

SECOND DIVISION

[G.R. No. 193381, February 08, 2017]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. APO CEMENT CORPORATION, RESPONDENT.

D E C I S I O N

LEONEN, J.:

This resolves a Petition for Review^[1] seeking to reverse and set aside the Court of Tax Appeals *En Banc*'s Decision^[2] dated June 24, 2010, which affirmed the Second Division's Resolution^[3] dated June 11, 2009 granting respondent's Motion to Cancel Tax Assessment; and Resolution^[4] dated August 23, 2010 denying respondent's motion for reconsideration.

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

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

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

DEFICIENCY TAXES	AMOUNT
Income Tax	P 9,305,697.74
Value-Added Tax	1,610,070.51
Withholding Tax on Compensation	20,916,611.66
Unremitted Withholding Tax on	13,479,061.25

Compensation	
Expanded Withholding Tax	23,664,416.36
Unremitted Expanded Withholding Tax	4,549,677.32
Final Withholding Tax	3,095,786.45
Fringe Benefits Tax	213,656.97
Documentary Stamp Tax	67,433,862.97
Administrative Penalties	25,000.00
Total	P144,293,840.65^[8] (Emphasis supplied)

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

In its Answer, the Commissioner of Internal Revenue admitted that Apo Cement had already paid the deficiency assessments reflected in the Bureau's Final Decision on Disputed Assessment, except for the documentary stamp taxes.^[10] The deficiency documentary stamp taxes were allegedly based on several real property transactions of the corporation consisting of the assignment of several parcels of land with mineral deposits to Apo Land and Quarry Corporation, a wholly owned subsidiary, and land acquisitions in 1999.^[11] According to the Commissioner, Apo Cement should have paid documentary stamp taxes based on the zonal value of property with mineral/quarry content, not on the zonal value of regular residential property.^[12]

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

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

On June 11, 2009, the Court of Tax Appeals (Second Division) granted^[16] Apo Cement's Motion to Cancel Tax Assessment. It found Apo Cement a qualified tax amnesty applicant under Republic Act No. 9480;^[17] and fully compliant with the requirements of the law, the Department Order No. 29-07, and Revenue Memorandum Circular No. 19-2008. The Decision disposed as follows:

WHEREFORE, premises considered:

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

CANCELLED and **SET ASIDE** in view of petitioner's payment of said taxes.

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

SO ORDERED.^[18]

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

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

The Commissioner filed a Motion for Reconsideration, but the same was denied in the Court of Tax Appeals *En Banc* Resolution dated August 23, 2010.^[25]

Hence, the petitioner filed its Petition for Review with this Court. Respondent filed its Comment^[26] and petitioner her Reply.^[27]

In a Resolution^[28] dated June 15, 2011, the Court expunged from the records respondent's Rejoinder to petitioner's Reply.

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

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

I

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

Through the Verification and Certification of Non-Forum Shopping^[29] attached to the present Petition, Deputy Commissioner Estela V. Sales of the Legal and Inspection Group of the Bureau of Internal Revenue states that the contents of the Petition are true and correct of her own "knowledge and belief based on authentic records."^[30]

In the Court's Resolution^[31] dated December 8, 2010, the petitioner was directed to

submit a sufficient verification within five (5) days from notice. Petitioner did not comply.

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

We are not persuaded.

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

In *Go v. Court of Appeals*:^[34]

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

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

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

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

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

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

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

SEC. 3. *Signature and address.* -

. . .

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

(5a)

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

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

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

II.

The pertinent provisions on the grant and availment of tax amnesty under Republic Act No. 9480 state:

SECTION 1. *Coverage.*-There is hereby authorized and granted a tax amnesty which shall cover all national internal revenue taxes for the taxable year 2005 and prior years, with or without assessments duly issued therefor, that have remained unpaid as of December 31, 2005: *Provided, however,* That the amnesty hereby authorized and granted shall not cover persons or cases enumerated under Section 8 hereof.

SEC. 2. *Availment of the Amnesty.* Any person, natural or juridical, who wishes to avail himself of the tax amnesty authorized and granted under this Act shall file with the Bureau of Internal Revenue (BIR) a notice and Tax Amnesty Return accompanied by a Statement of Assets, Liabilities and Net worth (SALN) as of December 31, 2005, in such form as may be prescribed in the implementing rules and regulations (JRR) of this Act, and pay the applicable amnesty tax within six months from the effectivity of the IRR.

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