REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

MCDONALD'S PHILIPPINES REALTY CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1283
(CTA Case No. 8506)

x - x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

MCDONALD'S PHILIPPINES REALTY CORPORATION,
Respondent.

CTA EB NO. 1284
(CTA Case No. 8506)

Members:
DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

Promulgated:
JUL 0 5 2017 11:40 a.m.

x- -x

RESOLUTION

RINGPIS-LIBAN, ***J.:***

The Court issued a Decision in these consolidated cases on February 09, 2017 (assailed Decision). The dispositive portion of the assailed Decision[1] reads:

> **WHEREFORE**, premises considered, the Court hereby **DENIES** the instant Petitions for lack of merit. The Decision dated October 29, 2014 and the Resolution dated February 20, 2015 of the Court in Division in CTA Case No. 8506 are hereby **AFFIRMED**.

Before the Court are the following Motions for Reconsideration:

1) "Motion for Reconsideration (Re: Decision Promulgated on 13 February 2017[sic])"[2] filed by the Commissioner of Internal Revenue (CIR) on March 03, 2017, arguing that the Court erred in denying the imposition of 50% surcharge and in ruling that Petitioner fully paid and remitted its VAT payment for rental income.

2) "Motion for Partial Reconsideration (Re: Decision Dated February 9, 2017)"[3] filed by Mcdonald's Philippines Realty Corporation (MPRC) on March 07, 2017 *via* registered mail, raising the following arguments:

   a. The Court erred in applying the extraordinary ten-year prescription period under Section 222(a), Tax Code on the ground that MPRC's Quarterly VAT Returns for CY 2008 may be considered "false returns" in light of the Supreme Court's pronouncements in *Aznar v. Court of Tax Appeals*;

   b. The Court erred in ruling that the interest income derived by MPRC from the unpaid rentals and the loan that it granted to GADC was incidental to its leasing business, and is therefore subject to VAT pursuant to Section 105, in relation to Section 108(A), Tax Code;

   c. Even assuming for the sake of argument that the aforesaid interest income derived by MPRC is subject to VAT, the Court erred in imposing deficiency interest on the deficiency VAT assessed against MPRC, contrary to the clear language of Section 249(B), Tax Code; and

   d. Even assuming for the sake of argument that the imposition of deficiency interest applies to deficiency VAT assessed against MPRC, the Court erred in ordering MPRC to pay deficiency interest from January 25, 2009 until full payment of the deficiency taxes, instead of

1 Rollo, pp. 193-215.
2 *Id.*, pp. 244-251.
3 *Id.*, pp. 302-347.

until the time when MPRC was required to pay the assessed deficiency tax after being informed thereof, in accordance with Revenue Regulation No. 12-99.

On May 22, 2017, MPRC filed its "Comment/Opposition (Re: CIR's Motion for Reconsideration dated March 3, 2017)"[4] *via* registered mail. Meanwhile, the CIR failed to comment on MPRC's "Motion for Partial Reconsideration (Re: Decision Dated February 9, 2017)", per Records Verification Report of the Judicial Records Division dated June 01, 2017.[5]

After a careful consideration of the grounds raised in the motions for reconsideration, the Court finds that the issues and arguments raised therein had already been amply discussed, passed upon and considered by this Court in the Decision sought to be reconsidered. The parties' arguments constitute neither compelling nor cogent reason to modify, much less reverse our Decision dated February 09, 2017.

We note that the CIR's Motion for Reconsideration and MPRC's Motion for Partial Reconsideration are very close copies of its Petitions for Review in CTA EB Nos. 1283 and 1284. In the assailed Decision, we already pointed out that the issues raised by MPRC and the CIR are rehashed from their arguments before the Court in Division, and have been sufficiently discussed in the Decision and Resolution of the Court in Division.[6]

Considering the fact that the CIR did not raise any new argument that would merit a reconsideration of the assailed Decision, the Court finds its Motion for Reconsideration bereft of merit.

With respect to MRPC's first and second arguments in its Motion for Partial Reconsideration, apart from minor stylistic changes, they are mere reproductions of its Petition for Review. Hence, a discussion on the same issues is deemed unwarranted. As to MPRC's third and fourth arguments in its Motion for Partial Reconsideration, we find them unmeritorious. The Court simply applied Section 249 of the 1997 NIRC, to wit:

> "SECTION 249. Interest. —
>
> (A) In General. — There shall be assessed and collected **on any unpaid amount of tax**, interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed by rules and

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[4] Rollo, pp. 373-384.
[5] *Id.*, p. 385.
[6] *Id.*, p. 203.

regulations, **from the date prescribed for payment until the amount is fully paid**.

(B) Deficiency Interest. — **Any deficiency in the tax due**, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected **from the date prescribed for its payment until the full payment thereof**."[7]

The law itself provides that imposition of deficiency interest on taxes due from the date prescribed for its payment until full payment is made, is proper. Hence, an administrative issuance such as Revenue Regulation No. 12-99 cannot take precedence over the mandate of the statute.

WHEREFORE, premises considered, the "Motion for Reconsideration (Re: Decision Promulgated on 13 February 2017[sic])" filed by the Commissioner of Internal Revenue, and the "Motion for Partial Reconsideration (Re: Decision Dated February 9, 2017)" filed by Mcdonald's Philippines Realty Corporation, are hereby **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

(See Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(I maintain my dissent)
LOVELL R. BAUTISTA
Associate Justice

(With due respect, I maintain my Concurring and Dissenting Opinion)
ERLINDA P. UY
Associate Justice

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7 *Emphasis and underscoring supplied.*

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

Catherine T. Manahan
(I maintain my Dissenting Opinion)
CATHERINE T. MANAHAN
Associate Justice

REPUBLIC OF THE PHILIPPINES
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Mindaro-Grulla,
Ringpis-Liban, and
Manahan, ***JJ.***

Promulgated:

JUL 05 2017 11:40 a.m.

x- -x

DISSENTING OPINION

DEL ROSARIO, P.J.:

With due respect, I reiterate my Dissenting Opinion in the assailed Decision that **the ten-year prescriptive period to assess deficiency taxes** under Section 222 (a) of the National Internal

Revenue Code (NIRC) of 1997, as amended, **should not be applied in all cases involving false returns**.

In the very recent case of ***Commissioner of Internal Revenue vs. Philippine Daily Inquirer, Inc.***,[1] the Supreme Court, citing **Commissioner of Internal Revenue vs. B.F. Goodrich Phils., Inc.**,[2] emphasized that the entry of wrong information in the tax return does not *ipso facto* makes the tax return false, *viz.*:

> "xxx, while the filing of a fraudulent return necessarily implies that the act of the taxpayer was intentional and done with intent to evade the taxes due, the filing of a false return can be intentional or due to honest mistake. In *CIR v. B.F. Goodrich Phils., Inc.*, the Court stated that **the entry of wrong information due to mistake, carelessness, or ignorance, without intent to evade tax, does not constitute a false return**. In this case, we do not find enough evidence to prove fraud or intentional falsity on the part of PDI." (Boldfacing supplied; citation omitted)

The facts obtaining in this case do not prove fraud or intentional falsity on the part of McDonald's Philippines Realty Corporation in filing its Value-Added Tax (VAT) Returns for taxable year 2008. As mere deviation from the truth is not sufficient justification to consider the VAT returns of McDonald's Philippines Realty Corporation as false for purposes of applying the ten-year prescriptive period to assess, the applicable prescriptive period for the Commissioner of Internal Revenue to assess McDonald's Philippines Realty Corporation for deficiency VAT for taxable year 2008 is three (3) years, reckoned from the filing of McDonald's Philippines Realty Corporation's quarterly VAT returns for the taxable year 2008. The Final Assessment Notice issued by the Commissioner of Internal Revenue against McDonald's Philippines Realty Corporation, assessing it for deficiency VAT for taxable year 2008, having been issued beyond the three-year prescriptive period, is void and must perforce be cancelled and set aside.

All told, I VOTE to **DENY** the Motion for Reconsideration filed by the Commissioner of Internal Revenue. On the other hand, I VOTE to **GRANT** the Motion for Partial Reconsideration filed by McDonald's Philippines Realty Corporation.

ROMAN G. DEL ROSARIO
Presiding Justice

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[1] G.R. No. 213943, March 22, 2017.
[2] 363 Phil. 169 (1999).