

## SECOND DIVISION

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

**ASIA INTERNATIONAL AUCTIONEERS, INC., PETITIONER, VS.  
COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.**

### R E S O L U T I O N

**PERLAS-BERNABE, J.:**

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

#### The Factual Antecedents

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

On August 25, 2004, AIA received from the CIR a Formal Letter of Demand, dated July 9, 2004, containing an assessment for deficiency value added tax (VAT) and excise tax in the amounts of P102,535,520.00 and P4,334,715.00, respectively, or a total amount of P106,870,235.00, inclusive of penalties and interest, for auction sales conducted on February 5, 6, 7, and 8, 2004.<sup>[5]</sup>

AIA claimed that it filed a protest letter dated August 29, 2004 through registered mail on August 30, 2004.<sup>[6]</sup> It also submitted additional supporting documents on September 24, 2004 and November 22, 2004.<sup>[7]</sup>

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

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

In opposition to the CIR's motion to dismiss, AIA submitted the following evidence to

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

### **Ruling of the Court of Tax Appeals**

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

The CTA First Division faulted AIA for failing to present the registry return card of the subject protest letter. Moreover, it noted that the text of the protest letter refers to a Formal Demand Letter dated June 9, 2004 and not the subject Formal Demand Letter dated July 9, 2004. Furthermore, it rejected AIA's argument that the September 24, 2004 letter merely served as a cover letter to the submission of its supporting documents pointing out that there was no mention therein of a prior separate protest letter.<sup>[19]</sup>

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

Hence, the instant petition.

### **Issue Before the Court**

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

Relevantly, on January 30, 2008, AIA filed a Manifestation and Motion with Leave of

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

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

### **Ruling of the Court**

A tax amnesty is a general pardon or the intentional overlooking by the State of its authority to impose penalties on persons otherwise guilty of violating a tax law. It partakes of an absolute waiver by the government of its right to collect what is due it and to give tax evaders who wish to relent a chance to start with a clean slate.<sup>[23]</sup>

A tax amnesty, much like a tax exemption, is never favored or presumed in law. The grant of a tax amnesty, similar to a tax exemption, must be construed strictly against the taxpayer and liberally in favor of the taxing authority.<sup>[24]</sup>

In 2007, RA 9480 took effect granting a tax amnesty to qualified taxpayers for all national internal revenue taxes for the taxable year 2005 and prior years, with or without assessments duly issued therefor, that have remained unpaid as of December 31, 2005.<sup>[25]</sup>

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

Section 8. Exceptions. — The tax amnesty provided in Section 5 hereof shall not extend to the following persons or cases existing as of the effectivity of this Act:

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

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

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

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

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