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SECOND DIVISION

[G.R. No. 167679. July 22, 2015]

ING BANK N.V., engaged in banking operations in the Philippines as ING BANK N.V. MANILA BRANCH, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. TAXATION; 2007 TAX AMNESTY ACT (RA 9480); TAXPAYERS WITH PENDING TAX CASES MAY AVAIL OF THE TAX AMNESTY PROGRAM.— Taxpayers with pending tax cases may avail themselves of the tax amnesty program under Republic Act No. 9480. In *CS Garment, Inc. v. Commissioner of Internal Revenue*, this court has [ruled]: [Neither the law nor the implementing rules state that a court ruling that has not attained finality would preclude the availment of the benefits of the Tax Amnesty Law. Both R.A. 9480 and DOF Order No. 29-07 are quite precise in declaring that "[t]ax cases **subject of final and executory judgment** by the courts" are the ones excepted from the benefits of the law.

2. ID.; ID.; TAX AMNESTY IN CASE AT BAR PROPER WITH THE COMPLIANCE OF REQUIREMENTS AND LAPSE OF CONTESTABILITY PERIOD; INCLUDES DEFICIENCY ON DOCUMENTARY STAMP TAX AND TAX ON ONSHORE INTEREST INCOME.— Petitioner ING Bank showed that it complied with the requirements set forth under Republic Act No. 9480. x x x Moreover, the contestability period of one (1) year from the time of petitioner ING Bank's availment of the tax amnesty law on December 14, 2007 lapsed. Correspondingly, it is fully entitled to the immunities and privileges mentioned under Section 6 of Republic Act No. 9480. x x x [The] Commissioner of Internal Revenue's authority under Republic Act No. 9480 is limited to determining whether (a) the taxpayer is qualified to avail oneself of the tax amnesty; (b) all the requirements for availment under the law were complied with; and (c) the correct amount of amnesty tax was paid within the period prescribed by law.

x x x Republic Act No. 9480 provides a general grant of tax amnesty subject only to the cases *specifically* excepted by it. A tax amnesty "partakes of an *absolute* . . . waiver by the Government of its right to collect what otherwise would be due it[.]" The effect of a qualified taxpayer's submission of the required documents and the payment of the prescribed amnesty tax was immunity from payment of all national internal revenue taxes as well as all administrative, civil, and criminal liabilities founded upon or arising from non-payment of national internal revenue taxes for taxable year 2005 and prior taxable years. [T]he documentary stamp tax and onshore income tax are covered by the tax amnesty program under Republic Act No. 9480 and its Implementing Rules and Regulations. x x x Considering petitioner ING Bank's tax amnesty availment, there is no more issue regarding its liability for deficiency documentary stamp taxes on its special savings accounts for 1996 and 1997 and deficiency tax on onshore interest income for 1996, including surcharge and interest.

3. ID.; NATIONAL INTERNAL REVENUE CODE (NIRC); DEDUCTIBILITY OF AN EXPENSE; WITHHOLDING TAX CLAIMED AS EXPENSE IN THE YEAR THEY WERE ACCRUED, ALLOWED AS DEDUCTION ONLY IF THE SAME WAS ALREADY PAID TO THE BUREAU OF INTERNAL REVENUE (BIR).— The Court of Tax Appeals En Banc affirmed the factual finding of the Second Division that accrued bonuses were recorded in petitioner ING Bank's books as expenses for taxable years 1996 and 1997, although no withholding of tax was effected. x x x An expense, whether the same is paid or *payable,* "shall be allowed as a deduction only if it is shown that the tax required to be deducted and withheld therefrom [was] paid to the Bureau of Internal Revenue[.]" x x x [P]etitioner ING Bank is liable for the withholding tax on the bonuses since it claimed the same as expenses in the year they were accrued. x x x *[A]n expense is accrued and deducted for tax purposes when (1) the obligation to pay is already fixed; (2) the amount can be determined with reasonable accuracy; and (3) it is already knowable or the taxpayer can reasonably be expected to have known at the closing of its books for the taxable year.* Section 29(j) of the 1977 National Internal Revenue Code (Section 34(K) of the 1997 National Internal Revenue Code) expressly requires,

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as a condition for deductibility of an expense, that the tax required to be withheld on the amount paid or payable is shown to have been remitted to the Bureau of Internal Revenue by the taxpayer constituted as a withholding agent of the government.

APPEARANCES OF COUNSEL

Tan Acut & Lopez for petitioner.
The Solicitor General for respondent.

D E C I S I O N

LEONEN, *J.*:

Qualified taxpayers with pending tax cases may still avail themselves of the tax amnesty program under Republic Act No. 9480,[1] otherwise known as the 2007 Tax Amnesty Act. Thus, the provision in BIR Revenue Memorandum Circular No. 19-2008 excepting "[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" from the benefits of the law is illegal, invalid, and null and void.[2] The duty to withhold the tax on compensation arises upon its accrual.

This is a Petition for Review[3] appealing the April 5, 2005 Decision[4] of the Court of Tax Appeals En Banc, which in turn

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[1] 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).

[2] *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> 14 [Per *C.J.* Sereno, First Division].

[3] *Rollo*, pp. 36-83. The Petition was filed pursuant to Rule 45 of the Rules of Court.

[4] *Id*. at 10-33. The Decision was penned by Associate Justice Olga Palanca-Enriquez and concurred in by Presiding Justice Ernesto D. Acosta

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affirmed the August 9, 2004 Decision[5] and November 12, 2004 Resolution[6] of the Court of Tax Appeals Second Division. The August 9, 2004 Decision held petitioner ING Bank, N.V. Manila Branch (ING Bank) liable for (a) deficiency documentary stamp tax for the taxable years 1996 and 1997 in the total amount of ₱238,545,052.38 inclusive of surcharges; (b) deficiency onshore tax for the taxable year 1996 in the total amount of ₱997,333.89 inclusive of surcharges and interest; and (c) deficiency withholding tax on compensation for the taxable years 1996 and 1997 in the total amount of ₱564,542.67 inclusive of interest. The Resolution denied ING Bank's Motion for Reconsideration.[7]

While this case was pending before this court, ING Bank filed a Manifestation and Motion[8] stating that it availed itself of the government's tax amnesty program under Republic Act No. 9480 with respect to its deficiency documentary stamp tax and deficiency onshore tax liabilities.[9] What is at issue now is whether ING Bank is entitled to the immunities and privileges under Republic Act No. 9480, and whether the assessment for deficiency withholding tax on compensation is proper.

ING Bank, "the Philippine branch of Internationale Nederlanden Bank N.V., a foreign banking corporation incorporated in the Netherlands[,] is duly authorized by the Bangko Sentral ng Pilipinas to operate as a branch with full banking authority in the Philippines."[10]

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and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, and Caesar A. Casanova.

[5] *Id*. at 387-420. The Decision was penned by Associate Justice Lovell R. Bautista and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justice Juanito C. Castañeda, Jr.

[6] *Id*. at 463-467. The Resolution was signed by Presiding Justice Ernesto D. Acosta and Associate Justices Lovell R. Bautista and Juanito C. Castañeda, Jr.

[7] *Id*. at 422-450.

[8] *Id*. at 801-805.

[9] *Id*. at 801-802.

[10] *Id*. at 12.

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On January 3, 2000, ING Bank received a Final Assessment Notice[11] dated December 3, 1999.[12] The Final Assessment Notice also contained the Details of Assessment[13] and 13 Assessment Notices "issued by the Enforcement Service of the Bureau of Internal Revenue through its Assistant Commissioner Percival T. Salazar[.]"[14] The Final Assessment Notice covered the following deficiency tax assessments for taxable years 1996 and 1997:[15]

Particulars	Basic Tax (₱)	Surcharge (₱)	Interest(₱)	Total (₱)
Deficiency Income Tax				
1996 (ST-INC-96-0174-99)	20,916,785.03		11,346,639.55	32,263,424.58
1997 (ST-INC-97-0185-99)	133,533,114.54		45,730,518.68	179,263,633.22
Deficiency Withholding Tax on Compensation				
1996 (ST-WC-96-0175-99)	1,027,267.20		602,288.17	1,629,555.37
1997 (ST-WC-97-0184-99)	2,505,925.25		968,042.36	3,473,967.61
Deficiency Onshore Tax				
1996 (ST-OT-96-0176-99)	8,267,437.54		4,847,209.95	13,114,647.49
Deficiency Branch Profit Remittance Tax				
1996 (ST-RT-96-0177-99)	39,215,700.00		22,992,218[.]63	62,207,918.63
1997 (ST-RT-97-0181-99)	92,587,381.60	6,729,180.18	40,799,690.39	140,116,252.17
Deficiency Documentary Stamp Tax				
1996 (ST-DST-96-0178-99	3,838,753.06	959,688.27		4,798,441.33
1997 (ST-DST-97-0181-99)	1,569,990.18	392,497.55		1,962,487.73
1997 (ST-DST-97-0183-99)	186,997,288.84	46,749,322.21		233,746,611.05
Compromise Penalty				
1996 (ST-CP-96-0179-99)	1,000.00			1,000.00
1997 (ST-CP-97-0186-99)	1,000.00			1,000.00
Deficiency Final Tax				
1997 (ST-FT-97-0183-99)	53,200.89		20,551.58	73,752.47
TOTALS	490,514,844.13	54,830,688.21	127,307,159.31	672,652,691.65

[11] *Id*. at 88-91.

[12] *Id*. at 13.

[13] *Id*. at 92.

[14] *Id*. at 13.

[15] *Id*. at 13-14.

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On February 2, 2000, ING Bank "paid the deficiency assessments for [the] 1996 compromise penalty, 1997 deficiency documentary stamp tax and 1997 deficiency final tax in the respective amounts of ₱1,000.00, ₱1,000.00 and ₱75,013.25 [the original amount of ₱73,752.47 plus additional interest]."[16] ING Bank, however, "protested [on the same day] the remaining ten (10) deficiency tax assessments in the total amount of ₱672,576,939.18."[17]

ING Bank filed a Petition for Review before the Court of Tax Appeals on October 26, 2000. This case was docketed as C.T.A. Case No. 6187.[18] The Petition was filed to seek "the cancellation and withdrawal of the deficiency tax assessments for the years 1996 and 1997, including the alleged deficiency documentary stamp tax on special savings accounts, deficiency onshore tax, and deficiency withholding tax on compensation mentioned above."[19]

After trial, the Court of Tax Appeals Second Division rendered its Decision on August 9, 2004, with the following disposition:

WHEREFORE, the assessments for 1996 and 1997 deficiency income tax, 1996 and 1997 deficiency branch profit remittance tax and 1997 deficiency documentary stamp tax on IBCLs exceeding five days are hereby CANCELLED and WITHDRAWN. However, the assessments for 1996 and 1997 deficiency withholding tax on compensation, 1996 deficiency onshore tax and 1996 and 1997 deficiency documentary stamp tax on special savings accounts are hereby UPHELD in the following amounts:

Particulars	Basic Tax	Surcharge	Interest	Total
Deficiency Withholding Tax on Compensation				
1996 (ST-WC-96-0175-99)	₱ 105,939.86		₱ 61,445.11	₱ 167,384.97
1997 (ST-WC-97-0184-99)	287,795.44	₱ 136,247.80	109,362.26	397,157.70

[16] *Id*. at 14.

[17] *Id*. at 14 and 98-111.

[18] *Id*. at 42.

[19] *Id*.

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Deficiency Onshore Tax				
1996 (ST-OT-96-0176-99)	544,991.20		316,094.89	997,333.89
Deficiency ocumentary Stamp Tax				
1996 (ST-DST-96-0178-99)	3,838,753.06	959,688.27		4,798,441.33
1997 (ST-DST-97-0180-99)	186,997,288.84	46,749,322.21		233,746,611.05
T O T A L S	₱191,774,768.40	₱47,845,258.28	₱ 486,902.26	₱240,106,928.94

Accordingly, petitioner is ORDERED to PAY the respondent the aggregate amount of ₱240,106,928.94, plus 20% delinquency interest per annum from February 3, 2000 until fully paid, pursuant to Section 249(C) of the National Internal Revenue Code of 1997.

SO ORDERED.[20] (Emphasis in the original)

Both the Commissioner of Internal Revenue and ING Bank filed their respective Motions for Reconsideration.[21] Both Motions were denied through the Second Division's Resolution dated November 12, 2004, as follows:

WHEREFORE, the respondent's Motion for Partial Reconsideration and the petitioner's Motion for Reconsideration are hereby **DENIED** for lack of merit. The pronouncement reached in the assailed decision is **REITERATED.**

SO ORDERED.[22]

On December 8, 2004, ING Bank filed its appeal before the Court of Tax Appeals En Banc.[23] The Court of Tax Appeals En Banc denied due course to ING Bank's Petition for Review and dismissed the same for lack of merit in the Decision promulgated on April 5, 2005.[24]

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[20] *Id*. at 419.

[21] *Id*. at 422-450 (Petitioner ING Bank's Motion for Reconsideration) and 451-455 (Respondent Commissioner of Internal Revenue's Motion for Partial Reconsideration).

[22] *Id*. at 467.

[23] *Id*. at 47.

[24] *Id*. at 32.

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Hence, ING Bank filed its Petition for Review[25] before this court. The Commissioner of Internal Revenue filed its Comment[26] on October 5, 2005 and ING Bank its Reply[27] on December 14, 2005. Pursuant to this court's Resolution[28] dated January 25, 2006, the Commissioner of Internal Revenue filed its Manifestation and Motion[29] on February 14, 2006, stating that it is adopting its Comment as its Memorandum, and ING Bank filed its Memorandum[30] on March 9, 2006.

On December 20, 2007, ING Bank filed a Manifestation and Motion[31] informing this court that it had availed itself of the tax amnesty authorized and granted under Republic Act No. 9480 covering "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[.]"[32] ING Bank stated that it filed before the Bureau of Internal Revenue its Notice of Availment of Tax Amnesty Under Republic Act No. 9480[33] on December 14, 2007, together with the following documents:

(1) Statement of Assets, Liabilities and Net Worth (SALN) as of December 31, 2005 (original and amended declarations);[34]

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[25] The Petition was received by this court on May 25, 2005.

[26] *Rollo*, pp. 623-646.

[27] *Id*. at 661-689.

[28] *Id*. at 691-692.

[29] *Id*. at 698-700.

[30] *Id*. at 703-765. On May 10, 2006 and September 19, 2007, this court received petitioner ING Bank's Supplemental Memorandum (*Rollo*, pp. 769-784) and Supplement to Memorandum (*Rollo*, pp. 787-798), respectively.

[31] *Id*. at 801-805.

[32] Rep. Act No. 9480, Sec. 1.

[33] *Rollo*, p. 807.

[34] *Id*. at 811-856 (Audited Financial Statements as of December 31, 2005 and 2004) and 858-859 (Statement of Assets, Liabilities and Net Worth as of December 31, 2005).

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(2) Tax Amnesty Return For Taxable Year 2005 and Prior Years (BIR Form No. 2116);[35] and

(3) Tax Amnesty Payment Form (Acceptance of Payment Form) for Taxable Year 2005 and Prior Years (BIR Form No. 0617)[36] showing payment of the amnesty tax in the amount of ₱500,000.00.

ING Bank prayed that this court issue a resolution taking note of its availment of the tax amnesty, and confirming its entitlement to all the immunities and privileges under Section 6 of Republic Act No. 9480, particularly with respect to the "payment of deficiency documentary stamp taxes on its special savings accounts for the taxable years 1996 and 1997 and deficiency tax on onshore interest income derived under the foreign currency deposit system for taxable year 1996[.]"[37]

Pursuant to this court's Resolution[38] dated January 23, 2008, the Commissioner of Internal Revenue filed its Comment[39] and ING Bank, its Reply.[40]

Originally, ING Bank raised the following issues in its pleadings:

First, whether "[t]he Court of Tax Appeals En Banc erred in concluding that petitioner's Special Saving Accounts are subject to documentary stamp tax (DST) as certificates of deposit under Section 180 of the 1977 Tax Code";[41]

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[35] *Id*. at 810.

[36] *Id*. at 808-809.

[37] *Id*. at 803.

[38] *Id*. at 860.

[39] *Id*. at 871-882. Respondent Commissioner of Internal Revenue's Comment was received by this court on April 25, 2008.

[40] *Id*. at 884-894. Petitioner ING Bank's Reply was received by this court on May 26, 2008.

[41] *Id*. at 49.

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Second, whether "[t]he Court of Tax Appeals En Banc erred in holding petitioner liable for deficiency onshore tax considering that under the 1977 Tax Code and the pertinent revenue regulations, the obligation to pay the ten percent (10%) final tax on onshore interest income rests on the payors-borrowers and not on petitioner as payee-lender";[42] and

Third, whether "[t]he Court of Tax Appeals En Banc erred in holding petitioner liable for deficiency withholding tax on compensation for the accrued bonuses in the taxable years 1996 and 1997 considering that these were not distributed to petitioner's officers and employees during those taxable years, hence, were not yet subject to withholding tax."[43]

However, ING Bank availed itself of the tax amnesty under Republic Act No. 9480, with respect to its liabilities for deficiency documentary stamp taxes on its special savings accounts for the taxable years 1996 and 1997 and deficiency tax on onshore interest income under the foreign currency deposit system for taxable year 1996.

Consequently, the issues now for resolution are:

First, whether petitioner ING Bank may validly avail itself of the tax amnesty granted by Republic Act No. 9480; and

Second, whether petitioner ING Bank is liable for deficiency withholding tax on accrued bonuses for the taxable years 1996 and 1997.

Tax amnesty availment

Petitioner ING Bank asserts that it is "qualified to avail of the tax amnesty under Section 5 [of Republic Act No. 9480] and . . . not disqualified under Section 8 [of the same law]."[44]

Respondent Commissioner of Internal Revenue, for its part, does not deny the authenticity of the documents submitted by

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[42] *Id*. at 50.

[43] *Id*.

[44] *Id*. at 802.

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petitioner ING Bank or dispute the payment of the amnesty tax. However, respondent Commissioner of Internal Revenue claims that petitioner ING Bank is not qualified to avail itself of the tax amnesty granted under Republic Act No. 9480 because both the Court of Tax Appeals En Banc and Second Division ruled in its favor that confirmed the liability of petitioner ING Bank for deficiency documentary stamp taxes, onshore taxes, and withholding taxes.[45]

Respondent Commissioner of Internal Revenue asserts that BIR Revenue Memorandum Circular No. 19-2008 specifically excludes "cases which were ruled by any court (even without finality) in favor of the BIR prior to amnesty availment of the taxpayer" from the coverage of the tax amnesty under Republic Act No. 9480.[46] In any case, respondent Commissioner of Internal Revenue argues that petitioner ING Bank's availment of the tax amnesty is still subject to its evaluation,[47] that it is "empowered to exercise [its] sound discretion . . . in the implementation of a tax amnesty in favor of a taxpayer,"[48] and "petitioner cannot presume that its application . . . would be granted[.]"[49] Accordingly, respondent Commissioner of Internal Revenue prays that "petitioner [ING Bank's] motion be denied for lack of merit."[50]

Petitioner ING Bank counters that BIR Revenue Memorandum Circular No. 19-2008 cannot override Republic Act No. 9480 and its Implementing Rules and Regulations, which only exclude from tax amnesty "***tax cases subject of final and [executory] judgment by the courts***."[51]

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[45] *Id*. at 876-879.

[46] *Id*. at 877-878.

[47] *Id*. at 879.

[48] *Id*. at 880.

[49] *Id*. at 881.

[50] *Id*.

[51] *Id*. at 886-888.

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Petitioner ING Bank asserts that its full compliance with the conditions prescribed in Republic Act No. 9480 (the conditions being submission of the requisite documents and payment of the amnesty tax), which respondent Commissioner of Internal Revenue does not dispute, confirms that it is "qualified to avail itself, and has actually availed itself, of the tax amnesty."[52] It argues that there is nothing in the law that gives respondent Commissioner of Internal Revenue the discretion to rescind or erase the legal effects of its tax amnesty availment.[53] Thus, the issue is no longer about whether "[it] is entitled to avail itself of the tax amnesty[,]"[54] but rather whether the effects of its tax amnesty availment extend to the assessments of deficiency documentary stamp taxes on its special savings accounts for 1996 and 1997 and deficiency tax on onshore interest income for 1996.[55]

Petitioner ING Bank points out the Court of Tax Appeals' ruling in *Metropolitan Bank and Trust Company v. Commissioner of Internal Revenue*,[56] to the effect that full compliance with the requirements of the tax amnesty law extinguishes the tax deficiencies subject of the amnesty availment.[57] Thus, with its availment of the tax amnesty and full compliance with all the conditions prescribed in the statute, petitioner ING Bank asserts that it is entitled to all the immunities and privileges under Section 6 of Republic Act No. 9480.[58]

Withholding tax on compensation

Petitioner ING Bank claims that it is not liable for withholding taxes on bonuses accruing to its officers and employees during

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[52] *Id*. at 890.

[53] *Id*.

[54] *Id*. at 889.

[55] *Id*. at 890-891.

[56] The case is docketed as CTA EB No. 269 (formerly CTA Case No. 6504, March 28, 2008).

[57] *Rollo*, p. 891.

[58] *Id*. at 892.

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taxable years 1996 and 1997.[59] It maintains its position that the liability of the employer to withhold the tax does not arise until such bonus is actually distributed. It cites Section 72 of the 1977 National Internal Revenue Code, which states that "[e]very employer *making payment of wages* shall deduct and withhold upon such wages a tax," and BIR Ruling No. 555-88 (November 23, 1988) declaring that "[t]he withholding tax on the bonuses should be deducted upon the distribution of the same to the officers and employees[.]"[60] Since the supposed bonuses were not distributed to the officers and employees in 1996 and 1997 but were distributed in the succeeding year when the amounts of the bonuses were finally determined, petitioner ING Bank asserts that its duty as employer to withhold the tax during these taxable years did not arise.[61]

Petitioner ING Bank further argues that the Court of Tax Appeals' discussion on Section 29(j) of the 1993 National Internal Revenue Code and Section 3 of Revenue Regulations No. 8-90 is not applicable because the issue in this case "is not whether the accrued bonuses should be allowed as deductions from petitioner's taxable income but, rather, whether the accrued bonuses are subject to withholding tax on compensation in the respective years of accrual[.]"[62]

Respondent Commissioner of Internal Revenue counters that petitioner ING Bank's application of BIR Ruling No. 555-88 is misplaced because as found by the Second Division of the Court of Tax Appeals, the factual milieu is different:[63]

In that ruling, bonuses are determined and distributed in the succeeding year "[A]fter [sic] the audit of each company is completed (on or before April 15 of the succeeding year)". The withholding

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[59] *Id*. at 758.

[60] *Id*. at 758-759.

[61] *Id*. at 760.

[62] *Id*. at 761.

[63] *Id*. at 642-643.

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and remittance of income taxes were also made in the year they were distributed to the employees. . . .

In petitioner's case, bonuses were determined during the year but were distributed in the succeeding year. No withholding of income tax was effected but the bonuses were claimed as an expense for the year. . . .

Since the bonuses were not subjected to withholding tax during the year they were claimed as an expense, the same should be disallowed pursuant to the above-quoted law.[64]

Respondent Commissioner of Internal Revenue contends that petitioner ING Bank's act of "claim[ing] [the] subject bonuses as deductible expenses in its taxable income although it has not yet withheld and remitted the [corresponding withholding] tax"[65] to the Bureau of Internal Revenue contravened Section 29(j) of the 1997 National Internal Revenue Code, as amended.[66] Respondent Commissioner of Internal Revenue claims that "subject bonuses should also be disallowed as deductible expenses of petitioner."[67]

I

Taxpayers with pending tax cases may avail themselves of the tax amnesty program under Republic Act No. 9480.

In *CS Garment, Inc. v. Commissioner of Internal Revenue*,[68] this court has "definitively declare[d] . . . 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 [Revenue Memorandum Circular No.] 19-2008 [as]

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[64] *Id*. at 643.

[65] *Id*. at 644.

[66] *Id*.

[67] *Id*. at 645.

[68] 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].

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invalid, [for going] beyond the scope of the provisions of the 2007 Tax Amnesty Law."[69] Thus:

> [N]either the law nor the implementing rules state that a court ruling that has not attained finality would preclude the availment of the benefits of the Tax Amnesty Law. Both R.A. 9480 and DOF Order No. 29-07 are quite precise in declaring that "[t]ax cases **subject of final and executory judgment** by the courts" are the ones excepted from the benefits of the law. In fact, we have already pointed out the erroneous interpretation of the law in *Philippine Banking Corporation (Now: Global Business Bank, Inc.) v. Commissioner of Internal Revenue, viz*:
>
> > The 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** in RMC 19-2008 is **misplaced**. 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.[70] (Emphasis in the original, citation omitted)

Moreover, in the fairly recent case of *LG Electronics Philippines, Inc. v. Commissioner of Internal Revenue*,[71] we confirmed that only cases that involve final and executory judgments are excluded from the tax amnesty program as explicitly provided under Section 8 of Republic Act No. 9480.[72]

Thus, petitioner ING Bank is not disqualified from availing itself of the tax amnesty under the law during the pendency of its appeal before this court.

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[69] *Id*. at 14.

[70] *Id*. at 13.

[71] G.R. No. 165451, December 3, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/december2014/165451.pdf> [Per *J*. Leonen, Second Division].

[72] *Id*. at 16.

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II

Petitioner ING Bank showed that it complied with the requirements set forth under Republic Act No. 9480. Respondent Commissioner of Internal Revenue never questioned or rebutted that petitioner ING Bank fully complied with the requirements for tax amnesty under the law. Moreover, the contestability period of one (1) year from the time of petitioner ING Bank's availment of the tax amnesty law on December 14, 2007 lapsed. Correspondingly, it is fully entitled to the immunities and privileges mentioned under Section 6 of Republic Act No. 9480. This is clear from the following provisions:

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.*

. . . . . .

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 networth 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.

. . . . . .

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 addition thereto, and the appurtenant civil,*

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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 Returns 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. (Emphasis supplied)

Contrary to respondent Commissioner of Internal Revenue's stance, Republic Act No. 9480 confers no discretion on respondent Commissioner of Internal Revenue. The provisions of the law are plain and simple. Unlike the power to compromise or abate a taxpayer's liability under Section 204[73] of the 1997 National

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[73] SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes*. — The Commissioner may —

(A) Compromise the payment of any internal revenue tax, when:

(1) A reasonable doubt as to the validity of the claim against the taxpayer exists; or

(2) The financial position of the taxpayer demonstrates a clear inability to pay the assessed tax.

The compromise settlement of any tax liability shall be subject to the following minimum amounts:

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Internal Revenue Code that is within the discretion of respondent Commissioner of Internal Revenue,[74] its authority under Republic Act No. 9480 is limited to determining whether (a) the taxpayer is qualified to avail oneself of the tax amnesty; (b) all the requirements for availment under the law were complied with; and (c) the correct amount of amnesty tax was paid within the period prescribed by law. There is nothing in Republic Act

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For cases of financial incapacity, a minimum compromise rate equivalent to ten percent (10%) of the basic assessed tax; and

For other cases, a minimum compromise rate equivalent to forty percent (40%) of the basic assessed tax.

Where the basic tax involved exceeds One million pesos (₱1,000,000) or where the settlement offered is less than the prescribed minimum rates, the compromise shall be subject to the approval of the Evaluation Board which shall be composed of the Commissioner and the four (4) Deputy Commissioners.

(B) Abate or cancel a tax liability, when:

(1) The tax or any portion thereof appears to be unjustly or excessively assessed; or

(2) The administration and collection costs involved do not justify the collection of the amount due.

All criminal violations may be compromised except: (a) those already filed in court, or (b) those involving fraud.

(C) . . .

. . . .

The Commissioner shall submit to the Chairmen of the Committee on Ways and Means of both the Senate and House of Representatives, every six (6) months, a report on the exercise of his powers under this Section, stating therein the following facts and information, among others: names and addresses of taxpayers whose cases have been the subject of abatement or compromise; amount involved; amount compromised or abated; and reasons for the exercise of power: Provided, That the said report shall be presented to the Oversight Committee in Congress that shall be constituted to determine that said powers are reasonably exercised and that the government is not unduly deprived of revenues.

[74] See *People v. Sandiganbayan*, 504 Phil. 407, 436 (2005) [Per *J.* Panganiban, Third Division]; *Philippine National Oil Company v. Court of Appeals*, 496 Phil. 506, 572-574 (2005) [Per *J.* Chico-Nazario, *En Banc*]; *Koppel (Philippines), Inc. v. Collector of Internal Revenue*, 87 Phil. 348, 351 (1950) [Per *C.J.* Moran, *En Banc*].

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No. 9480 which can be construed as authority for respondent Commissioner of Internal Revenue to introduce exceptions and/or conditions to the coverage of the law nor to disregard its provisions and substitute his own personal judgment.

Republic Act No. 9480 provides a general grant of tax amnesty subject only to the cases *specifically* excepted by it. A tax amnesty "partakes of an *absolute* . . . waiver by the Government of its right to collect what otherwise would be due it[.]"[75] The effect of a qualified taxpayer's submission of the required documents and the payment of the prescribed amnesty tax was immunity from payment of all national internal revenue taxes as well as all administrative, civil, and criminal liabilities founded upon or arising from non-payment of national internal revenue taxes for taxable year 2005 and prior taxable years.[76]

Finally, the documentary stamp tax and onshore income tax are covered by the tax amnesty program under Republic Act

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[75] *Republic v. Intermediate Appellate Court*, 273 Phil. 573, 578 (1991) [Per *J.* Griño-Aquino, First Division], cited *in Bañas, Jr. v. Court of Appeals*, 382 Phil. 144, 156 (2000) [Per *J.* Quisumbing, Second Division], which was cited in *Asia International Auctioneers, Inc. v. Commissioner of Internal Revenue*, G.R. No. 179115, September 26, 2012, 682 SCRA 49, 55 [Per *J.* Perlas-Bernabe, Second Division]. See *People v. Judge Castañeda, Jr.*, 247-A Phil. 420, 430-431 (1988) [Per *J.* Feliciano, Third Division] and *Nepomuceno, et al. v. Hon. Montecillo, etc., et al.*, 203 Phil. 632, 637-638 (1982) [Per *J.* Plana, First Division].

[76] *Philippine Banking Corporation (Now: Global Business Bank, Inc.) v. Commissioner of Internal Revenue*, 597 Phil. 363, 388 (2009) [Per *J.* Carpio, First Division]. The case involved deficiency documentary stamp taxes for the taxable years 1996 and 1997, respectively, on the bank's product called "Special/Super Savings Deposit Account" (SSDA). During the pendency of the appeal before this court, Metropolitan Bank and Trust Company, the surviving entity that absorbed petitioner's banking business, availed itself of the tax amnesty program under Rep. Act No. 9480. (pp. 387-388) See also *People v. Judge Castañeda, Jr.*, 247-A Phil. 420, 430-431(1988) [Per *J.* Feliciano, Third Division], which declared that compliance with all the requirements of availment of tax amnesty under P.D. No. 370 would have the effect of condoning income tax liabilities including the increments or penalties on account of non-payment as provided under the tax amnesty law.

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No. 9480 and its Implementing Rules and Regulations.[77] Moreover, as to the deficiency tax on onshore interest income, it is worthy to state that petitioner ING Bank was assessed by respondent Commissioner of Internal Revenue, not as a withholding agent, but as one that was directly liable for the tax on onshore interest income and failed to pay the same.

Considering petitioner ING Bank's tax amnesty availment, there is no more issue regarding its liability for deficiency documentary stamp taxes on its special savings accounts for 1996 and 1997 and deficiency tax on onshore interest income for 1996, including surcharge and interest.

III.

The Court of Tax Appeals En Banc affirmed the factual finding of the Second Division that accrued bonuses were recorded in

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[77] Rep. Act No. 9480, Sec. 1 provides:

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.

DOF Department Order No. 29-07 (2007), Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9480, 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.

BIR Revenue Memorandum Circular No. 69-2007 (2007) provides:

Q-1 What type of taxes and what taxable period/s are covered by the Tax Amnesty Program under RA 9480 as implemented by DO 29-07?

A-1 The Tax Amnesty Program (TAP) covers all national internal revenue taxes such as income tax, estate tax, donor's tax and capital gains tax, value added tax, other percentage taxes, excise taxes and documentary stamp taxes, except withholding taxes and taxes passed-on and already collected from the customers for remittance to the BIR, these taxes/funds being considered as funds held in trust for the government. Moreover, the time-honored doctrine that "*No person shall unjustly enrich himself at the expense of another*" should always be observed.

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petitioner ING Bank's books as expenses for taxable years 1996 and 1997, although no withholding of tax was effected:

With the preceding defense notwithstanding, petitioner now maintained that the portion of the disallowed bonuses in the amounts of ₱3,879,407.85 and ₱9,004,402.63 for the respective years 1996 and 1997, were actually payments for reimbursements of representation, travel and entertainment expenses of its officers. These expenses according to petitioner are not considered compensation of employees and likewise not subject to withholding tax.

In order to prove that the discrepancy in the accrued bonuses represents reimbursement of expenses, petitioner availed of the services of an independent CPA pursuant to CTA Circular No. 1-95, as amended. As a consequence, Mr. Ruben Rubio was commissioned by the court to verify the accuracy of petitioner's position and to check its supporting documents.

In a report dated January 29, 2002, the commissioned independent CPA noted the following pertinent findings: . . .

Findings and Observations	**1997**	**1996**
Supporting document is under the name of the employee	₱ 930,307.56	₱ 1,849,040.70
Supporting document is not under the name of the Bank nor its employees (addressee is "cash"/ blank)	537,456.37	53,384.80
Supporting document is under the name of the Bank	7,039,976.36	1,630,292.14
Supporting document is in the name of another person (other than the employee claiming the expense)	362,919.59	62,615.91
Supporting document is not dated within the period (i.e., 1996 and 1997)	13,404.00	423,199.07
Date/year of transaction is not indicated	31,510.00	26,126.49
Amount is not supported by liquidation document(s)	313,319.09	935,044.28
TOTAL	**₱9,228,892.97**	**₱4,979,703.39**

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Based on the above report, only the expenses in the name of petitioner's employee and those under its name can be given credence. Therefore, the following expenses are valid expenses for income tax purposes:

	1996	1997
Supporting document is under the name of the employee	₱1,849,040.70	₱ 930,307.56
Supporting document is under the name of the Bank	1,630,292.14	7,039,976.36
TOTAL	**₱3,479,332.84**	**₱ 7,970,283.92**

Consequently, petitioner is still liable for the amounts of ₱167,384.97 and ₱397,157.70 representing deficiency withholding taxes on compensation for the respective years of 1996 and 1997, computed as follows:

	1996	1997
Total Disallowed Accrued Bonus	₱ 3,879,407.85	₱ 9,004,402.63
Less: Substantiated Reimbursement of Expense	3,479,332.84	7,970,283.92
Unsubstantiated	₱ 400,075.01	₱ 1,034,119.43
Tax Rate	26.48%	27.83%
Basic Withholding Tax Due Thereon	₱ 105,939.86	₱ 287,795.44
Interest (Sec. 249)	61,445.11	109,362.26
Deficiency Withholding Tax on Compensation	₱ 167,384.97	₱ 397,157.70[78]

An expense, whether the same is paid or *payable,* "shall be allowed as a deduction only if it is shown that the tax required to be deducted and withheld therefrom [was] paid to the Bureau of Internal Revenue[.]"[79]

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[78] *Rollo*, pp. 405-406.

[79] Pres. Decree No. 1158 (1977), Sec. 29(j), as amended/renumbered by Pres. Decree No. 1351 (1978), Batas Blg. 135 (1981), Exec. Order Nos. 37 (1986) and 273 (1987) and Rep. Act No. 7496 (1992).

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Section 29(j) of the 1977 National Internal Revenue Code[80] (now Section 34(K) of the 1997 National Internal Revenue Code) provides:

Section 29. *Deductions from gross income*. — In computing taxable income subject to tax under Sec. 21(a); 24(a), (b) and (c); and 25(a)(1), there shall be allowed as deductions the items specified in paragraphs (a) to (i) of this section: . . . .

. . . . . .

(a) Expenses. — (1) *Business expenses*. — (A) *In general*. — All ordinary and necessary expenses *paid or incurred* during the taxable year in carrying on any trade or business, *including a reasonable allowance for salaries or other compensation for personal services actually rendered*; travelling expenses while away from home in the pursuit of a trade, profession or business, rentals or other payments required to be made as a condition to the continued use or possession, for the purpose of the trade, profession or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity.

. . . . . .

(j) Additional requirement for deductibility of certain payments. — Any amount ***paid or payable*** *which is otherwise deductible from, or taken into account in computing gross income* for which depreciation or amortization may be allowed under this section, *shall be allowed as a deduction only if it is shown that the tax required to be deducted and withheld therefrom has been paid to the Bureau of Internal Revenue in accordance with this section, Sections 51*[81] *and 74*[82] *of this Code.* (Emphasis supplied)

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[80] Pres. Decree No. 1158 (1977), as amended/renumbered by Pres. Decree No. 1351 (1978), Batas Blg. 135 (1981), Exec. Order Nos. 37 (1986) and 273 (1987) and Rep. Act No. 7496 (1992).

[81] Pres. Decree No. 1158 (1977), Sec. 51, as amended/renumbered by Batas Blg. 41 (1979), Pres. Decree Nos. 1959 (1984) and 1994 (1985), and Exec. Order No. 273 (1987) provides:

Section 51. *Returns and payment of taxes withheld at source.* — (a) *Quarterly return and payment of taxes withheld*. — Taxes deducted and withheld under Section 50 shall be covered by a return and paid to the Revenue District Officer, Collection Agent, or duly authorized Treasurer

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Section 3 of Revenue Regulations No. 8-90 (now Section 2.58.5 of Revenue Regulations No. 2-98) provides:

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of the city, or municipality where the withholding agent has his legal residence or principal place of business, or where the withholding agent is a corporation, where the principal office is located. The taxes deducted and withheld by the withholding agent shall be held as a special fund in trust for the Government until paid to the collecting officers. The Commissioner of Internal Revenue may, with the approval of the Secretary of Finance, require these withholding agents to pay or deposit the taxes deducted or withheld at more frequent intervals when necessary to protect the interest of the Government. The return for final withholding tax shall be filed and the payment made within 25 days from the close of each calendar quarter, while the return for creditable withholding taxes shall be filed and the payment made not later than the last day of the month following the close of the quarter during which withholding was made.

(b) *Penalties for failure to render returns; for rendering false or fraudulent return; for nonpayment or late payment of taxes withheld*. — The surcharges prescribed in Section seventy-two and the specific penalties prescribed in Section seventy-three of this Title in cases of failure to render returns, for filing false or fraudulent returns and for failure to pay tax shall apply to failure to file returns or pay the tax required under this Section. In case the taxes deducted and withheld are not paid within the time prescribed, there shall be added a surcharge of five per centum on the amount of tax unpaid and interest at the rate of fourteen per centum per annum from the date the same become due until paid.

(c) *Statement of income payments made and taxes withheld*. — Every withholding agent required to deduct and withhold taxes under Section [50] shall furnish each recipient, in respect to his or its receipts during the calendar quarter or year, a written statement showing the income or other payments made by the withholding agent during such quarter or year, and the amount of the tax deducted and withheld therefrom, simultaneously upon payment at the request of the payee, but not later than the 20th day following the close of the quarter in the case of corporate payee, or not later than March 1 of the following year in the case of individual payee for creditable withholding taxes. For final withholding taxes, the statement should be given to the payee on or before January 31 of the succeeding year.

(d) *Annual returns*. — Every withholding agent required to deduct and withhold taxes under Section [50] shall submit to the Commissioner of Internal Revenue a reconciliation statement of quarterly payments and list of payees and income payments. In the case of final withholding taxes, the return shall be filed on or before January 31 of the succeeding year, and for creditable withholding taxes, not later than March 1 of the year

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Section 3. Section 9 of Revenue Regulations No. 6-85 is hereby amended to read as follows:

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following the year for which the annual report is being submitted. This return, if made and filed in accordance with regulations approved by the [Secretary] of Finance, shall be sufficient compliance with the requirements of Section [61] of this Title in respect to the income payments.

The Commissioner may, by regulations, grant to any withholding agent a reasonable extension of time to furnish and submit the return required in this subsection.

(e) *Surcharge and interest for failure to deduct and withhold*. — If the withholding agent, in violation of the provisions of the preceding section and implementing regulations thereunder, fails to deduct and withhold the amount of tax required under said section and regulations, he shall be liable to pay in addition to the tax required to be deducted and withheld, a surcharge of fifty *per centum* if the failure is due to willful neglect or with intent to defraud the Government, or twenty-five *per centum* if the failure is not due to such causes, plus interest at the rate of fourteen *per centum per annum* from the time the tax is required to be withheld until the date of assessment.

(f) *Income of recipient* – Income upon which any creditable tax is required to be withheld at source under Section [50] shall be included in the return of its recipient but any excess of the amount of tax so withheld over the tax due on his return shall be refunded to him subject to the provisions of Section [204]; if the income tax collected at source is less than the tax due on his return, the difference shall be paid in accordance with the provisions of Section [49].

(g) All taxes withheld pursuant to the provisions of this Code and its implementing regulations are hereby considered trust funds and shall be maintained in a separate account and not commingled with any other funds of the withholding agent.

Any violation of this provision shall be subject to the surcharges and penalties prescribed in paragraph (b) of this Section.

[82] Pres. Decree No. 1158 (1977), Sec. 74, as amended, provides:

Section 74. *Return and payment to the Government of taxes withheld*. — Taxes deducted and withheld hereunder by the employer on wages of employees shall be covered by a return and paid to the collection agent of the city or municipality in which the employer has his legal residence or principal place of business, or, in case the employer is a corporation, in which the principal office is located. The return shall be filed and the payment made within twenty-five days from the close of each calendar quarter. The taxes deducted and withheld by employers shall be held in a special fund in trust for the Government until the same are paid to the

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Section 9. (a) Requirement for deductibility. Any income payment, which is otherwise deductible under Sections 29 and 54 of the Tax Code, as amended, *shall be allowed as a deduction from the payor's gross income only if it is shown that the tax required to be withheld has been paid to the Bureau of Internal Revenue in accordance with Sections 50, 51, 72, and 74 also of the Tax Code*. (Emphasis supplied)

Under the National Internal Revenue Code, every form of compensation for personal services is subject to income tax and, consequently, to withholding tax. The term "compensation" means all remunerations paid for services performed by an employee for his or her employer, whether paid in cash or in kind, unless specifically excluded under Sections 32(B)[83] and

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said collecting officers. The Commissioner of Internal Revenue may, with the approval of the Secretary of Finance, require employers to pay or deposit the taxes deducted and withheld at more frequent intervals, in cases where such requirement is deemed necessary to protect the interest of the Government. (As renumbered by Pres. Decree No. 1994 and Exec. Order No. 273).

[83] 1997 TAX CODE, Sec. 32 provides:

SEC. 32. Gross Income. —

. . . . . .

(B) Exclusions from Gross Income. — The following items shall not be included in gross income and shall be exempt from taxation under this title:

(1) Life Insurance. — The proceeds of life insurance policies paid to the heirs or beneficiaries upon the death of the insured, whether in a single sum or otherwise, but if such amounts are held by the insurer under an agreement to pay interest thereon, the interest payments shall be included in gross income.

(2) Amount Received by Insured as Return of Premium. — The amount received by the insured, as a return of premiums paid by him under life insurance, endowment, or annuity contracts, either during the term or at the maturity of the term mentioned in the contract or upon surrender of the contract.

(3) Gifts, Bequests, and Devises. — The value of property acquired by gift, bequest, devise, or descent: Provided, however, That income from such property, as well as gift, bequest, devise or descent of income from any property, in cases of transfers of divided interest, shall be included in gross income.

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(4) Compensation for Injuries or Sickness. — amounts received, through Accident or Health Insurance or under Workmen's Compensation Acts, as compensation for personal injuries or sickness, plus the amounts of any damages received, whether by suit or agreement, on account of such injuries or sickness.

(5) Income Exempt under Treaty. — Income of any kind, to the extent required by any treaty obligation binding upon the Government of the Philippines.

(6) Retirement Benefits, Pensions, Gratuities, etc.—

(a) Retirement benefits received under Republic Act No. 7641 and those received by officials and employees of private firms, whether individual or corporate, in accordance with a reasonable private benefit plan maintained by the employer: Provided, That the retiring official or employee has been in the service of the same employer for at least ten (10) years and is not less than fifty (50) years of age at the time of his retirement: Provided, further, That the benefits granted under this subparagraph shall be availed of by an official or employee only once. For purposes of this Subsection, the term 'reasonable private benefit plan' means a pension, gratuity, stock bonus or profit-sharing plan maintained by an employer for the benefit of some or all of his officials or employees, wherein contributions are made by such employer for the officials or employees, or both, for the purpose of distributing to such officials and employees the earnings and principal of the fund thus accumulated, and wherein its [sic] is provided in said plan that at no time shall any part of the corpus or income of the fund be used for, or be diverted to, any purpose other than for the exclusive benefit of the said officials and employees.

(b) Any amount received by an official or employee or by his heirs from the employer as a consequence of separation of such official or employee from the service of the employer because of death sickness or other physical disability or for any cause beyond the control of the said official or employee.

(c) The provisions of any existing law to the contrary notwithstanding, social security benefits, retirement gratuities, pensions and other similar benefits received by resident or nonresident citizens of the Philippines or aliens who come to reside permanently in the Philippines from foreign government agencies and other institutions, private or public.

(d) Payments of benefits due or to become due to any person residing in the Philippines under the laws of the United States administered by the United States Veterans Administration.

(e) Benefits received from or enjoyed under the Social Security System in accordance with the provisions of Republic Act No. 8282.

(f) Benefits received from the GSIS under Republic Act No. 8291, including retirement gratuity received by government officials and employees.

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(7) Miscellaneous Items. —

(a) Income Derived by Foreign Government. — Income derived from investments in the Philippines in loans, stocks, bonds or other domestic securities, or from interest on deposits in banks in the Philippines by (i) foreign governments, (ii) financing institutions owned, controlled, or enjoying refinancing from foreign governments, and (iii) international or regional financial institutions established by foreign governments.

(b) Income Derived by the Government or its Political Subdivisions. — Income derived from any public utility or from the exercise of any essential governmental function accruing to the Government of the Philippines or to any political subdivision thereof.

(c) Prizes and Awards. — Prizes and awards made primarily in recognition of religious, charitable, scientific, educational, artistic, literary, or civic achievement but only if:

(i) The recipient was selected without any action on his part to enter the contest or proceeding; and

(ii) The recipient is not required to render substantial future services as a condition to receiving the prize or award.

(d) Prizes and Awards in sports Competition. — All prizes and awards granted to athletes in local and international sports competitions and tournaments whether held in the Philippines or abroad and sanctioned by their national sports associations.

(e) 13th Month Pay and Other Benefits. — Gross benefits received by officials and employees of public and private entities: Provided, however, That the total exclusion under this subparagraph shall not exceed Thirty thousand pesos (₱30,000) which shall cover:

(i) Benefits received by officials and employees of the national and local government pursuant to Republic Act No. 6686;

(ii) Benefits received by employees pursuant to Presidential Decree No. 851, as amended by Memorandum Order No. 28, dated August 13, 1986;

(iii) Benefits received by officials and employees not covered by Presidential decree No. 851, as amended by Memorandum Order No. 28, dated August 13, 1986; and

(iv) Other benefits such as productivity incentives and Christmas bonus: Provided, further, That the ceiling of Thirty thousand pesos (₱30,000) may be increased through rules and regulations issued by the Secretary of Finance, upon recommendation of the Commissioner, after considering among others, the effect on the same of the inflation rate at the end of the taxable year.

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78(A)[84] of the 1997 National Internal Revenue Code.[85] The name designated to the remuneration for services is immaterial. Thus, "salaries, wages, emoluments and honoraria, bonuses, allowances (such as transportation, representation, entertainment, and the like), [taxable] fringe benefits[,] pensions and retirement pay, and other income of a similar nature constitute compensation income"[86] that is taxable.

(f) GSIS, SSS, Medicare and Other Contributions. — GSIS, SSS, Medicare and Pag-ibig contributions, and union dues of individuals.

(g) Gains from the Sale of Bonds, Debentures or other Certificate of Indebtedness. — Gains realized from the same or exchange or retirement of bonds, debentures or other certificate of indebtedness with a maturity of more than five (5) years.

(h) Gains from Redemption of Shares in Mutual Fund. — Gains realized by the investor upon redemption of shares of stock in a mutual fund company as defined in Section 22 (BB) of this Code.

[84] 1997 TAX CODE, Sec. 78 provides:

SEC. 78. Definitions. — As used in this Chapter:

(A) Wages. — The term 'wages' means all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration paid in any medium other than cash, except that such term shall not include remuneration paid:

(1) For agricultural labor paid entirely in products of the farm where the labor is performed, or

(2) For domestic service in a private home, or

(3) For casual labor not in the course of the employer's trade or business, or

(4) For services by a citizen or resident of the Philippines for a foreign government or an international organization.

If the remuneration paid by an employer to an employee for services performed during one-half (½) or more of any payroll period of not more than thirty-one (31) consecutive days constitutes wages, all the remuneration paid by such employer to such employee for such period shall be deemed to be wages; but if the remuneration paid by an employer to an employee for services performed during more than one-half (½) of any such payroll period does not constitute wages, then none of the remuneration paid by such employer to such employee for such period shall be deemed to be wages.

[85] BIR Revenue Regulations No. 6-82, as amended, Sec. 2.

[86] BIR Revenue Regulations No. 6-82, as amended, Sec. 2.

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Hence, petitioner ING Bank is liable for the withholding tax on the bonuses since it claimed the same as expenses in the year they were accrued.

Petitioner ING Bank insists, however, that the bonus accruals in 1996 and 1997 were not yet subject to withholding tax because these bonuses were actually distributed only in the succeeding years of their accrual (i.e., in 1997 and 1998) when the amounts were finally determined.

Petitioner ING Bank's contention is untenable.

The tax on compensation income is withheld at source under the creditable withholding tax system wherein the tax withheld is intended to equal or *at least approximate the tax due* of the payee on the said income. It was designed to enable (a) the individual taxpayer to meet his or her income tax liability on compensation *earned*; and (b) the government to collect at source the appropriate taxes on compensation.[87] Taxes withheld are creditable in nature.[88] Thus, the employee is still required to

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[87] *Study on Strengthening the Withholding Tax System on Individual Taxpayers*, NTRC Tax Research Journal, vol. XXIII.2, March–April 2011 <http://www.ntrc.gov.ph/files/Study-on-Strengthening-the-Withholding-Tax-System-on-Individual-Taxpayers_48tijve7.pdf> 3 (visited May 4, 2015), citing *Consideration of House Bill No. 1127*, Congressional Record, 2nd Cong., 1st Session, Vol. I, No. 74, May 10, 1950, p. 2227: "The withholding tax system was first proposed on May 2, 1950 under House Bill (HB) No. 1127. The two main justifications for the proposal were that: 'first, it will provide a convenient manner for meeting the employee's income tax liability on wages and, second, it will assure the Government of the collection of the income tax on wages which otherwise would have been lost or substantially reduced through failure of the employees concerned to file the corresponding income tax returns.' The proponents deemed it necessary to put the system in place for the reason that there are a large number of cases where an employee fails to file an income tax return (ITR) and/or pay the income tax for the 'simple reason that he/she did not set aside from his/her income sufficient amounts to meet his/her tax liability payable the following year.' Withholding of the tax on wages when these are earned was seen as the solution to the problem."

[88] Pres. Decree No. 1158 (1977), as amended, sec. 72(c) (sec. 79(c) of the 1997 TAX CODE), provides:

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file an income tax return to report the income and/or pay the difference between the tax withheld and the tax due on the income.[89] For over withholding, the employee is refunded.[90] Therefore, absolute or exact accuracy in the determination of the amount of the compensation income is not a prerequisite for the employer's withholding obligation to arise.

It is true that the law and implementing regulations require the employer to deduct and pay the income tax on compensation paid to its employees, either actually or constructively.

Section 72 of the 1977 National Internal Revenue Code, as amended,[91] states:

SECTION 72. *Income tax collected at source*. — (a) *Requirement of withholding. — Every employer making payment of wages shall*

SECTION 72. *Income tax collected at source*. — (a) . . .

(c) *Refunds or credits*. — (1) *Employer*. — When there has been an overpayment of tax under this section, refund or credit shall be made to the employer only to the extent that the amount of such overpayment was not deducted and withheld hereunder by the employer.

(2) *Employees*. — The amount deducted and withheld under this Chapter during any calendar year shall be allowed as a credit to the recipient of such income against the tax imposed under Section 21(a) of this Title. Refunds and credits in cases of excessive withholding shall be granted under rules and regulations promulgated by the Minister of Finance.

Any excess of the taxes withheld over the tax due from the taxpayer shall be returned or credited within three months from the fifteenth day of April. Refunds or credits made after such time shall earn interest at the rate of six per cent (6%) *per annum* starting after the lapse of the three-month period to the date the refund or credit is made.

Refunds shall be made upon warrants drawn by the Commissioner of Internal Revenue or by his duly authorized representative without the necessity of counter-signature by the Chairman, Commission on Audit or the latter's duly authorized representatives as an exception to the requirement prescribed by Section 621 of the Revised Administrative Code.

[89] *See* 1997 TAX CODE, Secs. 51 and 58(C) and (D).

[90] 1997 TAX CODE, Sec. 79(C).

[91] Pres. Decree No. 1158 (1977), as amended/renumbered by Batas Blg. 135 (1981), Pres. Decree No. 1994 (1986), and Exec. Order Nos. 37 (1986) and 273 (1987).

deduct and withhold upon such wages a tax determined in accordance with regulations to be prepared and promulgated by the Minister of Finance. (Emphasis supplied)

Sections 7 and 14 of Revenue Regulations No. 6-82,[92] as amended,[93] relative to the withholding of tax on compensation income, provide:

Section 7. **Requirement of withholding.** — Every employer or any person who pays or controls the payment of compensation to an employee, whether resident citizen or alien, non-resident citizen, or non-resident alien engaged in trade or business in the Philippines, must withhold from such compensation paid, an amount computed in accordance with these regulations.

I. Withholding of tax on compensation paid to resident employee*s*. – (a) *In general, every employer making payment of compensation shall deduct and withhold from such compensation income for the entire calendar year, a tax determined in accordance with the prescribed new Withholding Tax Tables effective January 1, 1992 (ANNEX "A").*

. . . . . .

Section 14. **Liability for the Tax.** — *The employer is required to collect the tax by deducting and withholding the amount thereof from the employee's compensation as when paid, either actually or constructively.* An employer is required to deduct and withhold the tax notwithstanding that the compensation is paid in something other than money (for example, compensation paid in stocks or bonds) and to pay the tax to the collecting officer. If compensation is paid in property other than money, the employer should make necessary arrangements to ensure that the amount of the tax required to be withheld is available for payment to the collecting officer.

Every person required to deduct and withhold the tax from the compensation of an employee is liable for the payment of such tax

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[92] Re: Collection at Source of Income Tax on Compensation Income of Employed Resident Citizens and Aliens, Non-Resident Citizens and Non-Resident Aliens engaged in trade or business in the Philippines.

[93] BIR Revenue Regulations No. 6-82 was amended by BIR Revenue Regulations Nos. 12-86, 1-92, 3-92, and 4-93.

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whether or not collected from the employee. If, for example, the employer deducts less than the correct amount of tax, or if he fails to deduct any part of the tax, he is nevertheless liable for the correct amount of the tax. However, if the employer in violation of the provisions of Chapter XI, Title II of the Tax Code fails to deduct and withhold and thereafter the employee pays the tax, it shall no longer be collected from the employer. Such payment does not, however, operate to relieve the employer from liability for penalties or additions to the tax for failure to deduct and withhold within the time prescribed by law or regulations. The employer will not be relieved of his liability for payment of the tax required to be withheld unless he can show that the tax has been paid by the employee.

The amount of any tax withheld/collected by the employer is a special fund in trust for the Government of the Philippines.

When the employer or other person required to deduct and withhold the tax under this Chapter XI, Title II of the Tax Code has withheld and paid such tax to the Commissioner of Internal Revenue or to any authorized collecting officer, then such employer or person shall be relieved of any liability to any person. (Emphasis supplied)

Constructive payment of compensation is further defined in Revenue Regulations No. 6-82:

Section 25. **Applicability; constructive receipt of compensation.** — . . .

Compensation is constructively paid within the meaning of these regulations when it is credited to the account of or set apart for an employee so that it may be drawn upon by him at any time although not then actually reduced to possession. To constitute payment in such a case, the compensation must be credited or set apart for the employee without any substantial limitation or restriction as to the time or manner of payment or condition upon which payment is to be made, and must be made available to him so that it may be drawn upon at any time, and its payment brought within his control and disposition. (Emphasis supplied)

On the other hand, it is also true that under Section 45 of the 1997 National Internal Revenue Code (then Section 39 of the 1977 National Internal Revenue Code, as amended), deductions from gross income are taken for the taxable year in which "paid

or accrued" or "paid or incurred" is dependent upon the method of accounting income and expenses adopted by the taxpayer.

In *Commissioner of Internal Revenue v. Isabela Cultural Corporation*,[94] this court explained the accrual method of accounting, as against the cash method:

> Accounting methods for tax purposes comprise a set of rules for determining when and how to report income and deductions. . . .
>
> Revenue Audit Memorandum Order No. 1-2000, provides that under the accrual method of accounting, expenses not being claimed as deductions by a taxpayer in the current year when they are incurred cannot be claimed as deduction from income for the succeeding year. Thus, a taxpayer who is authorized to deduct certain expenses and other allowable deductions for the current year but failed to do so cannot deduct the same for the next year.
>
> The accrual method relies upon the taxpayer's right to receive amounts or its obligation to pay them, in opposition to actual receipt or payment, which characterizes the cash method of accounting. Amounts of income accrue where the right to receive them become fixed, where there is created an enforceable liability. Similarly, liabilities are accrued when fixed and determinable in amount, without regard to indeterminacy merely of time of payment.
>
> For a taxpayer using the accrual method, the determinative question is, when do the facts present themselves in such a manner that the taxpayer must recognize income or expense? *The accrual of income and expense is permitted when the all-events test has been met. This test requires: (1) fixing of a right to income or liability to pay; and (2) the availability of the reasonable accurate determination of such income or liability.*
>
> *The all-events test requires the right to income or liability be fixed, and the amount of such income or liability be determined with reasonable accuracy. However, the test does not demand that the amount of income or liability be known absolutely, only that a taxpayer has at his disposal the information necessary to compute the amount with reasonable accuracy.* The all-events test is satisfied where computation remains uncertain, if its basis is unchangeable;

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[94] 544 Phil. 488 (2007) [Per *J.* Ynares-Santiago, Third Division].

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the test is satisfied where a computation may be unknown, but is not as much as unknowable, within the taxable year. The amount of liability does not have to be determined exactly; it must be determined with "reasonable accuracy." Accordingly, the term "reasonable accuracy" implies something less than an exact or completely accurate amount.[95] (Emphasis supplied, citations omitted)

Thus, if the taxpayer is on cash basis, the expense is deductible in the year it was paid, regardless of the year it was incurred. If he is on the accrual method, he can deduct the expense upon accrual thereof. An item that is reasonably ascertained as to amount and acknowledged to be due has "accrued"; actual payment is not essential to constitute "expense."

Stated otherwise, an expense is accrued and deducted for tax purposes when (1) the obligation to pay is already fixed; (2) the amount can be determined with reasonable accuracy; and (3) it is already knowable or the taxpayer can reasonably be expected to have known at the closing of its books for the taxable year.

Section 29(j) of the 1977 National Internal Revenue Code[96] (Section 34(K) of the 1997 National Internal Revenue Code) expressly requires, as a condition for deductibility of an expense, that the tax required to be withheld on the amount paid or payable is shown to have been remitted to the Bureau of Internal Revenue by the taxpayer constituted as a withholding agent of the government.

The provision of Section 72 of the 1977 National Internal Revenue Code (Section 79 of the 1997 National Internal Revenue Code) regarding withholding on wages must be read and construed in harmony with Section 29(j) of the 1977 National Internal Revenue Code (Section 34(K) of the 1997 National Internal Revenue Code) on deductions from gross income. This is in

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[95] *Id*. at 495-496.

[96] Pres. Decree No. 1158 (1977), as amended/renumbered by Pres. Decree No. 1351 (1978), Batas Blg. 135 (1981), Exec. Order Nos. 37 (1986) and 273 (1987), and Rep. Act No. 7496 (1992).

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accordance with the rule on statutory construction that an interpretation is to be sought which gives effect to the whole of the statute, such that every part is made effective, harmonious, and sensible,[97] if possible, and not defeated nor rendered insignificant, meaningless, and nugatory.[98] If we go by the theory of petitioner ING Bank, then the condition imposed by Section 29(j) would have been rendered nugatory, or we would in effect have created an exception to this mandatory requirement when there was none in the law.

Reading together the two provisions, we hold that the obligation of the payor/employer to deduct and withhold the related withholding tax arises at the time the income was paid or accrued or recorded as an expense in the payor's/employer's books, whichever comes first.

Petitioner ING Bank accrued or recorded the bonuses as deductible expense in its books. Therefore, its obligation to withhold the related withholding tax due from the deductions for accrued bonuses arose at the time of accrual and not at the time of actual payment.

In *Filipinas Synthetic Fiber Corporation v. Court of Appeals*,[99] the issue was raised on "whether the liability to withhold tax at source on income payments to non-resident foreign corporations arises upon remittance of the amounts due to the foreign creditors or upon accrual thereof."[100] In resolving this issue, this court considered the nature of the accounting method employed by the withholding agent, which was the accrual method, wherein it was the right to receive income, and not the actual receipt, that determined when to report the amount as part of the taxpayer's

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[97] *Commissioner of Internal Revenue v. TMX Sales, Inc.*, G.R. No. 83736, January 15, 1992, 205 SCRA 184, 188 [Per *J.* Gutierrez, Jr., *En Banc*].

[98] *Asturias Sugar Central, Inc. v. Commissioner of Customs, et al.*, 140 Phil. 20, 31 [Per *J.* Castro, *En Banc*].

[99] 374 Phil. 835 (1999) [Per *J.* Purisima, Third Division].

[100] *Id*. at 840.

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gross income.[101] It upheld the lower court's finding that there was already a definite liability on the part of petitioner at the maturity of the loan contracts.[102] Moreover, petitioner already deducted as business expense the said amounts as interests due to the foreign corporation.[103] Consequently, the taxpayer could not claim that there was "no duty to withhold and remit income taxes as yet because the loan contract was not yet due and demandable."[104] Petitioner, "[h]aving 'written-off' the amounts as business expense in its books, . . . had taken advantage of the benefit provided in the law allowing for deductions from gross income."[105]

Here, petitioner ING Bank already recognized a definite liability on its part considering that it had deducted as business expense from its gross income the accrued bonuses due to its employees. Underlying its accrual of the bonus expense was a reasonable expectation or probability that the bonus would be achieved. In this sense, there was already a constructive payment for income tax purposes as these accrued bonuses were already allotted or made available to its officers and employees.

We note petitioner ING Bank's earlier claim before the Court of Tax Appeals that the bonus accruals in 1996 and 1997 were disbursed in the following year of accrual, as reimbursements of representation, travel, and entertainment expenses incurred by its employees.[106] This shows that the accrued bonuses in the amounts of ₱400,075.01 (1996) and ₱1,034,119.43 (1997)

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[101] *Id*. at 842.

[102] *Id*. at 843.

[103] *Id*.

[104] *Id*.

[105] *Id*.

[106] *Rollo*, pp. 270-271 (Dated January 29, 2002, the Second and Final Report of Mr. Ruben R. Rubio, SGV & Co., the duly commissioned independent CPA, was submitted to the Court of Tax Appeals), 324-328 (Memorandum for petitioner ING Bank filed in CTA Case No. 6187) and 402-406 (Court of Tax Appeals Decision).

on which deficiency withholding taxes of ₱167,384.97 (1996) and ₱397,157.70 (1997) were imposed, respectively, were already set apart or made available to petitioner ING Bank's officers and employees. To avoid any tax issue, petitioner ING Bank should likewise have recognized the withholding tax liabilities associated with the bonuses at the time of accrual.

WHEREFORE, the Petition is **PARTLY GRANTED**. The assessments with respect to petitioner ING Bank's liabilities for deficiency documentary stamp taxes on its special savings accounts for the taxable years 1996 and 1997 and deficiency tax on onshore interest income under the foreign currency deposit system for taxable year 1996 are hereby **SET ASIDE** solely in view of petitioner ING Bank's availment of the tax amnesty program under Republic Act No. 9480. The April 5, 2005 Decision of the Court of Tax Appeals En Banc, which affirmed the August 9, 2004 Decision and November 12, 2004 Resolution of the Court of Tax Appeals Second Division holding petitioner ING Bank liable for deficiency withholding tax on compensation for the taxable years 1996 and 1997 in the total amount of ₱564,542.67 inclusive of interest, is **AFFIRMED**.

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Mendoza, JJ.,* concur.