REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 1988** **(CTA Case No. 9135)**
	Present:
-versus-	DEL ROSARIO, *P.J.*, CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, *and* MODESTO-SAN PEDRO, *JJ.*
HARD ROCK CAFÉ (MAKATI CITY), INC., Respondent.	**Promulgated:** JUN 02 2021 11:10am

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RESOLUTION

CASTAÑEDA, JR., J.:

This resolves the Motion for Reconsideration filed by petitioner on August 3, 2020,[1] with respondent's Comment (Re: CIR's Motion for Reconsideration dated August 3, 2020) filed on January 11, 2021.[2]

In his Motion for Reconsideration, petitioner seeks to reverse the Court's Decision dated June 29, 2020, which affirmed the cancellation of the assessment for deficiency percentage tax against respondent for calendar year 2012, to wit:

> "**WHEREFORE**, the Petition for Review dated January 7, 2019, filed by the Commissioner of Internal Revenue is **DENIED**. The challenged Decision dated August 10, 2018 and the Resolution dated December 6, 2018, both rendered by the Court in Division are **AFFIRMED**.
>
> **SO ORDERED**."[3]

[1] *Rollo*, pp. 164-176.
[2] *Id.* at pp. 185-197.
[3] *Id.* at p. 155.

In support of his motion, petitioner reiterates the arguments that: (1) respondent's business is an amusement establishment subject to amusement tax; (2) respondent operates as a night or day club; (3) the Court *En Banc* has no power to rule on the constitutionality of validity of Revenue Memorandum Circular No. 18-2010; (4) Revenue Memorandum Circular No. 18-2010 is a valid exercise of the rule-making power of the Commissioner of Internal Revenue; and, finally, (5) taxes are the lifeblood of the government and should be collected without unnecessary hindrance.

Petitioner's Motion for Reconsideration is bereft of merit.

First, it bears stressing that with respect to the contention that respondent's business is an amusement establishment or a night or day club subject to amusement tax, the court *a quo* had ruled that while respondent provided some form of entertainment, the same activities were merely *incidental to its main line of business* of serving food and drinks, thus:

> "In the case at hand, it was established that although petitioner provides some form of entertainment, the same are but incidental to its main line of business of serving food and drinks. While customers may dance within the dining area, there is no designated dance floor. Likewise, records are bereft of evidence that petitioner employ dancers to dance with its customer. Clearly, respondent failed to present evidence that petitioner's establishment also functions as a night club. Records are bereft of evidence that petitioner's establishment was frequented by customers for dancing either with their own partners or professional dancers furnished by petitioner."[4]

In the Court's decision under reconsideration, the issue of the nature of respondent's business was settled with finding that indeed respondent's *principal business activity was that of a restaurant* based on the evidence on record:

> "Indeed, for a business or industry to be deemed as a cabaret, or night and day club within the purview of Section 125 (b) of the NIRC, as amended, it must be established by concrete and credible evidence that the taxpayer's commercial operations principally involve dancing and customers patronize the place in order to dance either with their own partners or with professional hostesses engaged to render such service to its customers.
>
> Guided by the above observations, respondent's commercial undertaking may not be treated as a cabaret, night or day club subject to amusement tax under Section 125 (b) of the NIRC, as amended. Petitioner failed to present formidable proof showing that respondent hires hostesses, ballerinas, or dancers for the purpose of dancing with its customers or patrons in its premises. Neither does it have a specific dance floor in its business premises as demonstrated in a diagram indicating the partition of areas comprising its business establishment. This much was confirmed by

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[4] August 10, 2018 Decision, *Rollo*, pp. 58-59.

witness Joseph Y. Ang, testifying that respondent has no dance floor and in fact does not encourage or accept any dancing activities in the establishment. Customers spontaneously sing and/or dance with the music it provides in the area where they are seated and where ordered food and/or drinks are served.

Besides, numerous indicators suggest that respondent's *principal* business activity is that of a restaurant. For one, the primary purpose for its incorporation is to establish and maintain restaurants, coffee shops, refreshment parlors, cocktail lounges, and in the furtherance of such business, to provide its customers with entertainment, including music, and disco dancing, as well as the selling of souvenir items and goods, and catering services in relation to its restaurant business. In essence, its industry consists of service of food and drinks, entertainment being incidental to its restaurant operation.

Significantly, respondent was duly licensed and recognized by the City of Makati as a restaurant per the latter's Certifications dated July 6, 2011 and March 7, 2012. By the same token, it has been accredited by the Department of Tourism as a restaurant with Accreditation No. RST-NCR-00000190-2013.

Moreover, respondent's menu solely composed of food and drinks positively affirms conclusion that its business is to serve food and drinks to its customers or patrons. This as well was validated by its Audited Financial Statements ending December 31, 2012, particularly Note 12 thereof, showing that its revenues were generated from its sales of food, drinks, catering and banquet services rendered to its customers and/or patrons.

All the foregoing inevitably sustains the conclusion that respondent's commerce-in-chief is the sale of food and drinks to its customers, with entertainment being ancillary or an addition to enhance its restaurant business operation. Since respondent is not engaged in the commercial endeavors of a cabaret, or a night and day club as contemplated under Section 125 (b) of the NIRC, as amended, and settled jurisprudence, the invalidation of petitioner's assessment against it is in order."[5]

Second, the Court has already explained that although Revenue Memorandum Circular No. 18-2010 is an issuance made by the Bureau of Internal Revenue clarifying the Coverage and Taxability of Amusement Places under Section 125(b) of the National Internal Revenue Code, the same is *not* conclusive for purposes of adjudicating cases before the Court. Accordingly, the Court reiterates this holding which states that:

"It bears repeating that Revenue memorandum-circulars are considered administrative rulings (in the sense of more specific and less general interpretations of tax laws) which are issued from time to time by the Commissioner of Internal Revenue. It is widely accepted that the interpretation placed upon a statute by the executive officers, whose duty is to enforce it, is entitled to great respect by the courts. Nevertheless, such interpretation is not conclusive and will be ignored if judicially found to be erroneous. Thus, courts will not countenance administrative issuances that

[5] *Rollo*, pp. 150-151; underscoring supplied and citations omitted.

override, instead of remaining consistent and in harmony with the law they seek to apply and implement."[6]

Finally, it is clear that the issues raised in the motion are mere reiterations and amplifications of his previous arguments, all of which have been considered and denied in the assailed Decision dated June 29, 2020. As such, there is no compelling reason for the Court to modify or reverse its holding.

WHEREFORE, in view of the foregoing, the Motion for Reconsideration filed by the Commissioner of Internal Revenue is **DENIED** for lack of merit.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

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[6] *Philippine Bank of Communications v. Commissioner of Internal Revenue*, G.R. No. 112024, January 28, 1999; underscoring supplied and citations omitted.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice