REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

KABALIKAT PARA SA MAUNLAD NA BUHAY, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9003

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, *and*
MANAHAN, *JJ.*

Promulgated:

APR 03 2018
9:15 a.m.

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AMENDED DECISION

CASANOVA, J.:

For resolution is petitioner's **Motion for Reconsideration**, filed on January 23, 2018, with respondent's **Comment (Re: Motion for Reconsideration)**, filed on February 13, 2018.

Petitioner seeks the reconsideration of the Court's Decision dated January 3, 2018 (assailed Decision), the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **DENIED**. The deficiency value-added tax assessment issued by respondent against petitioner for CY 2012 is **UPHELD**. Accordingly, petitioner is ordered to pay **₱35,304,951.70**, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

Basic deficiency VAT	₱ 28,243,961.36
Add: 25% Surcharge	7,060,990.34
Total deficiency VAT	**₱ 35,304,951.70**

In addition, petitioner is ordered to pay:

(a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency VAT of ₱28,243,961.36 computed from January 25, 2013 until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended; and

(b) Delinquency interest at the rate of 20% per annum on the total amount of ₱35,304,951.70, and on the 20% deficiency interest which have accrued as aforestated in (a), computed from January 30, 2015 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED."

Petitioner's motion is based on the following grounds:

1. The decision failed to consider the argument that petitioner's microfinancing activities, being a legally mandated function, is not a pursuit of business or commercial activity; hence it is outside the coverage of valued-added tax (VAT).

2. The decision failed to explain why microfinancing activities, which is lending to the poor, should be distinguished from the lending function of entities defined as financial intermediaries.

3. The decision erroneously held that non-bank financial intermediaries presume authorization from the Bangko Sentral ng Pilipinas (BSP) to perform quasi-banking activities.

4. The decision mistakenly held that petitioner is claiming to be in the same footing as pawnshops as a non-bank financial intermediary.

On the other hand, respondent contends that petitioner's microfinancing activities is in pursuit of business or commercial activity subject to VAT as provided under Section 105 of the National Internal Revenue Code (NIRC) of 1997, as amended, and falls squarely under the phrase "in the course of trade or business". Respondent points out that under the said provision, even a non-stock, non-profit organization or government entity is liable to pay VAT.

Respondent also stresses that petitioner is lending money; and lending money to the poor or otherwise, does not negate the fact that petitioner is still engaged in business for profit.

Respondent also highlights the Court's observation that, "the petitioner seeks to align itself with the definition of financial intermediaries to escape VAT liability."

The motion is bereft of merit.

A perusal of petitioner's arguments shows that they are mere reiterations of its previous arguments that were already considered, thoroughly discussed and passed upon in the assailed Decision.

Tax exemptions are never presumed and the burden lies with the taxpayer to clearly establish his right to exemption. A tax exemption cannot arise from vague inference. Tax exemptions must be clear and unequivocal. A taxpayer claiming tax exemption must point to a specific provision of law conferring on the taxpayer, in clear and plain terms, exemption from a common burden. Any doubt whether a tax exemption exists is resolved against the taxpayer.[1]

In this case, petitioner failed to point a specific provision of law conferring on the taxpayer, in clear and unequivocal terms, too plain to be mistaken, that it is exempt from VAT.

Petitioner's reliance on Revenue Regulations (RR) No. 08-08, which held that the legally-mandated function of the BSP is not in pursuit of commercial or business activities, is misplaced. To our minds, the BSP is in a totally different league from microfinance nongovernment organizations (NGOs).

As provided in RR No. 08-08, the BSP is the constitutionally-mandated independent central monetary authority which performs governmental functions in order to achieve its responsibilities and objectives. The activities engaged in, and transactions undertaken, by the BSP, are geared towards the attainment of its constitutional and statutory mandates, and not in pursuit of commercial or business activities. Hence, it is but fitting for the BIR to hold that the revenues generated by the BSP from its operation will not transform such activities into a business undertaking.

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[1] *Digital Telecommunications Philippines, Inc. vs. City Government of Batangas, et al.,* G.R. No. 156040, December 11, 2008.

Petitioner's microfinancing activities cannot be said to be a "legally-mandated function", in the context of RR No. 08-08, since petitioner was not created by law to perform a governmental function. Thus, petitioner's argument that microfinancing, being a legally mandated function, is not a pursuit of business or commercial activity, hence, is VAT exempt, must fall.

Even assuming that microfinancing is a legally-mandated function, being a legally-mandated function does not automatically equate to tax exemption. This is clearly demonstrated by the fact that Republic Act (RA) No. 10693[2] approved on November 3, 2015 did not totally exempt microfinance NGOs from taxation but imposed a preferential tax of two percent (2%) based on its gross receipts from microfinance operations in lieu of all national taxes.

Petitioner cannot merely rely on presumption or inference by arguing that microfinancing is the same as the lending function of entities defined as financial intermediaries; that it should have been classified as a *de facto* non-bank financial intermediary; that it should have been assessed as a non-bank financial intermediary considering that similarly situated non-stock, non-profit civic organizations like Rangtay sa Pagrang-ay, Inc. and Urban Program Livelihood Finance & Training were assessed as such; and that its situation should have been similarly treated with how the issue of the categorization of pawnshop was handled by the Supreme Court.

As to the BIR Ruling supposedly issued to Pinoyme Foundation, Inc. ruling that a non-stock non-profit corporation whose corporate purpose is to conduct microfinance pursuant to RA No. 8425 can be classified as a non-bank financial intermediary, it bears stressing that BIR Rulings are not conclusive in the interpretation of tax laws. Said rulings should not be taken as the gospel truth of the interpretation of tax laws which will deprive the courts of its statutory mandate to interpret said laws. They are merely persuasive in nature.[3] Hence, petitioner cannot simply rely on this BIR Ruling especially when the same was not even issued in its favor.

The interpretation placed upon a statute by the executive officers, whose duty is to enforce it, is entitled to great respect by the courts.

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[2] An Act Strengthening Nongovernment Organizations (NGOs) Engaged in Microfinance Operations for the Poor or the "Microfinance NGOs Act".

[3] *Jewel Pawnshop Corp. vs. CIR*, CTA Case No. 6824, September 14, 2004.

Nevertheless, such interpretation is not conclusive and will be ignored if judicially found to be erroneous.[4]

Hence, the administrative assessments supposedly issued to Rangtay sa Pagrang-ay, Inc. and Urban Program Livelihood Finance & Training, assessing these non-stock, non-profit corporation engaged in microfinance activities as non-bank financial intermediaries, cannot control the construction of the Court.

Petitioner's reliance on the case of *First Planters Pawnshop, Inc. vs. Commissioner of Internal Revenue*[5] is, likewise, misplaced because the factual circumstances of that case are different from the case at bar. Even though for years there was no definitive declaration as to the tax treatment of a pawnshop business despite the fact that pawnshops have long been in existence, which may be said of petitioner's situation, however, in that case, when RA No. 9238 took effect on February 16, 2004, the Department of Finance issued RR No. 10-2004 dated October 18, 2004, finally classifying pawnshops as Other Non-bank Financial Intermediaries. In petitioner's situation, however, despite the enactment of RA No. 10693, there is no provision in the said law and in RR No. 3-2017, which implements the said law, categorically classifying microfinance NGOs as non-bank financial intermediaries, which categorization the Court can apply retroactively, as petitioner is suggesting. Hence, petitioner, as a non-stock, non-profit corporation conducting microfinance operations pursuant to RA No. 8425, cannot be classified as a non-bank financial intermediary.

Notably, Section 5 of RR No. 14-2007[6] (prevailing revenue regulation at the time of the disputed assessment), which was issued to clarify the tax treatment of profits on microfinance activities derived by NGOs and cooperatives, only exempts NGOs from payment of income taxes and not VAT, to wit:

> **"SECTION 5. Tax Treatment of Microfinance Services Rendered by Non-Government Organizations. —"**
>
> All NGOs falling under the enumeration of Section 30 of the Tax Code of 1997, as amended, are exempt from income taxes, in respect of income received by them as such. However, income of such NGOs from microfinance

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[4] *Philippine Bank of Communications vs. Commissioner of Internal Revenue*, G.R. No. 112024, January 28, 1999.

[5] G.R. No. 174134, July 30, 2008.

[6] Subject: Tax on Non-governmental Organizations (NGOs) and Cooperatives Engaged in Microfinance Activities dated December 11, 2007.

> activities and which are not in respect of their registered activities covered by Section 30 of the Tax Code of 1997, as amended, regardless of the disposition made of such income, shall be subject to tax under the Tax Code of 1997, as amended.
>
> Similarly, non-stock, non-profit NGOs, whether or not engaged in microfinance activities are still also required to file withholding tax returns and remit withholding taxes on all income payments that are subject to withholding as specified in Revenue Memorandum Circular No. 76-2003."

Considering that there is no specific provision of law or revenue regulations on the VAT exemption of microfinancing activities of microfinance NGOs during the period covered by the disputed assessment (1st semester of 2012), then the Court correctly treated petitioner's microfinance activities as subject to VAT under the "in the course of trade or business" phrase of Section 105 of the NIRC of 1997, as amended, in relation to the general classification of "sale or exchange of services" under Section 108(A) of the NIRC of 1997, as amended.

Petitioner also argues that it can be considered as "other non-bank financial intermediary" even if it is not regulated by the BSP. Petitioner points out that Section 121 of the NIRC of 1997, as amended, covers banks and non-bank financial intermediaries performing quasi-banking activities while Section 122 of the same Code covers "other non-bank financial intermediaries." Hence, petitioner concludes that Section 122 covers financial intermediaries which do not perform quasi-banking activities and therefore, are not under BSP supervision. In other words, petitioner explains that the NIRC recognizes the existence of non-banking financial intermediaries which are not under BSP supervision.

In the assailed Decision, the Court held that petitioner cannot be considered as "other non-bank financial intermediary" simply on the basis of its bare allegation; there is nothing in the records that would show that it has been authorized by the BSP to perform quasi-banking activities citing Section 22(W) of the NIRC of 1997, as amended.

Petitioner should understand that this pronouncement was made by the Court in light of petitioner's arguments in its memorandum that although microfinance often involves performing quasi-banking activities, it was not under the regulation of the BSP; and that microfinance NGOs perform quasi-banking activities but are not under the supervision and regulation of the BSP.[7]

Hence, it appearing that petitioner is arguing that microfinance NGOs perform quasi-banking activities, and petitioner being a microfinance NGO, then the Court held that petitioner was not able to present proof that it was authorized by the BSP to perform quasi-banking activities. It should be noted that under Section 6, Chapter II of RA No. 8791 or "The General Banking Law of 2000", no person or entity shall engage in banking operations or quasi-banking functions without authority from the BSP. Moreover, under Section 3, Article I, Chapter I of RA No. 7653 or "The New Central Bank Act", the BSP shall exercise regulatory powers over the operations of non-bank financial institutions performing quasi-banking functions, among others.

However, it appears that petitioner is now saying that it is a microfinance NGO not performing quasi-banking function. Notwithstanding the confusion brought about by petitioner as to whether or not it is performing quasi-banking activities, granting that petitioner is not performing quasi-banking function, still, petitioner failed to prove that it is a non-bank financial intermediary as discussed in the assailed Decision and further explained above.

In view of the foregoing, the Court finds no cogent reason to reverse the ruling in the assailed Decision.

However, this Court finds the necessity of modifying the dispositive portion of Our January 3, 2018 Decision, with regard to the imposition of the relevant interest on the final amount adjudged to be payable in this case, in order to conform to the new provisions of Republic Act No. 10963, or more commonly known as the TRAIN law, which took effect on January 1, 2018. The amended provision of Section 249 reads:

> "Section 249. Interest.—
>
> (A) In General. There shall be assessed and collected on any unpaid amount of legal interest at the rate of **DOUBLE THE LEGAL INTEREST RATE FOR LOANS OR FORBEARANCE OF ANY MONEY IN THE ABSENCE OF ANY EXPRESS STIPULATION AS SET BY THE BANGKO SENTRAL NG PILIPINAS**, from the date prescribed for payment until the amount is fully paid, **PROVIDED THAT**

[7] Petitioner's Memorandum, Docket (Vol. II), pp. 945-946.

> **IN NO CASE SHALL THE DEFICIENCY AND DELINQUENCY INTEREST PRESCRIBED UNDER SUBSECTION (B) AND (C) HEREOF, BE IMPOSED SIMULTANEOUSLY.**'
>
> (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, **OR UPON ISSUANCE OF A NOTICE AND DEMAND BY THE COMMISSIONER OF INTERNAL REVENUE, WHICHEVER COMES EARLIER.**" (with emphasis on the amended provisions)

The foregoing provision will be applied only on the portion of interest that will run starting January 1, 2018 onwards, as discussed in our recently decided case of *Moog Controls Corporation-Philippine Branch vs. Commissioner of Internal Revenue*[8], to wit:

> "The clear wordings of the aforequoted law is that the deficiency interest shall run from either of the following dates (whichever will come earlier):
>
> 1. The date prescribed for payment;
> 2. The issuance of a notice and demand by the Commissioner of Internal Revenue (CIR).
>
> The end date of the charging of the interest would be until full payment thereof and since the full payment will only be possible after petitioner is apprised by this Court of its tax liabilities by reason of the latter's judgment on January 3, 2018, we are inclined to agree with the petitioner that the provisions of the TRAIN law should *partially* apply to the instant case. There is no question that the tax liabilities or deficiencies of petitioner became due before the amendment of Section 249 of the 1997 NIRC by virtue of the TRAIN law but it is also quite plain to see that the full payment of the taxes will only be accomplished after the decision of this Court on January 3, 2018 when the TRAIN law has already come into effect. Section 87 of the TRAIN law provides for the date of its effectivity as follows:

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[8] CTA Case No. 9077, February 22, 2008.

> Section 87. *Effectivity*. This Act shall take effect on **January 1, 2018** following its complete publication in the Official Gazette or in at least one (1) newspaper of general circulation.' (Emphasis supplied)"

WHEREFORE, in the light of the foregoing considerations, petitioner's **Motion for Reconsideration is DENIED** for lack of merit. The Decision dated January 3, 2018 is hereby **AFFIRMED** with **MODIFICATION.** The deficiency value-added tax assessment issued by respondent against petitioner for CY 2011 is **UPHELD**. Accordingly, petitioner is ordered to pay **₱35,304,951.70**, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

Basic deficiency VAT	₱28,243,961.36
Add: 25% Surcharge	7,060,990.34
Total deficiency VAT	**₱35,304,951.70**

In addition, petitioner is ordered to pay:

a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency VAT of ₱28,243,961.36 computed from January 25, 2013 **<u>until December 31, 2017</u>** pursuant to Section 249 (B) of the NIRC of 1997, as amended:

b) Delinquency interest at the rate of 20% per annum on the total amount of P35,304,951.70, and on the 20% deficiency interest which have accrued as aforestated in (a), computed from January 30, 2015 **<u>until December 31, 2017</u>** pursuant to Section 249 (C) of the NIRC of 1997, as amended; and

c) **<u>Delinquency interest at the rate of 12% on the unpaid amount (basic tax plus surcharge plus interests computed in (a) and (b) above) from January 1, 2018 until the amount is fully paid pursuant to the relevant provisions of the TRAIN Law.</u>**[9]

[9] Moog Controls Corporation-Philippine Branch vs. Commissioner of Internal Revenue, CTA Case No. 9077, February 22, 2018.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

ATTESTATION

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

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice