<sup>66</sup>

The cause of action for failure to withhold taxes is different from the cause of action arising from non-payment of income taxes.<sup>67</sup> “Indeed, the revenue officers generally disallow the expenses claimed as deductions from gross income, if no withholding of tax as required by law or the regulations was withheld and remitted to the BIR within the prescribed dates.”<sup>68</sup>

In *Asia International Auctioneers, Inc. v. Commissioner of Internal Revenue*,<sup>69</sup> respondent therein argued that petitioner was not entitled to the grant of tax amnesty under Republic Act No. 9480 as petitioner was deemed

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<sup>61</sup> See *Filipinas Synthetic Fiber Corporation v. Court of Appeals*, 374 Phil. 835, 841 (1999) [Per J. Purisima, Third Division].

<sup>62</sup> *Bank of America NT & SA v. Court of Appeals*, G.R. No. 103092, July 21, 1994, 234 SCRA 302, 310 [Per J. Vitug, Third Division].

<sup>63</sup> *Chamber of Real Estate and Builders’ Associations, Inc. v. Romulo*, 628 Phil. 508, 536 (2010) [Per J. Corona, En Banc].

<sup>64</sup> *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*, G.R. No. 170257, September 7, 2011, 657 SCRA 70 [Per J. Mendoza, Third Division].

<sup>65</sup> Id. at 83.

<sup>66</sup> Id.

<sup>67</sup> See *Commissioner of Internal Revenue v. Malayan Insurance Co., Inc.*, 129 Phil. 165, 170 (1967) [Per J. Reyes, En Banc].

<sup>68</sup> VICTORINO C. MAMALATEO, REVIEWER ON TAXATION 264 (2nd ed., 2008).

<sup>69</sup> G.R. No. 179115, September 26, 2012, 682 SCRA 49 [Per J. Perlas-Bernabe, Second Division Resolution].

a withholding agent of the assessed deficiency value added tax and deficiency excise tax.<sup>70</sup> Petitioner was, thus, disqualified under Section 8 of the law.<sup>71</sup> This court rejected such contention:

The CIR did not assess AIA as a withholding agent that failed to withhold or remit the deficiency VAT and excise tax to the BIR under relevant provisions of the Tax Code. Hence, the argument that AIA is “deemed” a withholding agent for these deficiency taxes is fallacious.

Indirect taxes, like VAT and excise tax, are different from withholding taxes. To distinguish, in indirect taxes, the incidence of taxation falls on one person but the burden thereof can be shifted or passed on to another person, such as when the tax is imposed upon goods before reaching the consumer who ultimately pays for it. On the other hand, in case of withholding taxes, the incidence and burden of taxation fall on the same entity, the statutory taxpayer. The burden of taxation is not shifted to the withholding agent who merely collects, by withholding, the tax due from income payments to entities arising from certain transactions and remits the same to the government. Due to this difference, the deficiency VAT and excise tax cannot be “deemed” as withholding taxes merely because they constitute indirect taxes. Moreover, records support the conclusion that AIA was assessed not as a withholding agent but, as the one directly liable for the said deficiency taxes.<sup>72</sup> (Citations omitted)

In this case, petitioner was assessed for its deficiency income taxes due to the disallowance of several items for deduction. Petitioner was not assessed for its liability as withholding agent. The two liabilities are distinct from and must not be confused with each other.

The main reason for the disallowance of the deductions was that petitioner was not able to fully substantiate its claim of remittance through receipts or relevant documents.

#### IV

*Furthermore, we find it appropriate to pronounce that the Bureau of Internal Revenue Legal Division is not the proper representative of respondent.*

We observe that respondent is represented by a lawyer from the Legal Division of Revenue Region No. 7 of the Bureau of Internal Revenue and not by the Office of the Solicitor General.

We are mindful of Section 220 of Republic Act No. 8424 or the Tax

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<sup>70</sup> Id. at 56.

<sup>71</sup> Id.

<sup>72</sup> Id. at 57.

Reform Act of 1997, which provides that legal officers of the Bureau of Internal Revenue are the ones tasked to institute the necessary civil or criminal proceedings on behalf of the government:

**Section 220.** *Form and Mode of Proceeding in Actions Arising under this Code.* – Civil and criminal actions and proceedings instituted in behalf of the Government under the authority of this Code or other law enforced by the Bureau of Internal Revenue shall be brought in the name of the Government of the Philippines and shall be conducted by legal officers of the Bureau of Internal Revenue but no civil or criminal action for the recovery of taxes or the enforcement of any fine, penalty or forfeiture under this Code shall be filed in court without the approval of the Commissioner. (Emphasis supplied)

Nonetheless, this court has previously ruled on the issue of the Bureau of Internal Revenue’s representation in appellate proceedings, particularly before this court:

The *institution or commencement* before a proper court of civil and criminal actions and proceedings arising under the Tax Reform Act which “shall be conducted by legal officers of the Bureau of Internal Revenue” is not in dispute. *An appeal from such court, however, is not a matter of right. Section 220 of the Tax Reform Act must not be understood as overturning the long established procedure before this Court in requiring the Solicitor General to represent the interest of the Republic. This Court continues to maintain that it is the Solicitor General who has the primary responsibility to appear for the government in appellate proceedings.* This pronouncement finds justification in the various laws defining the Office of the Solicitor General, beginning with Act No. 135, which took effect on 16 June 1901, up to the present Administrative Code of 1987. Section 35, Chapter 12, Title III, Book IV, of the said Code outlines the powers and functions of the Office of the Solicitor General which includes, but not limited to, its duty to —

(1) Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings; represent the Government and its officers in the Supreme Court, the Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party.

. . . .

(3) Appear in any court in any action involving the validity of any treaty, law, executive order or proclamation, rule or regulation when in his judgment his intervention is necessary or when requested by the Court.

In *Gonzales vs. Chavez*, the Supreme Court has said that, from the historical and statutory perspectives, the Solicitor General is the “principal

law officer and legal defender of the government.”<sup>73</sup> (Emphasis in the original, citations omitted)

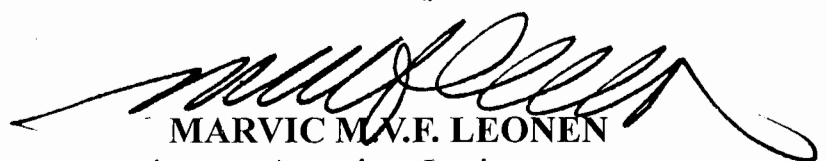
From the foregoing, we find that the Office of the Solicitor General is the proper party to represent the interests of the government through the Bureau of Internal Revenue. The Legal Division of the Bureau of Internal Revenue should be mindful of this procedural lapse in the future.

However, records show that the Office of the Solicitor General has been apprised of developments in the case since the beginning of the proceedings. We, thus, rule that the interests of the government have been duly protected.

As petitioner is found entitled to the immunities and privileges granted under the tax amnesty program, the issue on the assessed deficiency income taxes is, thus, moot and academic.

**WHEREFORE**, in view of petitioner LG Electronics Philippines, Inc.’s availment of the tax amnesty program under Republic Act No. 9480, the petition is **DENIED** for being **MOOT** and **ACADEMIC**. Petitioner’s deficiency taxes for taxable year 2005 and prior years are deemed fully settled.

**SO ORDERED.**



MARVIC M.V.F. LEONEN  
Associate Justice

WE CONCUR:



ANTONIO T. CARPIO  
Associate Justice  
Chairperson

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<sup>73</sup> *Commissioner of Internal Revenue v. La Suerte Cigar and Cigarette Factory*, 433 Phil. 463, 467–468 (2002) [Per J. Vitug, En Banc Resolution].

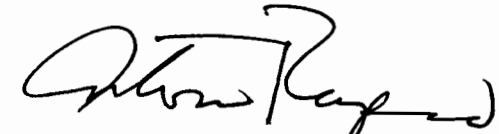
  
**MARIANO C. DEL CASTILLO**  
Associate Justice

  
**MARTIN S. VILLARAMA, JR.**  
Associate Justice

  
**JOSE CATRAL MENDOZA**  
Associate Justice


**ATTESTATION**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson, Second Division

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice