



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

COMMISSIONER OF INTERNAL REVENUE, G.R. No. 193381

Petitioner,

Present:

CARPIO, J., Chairperson,
PERALTA,
MENDOZA,
LEONEN, and
JARDELEZA, JJ.

-versus-

APO CEMENT CORPORATION,
Respondent.

Promulgated:
08 FEB 2017

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DECISION

LEONEN, J.:

This resolves a Petition for Review¹ seeking to reverse and set aside the Court of Tax Appeals *En Banc*'s Decision² dated June 24, 2010, which affirmed the Second Division's Resolution³ dated June 11, 2009 granting respondent's Motion to Cancel Tax Assessment; and Resolution⁴ dated

¹ *Rollo*, pp. 10-34. Filed under Rule 45 of the Rules of Court.

² Id. at 35-57. The Decision was penned by Associate Justice Lovell R. Bautista and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castaneda, Jr., Erlinda P. Uy, Caesar A. Casanova, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino and Amelia R. Cotangco-Manalastas of the En Banc, Court of Tax Appeals, Quezon City; Associate Justice Cielito N. Mindarogrulla was on leave.

³ Id. at 58-60. The Resolution was signed by Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy and Olga Palanca-Enriquez of the Second Division, Court of Tax Appeals, Quezon City.

⁴ Id. at 54-57. The Resolution was penned by Associate Justice Lovell R. Bautista and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino, Cielito N. Mindarogrulla and Amelia R. Cotangco-Manalastas of the En Banc, Court of Tax Appeals, Quezon City.

August 23, 2010 denying respondent's motion for reconsideration.

On September 1, 2003, the Bureau of Internal Revenue sent Apo Cement Corporation (Apo Cement) a Final Assessment Notice (FAN) for deficiency taxes for the taxable year 1999, as follows:

DEFICIENCY TAXES	AMOUNT
Income Tax	P 479,977,176.22
Value-Added Tax	181,345,963.86
VAT Withholding	23,536,374.48
Withholding Tax on Compensation	15,595,098.12
Unremitted Withholding Tax on Compensation	10,388,757.86
Expanded Withholding Tax	17,642,981.74
Unremitted Expanded Withholding Tax	3,510,390.71
Final Withholding Tax	53,808,355.59
Fringe Benefits Tax	167,337.31
Documentary Stamp Tax	52,480,372.77
Administrative Penalties	25,000.00 ⁵

Apo Cement protested the FAN.⁶ The Bureau issued the Final Decision on Disputed Assessment dated June 15, 2006 denying the Apo Cement's protest.⁷ The Final Decision contained the following deficiency assessments, *viz*:

DEFICIENCY TAXES	AMOUNT
Income Tax	P 9,305,697.74
Value-Added Tax	1,610,070.51
Withholding Tax on Compensation	20,916,611.66
Unremitted Withholding Tax on Compensation	13,479,061.25
Expanded Withholding Tax	23,664,416.39
Unremitted Expanded Withholding Tax	4,549,677.32
Final Withholding Tax	3,095,786.45
Fringe Benefits Tax	213,656.36
Documentary Stamp Tax	67,433,862.97
Administrative Penalties	25,000.00
Total	P 144,293,840.65⁸ (Emphasis supplied)

On August 3, 2006, Apo Cement filed a Petition for Review with the Court of Tax Appeals.⁹

⁵ Id. at 36.

⁶ Id. at 37.

⁷ Id.

⁸ Id.

⁹ Id.

In its Answer, the Commissioner of Internal Revenue admitted that Apo Cement had already paid the deficiency assessments reflected in the Bureau's Final Decision on Disputed Assessment, except for the documentary stamp taxes.¹⁰ The deficiency documentary stamp taxes were allegedly based on several real property transactions of the corporation consisting of the assignment of several parcels of land with mineral deposits to Apo Land and Quarry Corporation, a wholly owned subsidiary, and land acquisitions in 1999.¹¹ According to the Commissioner, Apo Cement should have paid documentary stamp taxes based on the zonal value of property with mineral/quarry content, not on the zonal value of regular residential property.¹²

On January 25, 2008, Apo Cement availed of the tax amnesty under Republic Act No. 9480, particularly affecting the 1999 deficiency documentary stamp taxes.¹³

After stipulation of facts and presentation of evidence, Apo Cement filed on April 17, 2009 a Motion to Cancel Tax Assessment (with Motion to Admit Attached Formal Offer of Evidence).¹⁴ The Commissioner filed her Opposition.¹⁵

On June 11, 2009, the Court of Tax Appeals (Second Division) granted¹⁶ Apo Cement's Motion to Cancel Tax Assessment. It found Apo Cement a qualified tax amnesty applicant under Republic Act No. 9480;¹⁷ and fully compliant with the requirements of the law, the Department Order No. 29-07, and Revenue Memorandum Circular No. 19-2008. The Decision disposed as follows:

WHEREFORE, premises considered:

- 1) the Assessment Notices for deficiency Documentary Stamp Taxes for taxable year 1999 issued against [Apo Cement Corporation] are hereby **CANCELLED** and **SET ASIDE**, solely in view of [its] availment of the Tax Amnesty under RA 9480;
- 2) the Assessment Notices for deficiency Income Tax, Value-Added Tax, VAT Withholding Tax, Withholding Tax on Compensation, Unremitted Withholding Tax on Compensation, Expanded Withholding Tax, Unremitted Expanded Withholding Tax, Final Withholding Tax, and Fringe Benefits Tax are **CANCELLED** and **SET ASIDE** in view of

¹⁰ Id.

¹¹ Id. at 37-38.

¹² Id.

¹³ Id. at 133, Comment.

¹⁴ Id. at 61-75.

¹⁵ Id. at 38.

¹⁶ Id. at 58-60.

¹⁷ 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 (2007).

petitioner's payment of said taxes.

Accordingly, the –above-captioned case is hereby considered **CLOSED** and **TERMINATED**.

SO ORDERED.¹⁸

The Commissioner filed a Motion for Reconsideration, which the Court of Tax Appeals denied in a Resolution dated October 19, 2009 for lack of merit.

On November 19, 2009, the Commissioner appealed to the *En Banc*.¹⁹ However, in a Decision promulgated on June 24, 2010, the Court of Tax Appeals *En Banc* dismissed the Commissioner's appeal and affirmed the Second Division's resolution ordering the cancellation of the assessment for deficiency documentary stamp taxes in view of the Apo Cement's availment of the tax amnesty program. The *En Banc* ruled that (a) Apo Cement is qualified to avail of the tax amnesty;²⁰ (b) it submitted the required documents to the court;²¹ (c) the Commissioner is not the proper party to challenge the SALN;²² (d) the one-year prescriptive period already lapsed;²³ and (e) in another tax case involving the same parties (CTA EB No. 256, CTA Case No. 6710), it was already adjudged that Apo Cement complied with the requirements of Tax Amnesty.²⁴

The Commissioner filed a Motion for Reconsideration, but the same was denied in the Court of Tax Appeals *En Banc*'s Resolution dated August 23, 2010.²⁵

Hence, the petitioner filed its Petition for Review with this Court. Respondent filed its Comment²⁶ and petitioner her Reply.²⁷

In a Resolution²⁸ dated June 15, 2011, the Court expunged from the records respondent's Rejoinder to petitioner's Reply.

The core issue is whether respondent had fully complied with all the requirements to avail of the tax amnesty granted under Republic Act No. 9480.

¹⁸ *Rollo*, p. 60.

¹⁹ *Id.* at 17.

²⁰ *Id.* at 46.

²¹ *Id.* at 47–48.

²² *Id.* at 49.

²³ *Id.*

²⁴ *Id.* at 51.

²⁵ *Id.* at 17.

²⁶ *Id.* at 126–165.

²⁷ *Id.* at 166–172.

²⁸ *Id.* at 189.

The Petition is devoid of merit. The Court of Tax Appeals committed no reversible error.

I

We shall first address the procedural issue of defective verification raised by the respondent.

Through the Verification and Certification of Non-Forum Shopping²⁹ attached to the present Petition, Deputy Commissioner Estela V. Sales of the Legal and Inspection Group of the Bureau of Internal Revenue states that the contents of the Petition are true and correct of her own “knowledge and belief based on authentic records.”³⁰

In the Court’s Resolution³¹ dated December 8, 2010, the petitioner was directed to submit a sufficient verification within five (5) days from notice. Petitioner did not comply.

Petitioner would argue however that while the verification still stated “belief,” it was qualified by “based on authentic records.” Hence, “the statement implies that the contents of the petition were based not only on the pleader’s belief but ultimately they are recitals from authentic records.”³²

We are not persuaded.

The amendment to Section 4, Rule 7 entirely removed any reference to “belief” as basis.³³ This is to ensure that the pleading is anchored on facts and not on imagination or speculation, and is filed in good faith.

In *Go v. Court of Appeals*:³⁴

Mere belief is insufficient basis and negates the verification which should be on the basis of personal knowledge or authentic records. Verification is required to secure an assurance that the allegations of the petition have been made in good faith, or are true and correct and not merely speculative.³⁵

²⁹ Id. at 31–32.

³⁰ Id. at 31.

³¹ Id. at 114.

³² Id. at 168.

³³ A.M. No. 00-2-10-SC (2000).

³⁴ 557 Phil. 700 (2007) [Per J. Quisumbing, Second Division].

³⁵ Id. at 707.

To emphasize this further, the third paragraph of Rule 7, Section 4 of the 1997 Rules of Civil Procedure, as amended, expressly treats pleadings with a verification based on "information and belief" or "knowledge, information and belief," as unsigned.³⁶

In *Negros Oriental Planters Association, Inc. v. Hon. Presiding Judge of RTC-Negros Occidental, Branch 52, Bacolod City*,³⁷ the Court explained that the amendment in the rules was made stricter so that a party cannot be allowed to base his statements on his belief. Otherwise, the pleading is treated as unsigned which produces no legal effect. The court, though, in its discretion, may give the party a chance to remedy the insufficiency. Thus:

Clearly, the amendment was introduced in order to make the verification requirement stricter, such that the party cannot now merely state under oath that he *believes* the statements made in the pleading. He cannot even merely state under oath that he *has knowledge* that such statements are true and correct. His knowledge must be specifically alleged under oath to be either *personal knowledge* or at least *based on authentic records*.

Unlike, however, the requirement for a Certification against Forum Shopping in Section 5, wherein failure to comply with the requirements is not curable by amendment of the complaint or other initiatory pleading, Section 4 of Rule 7, as amended, states that the effect of the failure to properly verify a pleading is that the pleading shall be treated as unsigned:

A pleading required to be verified which contains a verification based on "information and belief", or upon "knowledge, information and belief", or lacks a proper verification, shall be treated as an unsigned pleading.

Unsigned pleadings are discussed in the immediately preceding section of Rule 7:

SEC. 3. *Signature and address.* —

. . . .

An unsigned pleading produces no legal effect. However, the court *may, in its discretion*, allow such deficiency to be remedied if it shall appear that the same was due to mere inadvertence and not intended for delay. Counsel who deliberately files an unsigned pleading, or signs a pleading in violation of this Rule, or alleges scandalous or indecent matter therein, or fails to

³⁶ *Vicencio v. Villar*, 690 Phil. 59, 67 (2012) [Per C.J. Sereno, En Banc]. Rules of Court, Rule 7, sec. 4, as amended by A.M. No. 00-2-10-SC (2000) provides:
SEC. 4. *Verification.* — Except when otherwise specifically required by law or rule, pleadings need not be under oath, verified or accompanied by affidavit.

A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his personal knowledge or based on authentic records. A pleading required to be verified which contains a verification based on "information and belief", or upon "knowledge, information and belief," or lacks a proper verification, shall be treated as an unsigned pleading.

³⁷ 595 Phil. 1158 (2008) [Per J. Chico-Nazario, Third Division].

promptly report to the court a change of his address, shall be subject to appropriate disciplinary action. (5a)

A pleading, therefore, wherein the Verification is merely based on the party's knowledge and belief **produces no legal effect**, subject to the **discretion of the court to allow the deficiency to be remedied.**³⁸

In this case, petitioner did not submit a corrected verification despite the order of this Court. This alone merits the denial of the Petition outright.

In any case, we find respondent had fully complied with the requirements of Republic Act No. 9480. Hence, the Court of Tax Appeals properly cancelled the remaining assessment for deficiency documentary stamp taxes.

II.

The pertinent provisions on the grant and availment of tax amnesty under Republic Act No. 9480 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 therefor, 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 Net worth (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.*

SECTION 3. *What to Declare in the SALN.* — The SALN shall contain a declaration of the assets, liabilities and net worth as of December 31, 2005, as follows:

(a) Assets within or without the Philippines, whether real or personal, tangible or intangible, whether or not used in trade or business: *Provided,* That property other than money shall be valued at the cost at which the property was acquired: *Provided, further,* That foreign currency assets and/or securities shall be valued at the rate of exchange prevailing as of the date of the SALN;

(b) All existing liabilities which are legitimate and enforceable, secured or unsecured, whether or not incurred in trade or business; and

³⁸ Id. at 1166–1167.

(c) The net worth of the taxpayer, which shall be the difference between the total assets and total liabilities.

....

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 net worth 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 P50 Million | 5% or P500,000, whichever is higher |
| (2) With subscribed capital of above P20 Million up to P50 Million | 5% or P250,000, whichever is higher |
| (3) With subscribed capital of P5 Million to P20 Million | 5% or P100,000, whichever is higher |
| (4) With subscribed capital of below P5 Million | 5% or P25,000, 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 net worth: *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)

In addition to the above provisions of law, the Department of Finance Department Order No. 29-07³⁹ provides:

SECTION 6. *Method of Availment of Tax Amnesty.* —

³⁹ Rules and Regulations to Implement Republic Act No. 9480 (2007).

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 Net worth (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 Net worth, 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.

4. *Time for Filing and Payment of Amnesty Tax.* — The filing of the Tax Amnesty Return, together with the SALN, and the payment of the

amnesty tax shall be made within six (6) months from the effectivity of these Rules.

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 net worth 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 net worth 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.

This Court has declared⁴⁰ that submission of the documentary requirements and payment of the amnesty tax is considered full compliance with Republic Act No. 9480 and the taxpayer can immediately enjoy the immunities and privileges enumerated in Section 6 of the law.

⁴⁰ *CS Garment, Inc. v. Commissioner of Internal Revenue*, 729 Phil. 253, 267–272 [Per CJ Sereno, First Division]; *Metropolitan Bank and Trust Co. v. Commissioner of Internal Revenue*, 612 Phil. 544, 571–572 (2009) [Per J. Chico-Nazario, Third Division]; *Philippine Banking Corporation (now Global Business Banking) v. Commissioner of Internal Revenue*, 597 Phil. 363, 383–389 (2009) [Per J. Carpio, First Division].

The plain and straightforward conditions were obviously meant to encourage taxpayers to avail of the amnesty program, thereby enhancing revenue administration and collection.⁴¹

Here, it is undisputed that respondent had submitted all the documentary requirements. The Court of Tax Appeals *En Banc* found that respondent had submitted the following:

- i. Letter to the Commissioner of Internal Revenue, addressed to the Chief-LT Audit and Investigation Division II, Ms. Olivia O. Lao, received on January 25, 2008;
- ii. Notice of Availment of the Tax Amnesty;
- iii. Tax Amnesty Payment Form/Acceptance of Payment Form (BIR Form No. 0617);
- iv. Tax Amnesty Return (BIR Form No. 2116);
- v. Statement of Assets, Liabilities and Net worth;
- vi. Annual Income Tax Return for the taxable year 2005 with Audited Financial Statements for the year 2005; and
- vii. Development Bank of the Philippines BIR Tax Payment Deposit Slip in the amount of P3,668,951.06.⁴²

The Court of Tax Appeals further found that there was nothing in the records, which would show that proceedings to question the correctness of the Statement of Assets, Liabilities, and Net Worth (SALN) have been filed within the one-year period stated in Section 4 of the law.⁴³ Hence, it concluded that respondent had duly complied with the requisites enumerated under Republic Act No. 9480 and is therefore entitled to the benefits under Section 6.⁴⁴

III.

The Commissioner disputes, however, the correctness of respondent's 2005 SALN because respondent allegedly did not include the 57,500,000 shares of stocks it acquired in 1999 from its subsidiary – Apo Land and Quarry Corporation – in exchange for several parcels of land.⁴⁵

Consequently, respondent underpaid its amnesty tax by ₱89,858,951.05, corresponding to the value of the shares of stocks, which respondent allegedly did not include in its declaration of assets in the SALN.⁴⁶

⁴¹ Rep. Act No. 9480 (2007) was entitled 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.

⁴² Id. at 47–48.

⁴³ Id. at 49–50.

⁴⁴ Id. at 50.

⁴⁵ Id. at 22.

⁴⁶ Id. at 23–24.

Petitioner further submits that the one-year contestability period under Section 4 has not yet lapsed – as it had not yet even commenced – due to respondent’s failure to file a complete SALN and to pay the correct amnesty tax.⁴⁷

Respondent counters that the petitioner is not the proper party to question the correctness of its SALN.⁴⁸ Under Section 4 of Republic Act No. 9480, there is a presumption of correctness of the SALN and only parties other than the Bureau of Internal Revenue or its agents may dispute the correctness of the SALN.⁴⁹

Even assuming that petitioner has the standing to question the SALN, Republic Act No. 9480 provides that the proceeding to challenge the SALN must be initiated within one year following the date of filing of the Tax Amnesty documents.⁵⁰ Respondent asserts that it availed of the tax amnesty program on January 25, 2008.⁵¹ Hence, petitioner’s challenge, made only in April 2009, was already time-barred.⁵²

In her Reply, petitioner argues that: (1) she is the proper party to question the completeness of the applicant’s SALN; and (2) the State is not bound by the acts of the Bureau’s officials, who examined respondent’s SALN and accepted the wrong amnesty tax payment.⁵³

IV.

Section 4 of Republic Act No. 9480 provides:

SEC. 4. Presumption of Correctness of the SALN. — The SALN as of December 31, 2005 shall be considered as true and correct except where the amount of declared net worth is understated to the extent of thirty percent (30%) or more as may be established in proceedings initiated by, or at the instance of, parties other than the BIR or its agents: Provided, That such proceedings must be initiated within one year following the date of the filing of the tax amnesty return and the SALN. Findings of or admission in congressional hearings, other administrative agencies of government, and/or courts shall be admissible to prove a thirty percent (30%) under-declaration. (Emphasis and underscoring supplied)

⁴⁷ Id. at 27.

⁴⁸ Id. at 148.

⁴⁹ Id.

⁵⁰ Id. at 151.

⁵¹ Id.

⁵² Id.

⁵³ Id. at 170.

Under the above-stated provision, the SALN is presumed correct unless there is a concurrence of the following:

- a. There is under-declaration of net worth by 30%;
- b. The under-declaration is established in proceedings initiated by parties other than the BIR; and
- c. The proceedings were initiated within one (1) year from the filing of the tax amnesty.

The Court of Tax Appeals ruled that petitioner is not the proper party to question the veracity of respondent's SALN. It emphasized that "the presumption of correctness of the SALN applies even against the Commissioner . . . Thus, the thirty percent (30%) threshold can be established in proceedings initiated by, or at the instance of, parties other than the B[ureau of] I[nternal] R[evenue] or its agents."⁵⁴

The Court of Tax Appeals is correct.

We cannot disregard the plain and categorical text of Section 4. It is a basic rule of statutory construction that where the language of the law is clear and unambiguous, it should be applied as written.⁵⁵ Determining its wisdom or policy is beyond the realm of judicial power.⁵⁶

In *CS Garment, Inc. v. Commissioner of Internal Revenue*,⁵⁷ the Court clarified that –

The one-year period referred to in the law should . . . be considered only as a prescriptive period within which third parties, meaning 'parties other than the BIR or its agents,' can question the SALN — not as a waiting period during which the BIR may contest the SALN and the taxpayer prevented from enjoying the immunities and privileges under the law.⁵⁸

The Court explained that the documentary requirements and payment of the amnesty tax operate as a suspensive condition, such that completion of these requirements entitles the taxpayer-applicant to immediately enjoy the immunities and privileges under Republic Act No. 9480.

⁵⁴ Id. at 49.

⁵⁵ *Commissioner of Internal Revenue v. San Roque Power Corp.*, 703 Phil. 310, 370 (2013) [Per J. Carpio, En Banc]; *Commissioner of Internal Revenue v. Solidbank Corp.*, 462 Phil. 96, 129 (2003) [Per J. Panganiban, First Division]; *Commissioner of Internal Revenue v. Court of Appeals*, 358 Phil. 562, 577(1998) [Per J. Panganiban, First Division].

⁵⁶ *Commissioner of Internal Revenue v. Ariete*, 624 Phil. 458, 468 (2010) [Per J. Carpio, Second Division].

⁵⁷ 729 Phil. 253 [Per CJ Sereno, First Division].

⁵⁸ Id. at 271.

However, the Court further stated that Section 6 of the law contains a resolutive condition. Immunities and privileges will cease to apply to taxpayers who, in their SALN, were proven to have understated their net worth by 30% or more.

This clarification, however, does not mean that the amnesty taxpayers would go scot-free in case they substantially understate the amounts of their net worth in their SALN. The 2007 Tax Amnesty Law imposes a resolutive condition insofar as the enjoyment of immunities and privileges under the law is concerned. Pursuant to Section 4 of the law, third parties may initiate proceedings contesting the declared amount of net worth of the amnesty taxpayer within one year following the date of the filing of the tax amnesty return and the SALN. Section 6 then states that "All these immunities and privileges shall not apply . . . where the amount of net worth 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." Accordingly, Section 10 provides that amnesty taxpayers who willfully understate their net worth shall be (a) liable for perjury under the Revised Penal Code; and (b) subject to immediate tax fraud investigation in order to collect all taxes due and to criminally prosecute those found to have willfully evaded lawful taxes due.⁵⁹

Thus, the amnesty granted under the law is revoked once the taxpayer is proven to have under-declared his assets in his SALN by 30% or more. Pursuant to Section 10⁶⁰ of the Tax Amnesty Law, amnesty taxpayers who wilfully understate their net worth shall not only be liable for perjury under the Revised Penal Code, but, upon conviction, also subject to immediate tax fraud investigation in order to collect all taxes due and to criminally prosecute for tax evasion.

⁵⁹ *CS Garment, Inc. v. Commissioner of Internal Revenue*, 729 Phil. 253, 272 [Per CJ Sereno, First Division].

⁶⁰ Rep. Act No. 9480, sec. 10 provides:

SECTION 10. Penalties. — (a) Any person who, having filed a statement or Tax Amnesty Return under this Act, willfully understates his net worth to the extent of thirty percent (30%) or more shall, upon conviction, be subject to the penalties of perjury under the Revised Penal Code.

(b) The willful failure to declare any property in the statement and/or in the Tax Amnesty Return shall be deemed a prima facie evidence of fraud and shall constitute a ground upon which attachment of such property may be issued in favor of the BIR to answer for the satisfaction of any judgment that may be acquired against the declarant.

In addition to the penalties provided in paragraphs (a) and (b) above, immediate tax fraud investigation shall be conducted to collect all taxes due, including increments, and to criminally prosecute those found to have willfully evaded lawful taxes due.

In the case of associations, partnerships, or corporations, the penalty shall be imposed on the partner, president, general manager, branch manager, treasurer, officer-in-charge and employees responsible for the violation.

(c) Any person who makes an unlawful divulgence of the Tax Amnesty Return or the SALN shall be penalized by a fine of not less than Fifty thousand pesos (P50,000.00) and imprisonment of not less than six years but not more than ten (10) years.

If the offender is an officer or employee of the BIR or any government entity, he/she shall likewise suffer an additional penalty of perpetual disqualification to hold public office, to vote and to participate in any public election.

Here, the requisites to overturn the presumption of correctness of respondent's 2005 SALN were not met.

Respondent filed its Tax Amnesty documents on January 25, 2008.⁶¹ Since then, and up to the time of the filing of respondent's Motion to Cancel Tax Assessment on April 17, 2009, there had been no proceeding initiated to question its declared amount of net worth.⁶² Petitioner never alleged, before the Court of Tax Appeals and this Court, the existence of any such proceeding to challenge respondent's 2005 SALN during this period. Indeed, petitioner first raised the possibility of under-declaration of assets only in her Opposition to respondent's Motion to Cancel Tax Assessment.⁶³ Thus, the lapse of the one-year period effectively closed the window to question respondent's 2005 SALN.

Significantly, as explained by respondent, there was no understatement in its 2005 SALN because the shares of stocks, which the BIR repeatedly referred to, were sold in 2002 or more than three (3) years prior to the tax amnesty availment.⁶⁴ This was already discussed and detailed before the Court of Tax Appeals together with proofs of the transfer of ownership.⁶⁵

Our judicial review under Rule 45 of the Rules of Court is confined only to errors of law and does not extend to questions of fact.⁶⁶ This Court is not a trier of facts.⁶⁷ At any rate, petitioner's utter failure to refute these material points constitutes an implied admission.

WHEREFORE, the Petition is DENIED.

SO ORDERED.


MARVIC M.V.F. LEONEN
Associate Justice

⁶¹ *Rollo*, p. 128.

⁶² *Id.* at 49.

⁶³ *Id.* at 181-182.

⁶⁴ *Id.* at 154.

⁶⁵ *Id.* at 42.

⁶⁶ RULES OF COURT, Rule 45 provides:

Rule 45 — Appeal by *Certiorari* to the Supreme Court

Section 1. *Filing of Petition with Supreme Court.* — A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth.

⁶⁷ *Southern Power Corp. v. Commissioner of Internal Revenue*, 675 Phil. 732, 741 (2011) [Per J. Abad, Third Division]; *Commissioner of Internal Revenue v. Benguet Corp.*, 501 Phil. 343, 352 (2005) [Per J. Tinga, Second Division]; *Republic v. Court of Tax Appeals*, 418 Phil. 758, 767 (2001) [Per J. Vitug, Third Division].

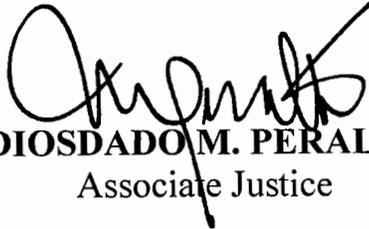
WE CONCUR:



ANTONIO T. CARPIO

Associate Justice

Chairperson



DIOSDADO M. PERALTA

Associate Justice



JOSE CATRAL MENDOZA

Associate Justice



FRANCIS H. JARDELEZA

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