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SECOND DIVISION

[G.R. No. 179115. September 26, 2012]

ASIA INTERNATIONAL AUCTIONEERS, INC., *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. TAXATION; TAX AMNESTY; CONCEPT; THE GRANT OF TAX AMNESTY MUST BE CONSTRUED STRICTLY AGAINST THE TAXPAYER AND LIBERALLY IN FAVOR OF THE TAXING AUTHORITY.— 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 violating 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.

2. ID.; TAXES; INDIRECT TAXES DISTINGUISHED FROM WITHHOLDING TAXES.— 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

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not as a withholding agent but, as the one directly liable for the said deficiency taxes.

3. ID.; TAX AMNESTY; REPUBLIC ACT 9399 DOES NOT PRECLUDE TAXPAYERS WITHIN ITS COVERAGE FROM AVAILING OF OTHER TAX AMNESTY PROGRAMS AVAILABLE OR ENACTED *IN FUTURO*.— The CIR also argues that AIA, being an accredited investor/ taxpayer situated at the Subic Special Economic Zone, should have availed of the tax amnesty granted under RA 9399 and not under RA 9480. This is also untenable.RA 9399 was passed prior to the passage of RA 9480. RA 9399 does not preclude taxpayers within its coverage from availing of other tax amnesty programs available or enacted *in futuro* like RA 9480. More so, RA 9480 does not exclude from its coverage taxpayers operating within special economic zones. As long as it is within the bounds of the law, a taxpayer has the liberty to choose which tax amnesty program it wants to avail.

4. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; ABSENT SUFFICIENT EVIDENCE PROVING THAT THE "CERTIFICATION OF QUALIFICATION" WAS ISSUED IN EXCESS OF AUTHORITY, THE PRESUMPTION THAT IT WAS ISSUED IN THE REGULAR PERFORMANCE OF THE REVENUE DISTRICT OFFICER'S OFFICIAL DUTY STANDS.— [T]he Court takes judicial notice of the "Certification of Qualification" issued by the Eduardo A. Baluyut, BIR Revenue District Officer, stating that AIA "has availed and is qualified for Tax Amnesty for the Taxable Year 2005 and Prior Years" pursuant to RA 9480. In the absence of sufficient evidence proving that the certification was issued in excess of authority, the presumption that it was issued in the regular performance of the revenue district officer's official duty stands.

APPEARANCES OF COUNSEL

Valdez Anigan & Associates and *Estanislao L. Cesa, Jr.* for petitioner.

The Solicitor General for respondent.

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R E S O L U T I O N

PERLAS-BERNABE, *J.*:

Before the Court is a Petition for Review seeking to reverse and set aside the Decision dated August 3, 2007 of the Court of Tax Appeals (CTA) En Banc,[1] and the Resolutions dated November 20, 2006[2] and February 22, 2007[3] of the CTA First Division dismissing Asia International Auctioneers, Inc.'s (AIA) appeal due to its alleged failure to timely protest the Commissioner of Internal Revenue's (CIR) tax assessment.

The Factual Antecedents

AIA is a duly organized corporation operating within the Subic Special Economic Zone. It is engaged in the importation of used motor vehicles and heavy equipment which it sells to the public through auction.[4]

On August 25, 2004, AIA received from the CIR a Formal Letter of Demand, dated July 9, 2004, containing an assessment for deficiency value added tax (VAT) and excise tax in the amounts of ₱102,535,520.00 and ₱4,334,715.00, respectively, or a total amount of ₱106,870,235.00, inclusive of penalties and interest, for auction sales conducted on February 5, 6, 7, and 8, 2004.[5]

AIA claimed that it filed a protest letter dated August 29, 2004 through registered mail on August 30, 2004.[6] It also

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[1] Penned by Associate Justice Olga Palanca-Enriquez, with Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy and Caesar A. Casanova, concurring; *rollo*, pp. 25-39.

[2] Penned by Presiding Justice Ernesto D. Acosta, with Associate Justices Lovell R. Bautista and Caesar A. Casanova, concurring; *id.* at 40-45.

[3] *Id.* at 46-47.

[4] *Id.* at 353.

[5] *Id.* at 48-49.

[6] *Id.* at 5.

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submitted additional supporting documents on September 24, 2004 and November 22, 2004.[7]

The CIR failed to act on the protest, prompting AIA to file a petition for review before the CTA on June 20, 2005,[8] to which the CIR filed its Answer on July 26, 2005.[9]

On March 8, 2006, the CIR filed a motion to dismiss[10] on the ground of lack of jurisdiction citing the alleged failure of AIA to timely file its protest which thereby rendered the assessment final and executory. The CIR denied receipt of the protest letter dated August 29, 2004 claiming that it only received the protest letter dated September 24, 2004 on September 27, 2004, three days after the lapse of the 30-day period prescribed in Section 228[11] of the Tax Code.[12]

In opposition to the CIR's motion to dismiss, AIA submitted the following evidence to prove the filing and the receipt of the protest letter dated August 29, 2004: (1) the protest letter dated

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[7] *Id.* at 55-56.

[8] *Id.* at 27.

[9] *Id.* at 143-153.

[10] *Id.* at 165-169.

[11] *Section 228. Protesting of Assessment.* — x x x

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations.

Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

[12] *Rollo*, pp. 165-166.

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August 29, 2004 with attached Registry Receipt No. 3824;[13] (2) a Certification dated November 15, 2005 issued by Wilfredo R. De Guzman, Postman III, of the Philippine Postal Corporation of Olongapo City, stating that Registered Letter No. 3824 dated August 30, 2004 , addressed to the CIR, was dispatched under Bill No. 45 Page 1 Line 11 on September 1, 2004 from Olongapo City to Quezon City;[14] (3) a Certification dated July 5, 2006 issued by Acting Postmaster, Josefina M. Hora, of the Philippine Postal Corporation-NCR, stating that Registered Letter No. 3824 was delivered to the BIR Records Section and was duly received by the authorized personnel on September 8, 2004;[15] and (4) a certified photocopy of the Receipt of Important Communication Delivered issued by the BIR Chief of Records Division, Felisa U. Arrojado, showing that Registered Letter No. 3824 was received by the BIR.[16] AIA also presented Josefina M. Hora and Felisa U. Arrojado as witnesses to testify on the due execution and the contents of the foregoing documents.

Ruling of the Court of Tax Appeals

After hearing both parties, the CTA First Division rendered the first assailed Resolution dated November 20, 2006 granting the CIR's motion to dismiss. Citing *Republic v. Court of Appeals*,[17] it ruled that "while a mailed letter is deemed received by the addressee in the course of the mail, still, this is merely a disputable presumption, subject to controversion, and a direct denial of the receipt thereof shifts the burden upon the party favored by the presumption to prove that the mailed letter indeed was received by the addressee."[18]

The CTA First Division faulted AIA for failing to present the registry return card of the subject protest letter. Moreover,

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[13] *Id.* at 51.

[14] *Id.* at 69.

[15] *Id.* at 70.

[16] *Id.* at 71.

[17] No. L-38540, April 30, 1987, 149 SCRA 351, 355.

[18] *Rollo*, p. 43.

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it noted that the text of the protest letter refers to a Formal Demand Letter dated June 9, 2004 and not the subject Formal Demand Letter dated July 9, 2004. Furthermore, it rejected AIA's argument that the September 24, 2004 letter merely served as a cover letter to the submission of its supporting documents pointing out that there was no mention therein of a prior separate protest letter.[19]

AIA's motion for reconsideration was subsequently denied by the CTA First Division in its second assailed Resolution dated February 22, 2007. On appeal, the CTA *En Banc* in its Decision dated August 3, 2007 affirmed the ruling of the CTA First Division holding that AIA's evidence was not sufficient to prove receipt by the CIR of the protest letter dated August 24, 2004.

Hence, the instant petition.

Issue Before the Court

Both parties discussed the legal bases for AIA's tax liability, unmindful of the fact that this case stemmed from the CTA's dismissal of AIA's petition for review for failure to file a timely protest, without passing upon the substantive merits of the case.

Relevantly, on January 30, 2008, AIA filed a Manifestation and Motion with Leave of the Honorable Court to Defer or Suspend Further Proceedings[20] on the ground that it availed of the Tax Amnesty Program under Republic Act 9480[21] (RA 9480), otherwise known as the Tax Amnesty Act of 2007. On February 13, 2008, it submitted to the Court a Certification of Qualification[22] issued by the BIR on February 5, 2008 stating that AIA "has availed and is qualified for Tax Amnesty for the Taxable Year 2005 and Prior Years" pursuant to RA 9480.

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[19] *Id.* at 44.

[20] *Id.* at 95-97.

[21] 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.

[22] *Rollo*, p. 106.

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With AIA's availment of the Tax Amnesty Program under RA 9480, the Court is tasked to first determine its effects on the instant petition.

Ruling of the Court

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 violating 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.[23]

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.[24]

In 2007, RA 9480 took effect granting a tax amnesty to qualified taxpayers for 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.[25]

The Tax Amnesty Program under RA 9480 may be availed of by any person except those who are disqualified under Section 8 thereof, to wit:

Section 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:

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[23] *Bañas, Jr. v. Court of Appeals,* G.R. No. 102967, February 10, 2000, 325 SCRA 259, 273-274, *citing Republic v. Intermediate Appellate Court,* 196 SCRA 335, 339 (1991)*; People v. Judge Castañeda,* 165 SCRA 327, 338-339 (1988); *Nepomuceno v. Montecillo,* 118 SCRA 254, 259 (1982).

[24] *Bañas, Jr. v. Court of Appeals, supra. See also People v. Castañeda, Jr.,* No. L-46881, September 15, 1988, 165 SCRA 327, 341, *citing E. Rodriguez, Inc. v. The Collector of Internal Revenue,* 28 SCRA 1119 (1969)*; Commissioner of Internal Revenue v. A. D. Guerrero,* 21 SCRA 180 (1967).

[25] RA 9480, Sec. 1.

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(a) **Withholding agents with respect to their withholding tax liabilities**;

(b) Those with pending cases falling under the jurisdiction of the Presidential Commission on Good Government;

(c) Those with pending cases involving unexplained or unlawfully acquired wealth or under the Anti-Graft and Corrupt Practices Act;

(d) Those with pending cases filed in court involving violation of the Anti-Money Laundering Law;

(e) Those with pending criminal cases for tax evasion and other criminal offenses under Chapter II of Title X of the National Internal Revenue Code of 1997, as amended, and the felonies of frauds, illegal exactions and transactions, and malversation of public funds and property under Chapters III and IV of Title VII of the Revised Penal Code; and

(f) Tax cases subject of final and executory judgment by the courts. (Emphasis supplied)

The CIR contends that AIA is disqualified under Section 8(a) of RA 9480 from availing itself of the Tax Amnesty Program because it is "deemed" a withholding agent for the deficiency taxes. This argument is untenable.

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.[26] On the other hand, in case of withholding taxes, the incidence and burden of taxation fall on the same entity,

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[26] *Silkair v. Commissioner of Internal Revenue*, G.R. No. 184398, February 25, 2010, 613 SCRA 638, 656.

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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[27] 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.[28]

The CIR also argues that AIA, being an accredited investor/ taxpayer situated at the Subic Special Economic Zone, should have availed of the tax amnesty granted under RA 9399[29] and not under RA 9480. This is also untenable.

RA 9399 was passed prior to the passage of RA 9480. RA 9399 does not preclude taxpayers within its coverage from availing of other tax amnesty programs available or enacted *in futuro* like RA 9480. More so, RA 9480 does not exclude from its coverage taxpayers operating within special economic zones. As long as it is within the bounds of the law, a taxpayer has the liberty to choose which tax amnesty program it wants to avail.

Lastly, the Court takes judicial notice of the "Certification of Qualification"[30] issued by the Eduardo A. Baluyut, BIR Revenue District Officer, stating that AIA "has availed and is qualified for Tax Amnesty for the Taxable Year 2005 and Prior Years" pursuant to RA 9480. In the absence of sufficient evidence

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[27] *See* Tax Code, Secs. 57-58 and 78-83.

[28] *Metropolitan Bank and Trust Co. v. Commissioner of Internal Revenue*, G.R. No. 178797, August 4, 2009, 595 SCRA 234, 255.

[29] An Act Declaring a One-time Amnesty on Certain Tax and Duty Liabilities, Inclusive of Fees, Fines, Penalties, Interest and Other Additions thereto, Incurred by Certain Business Enterprises Operating within the Special Economic Zones and Freeports Created under Proclamation No. 163, Series of 1993; Proclamation No. 216, Series of 1993; Proclamation No. 120, Series of 1994; and Proclamation No. 984, Series of 1997, Pursuant to Section 15 of Republic Act No. 7227, as amended, and For Other Purposes.

[30] *Supra* note 22.

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proving that the certification was issued in excess of authority, the presumption that it was issued in the regular performance of the revenue district officer's official duty stands.[31]

WHEREFORE, the petition is **DENIED** for being *MOOT* and *ACADEMIC* in view of Asia International Auctioneers, Inc.'s (AIA) availment of the Tax Amnesty Program under RA 9480. Accordingly, the outstanding deficiency taxes of AIA are deemed fully settled.

SO ORDERED.

Carpio (Chairperson), Leonardo-de Castro,[*] *Brion,* and *Perez, JJ.,* concur.

SECOND DIVISION

[G.R. No. 193753. September 26, 2012]

LIVING @ SENSE, INC., *petitioner, vs.* **MALAYAN INSURANCE COMPANY, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES; INDISPENSABLE PARTY; EXPLAINED; THE NATURE OF THE SOLIDARY OBLIGATION UNDER THE SURETY DOES NOT MAKE ONE AN INDISPENSABLE PARTY; THE PRINCIPAL IS NOT AN INDISPENSABLE PARTY IN A COMPLAINT FOR INDEMNIFICATION FILED AGAINST A SURETY WHO BOUND ITSELF

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[31] Rules of Court, Rule 131, Sec. 3(m).

[*] Acting Member per Special Order No. 1308 dated September 21, 2012.