REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

HARD ROCK CAFÉ (MAKATI CITY), INC. Petitioner,	CTA Case No. 9279
	Members:
-versus-	FABON-VICTORINO, and RINGPIS LIBAN, JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: OCT 10 2018 3:12 p.m.

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RESOLUTION

***Fabon-Victorino, J.*:**

For Court action is respondent's *Motion for Reconsideration* dated July 31, 2018, challenging the Decision[1] promulgated on July 12, 2018, disposing the case as follows:

> **WHEREFORE**, the Petition for Review dated February 29, 2016 filed by Hard Rock Café (Makati City), Inc. is **GRANTED**.
>
> Accordingly, the Formal Assessment Notices Part I and Part II both dated May 5, 2015 issued by respondent Commissioner of Internal Revenue against petitioner Hard Rock Café (Makati City) for alleged deficiency percentage tax for the calendar year 2013, are hereby **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED**.

[1] Docket, pp. 1014-1035.

Respondent argues that the Court of Tax Appeals (CTA) has no legal competence to rule on the constitutionality/validity of Revenue Memorandum Circular (RMC) No. 18-2010, which he issued in the exercise of his quasi-legislative power under Section 4 of the NIRC, as amended, consequently, it does not fall under its power to decide tax cases including "other matters" arising under the same Tax Code, as amended. In view thereof, the CTA is bereft of any authority to declare RMC No. 18-2010 as contrary to existing tax laws and jurisprudence.

He further contends that the definitions of 'night and day club' and 'cabaret' as spelled out in RR No. 14-67 and in the twin cases of *Chuico*[2] and *Junior Women's Club*[3] were deemed superseded by RMC No. 18-2010, which he issued in the exercise of his quasi-legislative or rule-making power under Section 4 of the NIRC, as amended, precisely reliance by the Court on the foregoing authorities is misplaced, says respondent.

On the merits of the assessment, respondent avers that the business activities conducted by petitioner in its establishment demonstrate that it is 'night and day club' and 'cabaret' within the contemplation of RMC No. 18-2010, hence, subject to 18% amusement tax based on its gross sales/receipts pursuant to Section 125(b) of the NIRC, as amended. Petitioner has a dining area where food and/or drinks are served, a stage for performances, and a dance floor for its patrons/customers. Billiard tables are also found inside the establishment to encourage and lengthen their customers' stay inside the premises. With the foregoing, petitioner must be made to pay deficiency amusement tax in the total amount of ₱27,824,898.28, exclusive of increments for calendar year (CY) 2013.

In its Comment dated September 13, 2018, petitioner counter-argues that: 1) per jurisprudence[4], the CTA has jurisdiction to determine whether RMC No. 18-2010 is in

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[2] *Sy Chiuco vs. Collector of Internal Revenue,* G.R. No. L-13387, March 28, 1960.
[3] *Collector of Internal Revenue vs. Junior Women's Club of the Philippines,* G.R. No. L-6992, February 28, 1956.
[4] *Philippine American Life and General Insurance Company vs. Secretary of Finance,* G.R. No. 210987, November 24, 2014; and *Bloomberry Resorts and Hotels, Inc. vs. Bureau of Internal Revenue,* G.R. 212530, August 10, 2016.

consonance with the Tax Code or the Constitution; 2) RMC No. 18-2010 is respondent's opinion/ruling on tax matter, reviewable by the CTA on appeal; 3) the definition of 'night and day club' and 'cabaret' in RMC No. 18-2010 may not be utilized as basis for its amusement tax assessment as it is outside the legal meaning provided under RR No. 15-67 and in the twin cases of *Chuico* and *Junior Women's Club*; and 4) evidence adduced show that its business activity is neither a 'night and day club' nor a 'cabaret' within the contemplation of RR No. 15-67, as well as settled jurisprudence.

THE RULING OF THE COURT

This Court has jurisdiction over the instant case. This is very clear in Section 7(a)(2) of R.A. No. 1125, as amended[5], thus:

> *Sec. 7. Jurisdiction. — The CTA shall exercise:*
>
> *(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:*
>
> *(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges,* penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial; *(Emphasis supplied)*

Evidently, the inaction of the respondent on the protest filed by petitioner against the FAN (Parts I and II) both dated May 5, 2015 falls squarely within the ambit of the Court's jurisdiction.

The Court's competence over issues involving the validity/constitutionality of tax issuances is certainly not new. In a plethora of cases,[6] it has been consistently ruled

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[5] As amended by R.A. No. 9282.

[6] *Commissioner of Internal Revenue vs. Court of Tax Appeals and Petron Corporation*, G.R. No. 207843 (Resolution on Motion for Reconsideration), February 14, 2018; *Banco De Oro et. al. vs. Republic of the Philippines*, G.R. No. 198756 (Resolution on Motion for Reconsideration), August 16, 2016; *Bloomberry Resorts*

that the CTA has exclusive jurisdiction to pass upon the validity or constitutionality of a tax law, rules or regulations when raised by the taxpayer as a defense in disputing or contesting an assessment or claiming a refund. This is very clear in the words of the Supreme Court *En Banc* in the case of *Banco De Oro, et. al. vs. Republic of the Philippines*[7], thus:

> We revert to the earlier rulings in *Rodriguez*, *Leal*, and *Asia International Auctioneers, Inc.* *<u>The Court of Tax Appeals has exclusive jurisdiction to determine the constitutionality or validity of tax laws, rules and regulations, and other administrative issuances of the Commissioner of Internal Revenue</u>.*
>
> *x x x* *x x x* *x x x*
>
> *Section 7, as amended, grants the Court of Tax Appeals the exclusive jurisdiction to resolve all tax-related issues:*
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> Section 7. Jurisdiction. — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> 1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
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> 2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under

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and Hotels, Inc. vs. Bureau of Internal Revenue, G.R. No. 212530, August 10, 2016; *The Philippine American Life and General Insurance Company vs. The Secretary of Finance and the Commissioner of Internal Revenue*, G.R. No. 210987, November 24, 2014; *Asia International Auctioneers, Inc. vs. Parayno, Jr.*, G.R. No. 163445, December 18, 2007; *Commissioner of Internal Revenue vs. Leal*, G.R. No. 113459, November 18, 2002; and *Rodriguez vs. Blaquera*, G.R. No. L-13941, September 30, 1960.

[7] G.R. No. 198756, August 16, 2016.

> the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;
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> xxx xxx xxx

The Court of Tax Appeals has undoubted jurisdiction to pass upon the constitutionality or validity of a tax law or regulation when raised by the taxpayer as a defense in disputing or contesting an assessment or claiming a refund. It is only in the lawful exercise of its power to pass upon all matters brought before it, as sanctioned by Section 7 of Republic Act No. 1125, as amended.

This Court, however, declares that the Court of Tax Appeals may likewise take cognizance of cases directly challenging the constitutionality or validity of a tax law or regulation or administrative issuance (revenue orders, revenue memorandum circulars, rulings).

Section 7 of Republic Act No. 1125, as amended, is explicit that, except for local taxes, appeals from the decisions of quasi-judicial agencies (Commissioner of Internal Revenue, Commissioner of Customs, Secretary of Finance, Central Board of Assessment Appeals, Secretary of Trade and Industry) on tax-related problems must be brought exclusively to the Court of Tax Appeals.

In other words, within the judicial system, the law intends the Court of Tax Appeals to have exclusive jurisdiction to resolve all tax problems. Petitions for writs of certiorari against the acts and omissions of the said quasi-judicial agencies should, thus, be filed before the Court of Tax Appeals.

Republic Act No. 9282, a special and later law than Batas Pambansa Blg. 129 provides an exception to the original jurisdiction of the Regional Trial Courts over actions questioning the constitutionality or validity of tax laws or regulations. *Except for local tax cases, actions directly challenging the constitutionality or validity of a tax law or regulation or administrative issuance may be filed directly before the Court of Tax Appeals.*

Furthermore, with respect to administrative issuances (revenue orders, revenue memorandum

> circulars, or rulings), these are issued by the Commissioner under its power to make rulings or opinions in connection with the implementation of the provisions of internal revenue laws. Tax rulings, on the other hand, are official positions of the Bureau on inquiries of taxpayers who request clarification on certain provisions of the National Internal Revenue Code, other tax laws, or their implementing regulations. Hence, the determination of the validity of these issuances clearly falls within the exclusive appellate jurisdiction of the Court of Tax Appeals under Section 7 (1) of Republic Act No. 1125, as amended, subject to prior review by the Secretary of Finance, as required under Republic Act No. 8424. *(Emphasis and underscoring supplied; citations omitted)*

The foregoing ruling has been echoed in the case of *Commissioner of Internal Revenue vs. Court of Tax Appeals and Petron Corporation,*[8] where the High Court declared that the ruling in the *Banco De Oro* case is the prevailing rule on the matter.

Anent the propriety of the subject assessment, Section 125(b) of the NIRC, as amended, imposes a 18% amusement tax on cabarets, as well as night and day clubs based on a taxpayer's gross receipts/sales. Under RR No. 14-67, as well as the *Chuico*[9] case, for an establishment to be considered as a cabaret, the taxpayer's primary business activity must be that of 'dancing' where clienteles frequent the place to dance which is certainly not the business activity of petitioner. And to be deemed as a night and day club, the fact that the business establishment is serving foods and drinks is not enough. It must be shown that the habitues of the place are allowed to dance with their own partners or professional hostesses furnished by such leisure place.[10]

Contrary to respondent's posture, numerous indicators all veer towards the conclusion that petitioner is a restaurant engaged in food and drink business, no more, no less. This is clearly shown in the following: 1) the primary purpose in its Amended Articles of Incorporation; 2) Certification by the City of Makati treating it as a restaurant; 3) there are no dance floors, nor does its management encourage customers

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[8] G.R. No. 207843 (Resolution on Motion for Reconsideration), February 14, 2018.
[9] *Supra* note 2.
[10] *Supra,* note 3.

to dance; 4) the bands/musicians are merely ancillary to its restaurant business; 5) Notes to its Audited Financial Statements (AFS) for 2012 revealed that its revenue emanated from sales of food and drinks to customers.

More importantly, respondent's invocation of the provisions of RMC No. 18-2010 to rationalize the subject assessment is certainly misplaced since by treating videoke bars, karaoke bars, karaoke televisions, karaoke boxes and music lounges on the same boat as that of a 'cabaret' and 'night and day club,' it unduly broaden the legal and jurisprudential definition of the cited businesses which the Court cannot countenance. Note that administrative or executive acts, orders and regulations are only valid when they are not contrary to the laws or the Constitution.[11] An administrative agency may not enlarge, alter or restrict a provision of law. It cannot add to the requirements provided by law. To do so constitutes lawmaking, which is generally reserved for Congress.[12]

WHEREFORE, respondent's *Motion for Reconsideration* dated July 31, 2018 is **DENIED**. The Decision dated July 12, 2018 is **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

I Concur:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[11] Second sentence, Article 7, Civil Code of the Philippines.
[12] See *Soriano vs. Secretary of Finance,* G.R. No. 184450, January 24, 2017.