



SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Petitioner,

G.R. No. 206579

Present:

- versus -

PERLAS-BERNABE, S.A.J.,
Chairperson,
HERNANDO,
INTING,
GAERLAN,* and
DIMAAMPAO,* JJ.

GLORIA F. TUYAY,
Respondent.

Promulgated:

DEC 01 2021 

X-----X

DECISION

HERNANDO, J.:

Before the Court is a petition for *certiorari*¹ under Rule 65 of the Rules of Court, assailing the March 5, 2012,² September 10, 2012,³ and February 14, 2013⁴ Resolutions of the Court of Tax Appeals (CTA) in CTA EB Crim. No. 017.

* On official leave.

¹ *Rollo*, pp. 2-27.

² Id. at 28-32. Penned by Associate Justice Juanito C. Castañeda, Jr. and concurred in by Presiding Justice Ernesto D. Acosta, Associate Justices Erlinda P. Uy, Caesar A. Casanova, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla and Amelia R. Cotangco-Manalastas.

³ Id. at 42-47. Signed by Presiding Justice Ernesto D. Acosta, Associate Justices Juanito C. Castañeda, Jr. Erlinda P. Uy, Caesar A. Casanova, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla and Amelia R. Cotangco-Manalastas.

⁴ Id. at 63-66. Signed by Acting Presiding Justice Juanito C. Castañeda, Jr. and Associate Justices Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla and Amelia R. Cotangco-Manalastas.

Factual Antecedents:

Respondent Gloria F. Tuyay (Tuyay) is the registered owner of Glo Herbal Trading and Manufacturing, a single proprietorship engaged in the business of manufacturing, selling, and distributing the herbal concoction, Glo-Herbal.⁵

On June 25, 2003, Assistant Commissioner Percival T. Salazar of the Bureau of Internal Revenue (BIR) issued a Letter of Authority (LOA)⁶ authorizing the BIR revenue officers to examine the books of accounts of Glo Herbal Trading and Manufacturing for taxable years 2000 to 2002 as it allegedly sold millions of its product during the said years.⁷ However, despite receipt of the LOA, Tuyay failed to submit the books of account. The revenue officers, thus, had to use the expenditure method⁸ to reconstruct the undeclared income and determine the deficiency taxes of Tuyay.

On June 10, 2004, the BIR issued assessment notices⁹ against Tuyay for deficiency income tax and value-added tax (VAT) for the taxable years 2001 and 2002 in the amounts of ₱110,305,049.69 and ₱4,501,011.03, respectively.¹⁰ The deficiency tax for taxable year 2001, which is the taxable year involved in this case, is broken down as follows:

Income Tax

Taxable year 2001	
Tax Due	₱ 42,494,174.29
Add: Surcharge	21,247,087.15
Interest	19,836,280.56
Total Amount Payable	₱ 83,577,542.00 ¹¹

VAT

Taxable year 2001	
Tax Due	₱ 13,279,429.47
Add: Surcharge	6,639,714.73
Interest	6,808,363.49
Total Amount Payable	₱ <u>26,727,507.69</u> ¹²
	₱ 110,305,049.69

⁵ Id. at 67.

⁶ Id. at 72.

⁷ Id. at 67.

⁸ Id. at 68. Expenditure Method is based on the theory that if the taxpayer's expenditures during a given year exceed her reported income and the source of such expenditures is unexplained, it can be inferred that such expenditures represent unreported income.

⁹ CTA Division records, pp. 31-32.

¹⁰ Id. at 67.

¹¹ Id. at 30.

¹² Id. at 31.

On June 3, 2005, the BIR, through its revenue officers, filed with the Department of Justice (DOJ) a criminal complaint¹³ for violations of Sections 254¹⁴ and 255¹⁵ of the National Internal Revenue Code (NIRC) against Tuyay.¹⁶

On August 20, 2009, the DOJ issued a Resolution¹⁷ finding probable cause and recommending the filing of criminal cases against Tuyay for violations of Sections 254 and 255 of the NIRC.

On October 23, 2009, Informations¹⁸ against Tuyay were filed with the CTA. The criminal case for violation of Section 254 of the NIRC, docketed as CTA Crim. Case No. 0-155, was raffled to the First Division while the criminal case for violation of Section 255 of the NIRC, docketed as CTA Crim. Case No. 0-154, was raffled to the Third Division.¹⁹

During the arraignment in Crim. Case No. 0-154, Tuyay pleaded “not guilty.”

On June 21, 2011, Tuyay moved to dismiss²⁰ CTA Crim. Case No. 0-154 against her on the ground that she was immune from criminal liability in view of her availment of the tax amnesty under Republic Act No. (RA) 9480.²¹ Tuyay alleged that on February 21, 2008, she filed with the BIR a Notice of Availment of Tax Amnesty,²² together with her Statement of Assets, Liabilities, and Networth (SALN) as of December 31, 2005;²³ and that on February 26,

¹³ Amended Joint Complaint-Affidavit, *rollo*, pp. 67-71.

¹⁴ SEC. 254. *Attempt to Evade or Defeat Tax*.—Any person who willfully attempts in any manner to evade or defeat any tax imposed under this Code or the payment thereof shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Thirty thousand pesos (P30,000.00) but not more than One hundred thousand pesos (P100,000.00) and suffer imprisonment of not less than two (2) years but not more than four (4) years: Provided, That the conviction or acquittal obtained under this Section shall not be a bar to the filing of a civil suit for the collection of taxes.

¹⁵ SEC. 255. *Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund excess Taxes Withheld on Compensation*.—Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax, make a return, keep any record, or supply correct and accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply such correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000.00) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.

¹⁶ *Rollo*, p. 138.

¹⁷ *Id.* at 83-88.

¹⁸ *Id.* at 89-92.

¹⁹ Later transferred to the Third Division.

²⁰ *Rollo*, pp. 95-102.

²¹ AN ACT AMENDING 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. Lapsed into law on May 24, 2007 without the signature of the President in accordance with Article VI, Section 27(1) of the Constitution.

²² CTA Division records, p. 257.

²³ *Id.* at 258-259.

2008, she filed with the BIR her Tax Amnesty Return²⁴ and Tax Amnesty Payment Form²⁵ evidencing her payment of the amounts of ₱79,913.90²⁶ and ₱35,177.50.

Petitioner opposed²⁷ the motion contending that Tuyay was disqualified to avail of the tax amnesty because under the Implementing Rules and Regulations (IRR) of RA 9480, the tax amnesty does not extend to those with pending criminal cases filed in court or in the DOJ for tax evasion and other criminal offenses under the NIRC. In Tuyay's case, petitioner averred that when she availed of the tax amnesty, there was already a pending case against her with the DOJ. Thus, under the IRR of RA 9480, she was not entitled to the immunities and privileges of the tax amnesty law.²⁸

**Ruling of the Court of
Tax Appeals Second
Division:**

Finding the opposition of petitioner to be well-taken, the CTA Third Division denied Tuyay's motion to dismiss CTA Crim. Case No. 0-154 in its August 9, 2011 Resolution.²⁹

Undaunted, Tuyay sought reconsideration³⁰ arguing that under RA 9480, only those with pending criminal case before the court are excluded from the coverage of the amnesty and that by adding the phrase "filed in court or in the [DOJ]" in Section 5.5 of the IRR of RA 9480, the BIR and the Department of Finance (DOF) in effect expanded the coverage of the exceptions in Section 8(e) of RA 9480, which should not be allowed. To support her argument, Tuyay cited the July 21, 2011 Resolution³¹ of the CTA First Division in CTA Crim. Case No. 0-155, which dismissed the criminal case filed against her for violation of Section 254 of the NIRC because of her availment of the tax amnesty. Thus, on October 4, 2011, the CTA Third Division issued a Resolution³² dismissing CTA Crim. Case No. 0-154 against respondent for violation of Section 255 of the NIRC in view of her availment of the tax amnesty.

²⁴ Id. at 260.

²⁵ Id. at 262.

²⁶ Id. at 261.

²⁷ Id. at 263-267.

²⁸ Id.

²⁹ Id. at 284-287. Signed by Associate Justices Olga Palanca-Enriquez and Amelia R. Cotangco-Manalastas.

³⁰ Id. at 308-316.

³¹ Id. at 318-329. Penned by Associate Justice Esperanza R. Fabon-Victorino and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justice Erlinda P. Uy.

³² Id. at 342-347. Signed by Associate Justices Olga Palanca-Enriquez and Amelia R. Cotangco-Manalastas.

**Ruling of the Court of
Tax Appeals *En Banc*:**

Petitioner appealed the dismissal of CTA Crim. Case No. 0-154 to CTA *En Banc* via a petition for review under Rule 43 of the Rules of Court.³³ But because petitioner was represented by the BIR Special Prosecutors, and not by the Office of the Solicitor General (OSG), the CTA *En Banc*, in its March 5, 2012 Resolution,³⁴ resolved to dismiss the Petition.

Petitioner moved for reconsideration³⁵ citing the deputization orders³⁶ of the Solicitor General and Revenue Memorandum Circular (RMC) No. 25-2010, that contain the provisions of the memorandum of agreement³⁷ executed between the BIR and the OSG, deputizing BIR Special Prosecutors to continue with the prosecution of appealed tax case before the CTA.

Finding that the copies of RMC No. 25-2010 and the deputization orders were not attached, the CTA *En Banc*, in its April 16, 2012 Resolution³⁸ gave petitioner a period of 10 days from notice to submit the same. Failing to comply, the CTA *En Banc*, in its June 11, 2012 Resolution,³⁹ gave petitioner another period of five days. Petitioner, however, still failed to comply. Thus, in its September 10, 2012 Resolution,⁴⁰ the CTA *En Banc* denied petitioner's reconsideration due to its failure to submit copies of RMC No. 25-2010 and the deputization orders in its motion for reconsideration.

Petitioner thereafter filed a second motion for reconsideration.⁴¹ This time, petitioner attached copies of the deputization orders and RMC No. 25-2010. However, for being a prohibited pleading, the CTA *En Banc* denied petitioner's second motion for reconsideration in its February 14, 2013 Resolution.⁴²

Thus, petitioner filed the instant petition for *certiorari*, interposing grave abuse of discretion on the part of the CTA:

³³ *Rollo*, pp. 140-156.

³⁴ *Id.* at 28-32.

³⁵ *Id.* at 33-41.

³⁶ *Id.* at 179-182.

³⁷ *Id.* at 173-178.

³⁸ CTA *En Banc* *rollo*, pp. 158-159. Signed by Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, Olga Palanca Enriquez, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla and Amelia R. Cotangco-Manalastas.

³⁹ *Id.* at 196-197. Signed by Presiding Justice Ernesto D. Acosta, Associate Justices Juanito Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, Olga Palanca Enriquez, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla and Amelia R. Cotangco-Manalastas.

⁴⁰ *Rollo*, pp. 42-47.

⁴¹ *Id.* at 48-51.

⁴² *Id.* at 63-66.

(A) WHEN IT DID NOT RECOGNIZE THE AUTHORITY OF THE BIR TO INSTITUTE AND PROSECUTE A TAX EVASION CASE BEFORE IT.

(B) WHEN IT RULED THAT THOSE WHO AVAIL OF TAX AMNESTY WITH PENDING CRIMINAL CASES FOR TAX EVASION FILED BEFORE THE [DOJ] ARE IMMUNE FROM PROSECUTION UNDER THE TAX AMNESTY ACT.⁴³

Petitioner's Arguments:

Petitioner imputes grave abuse of discretion on the part of the CTA *En Banc* in failing to recognize the deputized authority of the BIR to appeal the instant case.⁴⁴ Though petitioner admits that it inadvertently omitted to attach the required proof of deputized authority from the OSG, it claims that it nevertheless was able to attach the same in its second motion for reconsideration.⁴⁵ Besides, even without the required proof, petitioner insists that the CTA *En Banc* cannot feign ignorance of the existence of the memorandum of agreement dated March 17, 2010, that authorizes the BIR Special Prosecutors to continue the prosecution or litigation of appealed tax cases before the CTA *En Banc*, because from the date of its issuance, the BIR Special Prosecutors have been appearing and representing the BIR under the control and supervision of the OSG before the CTA *En Banc*.⁴⁶

As to the merits of the case, petitioner ascribes grave abuse of discretion on the part of the CTA Third Division in disregarding the IRR of RA 9480 promulgated by the DOF.⁴⁷ Petitioner avers that there is no inconsistency between RA 9480 and its IRR because criminal cases are considered pending once they are commenced by the filing of a criminal complaint or information.⁴⁸ Thus, a criminal case is deemed pending once a complaint is filed before the DOJ for the purpose of conducting a preliminary investigation.⁴⁹ And besides, in case of an apparent conflict between RA 9480 and its IRR, petitioner asserts that the CTA Third Division should have exerted effort to reconcile the same since the interpretation of the DOF is afforded great weight and respect by the courts.⁵⁰

⁴³ Id. at 8.

⁴⁴ Id. at 9-13.

⁴⁵ Id. at 12.

⁴⁶ Id. at 11-12.

⁴⁷ Id. at 13-21.

⁴⁸ Id. at 17-18.

⁴⁹ Id.

⁵⁰ Id. at 18.

Tuyay's Arguments:

In her Comment,⁵¹ Tuyay argues that the BIR Special Prosecutors have no authority to appeal the instant case because it is the Solicitor General who has the primary responsibility to appear for the government in criminal proceedings.⁵² Regarding her availment of the tax amnesty, Tuyay maintains that she is not disqualified as the law clearly states that only those with pending criminal cases in court are excluded,⁵³ and that the inclusion of criminal complaints pending before the DOJ in the IRR is inconsistent with the law and departs from the true intent of the legislature.⁵⁴ Tuyay likewise points out that under prevailing jurisprudence, it is the filing of the complaint or information in court that initiates the criminal prosecution against an accused, not the filing of a complaint for preliminary investigation.⁵⁵ Lastly, Tuyay claims that the instant petition should be dismissed under the principle of *res judicata*.⁵⁶ According to her, the Court already dismissed the case against her for violation of Section 254 of the NIRC in its September 30, 2013 and January 15, 2014 Minute Resolutions in G.R. No. 208435, entitled *People of the Philippines v. Gloria F. Tuyay*.⁵⁷ In that case, the Court found no grave abuse of discretion on the part of the CTA *En Banc* in ruling that respondent was eligible to avail of the tax amnesty under RA 9480.

Our Ruling

The petition must be dismissed.

Petitioner availed of the wrong remedy.

At the outset, it must be stressed that a special civil action for *certiorari* filed under Rule 65 of the Rules of Court will lie only in the absence of an appeal or any plain, speedy, and adequate remedy in the ordinary course of law.⁵⁸ Thus, if the remedy of an appeal is available, a petition for *certiorari* under Rule 65 will not prosper as it is not a substitute for a lost appeal.⁵⁹

⁵¹ Id. at 193-202.

⁵² Id. at 199-201.

⁵³ Id. at 196-197.

⁵⁴ Id. at 194-196.

⁵⁵ Id. at 197-198.

⁵⁶ Id. at 193-194.

⁵⁷ Id. at 203-204.

⁵⁸ *Aichi Forging Co. of Asia, Inc. v. Court of Tax Appeals (En Banc)*, 817 Phil. 403, 430 (2017).

⁵⁹ *Pfleider v. Court of Appeals-Cebu City*, G.R. No. 196058, November 12, 2018.

In this case, the remedy of an appeal was available. Section 1, Rule 16 of the 2005 Revised Rules of the CTA provides:

SECTION 1. *Appeal to Supreme Court by Petition for Review on Certiorari.*

- A party adversely affected by a decision or ruling of the Court *en banc* may appeal therefrom by filing with the Supreme Court a verified petition for review on *certiorari* within fifteen days from receipt of a copy of the decision or resolution, as provided in Rule 45 of the Rules of Court. If such party has filed a motion for reconsideration or for new trial, the period herein fixed shall run from party's receipt of a copy of the resolution denying the motion for reconsideration or for new trial.

Thus, petitioner availed of the wrong remedy because instead of filing a petition for review on *certiorari* under Rule 45 of the Rules of Court, petitioner filed a petition for *certiorari* under Rule 65.

While the Court has the discretion to treat a Rule 65 petition as a Rule 45 petition under the following circumstances: (1) if the petition is filed within the reglementary period for filing a petition under Rule 45; (2) when errors of judgment are averred; and (3) when there is justifiable reason for the relaxation of the rule,⁶⁰ this cannot be done in the instant case because none of the circumstances are present. Thus, for being a wrong remedy, the instant petition merits an outright dismissal.

And besides, even if the Court exercises liberality and gives due course to the instant petition, it would still be dismissed for failure of petitioner to show grave abuse of discretion on the part of the CTA.

For a special civil action for *certiorari* to prosper, there must be grave abuse of discretion amounting to lack or excess of jurisdiction as when an act of a court or tribunal is performed with a capricious or whimsical exercise of judgment equivalent to lack of jurisdiction, or when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility which must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law -- mere abuse of discretion is not enough.⁶¹ In the instant case, there is none.

**No grave abuse of
discretion on the part
of the CTA *En Banc* in
denying due course to**

⁶⁰ *Tankeh v. Development Bank of the Philippines*, 720 Phil. 641, 668-669 (2013).

⁶¹ *VMC Rural Electric Service Cooperative, Inc. v. Court of Appeals*, 535 Phil. 345, 358-359 (2006).

**the petition for review,
and accordingly
dismissing the same.**

Section 10, Rule 9 of the 2005 Revised Rules of the CTA states that:

SEC.10. *Solicitor General as Counsel for the People and Government Officials Sued in their Official Capacity* -- The Solicitor General shall represent the people of the Philippines and government officials sued in their official capacity in all cases brought to the Court in the exercise of its appellate jurisdiction. The former may deputize the legal officers of the Bureau of Internal Revenue in cases brought under the National Internal Revenue Code or others laws enforced by the Bureau of Internal Revenue, or the legal officers of the Bureau of Customs in cases brought under the Tariff and Customs Code of the Philippines or others laws enforced by the Bureau of Customs, to appear in behalf of the officials of said agencies sued in their officials capacity: *Provided, however,* such duly deputized legal officers shall remain at all times under the direct control and supervision of the Solicitor General .

Jurisprudence likewise consistently holds that is it the Solicitor General who has the primary responsibility to appear for the government in appellate proceedings.⁶² The only exceptions are: (1) when the government is adversely affected by the contrary position taken by the OSG; (2) when there is an express authorization by the OSG deputizing legal officers to assist the Solicitor General and appear or represent the government in cases involving their respective offices; and (3) when the dismissal of the petition could have lasting effect on government tax revenues as in the case of *Commissioner of Internal Revenue (CIR) v. La Suerte Cigar and Cigarette Factory*,⁶³ where the issue raised was whether the revenue regulation issued by the CIR has exceeded, on constitutional grounds, the allowable limits of legislative delegation.⁶⁴ In this case, none of the exceptions apply.

Records show that when petitioner filed its petition for review before the CTA *En Banc*, it was represented by the BIR Special Prosecutors, and not by the OSG, which has the primary responsibility to appear for the government in appellate proceedings. Neither did it state in the said petition that the BIR Special Prosecutors were deputized by the OSG to represent petitioner. In fact, it was only when the petition for review was denied due course, and consequently, dismissed by the CTA *En Banc*, that petitioner claimed that the BIR Special Prosecutors were deputized by the OSG to file the petition for review pursuant to RMC No. 25-2010 and the deputization orders of the Solicitor General. However, despite the many opportunities given to petitioner, the BIR Special Prosecutors without any justifiable reason failed to submit

⁶² *LG Electronics Philippines, Inc. v. Commissioner of Internal Revenue*, 749 Phil. 155, 184 (2014).

⁶³ 433 Phil. 463, 467-468 (2002).

⁶⁴ *Civil Service Commission v. Asensi*, 488 Phil. 358, 373-375 (2004).

copies of RMC No. 25-2010 and the deputization orders to prove that they were duly deputized and authorized by the OSG to file the petition for review.

And although petitioner, in its second motion for reconsideration, was able to attach copies of the required documents, this did not cure the defect. First of all, the filing of a second motion of reconsideration is not allowed under Section 7,⁶⁵ Rule 15 of the 2005 Revised Rules of the CTA. Neither does it toll the running of the period to appeal.⁶⁶ Second, a perusal of the deputization orders show that the request for deputization of BIR Special Prosecutors was received and approved by the OSG only in February 2012 or months after the filing of the petition for review in November 2011.⁶⁷ Thus, at the time the petition for review was filed, the BIR Special Prosecutors were not yet deputized by the OSG.

Considering that petitioner was afforded ample time to submit the required documents, and considering that no valid reason was given by petitioner to explain its belated compliance, the CTA *En Banc* cannot be faulted for not recognizing the authority of the BIR Special Prosecutors to file the petition for review. Thus, no grave abuse of discretion is attributable to CTA *En Banc* in dismissing the petition for review.

No grave abuse of discretion on the part of the CTA Second Division in dismissing the complaint against Tuyay because of her availment of the tax amnesty.

With regard to Tuyay's availment of the tax amnesty, petitioner posits that under Section 5.5 of the IRR of RA 9480, respondent was disqualified to avail of the tax amnesty because at the time she applied for it, there was already a pending criminal case against her before the DOJ.

The Court does not agree.

Section 8 (e) of RA 9480 provides:

⁶⁵ SECTION 7. *No Second Motion for Reconsideration or for New Trial.* – No party shall be allowed to file a second motion for reconsideration of a decision, final resolution or order; or for new trial.

⁶⁶ *Reyes v. People*, 764 Phil. 294, 305 (2015).

⁶⁷ *Rollo*, pp. 179-182.

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:

x x x x

(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 ; x x x

Section 5.5 of the IRR of RA 9480, on the other hand, reads:

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

x x x x

5. Those with pending criminal cases filed in court or in the Department of Justice for tax evasion and other criminal offenses under Chapter II of Title X of the National Internal Revenue Code of 1997, as amended.

A comparison of Section 8(e) of RA 9480 and Section 5.5 of its IRR readily shows that the DOJ inserted the phrase "filed in court or in the [DOJ]" in the IRR. By adding the said phrase, the DOJ in effect expanded the law. It added another exception by disqualifying those with pending criminal complaints before the DOJ for tax evasion and other criminal offenses under Chapter II of Title X of the NIRC. This is a clear deviation from the law as there is nothing in Section 8(e) of RA 9480 to indicate that those with pending criminal complaints with the DOJ are also excluded from availing the tax amnesty. In fact, the deliberations of Congress on RA 9480 reveal the intention of the legislature that only those with pending tax cases in the courts are excluded. Quoted below are pertinent portions of the deliberations:

As to the amount that can be generated from the instant tax amnesty measure, Rep. Suarez replied that the proposed tax amnesty measure is expected to generate a minimum of P15 billion.

In his rejoinder, Rep. Malapitan pointed out that if the tax amnesty program would only generate this so much amount, it would be best if the government would just go after the tax evaders who have pending tax cases in the courts and in the process, generate more revenues without the benefit of enacting a tax amnesty program.

Rep. Suarez, in reply, explained that the primary objective of the measure is to entice about half-a-million tax avoiders and tax evaders and make them avail themselves of the tax amnesty program. He pointed out that the only way that the government can go after them is to take them to court to face charges. However, he said that considering the limited capabilities, manpower, and resources of the

government the next best alternative in going after these voluminous number of tax avoiders and tax evaders is to grant them tax amnesty.

While he shares the concern of Rep. Malapitan regarding the need to pursue pending tax cases against big tax cheaters, Rep. Suarez underscored however that those with pending tax cases in the courts, particularly criminal in nature, are not qualified for inclusion in the government's tax amnesty program.

x x x x

Rep. Suarez, in reply, reiterated that this was the third time that he had proposed the measure on the floor and in all of these occasions, he had not included the provision allowing those with pending tax cases to avail themselves of the tax amnesty program. He however pointed out that it will be up to the Body to decide whether such provision should still be included in the measure. This, as he underscored the fact that the success rate of the BIR in collecting back taxes from tax cases docketed in courts was only less than 1% and that most of the corporations involved in these tax cases have already ceased operations.

In his rejoinder, Rep. Serapio however pointed out that there are still pending tax cases in courts which are near resolution because of strong evidence of tax evasion. He then recalled that in one of his interpellations in the Committee deliberations, he had been informed by the DOF that a total amount of ₱28 billion can be collected from these pending tax cases. It is for this reason, he said, that he was against Section 7 and that despite the DOF's observation, it was a surprise that the committee had included the same provision in the measure.

Rep. Serapio further underscored that if the amount of money that can still be collected from the pending tax cases is more than amount that can be generated by the tax amnesty bill, then what is the need for this particular measure when the government can make more revenues if it only pursues the resolution of these pending tax cases.

In reply, Rep. Suarez explained that the pending big-time tax cases that Rep. Serapio was talking about are mostly criminal cases that cannot be qualified for inclusion under the tax amnesty program. He thereafter informed Rep. Serapio that these are about 2,374 pending tax cases amounting to ₱53 billion out of which ₱43 billion involves the Marcos case and about ₱7 billion are from pending cases that are about 20 to 25 years old. Moreover, he reiterated that the government had only less than one percent record of winning pending tax cases. Nonetheless, he stated that it will still be up to the decision of the Body whether to include those with pending tax cases to avail themselves of tax amnesty.

x x x x

Rep. Aguja next sought clarification on Section 10 (f) of the Bill.

Rep. Suarez affirmed that those with final and executory judgment by the courts or who have pending tax evasion cases in lower courts, the CTA and Supreme Court, cannot avail of the amnesty program. He explained that the cases involved are criminal in nature and are thus not included in the program.⁶⁸ (Underscoring supplied)

The Court need not belabor that administrative agencies, which are tasked to promulgate IRR, cannot supplant, modify, or amend the law by altering, enlarging, or restricting the provisions of the law its seeks to implement.⁶⁹ And in case there is a discrepancy between the law and its IRR, it is the law that must prevail because the IRR cannot go beyond the terms and provisions of the law.⁷⁰ Thus, as between Section 8(e) of RA 9480, and Section 5.5 of the IRR of RA 9480, it is the former that must prevail. Accordingly, under Section 8(e) of RA 9480, only those with pending criminal cases in court for tax evasion and other criminal offenses under the NIRC, 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, are excluded.

Here, there is no dispute that Tuyay availed of the tax amnesty under RA 9480 and complied with all the requirements thereof. In fact, during the pre-trial hearing, petitioner admitted that Tuyay's application for tax amnesty was approved and that her payment of taxes was accepted by the BIR.⁷¹ Thus, the only question is whether Tuyay was excluded from availing the tax amnesty. The Court finds that she was not disqualified to avail of the tax amnesty because at the time she availed of it on February 21, 2008, there was no pending criminal case against her before any court as it was only in October 2009 that the criminal cases were filed against her with the CTA. And even though there was already a pending criminal complaint against her before the DOJ on June 3, 2005, such fact cannot disqualify her from availing of the tax amnesty because this is not included in the list of exceptions under Section 8 of RA 9480.

In sum, having availed of the tax amnesty and having fully complied with all its requirements and conditions, Tuyay is indeed entitled to the immunities and privileges conferred by RA 9480, which includes her immunity from criminal liability under the NIRC arising from her failure to pay internal revenue taxes for taxable year 2005 and prior years. The CTA Third Division, therefore, committed no grave abuse of discretion in dismissing the criminal case against Tuyay because of her availment of the tax amnesty under RA 9480.

WHEREFORE, the instant petition for *certiorari* is hereby **DISMISSED** for lack of merit.

⁶⁸ Thirteenth Congress, First Regular Session (2004-2005); Journal of the House of Representatives, Journal No. 33, Tues, December 7, 2004, pp. 260-281.

⁶⁹ *Lokin, Jr. v. Commission on Elections*, 635 Phil. 372, 394 (2010).

⁷⁰ *Navarro v. Executive Secretary Ermita*, 626 Phil. 23, 48 (2010).

⁷¹ TSN, June 15, 2011, p. 22; CTA Division records, p. 242.

SO ORDERED.



RAMON PAUL L. HERNANDO
Associate Justice

WE CONCUR:


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson


HENRI JEAN PAUL B. INTING
Associate Justice

On official leave.
SAMUEL H. GAERLAN
Associate Justice

On official leave.
JAPAR B. DIMAAMPAO
Associate Justice

ATTESTATION

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


ESTELA M. PERLAS-BERNABE
Associate Justice
Chairperson

CERTIFICATION

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


ALEXANDER G. GESMUNDO
Chief Justice

