REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

MAXICARE HEALTHCARE CORPORATION, Petitioner,	**CTA EB NO. 1312** **(CTA Case No. 8441)**
-versus-	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	

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COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 1317** **(CTA Case No. 8441)**
-versus-	Present: Del Rosario, *P.J.,* Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, *and* Manahan, *JJ.*
MAXICARE HEALTHCARE CORPORATION, Respondent.	Promulgated: MAY 08 2017 2:10 pm

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D E C I S I O N

CASTAÑEDA, JR., J.:

Before Us are consolidated Petitions for Review, docketed as follows:

(a) CTA EB No. 1312, that Maxicare Healthcare Corporation (Maxicare) filed by registered mail on June 9, 2015; and,

(b) CTA EB No. 1317, that the Commissioner of Internal Revenue (CIR) filed by registered mail on June 10, 2015.

Both petitions assail the April 21, 2014 Decision and May 5, 2015 Amended Decision promulgated by the Third Division of the Court in CTA Case No. 8441, the dispositive portions of which respectively read:

April 21, 2014 Decision that upheld the 2008 2nd, 3rd and 4th Quarters VAT assessment:

> "**WHEREFORE**, the instant Petition for Review dated March 13, 2012 filed by petitioner Maxicare Healthcare, is hereby **PARTIALLY GRANTED**. Consequently, the assessment issued by respondent Commissioner of Internal Revenue against petitioner Maxicare Healthcare Corporation for calendar year 2008 covering deficiency Value-Added Tax is **UPHELD IN PART**. Accordingly, petitioner is **DIRECTED TO PAY** respondent basic deficiency VAT in the amount of ₱125,726,203.58 and the corresponding twenty-five percent (25%) surcharge in the amount of ₱31,431,550.89 as imposed under Section 248(A)(3) of the NIRC of 1997, as amended, or in the sum of ₱157,157,754.47, computed as follows:

	2nd Qtr.	3rd Qtr.	4th Qtr.	Total
Cost to render service (Exempt sales per VAT Returns)	₱ 247,386,731.43	₱ 376,254,627.49	₱ 572,012,745.55	₱1,195,654,104.47
Output Tax Due Thereon	₱ 29,686,407.77	₱ 45,150,555.30	₱ 68,641,529.47	₱143,478,492.54
Less: Input tax attributable to Exempt Sales - now allowed as input tax	₱ 5,209,895.00	₱ 5,402,589.96	₱ 7,139,804.00	₱17,752,288.96
Basic Deficiency VAT	₱ 24,476,512.77	₱ 39,747,965.34	₱ 61,501,725.47	₱125,726,203.58
Add: 25% Surcharge				₱31,431,550.89
Total Amount Due				₱157,157,754.47

> 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 ₱24,476,512.77, ₱39,747,965.34, and ₱61,501,725.47 for the 2nd, 3rd and 4th quarters, respectively, computed from July 25, 2008, October 25, 2008 and January 25, 2009, respectively, until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended; (b) Delinquency interest at the rate of twenty percent (20%) per annum on the total deficiency taxes of ₱157,157,754.47 representing basic deficiency VAT of ₱125,726,203.58 and 25°/o surcharge of ₱31,431,550.89 computed from April 30, 2012 until full payment thereof pursuant to Section 249(C)(3) of the NIRC of 1997, as amended.
>
> **SO ORDERED.**"

May 5, 2015 Amended Decision that withdrew and set aside the VAT assessment:

> "**WHEREFORE**, the Motion for Partial Reconsideration dated May 7, 2014 filed by petitioner is hereby **GRANTED**. Accordingly, the impugned VAT assessment issued by respondent against petitioner for taxable year 2008 is ordered withdrawn and set aside.
>
> On the other hand, the Motion for Partial Reconsideration posted by respondent on May 9, 2014 is hereby **DENIED**, for lack of merit.
>
> **SO ORDERED**."

THE FACTS

Maxicare, previously known as Philippine Healthcare Providers, Inc.,[1] is a domestic corporation whose "primary purpose is to establish, maintain, conduct, and operate a prepaid group practice health care delivery system or a health maintenance organization (HMO) to take care of the sick, diseased, and disabled persons who are enrolled in a health care plan and to provide for the administrative, legal and financial responsibilities of the organization."[2]

By law,[3] the CIR has authority to decide disputed assessment and to enforce the provisions of National Internal Revenue Code (NIRC), and other tax laws.

On January 1, 1998, the 1997 NIRC took effect. Section 7 therein expressly prohibits the CIR from delegating the powers (a) to recommend rules and regulations implementing the NIRC and (b) to issue rulings of first impression and to reverse, revoke or modify existing rulings.[4]

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[1] Decision, par. 4, p. 7, Division Docket Vol. 2, p. 625; EFPS Forms, Annex E, Maxicare's March 13, 2012 Petition for Review, Division Docket Vol. 1, pp. 56-66; EFPS Forms, Exhibit C, Maxicare's Formal Offer of Documentary Evidence, Division Docket Vol. 1, pp. 432-443. Philippine Healthcare Providers, Inc. has principal office at 19/F Medical Plaza, Makati, Amorsolo corner De la Rosa Street, Legaspi Village, Makati City (G.R. No. 168129. April 24, 2007; CA-GR SP No. 76449, February 18, 2005; CTA Case No. 6166, April 5, 2002). Maxicare also has its principal office at 19/F Medical Plaza Makati, Amorsolo corner Dela Rosa Streets, Legaspi Village, Makati City (Letter of Authority, Exhibit A, Maxicare's Formal Offer of Documentary Evidence, Division Docket Vol. 1, p. 430).

[2] Decision, par. 2, p. 1, Division Docket Vol. 2, p. 619.

[3] "**SEC. 4.** *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.* - The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.

The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals."

[4] "**SEC. 7.** *Authority of the Commissioner to Delegate Power.* - The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the rank equivalent to a division chief or higher, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner: *Provided, however*, That the following powers of the Commissioner shall not be delegated:

(a) The power to recommend the promulgation of rules and regulations by the Secretary of Finance;

Also, under Section 108, VAT is imposed on the sales of services by service contractors with the term "gross receipts" defined as the "total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advanced payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, xxx."[5]

On June 23, 1998, CIR Liwayway Vinzons-Chato issued VAT Ruling No. 018-98 which confirmed that Aetna Healthcare, Inc., an HMO, is subject to VAT as a service contractor and that the "basis for computing the VAT in the case of sellers of services shall be gross receipts as defined above and under Sec. 102 of the Tax Code [now Section 108], as amended, which in the case of the HMOs shall be the membership fees received from the members *undiminished by any amount paid or payable to owners/operators of hospitals, clinics and medical and dental practitioners*." (*Aetna* ruling; italics supplied)[6]

(b) The power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau;

xxx xxx xxx" (underscoring supplied)

[5] "**SEC. 108.** *Value-added Tax on Sale of Services and Use or Lease of Properties.* –

(A) *Rate and Base of Tax.* - There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties.

The phrase '**sale or exchange of services**' means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by construction and **service contractors**; stock, real estate, commercial, customs and immigration brokers; lessors of property, whether personal or real; warehousing services; lessors or distributors of cinematographic films; persons engaged in milling, processing, manufacturing or repacking goods for others; proprietors, operators or keepers of hotels, motels, resthouses, pension houses, inns, resorts; proprietors or operators of restaurants, refreshment parlors, cafes and other eating places, including clubs and caterers; dealers in securities; lending investors; transportation contractors on their transport of goods or cargoes, including persons who transport goods or cargoes for hire and other domestic common carriers by land, air and water relative to their transport of goods or cargoes; services of franchise grantees of telephone and telegraph, radio and television broadcasting and all other franchise grantees except those under Section 119 of this Code; services of banks, non-bank financial intermediaries and finance companies; and non-life insurance companies (except their crop insurances), including surety, fidelity, indemnity and bonding companies; and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties. The phrase '**sale or exchange of services**' shall likewise include:

xxx xxx xxx

The term '**gross receipts**' means the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advanced payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax." (underscoring supplied)

[6] "In reply, please be informed as follows:

Answer to Query No. 1:

xxx xxx xxx

By arranging for the provision of health care services to members when the need arises, which will be rendered by independent health care providers, in exchange for pre-negotiated, pre-paid membership fees, your firm is subject to value-added tax under Sec. 102 of the Tax Code as a service contractor. It could not be exempt under Sec 103(1) of the Tax Code as your firm does not directly perform or render medical, dental, hospital and/or veterinary service.

Answer to query No. 2.

On April 5, 2002, the CTA promulgated *Philippine Health Care Providers, Inc. v. The Commissioner of Internal Revenue*[7] which upheld the 1996 and 1997 VAT assessments against *then* Philippine Health Care Providers, Inc. (now Maxicare) under Section 102 (now Section 108) of the 1997 NIRC). The court sustained the *Aetna* ruling on the definition of gross receipts for HMOs, thus:

> "Thus, it is evident that petitioner [Philippine Health Care Providers, Inc.] is not actually rendering medical service but merely acting as a conduit between the members and their accredited and recognized hospitals and clinics. Apparently, they are subject to VAT under Section 102 of the Tax Code as service contractors, thus:
>
> xxx xxx xxx
>
> Suffice it to say, that what is really taxed in this case is the service rendered by petitioner in providing and arranging for the provisions of health care services to its members in exchange for a pre-negotiated, pre-paid membership fees. The records do not show any proof that petitioner actually owned a hospital or clinic nor is it directly engaged in the rendering of medical services.
>
> xxx xxx xxx
>
> The next issue is concerned with the question of whether or not membership fees in connection with prepaid group practice health care program are subject to VAT. We answer in the affirmative. The revenues of health care providers are actually derived from the application and membership fees being paid by their members. Thus, the basis for computing the VAT in case of sellers of services shall be the gross receipts, which in this case shall be the payments for medical plans and application fees actually received from the members, undiminished by any amount paid or payable to owners/operators of hospitals, clinics and medical and dental practitioners." (underscoring supplied)

The fact that an HMO fully owns or controls a hospital or clinic which may directly provide health care services to members does not affect its being subject to value-added tax. What is being subjected to tax is the activity of contracting to provide probable future medical and health services the considerations of which are pre-paid pre-negotiated membership fees. It is different in the case where a firm, which owns a hospital or clinic and having in its employ a complement of medical or dental staff, renders medical, hospital or dental services and is paid for the services just rendered. The former is subject to VAT under Sec. 102 while the latter is exempt pursuant to Sec. 103(1) of the Tax Code, as amended.

Answer to query No. 3.

The basis for computing the VAT in the case of sellers of services shall be gross receipts as defined above and under Sec. 102 of the Tax Code, as amended, which in the case of the HMOs shall be the membership fees received from the members undiminished by any amount paid or payable to owners/operators of hospitals, clinics and medical and dental practitioners. However, the HMO, if a VAT-registered taxpayer, is entitled to input tax credits in determining its VAT liability." (underscoring supplied)

[7] CTA Case No. 6166, April 5, 2002; Maxicare's Audited Financial Statements disclosed this contingency in Note 24, BIR Records, pp. 1-3.

On December 13, 2002, CIR Guillermo L. Parayno, Jr. issued Revenue Memorandum Circular No. (RMC) 56-2002 on the taxability of HMOs for VAT purposes. It circularized to all revenue officers and others concerned the *Aetna* ruling which was reiterated in *Philippine Health Care Providers, Inc. v. The Commissioner of Internal Revenue*[8] that held HMOs as service contractors subject to VAT under Section 108.[9]

On March 26, 2003, the CTA subsequently reconsidered its decision and set-aside the VAT assessments on the ground that the 1998 *Aetna* ruling,[10] declaring the HMOs subject to VAT, could not be applied to justify the 1996 and 1997 VAT assessments pursuant to the principle of non-retroactivity in Section 246 of the 1997 NIRC.[11]

On February 18, 2005, the Court of Appeals affirmed the CTA Resolution stating that the case of Philippine Health Care Providers, Inc. (now Maxicare) did not fall under one of the exceptions of the non-retroactivity rule. Therefore, so as not to prejudice the taxpayer, the *Aetna* ruling could only be applied prospectively:

> "In sum, the facts herein presented do not show that the case falls under one of the exceptions to the applicability of the non-retroactivity rule. VAT Ruling No. 18-98 dated June 23, 1998 [Aetna ruling] cannot be applied retroactively as it would be prejudicial to respondent [Philippine Health Care Providers, Inc.]. To allow the imposition of the value-added tax upon services offered by respondent covering the years 1996 and 1997 when it can no longer at present pass on the economic burden to its members would be to penalize respondent's reliance in good faith on the BIR's previous ruling. Thus, VAT Ruling No. 231-88 is still the applicable ruling in the instant case.
>
> **WHEREFORE**, the petition is **DENIED**. The Resolution dated March 26, 2003 of the Court of Tax Appeals is **AFFIRMED**." (underscoring supplied)

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[8] CTA Case No. 6166, April 5, 2002.

[9] "SUBJECT: *Taxability of Health Maintenance Organizations (HMOs) for VAT Purposes*

TO: *All Internal Revenue Officers and Others Concerned*

For the information and guidance of all concerned, quoted hereunder are pertinent portions of C.T.A. Case No. 6166, entitled: '*Philippine Health Care Providers, Inc., petitioner, vs. The Commissioner of Internal Revenue, respondent*', dated April 05, 2002, which reiterated the view of the VAT Review Committee under VAT Ruling No. 18-98, dated June 23, 1998, [*Aetna ruling*] that Health Maintenance Organizations (HMOs) are considered service contractors and, therefore, subject to VAT at the rate of ten percent (10%), to wit:

xxx xxx xxx

Thus, without doubt, HMOs are subject to the value-added tax on their gross receipts.

All internal revenue officers and employees are hereby enjoined to give this Circular as wide a publicity as possible." (underscoring supplied)

[10] VAT Ruling No. 18-98, June 23, 1998.

[11] *Commissioner of Internal Revenue v. Philippine Health Care Providers, Inc.*, CA-G.R. SP No. 76449, February 18, 2005.

On November 1, 2005, Republic Act No. (RA) 9337 took effect which amended portions of Section 108 but retained its relevant provisions on service contractors and the definition of gross receipts.[12]

To implement RA 9337, Revenue Regulations No. (RR) 16-2005 or the Consolidated Value-Added Tax Regulations of 2005 was issued. Section 4.108-3 of the regulations provides, among others, specific definitions of gross receipts of various industries. Specifically, Section 4.108-3(k) defined the nature of HMOs and the scope of their gross receipts subject to VAT:

> **"SEC. 4.108-3.** *Definitions and Specific Rules on Selected Services.* —
>
> xxx xxx xxx
>
> **(k) Health Maintenance Organizations (HMOs)** are entities, organized in accordance with the provisions of the Corporation Code of the Philippines and licensed by the appropriate government agency, which arranges for coverage or designated managed care services needed by plan holders/members for fixed prepaid membership fees and for a specified period of time.

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12 "**SEC. 108.** *Value-added Tax on Sale of Services and Use or Lease of Properties.* –

(A) *Rate and Base of Tax.* - There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties: *Provided*, That the President, upon the recommendation of the Secretary of Finance, shall, effective January 1, 2006, raise the rate of value-added tax to twelve percent (12%), after any of the following conditions has been satisfied:

(i) Value-added tax collection as a percentage of Gross Domestic Product (GDP) of the previous year exceeds two and four-fifth percent (2 4/5%); or

(ii) National government deficit as a percentage of GDP of the previous year exceeds one and one-half percent (1 ½%).

The phrase "**sale or exchange of services**" means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors; stock, real estate, commercial, customs and immigration brokers; lessors of property, whether personal or real; warehousing services; lessors or distributors of cinematographic films; persons engaged in milling, processing, manufacturing or repacking goods for others; proprietors, operators or keepers of hotels, motels, resthouses, pension houses, inns, resorts; proprietors or operators of restaurants, refreshment parlors, cafes and other eating places, including clubs and caterers; dealers in securities; lending investors; transportation contractors on their transport of goods or cargoes, including persons who transport goods or cargoes for hire and other domestic common carriers by land relative to their transport of goods or cargoes; common carriers by air and sea relative to their transport of passengers, goods or cargoes from one place in the Philippines to another place in the Philippines; sales of electricity by generation companies, transmission, and distribution companies; services of franchise grantees of electric utilities, telephone and telegraph, radio and television broadcasting and all other franchise grantees except those under Section 119 of this Code and non-life insurance companies (except their crop insurances), including surety, fidelity, indemnity and bonding companies; and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties. The phrase "**sale or exchange of services**" shall likewise include:

xxx xxx xxx

The term '***gross receipts***' means the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advanced payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax." (underscoring supplied)

> HMO's gross receipts shall be the total amount of money or its equivalent representing the service fee actually or constructively received during the taxable period for the services performed or to be performed for another person, excluding the value-added tax. The compensation for their services representing their service fee, is presumed to be the total amount received as enrollment fee from their members plus other charges received."

On February 7, 2007, RR 4-2007 was issued to amend, among others, provisions of Section 4.108-3 of RR 16-2005. However, it left Section 4.108-3(k), the provision dealing specifically on HMOs, *unchanged*. The regulations likewise amended the definition of gross receipts found in Section 4.108-4:

> **"SECTION 4.108-4.** ***Definition of Gross Receipts.*** — ***'Gross receipts'*** refers to the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits applied as payments for services rendered and advance payments actually or constructively received during the taxable period for the services performed or to be performed for another person, excluding VAT, except those amounts earmarked for payment to unrelated third (3rd) party or received as reimbursement for advance payment on behalf of another which do not redound to the benefit of the payor.
>
> A payment is a payment to a third (3rd) party if the same is made to settle an obligation of another person, e.g., customer or client, to the said third party, which obligation is evidenced by the sales invoice/official receipt issued by said third party to the obligor/debtor (e.g., customer or client of the payor of the obligation).
>
> An advance payment is an advance payment on behalf of another if the same is paid to a third (3rd) party for a present or future obligation of said another party which obligation is evidenced by a sales invoice/official receipt issued by the obligee/creditor to the obligor/debtor (i.e., the aforementioned "another party") for the sale of goods or services by the former to the latter.
>
> For this purpose "unrelated party" shall not include taxpayer's employees, partners, affiliates (parent, subsidiary and other related companies), relatives by consanguinity or affinity within the fourth (4th) civil degree, and trust fund where the taxpayer is the trustor, trustee or beneficiary, even if covered by an agreement to the contrary."

On April 24, 2007, the Supreme Court promulgated *Commissioner of Internal Revenue v. Philippine Health Care Providers, Inc.*,[13] which cancelled the HMO's 1997 and 1999 VAT assessments on the basis of the non-retroactivity of *Aetna* ruling[14] and of its good faith reliance on VAT Ruling

[13] G.R. No. 168129, April 24, 2007.

[14] VAT Ruling No. 18-98.

No. 231-88 issued on June 8, 1988, which exempted it from VAT. However, in finding that the Philippine Health Care Providers, Inc. did not actually render medical and/or hospital services, the Court held that its services were *not* exempt from VAT. Thus:

> "On the first issue, respondent is contesting petitioner's assessment of its VAT liabilities for taxable years 1996 and 1997.
>
> Section 102 of the National Internal Revenue Code of 1977, as amended by E.O. No. 273 (VAT Law) and R.A. No. 7716 (E-VAT Law), provides:
>
> The import of the above provision is plain. It requires no interpretation. It contemplates the exemption from VAT of taxpayers engaged in the performance of medical, dental, hospital, and veterinary services. In *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*, we defined an exempt transaction as one involving goods or services which, by their nature, are specifically listed in and expressly exempted from the VAT, under the Tax Code, without regard to the tax status of the party in the transaction. In *Commissioner of Internal Revenue v. Toshiba Information Equipment (Phils.) Inc.*, we reiterated this definition.
>
> In its letter to the BIR requesting confirmation of its VAT-exempt status, respondent described its services as follows:
>
>> Under the prepaid group practice health care delivery system adopted by Health Care, individuals enrolled in Health Care's health care program are entitled to preventive, diagnostic, and corrective medical services to be dispensed by Health Care's duly licensed physicians, specialists, and other professional technical staff participating in said group practice health care delivery system established and operated by Health Care. Such medical services will be dispensed in a hospital or clinic owned, operated, or accredited by Health Care. To be entitled to receive such medical services from Health Care, an individual must enroll in Health Care's health care program and pay an annual fee. Enrollment in Health Care's health care program is on a year-to-year basis and enrollees are issued identification cards.
>
> From the foregoing, the CTA made the following conclusions:
>
> a) Respondent '**is not actually rendering medical service but merely acting as a conduit between the members and their accredited and recognized hospitals and clinics.**'
>
> b) It merely '**provides and arranges for the provision of pre-need health care services to its members for a fixed prepaid fee for a specified period of time.**'
>
> c) It then '**contracts the services of physicians, medical and dental practitioners, clinics and hospitals to perform such services to its enrolled members**'; and

d) Respondent '**also enters into contract with clinics, hospitals, medical professionals and then negotiates with them regarding payment schemes, financing and other procedures in the delivery of health services.**'

We note that these factual findings of the CTA were neither modified nor reversed by the Court of Appeals. It is a doctrine that findings of fact of the CTA, a special court exercising particular expertise on the subject of tax, are generally regarded as final, binding, and conclusive upon this Court, more so where these do not conflict with the findings of the Court of Appeals. Perforce, as respondent does not actually provide medical and/or hospital services, as provided under Section 103 on exempt transactions, but merely arranges for the same, its services are not VAT-exempt." (underscoring supplied; citations omitted)

On December 4, 2007, CIR Lilian B. Hefti issued RMC 81-2007 which again clarified that the "taxable base of HMOs for VAT purposes shall be the gross receipts without any deduction."[15]

On March 26, 2008, Deputy Commissioner Gregorio V. Cabantac issued VAT Ruling No. 03-2008 which again reiterated the previous CIR position in *Aetna* that an HMO is not exempt from VAT under Section 109(G) since it does not directly perform the medical services but merely acts as conduit between its members and their accredited hospitals and that the taxable base for computing the VAT shall be the gross receipts under Section 108(A) "undiminished by any amount paid or payable to owners/operators of hospitals, clinics and medical and dental practitioners."[16]

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[15] "For the information and guidance of all internal revenue officials, employees and others concerned, quoted hereunder is the full text of Unnumbered Memorandum dated December 4, 2007 regarding "Table Audit of Health Maintenance Organizations (HMO)", as follows:

'MEMORANDUM

TO : Assistant Commissioner/Head Revenue Executive Assistants of the Large Taxpayers Service, Regional Directors, Revenue District Officers and Others Concerned

FROM : (Signed)
LILIAN B. HEFTI
Commissioner of Internal Revenue

SUBJECT: Table Audit of Health Maintenance Organizations (HMOs)

DATE : December 4, 2007

It has come to the attention of the undersigned that, for purposes of computing Value-Added Tax (VAT), most of the HMOs are using as their taxable base not their actual or constructive gross receipts.

It is hereby clarified that the taxable base of HMOs for VAT purposes shall be the gross receipts without any deduction. The said tax treatments have already been clarified and reiterated under Revenue Regulations (RR) No.16-2005, as amended.

xxx xxx xxx'" (underscoring supplied)

[16] "From the foregoing, it is evident that entities providing non-professional medical, dental, hospital and veterinary services are entitled to VAT exemption on such transactions. However it appears that in the present case, HPPI [Health Plan Philippines, Inc.] merely arranges for the provision of health care services to members when the need arises, which will be rendered by independent health care providers, in exchange for pre-paid membership fees. HPPI is subject to value-added tax under Sec. 108(A) of the same Tax Code as a service contractor. It could not be exempt under Sec. 109 (G) of the same Tax Code since HPPI does not directly perform or render medical, dental, hospital and/or veterinary

Thereafter, Maxicare filed its 1st and 2nd quarterly VAT returns of 2008 on the following dates[17] declaring the amounts it allegedly earmarked for payments to unrelated third parties or its medical utilization expenses (i.e. medical and dental fees, hospital bills, laboratory fees, professional fees, etc.) as VAT-exempt sales:[18]

VAT Returns	Date of Filing	VAT-Exempt Sales
1st Quarter	April 24, 2008	₱ 330,063,761.96[19]
2nd Quarter	July 25, 2008	247,386,731.43[20]

In a letter dated September 25, 2008, Maxicare requested for confirmation of its opinion that its provision for medical utilization should not be subject to VAT.[21]

On October 27, 2008, Maxicare filed its 3rd Quarter VAT return and again excluded from the taxable sales those it allegedly earmarked for payments to unrelated third parties or the medical utilization expenses (i.e. medical and dental fees, hospital bills, laboratory fees, professional fees, etc.):[22]

VAT Returns	Date of Filing	VAT-Exempt Sales
3rd Quarter	October 27, 2008	376,254,627.49[23]

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service, nonprofessional or otherwise, but merely acts as a conduit between the members and their accredited and recognized hospitals and clinics. (*CIR vs. Philippine Health Care Providers, Inc.*, G.R. No. 168129, April 24, 2007)

The basis for computing the abovementioned 10% VAT (now 12% under Revenue Memorandum Circular No. 7-2006) in the case of sellers of services shall be the gross receipts as defined under Sec. 108 (A) of the Tax Code, as amended, which in [sic] the undiminished by any amount paid or payable to owners/operators of hospitals, clinics and medical and dental practitioners. However, the HMO, if a VAT-registered taxpayer, is entitled to input tax credits in determining its VAT liability." (underscoring supplied)

[17] Decision, par. 3, p. 6 and par. 2, p. 12, Division Docket Vol. 2, pp. 624 and 630.

[18] Decision, pp. 20-22, Division Docket Vol. 2, p. 638-640.

[19] 1st Quarter 2008 VAT Return, BIR Records, pp. 543-544.

[20] 2nd Quarter 2008 VAT Return, BIR Records, pp. 549-550.

[21] BIR Ruling DA-VAT-026 375-08, October 31, 2008.

[22] Decision, pp. 20-22, Division Docket Vol. 2, p. 638-640.

[23] 3rd Quarter 2008 VAT Return, BIR Records, pp. 555-556.

On October 31, 2008, the Assistant Commissioner-Legal Service issued BIR Ruling DA-VAT-026 375-08 in favor of Maxicare which confirmed the position that the "amounts earmarked for payment to unrelated third parties or received as reimbursement for advance payment on behalf of another shall be excluded" in "determining gross receipts for VAT purposes."[24]

On January 15, 2009, CIR Sixto S. Esquivias IV issued RMC 02-2009, which reproduced his letter to MEDICard Philippines, Inc. (MEDICard) *expressly revoking* BIR Ruling No. DA (VAT-054) 529-2008. The letter stated that said ruling previously issued by the Assistant Commissioner-Legal Service to MEDICard was one of "first impression" that "should have been presented to the CIR for evaluation and approval."[25] *Jc*

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[24] "It is undisputed that in determining the gross receipts for VAT purposes, only those amounts which would redound to the benefit of the payor will be considered. Accordingly, those amounts which are earmarked for payment to unrelated third party or received as reimbursement for advance payment on behalf of another shall be excluded.

xxx xxx xxx

WHEREFORE, *in view of the foregoing*, this office holds that —

1. Maxicare, under a fund management arrangement similar to ASO and CHCP, acts only as an intermediary between the purchaser of health care services (members) and the health care providers (hospitals and clinics), does not exercise any beneficial ownership of the amount earmarked for medical utilization and which amount does not redound to the benefit of the said corporation, the same shall be excluded from its gross receipts for purposes of VAT. Only gross receipts constituting part of gross income of the recipient shall be subject to VAT." (underscoring supplied)

[25] "SUBJECT : Circularizing Revocation of BIR Ruling No. DA (VAT-054) 529-2008
TO : All Internal Revenue Officials, Employees and Others Concerned

For the information and guidance of all internal revenue officials, employees and others concerned, quoted hereunder is the full text of the undersigned letter to MEDICard Philippines, Inc. for the revocation of BIR Ruling DA (VAT-054) 529-2008 dated December 15, 2008, as follows:

January 15, 2009

The President
MEDICard Philippines, Inc.
9th Floor Sagittarius Building
H.V. dela Costa Street
Salcedo Village

Sir/Madam:

This is to inform you that this office is recalling BIR Ruling DA (VAT-054) 529-2008 dated December 15, 2008 issued to you through your agent Mr. Prudencio F. Tatunay, Managing Partner of Dela Cruz Tatunay & Co.

Please be informed that your request for a ruling is of first impression, on this regard, the ruling should have been presented to the undersigned for evaluation and approval. Under the Tax Code, the power to issue rulings of first impression or to reverse or to revoke or modify any existing ruling of the Bureau is an exclusive power of the Commissioner of Internal Revenue which cannot be delegated.

This serves as a notice of revocation of BIR Ruling DA (VAT-054) 529-2008.

Very truly yours,
(SGD.) SIXTO S. ESQUIVIAS IV
Commissioner of Internal Revenue

All concerned are hereby enjoined to be guided accordingly and give this circular as wide a publicity as possible.

(SGD.) SIXTO S. ESQUIVIAS IV
Commissioner of Internal Revenue"
(underscoring supplied)

On January 26, 2009,[26] as in the previous three quarters, Maxicare filed its fourth quarter VAT return declaring the amounts it allegedly earmarked for payments to unrelated third parties as VAT-exempt sales:[27]

VAT Returns	Date of Filing	VAT-Exempt Sales
4th Quarter	January 26, 2009	₱ 572,012,745.55[28]

On January 27, 2009, CIR Sixto S. Esquivias IV issued RMC 6-2009 which repeated his revocation of BIR Ruling No. DA (VAT-054) 529-2008 and *similar rulings such as the one issued to Maxicare (DA-VAT-026 375-08)* and stressed the VATability of HMOs. The circular also stressed that the 1998 *Aetna ruling* is still controlling which pronounced that HMOs are subject to VAT and the "basis for computing the VAT shall be the membership fees received from the members undiminished by any amount paid or payable to owners/operators of hospitals, clinics and medical and dental practitioners."[29]

Consequently, on February 1, 2009, respondent issued Letter of Authority (LOA) No. 00012161 authorizing the audit of the internal revenue tax liabilities of petitioner for calendar year 2008.[30]

On May 21, 2010, CIR Joel L. Tan-Torres issued RMC 39-2010 declaring that the tax base of HMOs for VAT purposes shall be the gross receipts without any deduction for medical utilization such as medical and dental fees, hospital bills, laboratory fees, professional fees, etc.[31]

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[26] April 21, 2014 Decision, p. 12, Division Docket Vol. 2, p. 630.

[27] April 21, 2014 Decision, pp. 20-22, Division Docket Vol. 2, p. 638-640.

[28] 4th Quarter 2008 VAT Return, BIR Records, pp. 561-562.

[29] "For the information and guidance of all internal revenue officials, employees and others concerned, please be informed that the undersigned issued Revenue Memorandum Circular (RMC) No. 2-2009 revoking BIR Ruling No. DA (VAT-054) 529-2008 issued in favor of MEDICard Philippines, Inc.

Similarly, BIR Rulings Nos. DA (VAT-019) 121 dated August 8, 2008 issued in favor of Health Maintenance, Inc., DA (C-032) 122-2008 also dated August 8, 2008 issued in favor of Asalus Corporation, and DA (VAT 026) 375-2008 dated October 31, 2008 issued in favor of Maxicare Health Corporation are likewise herein being revoked.

On this regard, all internal revenue officials, employees and others concerned are being reminded that BIR Ruling 018-98 is still controlling which states that *HMOs are subject to VAT and the basis for computing the VAT shall be the membership fees received from the members undiminished by any amount paid or payable to owners/operators of hospitals, clinics and medical and dental practitioners*.

This has already been elucidated in Revenue Regulations No. 16-2005 which categorically mentioned that *HMO's gross receipts shall be the total amount of money or its equivalent representing the service fee actually or constructively received during the taxable period for the services performed or to be performed for another person, excluding the value-added tax. The compensation for their services representing their service fee, is presumed to be the total amount received as enrollment from their members plus other charges received.*" (underscoring supplied)

[30] Decision, p. 2, Division Docket Vol. 2, p. 620.

[31] Decision, p. 2, Division Docket Vol. 2, p. 620. RMC 39-2010 is quoted in part:

"Revenue Memorandum Circular (RMC) No. 2-2009 was issued revoking BIR Ruling No. *DA (VAT-054) 529-2008* issued in favor of *MEDICard Philippines, Inc.* RMC No. 6-2009, likewise, revoked BIR Rulings Nos. DA (VAT-

On February 4, 2011, Maxicare received BIR Notice of Informal Conference dated February 1, 2011 in connection with its deficiency VAT assessment for CY 2008 in the amount of ₱305,192,043.58.[32]

In a letter-reply dated March 19, 2011, Maxicare contested the assessment indicated in the Notice of Informal Conference. The challenge was dismissed by virtue of BIR letter dated April 5, 2011.[33]

On April 18, 2011, Maxicare received from the CIR a Preliminary Assessment Notice (PAN) for deficiency VAT for calendar year 2008 in the amount of ₱332,449,309.85, inclusive of penalties and surcharges.[34]

On May 18, 2011, Maxicare received an Assessment Notice from respondent for deficiency VAT in the amount of ₱337,911,970.96, inclusive of surcharges and interest. The assessment was based on CIR's position that the tax base of HMOs for VAT purposes shall be the gross receipts without any deduction for medical utilization, viz., medical and dental fees, hospital bills, laboratory fees, professional fees, etc. Specifically, the assessment covered purported gross receipts *not* subjected to VAT or exempt sales per VAT returns pertaining to Maxicare's deductions or exclusions from its gross receipts of medical utilization expenses like medical and dental fees, hospital bills, laboratory fees, professional fees, etc.[35]

On June 17, 2011, Maxicare filed its protest against the subject assessment issued pursuant to Section 228 of the Tax Code.[36]

On July 7, 2011, Maxicare received the CIR's letter dated June 28, 2011 informing it that its protest as well as the case docket would be forwarded to Revenue District Office (RDO) No. 47 for further evaluation and action.[37]

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019) 121 issued in favor of *Health Maintenance, Inc.*, DA (C-032) 122-2008 issued in favor of *Asalus Corporation*, and, DA (VAT-026) 375-2008 issued in favor of *Maxicare Health Corporation*.

The Legal and Revenue Operations Group of the Department of Finance (DOF), in its letter dated January 12, 2010 to Asalus Corporation, upheld the revocation of BIR Ruling No. DA (C-032) 122-2008.

These actions confirm the BIR's position that the taxable base of Health Maintenance Organizations (HMOs) for VAT purposes shall be the gross receipts without any deduction for medical utilization (medical and dental fees, hospital bills, laboratory fees, professional fees, etc.). The said tax treatments have already been clarified under Revenue Regulations No. 16 2005, as amended, which provides that HMO's gross receipts shall be the total amount of money or its equivalent representing the service fee actually or constructively received during the taxable period for the services performed or to be performed for another person, excluding the value-added tax. The compensation for their services representing their service fee, is presumed to be the total amount received as enrollment from their members plus other charges received." (underscoring supplied)

[32] Decision, p. 2, Division Docket Vol. 2, p. 620.

[33] Decision, p. 2, Division Docket Vol. 2, p. 620.

[34] Decision, p. 3, Division Docket Vol. 2, p. 621.

[35] Decision, p. 3, Division Docket Vol. 2, p. 621.

[36] Decision, p. 3, Division Docket Vol. 2, p. 621.

[37] Decision, p. 3, Division Docket Vol. 2, p. 621.

On August 8, 2011, Maxicare received, through BIR RDO No. 47, a letter dated August 3, 2011 on the indorsement of the case to certain revenue officers for further evaluation.[38]

On August 16, 2011, Maxicare submitted pertinent documents to substantiate its protest.[39]

On March 2, 2012, petitioner received a copy of the letter dated February 21, 2012 denying its protest and reiterating the assessment.[40]

On March 13, 2012, Maxicare filed its Petition for Review which was raffled to the Court of Tax Appeals (CTA) Third Division.[41]

On March 27, 2012, the CIR issued a Final Decision on Disputed Assessment (FDDA).[42]

On May 25, 2012, the CIR filed her Answer.[43]

After the Pre-trial Conference, the parties filed their Joint Stipulation of Facts (JSF) on the basis of which a Pre-Trial Order was issued on September 13, 2012.[44]

During the trial, petitioner presented its Assistant Treasurer and Vice President for Finance, Jean Paul I. Gines, who executed a judicial affidavit for his direct testimony.[45] The CIR opted not to present evidence.[46]

On May 6, 2013, the case was submitted for decision with the filing of Maxicare's memorandum. The CIR, however did not file a memorandum, despite the opportunity granted.[47]

On August 13, 2013, Maxicare filed an Omnibus Motion (to Re-open Trial and to Appoint an ICPA) to which respondent filed

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[38] Decision, p. 3, Division Docket Vol. 2, p. 621.

[39] Decision, p. 3, Division Docket Vol. 2, p. 621.

[40] Decision, p. 4, Division Docket Vol. 2, p. 622.

[41] Decision, p. 4, Division Docket Vol. 2, p. 622.

[42] Decision, p. 4, Division Docket Vol. 2, p. 622.

[43] Decision, p. 4, Division Docket Vol. 2, p. 622.

[44] Decision, p. 5, Division Docket Vol. 2, p. 623.

[45] Decision, p. 5, Division Docket Vol. 2, p. 623.

[46] Decision, p. 8, Division Docket Vol. 2, p. 626; Resolution dated March 21, 2016, Division Docket Vol. 2, p. 527-528.

[47] Decision, p. 8, Division Docket Vol. 2, p. 626.

Comment/Opposition on October 1, 2013. The Court denied the motion for lack of merit on October 30, 2013.[48]

On April 21, 2014, the CTA Third Division promulgated its decision partially granting Maxicare's petition but upheld in part the VAT assessment.[49]

On May 5, 2015, upon motions for reconsideration of both parties, the Court in Division promulgated an Amended Decision which set aside the VAT assessment.[50]

On June 9, 2015, Maxicare filed its Petition for Review by registered mail with the Court *En Banc* under Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) which was docketed as CTA EB Case No. 1312.[51]

On June 10, 2015, the CIR also filed a Petition for Review by registered mail with the Court *En Banc* which was docketed as CTA EB Case No. 1317.[52]

On June 24, 2015, the Court *En Banc* in a Minute Resolution resolved to consolidate CTA EB No. 1317 with CTA EB No. 1312.[53]

In a Resolution dated July 28, 2015, both parties were ordered to file their respective comments.[54]

On September 1, 2015, Maxicare filed its Comment/Opposition.[55] However, the CIR failed to file a comment per records verification.[56]

Accordingly, in a Resolution dated January 7, 2016, the Court ordered both parties to file their memoranda.[57]

On March 3, 2016, Maxicare filed its memorandum.[58] Per records verification dated April 14, 2016, the CIR did not file a memorandum.

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[48] Decision, p. 8, Division Docket Vol. 2, p. 626.

[49] Decision, p. 22, Division Docket Vol. 2, p. 640.

[50] Amended Decision, p. 16, Division Docket Vol. 2, p. 860.

[51] Rollo (CTA EB No. 1312) Vol. I, pp. 7-46.

[52] Rollo (CTA EB No. 1317), pp. 6-21.

[53] Division Docket Vol. 2, p. 866.

[54] Rollo (CTA EB No. 1312) Vol. II, pp. 518-520.

[55] Rollo (CTA EB No. 1312) Vol. II, pp. 527-578.

[56] Resolution dated January 7, 2016, Rollo (CTA EB No. 1312) Vol. II, p. 590.

[57] Rollo (CTA EB No. 1312) Vol. II, pp. 589-590.

[58] Rollo (CTA EB No. 1312) Vol. II, pp. 603-672.

In a Resolution dated May 17, 2016, the consolidated cases were deemed submitted for decision.[59]

THE ISSUES

The issues to be resolved by the Court *En Banc* can be summarized as follows:

1. Was Maxicare justified in relying on BIR Ruling DA-(VAT-026) 375-08 issued on October 31, 2008?

2. For HMOs, how should the gross receipts be defined for purposes of computing the VAT?

3. What prescriptive period should apply to the CY 2008 VAT Assessments?

THIS COURT'S RULING

We grant in part the petition of the CIR.

The facts *do not support* Maxicare's assertion that there was good faith reliance in BIR Ruling DA-(VAT-026) 375-08 issued on October 31, 2008

Although good faith is presumed,[60] based on the chronology of facts, the Court is unconvinced that Maxicare was unaware of the position of the CIR with respect to the VAT issues concerning the HMO industry *prior* to the filing of its quarterly VAT returns.

In *CIR v. Philippine Health Care Providers, Inc.*,[61] a case involving Maxicare (*then* Philippine Health Care Providers, Inc.) and very similar issues, the Supreme Court defined good faith in this wise:

[59] Rollo (CTA EB No. 1312) Vol. II, pp. 676-677.

[60] *Edgardo H. Catindig v. People of the Philippines, et al.*, G.R. No. 183141, September 18, 2009.

[61] G.R. No. 168129, April 24, 2007.

> "We agree with both the Tax Court and the Court of Appeals that respondent acted in good faith. In *Civil Service Commission v. Maala*, we described good faith as 'that state of mind denoting honesty of intention and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even through technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render transaction unconscientious.'" (underscoring supplied)

The sequence of events leading up to the favorable delegated authority ruling in 2008 demonstrate clearly that the CIR was very consistent in the treatment of HMOs and in the definition of an HMO's gross receipts for VAT purposes. As will be discussed at length, Maxicare was fully apprised of the implications on its VAT position and ought to have realized that its position was untenable in the light of consistent pronouncements by both the CIR and the courts.

First, the issue on the VATability of HMOs and the computation of gross receipts has been restated with coherence by the CIR in various implementing issuances beginning with the *Aetna* ruling[62] in 1998.

In fact, *prior to the filing of Maxicare's 2008 quarterly VAT returns*,[63] *Aetna* was reiterated by no less than three revenue issuances and a ruling:

- RMC 56-2002 on December 8, 2002;
- RR 16-2005, Section 1.108-3(k), on September 1, 2005;
- RMC 81-2007 on December 4, 2007; and,
- VAT Ruling No. 3-2008 on March 26, 2008.

All these issuances have been uniform in defining gross receipts as defined in Section 108(A) of the 1997 NIRC "without deductions"[64] or "undiminished by any amount paid or payable to owners/operators of hospitals, clinics and medical and dental practitioners."[65]

As a general rule, the construction given to a statute by an administrative agency charged with the interpretation and application of that statute is entitled to great respect and should be accorded great weight by the courts.[66] Maxicare should have been guided by the same prudence and should have deferred to the consistent position taken by the CIR.

Second, as early as 2002, when the CTA promulgated its decision cancelling the 1996 and 1997 VAT assessments because the *Aetna* ruling was

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[62] VAT Ruling No. 18-98, June 23, 1998.

[63] 1st Quarter, April 24, 2008; 2nd Quarter, July 25, 2008; 3rd Quarter, October 27, 2008 and 4th Quarter, January 26, 2009.

[64] RMC 81-2007, December 4, 2007.

[65] RMC 56-2002, December 13, 2002; VAT Ruling No. 3-2008, March 26, 2008.

[66] *Commissioner of Internal Revenue v. Solidbank Corporation*, G.R. No. 148191, November 25, 2003; *Senator Heherson T. Alvarez, et al. v. Secretary Teofisto T. Guingona, et al.*, G.R. No. 118303. January 31, 1996.

not given retroactive application, Maxicare (*then* Philippine Health Care Providers, Inc.) was already put on notice as to the definition of gross receipts espoused by the CIR and subsequently adopted by the CTA.

In *Philippine Health Care Providers, Inc. v. Commissioner of Internal Revenue*,[67] the CTA adopted the definition of gross receipts for HMOs stated in the *Aetna* ruling. In said case, the Court specifically pronounced that "the basis for computing the VAT in case of sellers of services shall be the payments for medical plans and application fees actually received from the members, *undiminished by any amount paid or payable to owners/operators of hospitals, clinics and medical and dental practitioners*."

> "Thus, it is evident that petitioner is not actually rendering medical service but merely acting as a conduit between the members and their accredited and recognized hospitals and clinics. Apparently, they are subject to VAT under Section 102 [now Section 108] of the Tax Code as service contractors, thus:
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> xxx xxx xxx
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> Suffice it to say, that what is really taxed in this case is the service rendered by petitioner in providing and arranging for the provisions of health care services to its members in exchange for a pre-negotiated, pre-paid membership fees. The records do not show any proof that petitioner actually owned a hospital or clinic nor is it directly engaged in the rendering of medical services.
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> xxx xxx xxx
>
> The next issue is concerned with the question of whether or not membership fees in connection with prepaid group practice health care program are subject to VAT. We answer in the affirmative. The revenues of health care providers are actually derived from the application and membership fees being paid by their members. Thus, the basis for computing the VAT in case of sellers of services shall be the gross receipts, which in this case shall be the payments for medical plans and application fees actually received from the members, undiminished by any amount paid or payable to owners/operators of hospitals, clinics and medical and dental practitioners."[68] (underscoring supplied)

[67] CTA Case No. 6166, April 5, 2002.

[68] Compare with the CIR's definition of gross receipts in *Aetna*: "The basis for computing the VAT in the case of sellers of services shall be gross receipts as defined above and under Sec. 102 [now Sec. 108] of the Tax Code, as amended, which in the case of the HMOs shall be the membership fees received from the members *undiminished by any amount paid or payable to owners/operators of hospitals, clinics and medical and dental practitioners*. However, the HMO, if a VAT-registered taxpayer, is entitled to input tax credits in determining its VAT liability."

On appeal, although the Court of Appeals[69] and the Supreme Court[70] upheld the CTA resolution restraining the application of the *Aetna* ruling to prevent prejudice to Maxicare, *the courts nonetheless did not disturb the CTA's definition of gross receipts*. The courts furthermore did *not* overturn or invalidate the *Aetna* ruling where the same definition was lifted.

We observe that the facts of this case especially Maxicare's justification based on a ruling it hastily obtained uncannily mirror those in the previous cases. This pattern or strategy betrays an intention to take advantage of another through the technicalities of law.

Third, BIR Ruling DA-(VAT-026) 375-08 issued by the Assistant Commissioner Legal Service cannot reverse, revoke or modify the existing *Aetna* ruling issued by the CIR. The DA-(VAT-026) 375-08 ruling, is a delegated authority ruling which deviates from the prior rulings and issuances of the delegating authority, the CIR. It is a ruling of first impression because it was issued without established precedents[71] and, thus, could not be issued by an Assistant Commissioner.

In this regard, Section 7 of the 1997 NIRC plainly prohibits the issuance of DA-(VAT-026) 375-08, thus:

> "**SEC. 7.** *Authority of the Commissioner to Delegate Power.* - The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the rank equivalent to a division chief or higher, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner: *Provided*, however, That the following powers of the Commissioner shall not be delegated:
>
> (a) The power to recommend the promulgation of rules and regulations by the Secretary of Finance;
>
> (b) The power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau;
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> xxx xxx xxx" (underscoring supplied)

Given the succession of issuances by the CIR which consistently spell out that the HMOs are subject to VAT and that the gross receipts should be

[69] CA-G.R. SP No. 76449, February 18, 2005.

[70] G.R. No. 168129, April 24, 2007.

[71] Section 3 of Revenue Administrative Order No. 2-2001 defines rulings of first impression as "rulings, opinions and interpretations of the Commissioner of Internal Revenue with respect to the provisions of the Tax Code and other tax laws without established precedent, and which are issued in response to a specific request for ruling filed by a taxpayer with the Bureau of Internal Revenue. Provided, however, that the term shall include reversal, modification or revocation of any existing ruling."

undiminished by any deductions, it is unwarranted that Maxicare could disavow knowledge of these circumstances and conveniently insist upon relying on BIR Ruling DA-(VAT-026) 375-08.

We note that Maxicare has been conspicuously silent about the fact that the positive ruling it obtained was subsequently revoked by the CIR in RMC 6-2009 in January 27, 2009, *less than three months after it was issued.*

Fourth, We note that in its 2007 and 2008 Audited Financial Statements submitted to the examiners,[72] Maxicare disclosed the contingency pertaining to the cases involving the 1996 and 1997 VAT assessments. The cases on VAT assessments precisely adjudicated upon the very issues that are again before the Court in this case: how the gross receipts of HMOs should be computed for VAT purposes.

Fifth, Maxicare's position which calls for the exemption of its receipts from VAT must be proven beyond bare allegations considering that tax exemptions are construed strictly against the taxpayer.[73] During the trial, Maxicare has had ample time to adduce relevant evidence in support of its position on the amounts earmarked as medical/hospital utilization expenses. It failed to do so during the presentation of evidence and when its eleventh-hour attempt to reopen trial, after filing its memorandum, was denied by the Court below.[74]

Finally, *granting We were to ignore these glaring circumstances* that should have put Maxicare upon inquiry on how the gross receipts should properly be computed as financial prudence should dictate, it can be shielded only with respect to its 4th Quarter 2008 VAT Return, which it filed on January 26, 2009 *after* the issuance of the ruling.

A taxpayer cannot benefit from a BIR ruling before the date of its issuance. In the consolidated cases of *Commissioner of Internal Revenue v. San Roque Power Corporation, et al.*,[75] the Supreme Court held in this regard:

> "San Roque, therefore, cannot benefit from BIR Ruling No. DA-489-03 because it filed its judicial claim prematurely on 10 April 2003, before the issuance of BIR Ruling No. DA-489-03 on 10 December 2003. To repeat, San Roque cannot claim that it was misled by the BIR into filing its judicial claim prematurely because BIR Ruling No. DA-489-03 was issued only after San Roque filed its judicial claim. At the time San Roque filed its judicial claim, the law as applied and administered by the BIR was

[72] Note 24 Contingencies, BIR Records, pp. 1-3.

[73] *Smart Communications, Inc. v. The City of Davao, et al.*, G.R. No. 155491, September 16, 2008 stated that: "Tax exemptions are never presumed and are strictly construed against the taxpayer and liberally in favor of the taxing authority."

[74] Decision, p. 8, Division Docket Vol. 2, p. 626.

[75] G.R. No. 187485, February 12, 2013.

> that the Commissioner had 120 days to act on administrative claims. This was in fact the position of the BIR prior to the issuance of BIR Ruling No. DA-489-03. Indeed, San Roque never claimed the benefit of BIR Ruling No. DA-489-03 or RMC 49-03, whether in this Court, the CTA, or before the Commissioner." (underscoring supplied)

Considering the foregoing, the Court finds Maxicare's arguments unmeritorious.

The Court sustains the CTA Third Division's holding on the definition of gross receipts of HMOs

Maxicare seeks to exempt from VAT 80% of the enrollment fees or premiums it collected which allegedly represents those earmarked for medical utilization[76] despite the contrary issuances of the CIR. It has taken issue with the definition of gross receipts as far as HMOs are concerned which was restated in the Amended Decision[77] of the CTA Third Division:

> "A judicious evaluation of petitioner's arguments unfolds no extenuating ground for the Court to depart from its ruling with respect to the application of Section 4.108-3(k) of RR No. 16-2005 defining what constitutes HMOs' gross receipts for purposes of determining its tax base for VAT. The challenged Decision of April 21, 2014 even traced the evolution of the terms as applied in the present case and clarified that <u>for VAT purposes, HMOs' gross receipts shall be the total amount of money or its equivalent actually received from members undiminished by any amount paid or payable to the owners/operators of hospitals, clinics and medical and dental practitioners</u>.
>
> xxx xxx xxx" (underscoring supplied)

We agree with the Court's definition of gross receipts.

First, for a tax exemption to exist, it must be so categorically declared in words that admit of no doubt.[78] The law is very clear. Section 108 of the 1997 NIRC, as amended, provides a definition of gross receipts subject to VAT:

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[76] Maxicare's March 3, 2016 Memorandum, par. 139, p. 44, Rollo (CTA EB No. 1312) Vol. II, p. 646.

[77] Amended Decision, pp. 5-6, Division Docket Vol. 2, pp. 848-849.

[78] *Commissioner of Internal Revenue v. A.D. Guerrero*, G.R. No. L-20942, September 22, 1967.

> "**SEC. 108.** *Value-added Tax on Sale of Services and Use or Lease of Properties.* –
>
> xxx xxx xxx
>
> The term '***gross receipts***' means the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advanced payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax." (underscoring supplied)

Second, one cannot question the authority of petitioner CIR to promulgate rules and regulations to effectuate the clear intent of our internal revenue laws.[79] It is well settled that the construction given to a statute by an administrative agency charged with the interpretation and application of that statute is entitled to great respect and should be accorded great weight by the courts unless such construction is clearly shown to be in sharp conflict with the Constitution, the governing statute, or other laws.[80]

As already discussed, a succession of regulations, circulars and rulings have harmoniously affirmed the position that for HMOs, gross receipts "shall be the payments for medical plans and application fees actually received from the members, undiminished by any amount paid or payable to owners/operators of hospitals, clinics and medical and dental practitioners." Maxicare cannot persist upon a position which differs from established interpretation simply because it serves its own interests.

Third, Maxicare contends that when RR 4-2007 amended the *general provision* on the definition of gross receipts in Section 4.108.4 of the RR 16-2005, the corresponding definition of gross receipts for HMOs found in Section 4.108-3(k) was likewise amended.[81]

This argument is flawed.

Maxicare's strained reasoning runs counter to the principle of *generalia specialibus non derogant*. As a corollary from the doctrine that implied repeals are not favored, this rule of interpretation states that subsequent general legislation is deemed *not* to derogate from a prior special act. Section 4.108.4 gives the *general* definition of gross receipts. Thus, the definition found therein cannot overcome the *specific* definition of gross receipts for HMOs in Section 4.108-3(k). This is in accord with the rule on statutory construction that specific provisions must prevail over general ones:

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[79] Section 4, 1997 NIRC.

[80] *Senator Heherson T. Alvarez, et al. v. Secretary Teofisto T. Guingona, et al.*, G.R. No. 118303, January 31, 1996.

[81] Maxicare's April 17, 2013 Memorandum, par. 38, p. 15, Division Docket Vol. 2, p. 543; Maxicare's March 3, 2016 Memorandum, pars. 50-58, pp. 19-21, Rollo (CTA EB No. 1312) Vol. II, pp. 621-623.

> "A special and specific provision prevails over a general provision irrespective of their relative positions in the statute. *Generalia specialibus non derogant*. Where there is in the same statute a particular enactment and also a general one which in its most comprehensive sense would include what is embraced in the former, the particular enactment must be operative, and the general enactment must be taken to affect only such cases within its general language as are not within the provisions of the particular enactment."[82]

Stated differently, the amendment by RR 4-2007 of a general provision on gross receipts under Section 4.108-4 cannot be construed as implying the repeal or amendment of a specific provision on gross receipts for HMOs under Section 4.108-3(k).

Maxicare notably fails to highlight that while RR 4-2007 amended Section 4.108-4, it also amended other provisions of 4.108-3 on other selected services such as (e) domestic common carriers; (f) generation, transmission and distribution companies; (h) franchise grantees; (i) non-life insurance companies. But, significantly, it left out *unchanged* the provision on HMOs under Section 4.108-3(k). If it were really the intention of the CIR to amend the definition of gross receipts for HMOs, it should have made the necessary recommendations. No such intention can be inferred when viewed in the light of prior and consistent issuances and interpretation of the CIR.

Fourth, the issues concerning the HMOs are not novel. Recently, in *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*,[83] the CTA Third Division affirmed the VAT assessment against an HMO. The court held that the gross receipts for HMOs include the amount earmarked as payments for medical/hospital expenses, thus:

> "In the case of HMOs, it is they, not their members, who are obligated to the doctors and hospitals for payment of the latter's bills. The contractual vinculum, insofar as the provision of medical services is concerned, is between the hospitals and doctors, on the one hand, and the petitioner, on the other hand. In the event, for example, that a doctor refuses to treat a member, the course of action of the member is against petitioner, not the doctor. The doctors on the other hand, cannot refuse to render service for as long as the member is in good standing in the records of the petitioner.
>
> Therefore, all payments to doctors and hospitals, whether earmarked or actually paid, including the item of P11,522,346.00 identified as *Professional Fees* in the disputed assessment, are inextricably intertwined with the total fees payable to petitioner by the members and are a crucial factor in the over-all design of the terms and conditions stated in every contract for coverage. They form part of the gross receipt of petitioner subject to VAT." (underscoring supplied)

[82] *Batangas City et al. v. Pilipinas Shell Petroleum Corporation*, G.R. No. 187631, July 8, 2015.

[83] CTA Case No. 7948, June 5, 2014.

On appeal, the CTA *En Banc* affirmed the CTA Third Division and held that the HMO's taxable gross receipts include those earmarked for medical, dental and hospital services,[84] thus:

> "Petitioner avers that the amounts it received from its member-clients are earmarked or intended to be paid for medical, dental and hospital services to independent hospital, clinics and medical professionals. In addition, these amounts do not redound to the benefit of the petitioner and are merely held for the account of the member-clients. Thus, these amounts should not form part of petitioner's gross receipts pursuant to Revenue Regulations No. 4-2007 (RR No. 4-2007).
>
> xxx xxx xxx
>
> Under Section 4.108-3(k) of RR No. 16-2005, HMOs gross receipts shall be the total amount of money or its equivalent representing the service fee actually or constructively received during the taxable period for the services performed or to be performed for another person, excluding the value-added tax. In contrast with the amendment introduced by Section 11 of RR No. 4-2007, to Section 4.108.4 of RR No. 16-2005, Section 4.108-3 of RR No. 16-2005 does not mention of any amount earmarked or received as reimbursement for advance payment to be excluded from gross receipts.
>
> Likewise, it is noteworthy that Section 10 of RR No. 4-2007 amended Section 4.108-3 (e), (f), (h), (i) and (j) of RR No. 16-2005, but the same did not amend Section 4.108-3(k) of RR No. 16-2005. Hence, the necessary conclusion is that Sections 10 and 11 of RR No. 4-2007 did not amend Section 4.108-3(k) of RR No. 16-2005 and as such, the latter provision is still applicable with respect to the determination of gross receipts of HMOs.
>
> In other words, what is applicable in this case is Section 4.108-3(k) of RR No. 16-2005, and not Section 11 of RR No. 4-2007 amending Section 4.108-4 of RR No. 16-2005, with respect to the composition of petitioner's gross receipts. To reiterate, Sections 10 and 11 of RR No. 4-2007 did not amend Section 4.108-3(k) of RR No. 16-2005, which provides for specific rules *vis a vis* HMOs gross receipts. Thus, there is no basis to exclude petitioner's alleged amounts earmarked for payment to medical, dental and hospital services to independent hospital, clinics and medical professionals, following the specific rules for HMOs under Section 4.108-3(k) of RR No. 16-2005." (underscoring supplied)

On the basis of the foregoing, Maxicare's arguments clearly lack merit.

[84] CTA EB No. 1224 (CTA Case No. 7984), September 2, 2015.

The ten-year prescription in Section 222(a) of the 1997 NIRC applies to the VAT assessments against Maxicare.

In its decision,[85] the CTA Third Division found that CIR's right to assess Maxicare for deficiency VAT had prescribed with respect to the 1st Quarter of 2008 since the Formal Assessment Notice (FAN) was received by Maxicare only on May 18, 2011,[86] to wit:

Quarter	Period Covered	Date of Filing of Quarterly VAT Returns	Last Day of Filing	End of 3 Years (Last Day to Assess)
1st	January-February 2008	April 24, 2008	April 25, 2008	April 25, 2011
2nd	March-June 2008	July 25, 2008	July 25, 2008	July 25, 2011
3rd	July-September 2008	October 27, 2008	October 25, 2008	October 27, 2011
4th	October-December 2008	January 26, 2009	January 25, 2009	January 26, 2012

However, the CIR correctly identified that Maxicare's VAT returns for the subject year under audit are false.[87] Consequently, We hold that the ten-year period under Section 222(a) of the 1997 NIRC, as amended, applies:

> "**SEC. 222.** *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.*—
>
> (a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: *Provided*, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof." (underscoring supplied)

In *Aznar v. Court of Tax Appeals,*[88] a case characterized as involving "false tax returns", the Supreme Court sustained the right of the CIR to assess under the extended ten-year prescription in Section 332 (now Section 222) of the 1997 NIRC. *gr*

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[85] Division Docket Vol. 2, p. 630.

[86] Pre-Trial Order, Stipulated Facts, par. 12, Division Docket Vol. 1, p. 308.

[87] CIR's June 10, 2015 Petition for Review, Rollo (CTA EB No. 1317), pp. 13-15.

[88] G.R. No. L-20569, August 23, 1974, 58 SCRA 519.

In *Samar-I Electric Cooperative v. Commissioner of Internal Revenue*,[89] the Supreme Court once again invoked *Aznar* to apply the ten-year prescription under Section 222. It justified the extended period by remarking on the substantial underdeclaration of withholding taxes by the taxpayer in the amount of ₱2,690,850.91 which constituted *falsity* within the *Aznar* contemplation:

> "In the case at bar, it was petitioner's **substantial underdeclaration** of withholding taxes in the amount of ₱2,690,850.91 which constituted the "**falsity**" in the subject returns — giving respondent the benefit of the period under **Section 222** of the NIRC of 1997 to assess the correct amount of tax '**at any time within ten (10) years** after the discovery of the **falsity, fraud** or **omission**.'
>
> The case of ***Aznar v. Court of Tax Appeals*** discusses what acts or omissions may constitute falsity, viz.:
>
> xxx xxx xxx
>
> There being undoubtedly false tax returns in this case, We affirm the conclusion of the respondent Court of Tax Appeals that Sec. 332 (a) of the NIRC should apply and that the period of ten years within which to assess petitioner's tax liability had not expired at the time said assessment was made.
>
> A careful examination of the evidence on record yields to no other conclusion but that petitioner failed to withhold taxes from its employees' 13th month pay and other benefits in excess of thirty thousand pesos (P30,000.00) amounting to ₱2,690,850.91 for the taxable years 1997 to 1999 — resulting to its filing of the subject false returns. Petitioner failed to refute this finding, both in fact and in law, before the courts a quo." (underscoring and emphases supplied; citations omitted)

A false return simply involves a "deviation from truth, whether intentional or not."[90]

In this case, Maxicare, clearly filed false returns as it has consistently stipulated[91] and stated[92] that it excluded the medical/hospital utilization expenses from its taxable gross receipts against the established interpretation by the CIR and the holdings by the courts. Based on the Assessment Notice,[93] it remains uncontested that Maxicare failed to pay VAT on these receipts

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[89] G.R. No. 193100, December 10, 2014.

[90] *Commissioner of Internal Revenue v. Fitness By Design, Inc.*, G.R. No. 215957, November 9, 2016 citing *Aznar v. Court of Tax Appeals*, G.R. No. L-20569, August 23, 1974.

[91] Joint Stipulation of Facts with Manifestation and Motion, No. 1. xvii, Division Docket, p. 299.

[92] Maxicare's April 17, 2013 Memorandum, par. 4, Division Docket, pp. 530-531; Maxicare's March 3, 2016 Memorandum, par. 139, Rollo, p. 637.

[93] Exhibit H-1, Maxicare's Formal Offer of Documentary Evidence, Division Docket Vol. 1, p. 471.

which it erroneously considered exempt sales amounting to ₱1,525,717,866.43, thus:

Schedule 1(Exhibit H-1)	
VATable sales erroneously classified as zero-rated sales	₱ 9,841,685.67
Proceeds from sale of assets	616,071.00
Exempt sales per VAT returns (cost to render service not subject to VAT)	**1,525,717,866.43**
Gross receipts not subjected to VAT	₱ 1,536,175,623.10

More recently in *Commissioner of Internal Revenue v. Asalus Corporation*,[94] a case involving undeclared VATable sales of more than 30%, the Supreme Court declared that "a mere showing that the returns filed by the taxpayer were false, notwithstanding the absence of intent to defraud, is sufficient to warrant the application of the ten (10) year prescriptive period under Section 222 of the NIRC."

Accordingly, reckoned from February 1, 2011,[95] the date of the Notice of Informal Conference, the CIR has ten years or until February 1, 2021 to assess Maxicare for deficiency VAT.

WHEREFORE, premises considered, the Petition for Review filed by Maxicare in CTA EB Case No. 1312 is **DENIED** for lack of merit. The Petition for Review filed by the CIR in CTA EB Case No. 1317 is **GRANTED** in part.

The Amended Decision is hereby **REVERSED**. Maxicare is **ORDERED TO PAY** deficiency VAT liability in the aggregate amount of ₱200,149,302.69, inclusive of 25% surcharge as imposed under Section 248(A)(3) of the 1997 NIRC, as amended, computed as follows:

	1st Qtr-2008	2nd Qtr-2008	3rd Qtr-2008	4th Qtr-2008	Total
Cost to render service (Exempt sales per VAT returns)	₱ 330,063,761.96	₱ 247,386,731.43	₱ 376,254,627.49	₱ 572,012,745.55	₱1,525,717,866.43
Output tax due thereon	₱ 39,607,651.44	₱ 29,686,407.77	₱ 45,150,555.30	₱ 68,641,529.47	₱ 183,086,143.97
Less: Input tax attributable to Exempt Sales - now allowed as input tax	(5,214,412.86)	(5,209,895.00)	(5,402,589.96)	(7,139,804.00)	(22,966,701.82)
Basic deficiency VAT	**₱34,393,238.58**	**₱24,476,512.77**	**₱39,747,965.34**	**₱61,501,725.47**	**₱160,119,442.15**
Add: 25% Surcharge	8,598,309.64	6,119,128.19	9,936,991.33	15,375,431.37	40,029,860.54
Total Amount Due	**₱42,991,548.22**	**₱30,595,640.96**	**₱49,684,956.67**	**₱76,877,156.83**	**₱200,149,302.69**

[94] G.R. No. 221590, February 22, 2017.

[95] Exhibit D, Division Docket Vol. 1, pp. 444-447.

In addition, Maxicare is **ORDERED TO PAY**:

(a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency VAT computed from the following dates until full payment thereof pursuant to Section 249(B) of the 1997 NIRC, as amended:

Period Covered	Basic Deficiency VAT	Reckoning Date
1st Quarter 2008	₱34,393,238.58	April 25, 2008
2nd Quarter 2008	₱24,476,512.77	Jul 25, 2008
3rd Quarter 2008	₱39,747,965.34	October 25, 2008
4th Quarter 2008	₱61,501,725.47	January 25, 2009

(b) Delinquency interest at the rate of twenty percent (20%) per annum on the total deficiency taxes of ₱200,149,302.69, representing basic deficiency VAT of ₱160,119,442.15 and 25% surcharge of ₱40,029,860.54, computed from April 30, 2012[96] until full payment thereof pursuant to Section 249(C)(3) of the 1997 NIRC, as amended.

SO ORDERED.

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

WE CONCUR:

(with Concurring and Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

[96] Exhibit L, Final Decision on Disputed Assessment, Maxicare's Formal Offer of Documentary Evidence, Division Docket Vol. 1, p. 496-497.

(I maintain my position in the assailed decision)
LOVELL R. BAUTISTA
Associate Justice

(With due respect, I join PJ's Concurring and Dissenting Opinion)
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

(I maintain my position in the assailed decision)
ESPERANZA R. FABON-VICTORINO
Associate Justice

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

(with Separate Concurring Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(with Concurring and Dissenting Opinion)
CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above 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

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

MAXICARE HEALTHCARE CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1312
(CTA Case No. 8441)

x- x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

MAXICARE HEALTHCARE CORPORATION,
Respondent.

CTA EB NO. 1317
(CTA Case No. 8441)

Members:

Del Rosario, *P.J.*,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, and
Manahan, *JJ.*

Promulgated:
MAY 08 2017 2:0pm

x- -x

CONCURRING AND DISSENTING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia*'s conclusion that the ten-year prescriptive period to assess Maxicare Healthcare Corporation

(Maxicare) with deficiency value-added tax (VAT) for the year 2008 under Section 222 (a) of the National Internal Revenue Code (NIRC) of 1997, as amended, applies to this case. As elucidated in the *ponencia,* the factual antecedents of the present case clearly show that Maxicare was fully aware of the Commissioner of Internal Revenue's (CIR) consistent rulings and revenue issuances in the form of revenue regulations and revenue memorandum circular on what constitutes "gross receipts" of health maintenance organizations (HMOs) for VAT purposes. Hence, in choosing not to declare the total amount of money or its equivalent actually or constructively received from its members as enrollment fee in year 2008, Maxicare intentionally and deceptively concealed substantial receipts from its services as HMO thereby succeeding in paying much less VAT than what the law prescribes. **While the non-declaration of the correct amount of gross receipts makes the corresponding VAT returns fraudulent, it clearly establishes Maxicare's intent to evade the payment of correct VAT on its vatable transaction.**

True, Maxicare obtained BIR Ruling DA-(VAT-026) 375-08 dated October 31, 2008 which purportedly opines that Maxicare's gross receipts, for VAT purposes, pertain to the total amount of money or its equivalent actually received from members less the amount earmarked as provision for medical utilization to cover for medical availment/claims of members. Yet, Maxicare cannot feign ignorance of the instrinsic invalidity of such ruling, issued as it was merely by the Assistant Commissioner of the Legal Service.

As aptly pointed out in the *ponencia*, **BIR Ruling DA-(VAT-026) 375-08 is a ruling of first impression which may only be issued by the CIR pursuant to Section 7 of the NIRC of 1997, as amended**. A ruling or opinion on matters of first impression issued by a BIR Official **without authority** is a patent nullity which cannot be binding upon the government. Stated differently, BIR Ruling DA-(VAT-026) 375-08 did not operate to reverse, modify or revoke the existing interpretative position of the CIR on what constitutes HMOs' gross receipts for VAT purposes as embodied in VAT Ruling No. 018-08 and circularized through Revenue Memorandum Circular (RMC) No. 56-2002.

Consistent with the foregoing, I concur with the *ponencia*'s pronouncement that HMOs' gross receipts, for VAT purposes, shall be the total amount of money or its equivalent actually received from members undiminished by any amount paid or payable to the

owners/operators of hospitals, clinics and medical and dental practitioners.

The point of my dissent is with regard to the imposition of 20% deficiency interest on Maxicare's deficiency VAT for the year 2008. In this regard, I reiterate the position I have taken in the consolidated cases of *Commissioner of Internal Revenue vs. Philippine Tobacco Flue-Curing & Redrying Corporation*[1] on the imposition of deficiency interest:

> "xxx I am not unaware of *Paper Industries Corporation of the Philippines vs. Court of Appeals, Commissioner of Internal Revenue, and Court of Tax Appeals (PICOP)*,[2] which somehow made mention of deficiency interest under the NIRC of 1977. I must stress, however, that *PICOP* cannot be relied upon to justify the imposition of deficiency interest on petitioner's excise tax liability. *PICOP* did not state nor resolve the issue whether or not the deficiency interest provided for in Section 249 (B) of the NIRC of 1997, as amended, may be imposed on tax other than donor's, estate, and income taxes. Thus, not having been resolved therein, *PICOP* cannot be considered as a doctrine on the matter. The case of *Office of the Ombudsman vs. Honorable Court of Appeals and Former Deputy Ombudsman for the Visayas Arturo C. Mojica*,[3] is instructive:
>
>> "The legal maxim "*stare decisis et non quieta movere*" (follow past precedents and do not disturb what has been settled) states that where the same questions relating to the same event have been put forward by parties similarly situated as in a previous case litigated and decided by a competent court, the rule of

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[1] CTA EB Nos. 1218 and 1220, April 11, 2016. This is consistent with my earlier opinion in *Avon Products Manufacturing, Inc. vs. Commissioner of Internal Revenue, CTA EB No. 1062, January 15, 2016; CIR vs. Staedtler (Philippines), Inc., CTA EB No. 1310, January 28, 2016; Medicard Philippines, Inc. vs. CIR, CTA EB No. 1224, January 29, 2016; Lourdes College vs. CIR, CTA EB No. 1164, February 2, 2016; Philippine Aerospace Development Corporation vs. CIR, CTA EB No. 1035, February 9, 2016; CIR vs. BPI-Philam Life Assurance Corporation, CTA EB No. 1240, February 11, 2016; CIR vs. OfficeMetro Philippines, Inc. (formerly Regus Centres, Inc.), and OfficeMetro Philippines, Inc. vs. CIR, CTA EB Nos. 1210 & 1213, March 7, 2016; and CIR vs. ESS Manufacturing Company, Inc., ESS Manufacturing Company, Inc. vs. CIR, CTA EB Nos. 1169 & 1175, March 30, 2016.*

[2] G.R. Nos. 106949-50, December 1, 1995.

[3] G.R. No. 146486, March 4, 2005.

> *stare decisis* is a bar to any attempt relitigate the same issues.
>
> xxx xxx xxx
>
> **Thus, where the issue involved was not raised nor presented to the court and not passed upon by the court in the previous case, the decision in the previous case is not *stare decisis* of the question presented.**" (Emphasis supplied)

If *PICOP* has any relevance to the present controversy, it is the doctrinal precedent that **deficiency interest may be imposed only on tax specifically covered by the relevant provision of the NIRC of 1977**. Thus, the Court in *PICOP*, while recognizing that transaction tax is in the nature of income tax and that deficiency interest is imposable on income tax, nonetheless declined to impose such deficiency interest on transaction tax after noting the significant provisions of the NIRC of 1977: ***first*, it is Section 51 (c)(1), (e)(1), and (3) which impose deficiency interest; *second*, Section 51 (c) (1) confines such deficiency interest on taxes covered by TITLE II; and, *third*, that transaction tax does not fall within TITLE II.** Thus:

> **"It will be seen that Section 51 (c) (1) and (e) (1) and (3), of the 1977 Tax Code, authorize the imposition of surcharge and interest only in respect of a *"tax imposed by this Title,"* that is to say, Title II on "Income Tax."** It will also be seen that Section 72 of the 1977 Tax Code imposes a surcharge only in case of failure to file a return or list *"required by this Title,"* that is, *Title II on "Income Tax."* **The thirty-five percent (35%) transaction tax is, however, imposed in the 1977 Tax Code by *Section 210 (b) thereof which Section is embraced in Title V on "Taxes on Business"* of that Code.** Thus, while the thirty-five percent (35%) transaction tax is in truth *a tax imposed on* interest *income* earned by lenders or creditors purchasing commercial paper on the money market, the relevant provisions, *i.e.,* Section 210 (b), were *not* inserted in Title II of the 1977 Tax Code. The end result is that the thirty-five percent (35%) transaction tax is *not* one of the taxes in

> respect of which Section 51 (e) authorized the imposition of surcharge and interest and Section 72 the imposition of a fraud surcharge." (Emphases supplied)

True, the Supreme Court in *PICOP* declared that the present provision of the NIRC mentions that **additions** on tax applies to all taxes. While such pronouncement may not be construed beyond the context in which it was made, *PICOP* simply confirmed that *in general*, certain penalties and charges are applicable to all types of tax or deficiency tax; **PICOP, however, did not categorically construe the provision of Section 249 (B) that deals with "deficiency interest" on the type of tax "as defined in [the] Code."** Note that the present NIRC is explicit with respect to the type of tax on which deficiency interest may be imposed, viz:

> 'Section 249.Interest-
>
> (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.' (Emphasis supplied)

Section 249 (B) cannot be any clearer: the deficiency interest must refer only to 'deficiency in the tax due, <u>as the term is defined in [the] Code</u>.'

Verily, as the law stands, only donor's, estate, and income taxes carry a provision on deficiency tax; they are the types of taxes on which such deficiency interest may be imposed.

Finally, Sections 247 (a) and 249 (A) are **general provisions** that impose "additions" to the tax and "interest" thereon. Both sections may not be read in isolation from the relevant and **specific provision** of Section 249 (B) with respect to the imposition of "deficiency" interest, more so as all these provisions fall within the same Chapter I of Title X of the NIRC of 1997, as amended.

> Otherwise stated, Sections 247 (a) and 249 (A) must reasonably be read and construed subject to the provision of Section 249 (B) - - all these provisions being covered by the **same** Chapter I of Title X of the NIRC of 1997, as amended."

Also apt is my Concurring and Dissenting Opinion in *Philippine Aerospace Development Corporation vs. Commissioner of Internal Revenue*[4] which I quote below:

> "Settled is the rule that laws imposing tax is construed strictly against the government and liberally in favor of the taxpayer. **Unless clearly imposed by pertinent provision of law, deficiency interest as an additional tax burden should not simply be presumed. Thus, the obligation to pay deficiency interest may not be applied to taxes other than income tax, donor's tax and estate tax, irrespective of whether an assessment is issued or not. After all, the deficiency tax assessed is still subject to the delinquency interest rate of 20% per annum until fully paid. Truth be told, the delinquency interest rate of 20% is way more than the legal interest of 12% per annum**."

The power of taxation is sometimes called also the power to destroy. Therefore, it should be exercised with caution to minimize injury to the proprietary rights of a taxpayer. It must be exercised fairly, equally and uniformly, lest the tax collector kills the "hen that lays the golden egg."[5] Indeed, the imposition of 20% deficiency interest per annum on a tax not clearly within the context of the law, in addition to 20% delinquency interest per annum <u>and</u> a surcharge of 25% on the amount due under Section 248 of the NIRC of 1997, as amended, is too burdensome for a taxpayer to survive and continue its business affairs.

In fine, Section 249 (B) of the NIRC is clear and explicit as when **deficiency interest** may be imposed, i.e., it may be imposed only on *"any deficiency in the tax due as the term is defined in [the National Internal Revenue] Code."* While there are many situations which could give rise to deficiency tax liabilities, **Section 249 (B) of**

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[4] CTA EB No. 1035, February 9, 2016.
[5] *Commissioner of Internal Revenue vs. SM Prime Holdings, Inc.*, G.R. No. 183505, February 26, 2010, *citing Roxas vs. Court of Tax Appeals*, G.R. No. L-25043, April 26, 1968.

the NIRC qualified the imposition of deficiency interest to "deficiency in the tax due, as the term is defined in the Code." This evidently means that not all situations involving deficiency tax liabilities should be subjected to deficiency interest.

In contrast, Sections 248 **[Civil Penalties]** and 249(C) **[Delinquency Interest]** of the NIRC, both of which fall under Chapter I of Title X [Statutory Offenses and Penalties], prescribe "Additions to the Tax"; yet, these Sections **did not provide the same qualification** as that which is stated with respect to **deficiency interest**. Moreover, Section 248(A) of the NIRC imposes the 25% surcharge simply in addition to the tax required to be paid, and Section 248(B) imposes the penalty of 50% of the tax or of the deficiency tax, **without qualification** similar to that provided in Section 249(B) of the NIRC anent **deficiency interest**. In the same vein, **delinquency interest** provided in Section 249 of the NRIC is imposed **without qualification** on the amount of the tax due, or on the deficiency tax, or on any surcharge or interest thereon. Reasonably construed, in the absence of aforestated qualification, the "additions" to tax apply to all forms of tax.

While additions to tax that are "qualified" must be limited to the type of "deficiency in the tax due as the term is defined in the Code", to impose or demand payment of 20% deficiency interest on all deficiency tax liabilities would render senseless the unequivocal qualification in Section 249(B) of the NIRC that deficiency interest shall be imposed only on *"any deficiency in the tax due as the term is defined in [the National Internal Revenue] Code."* Had it been the intention to impose deficiency interest on all deficiency tax liabilities, this specific qualification would not have been incorporated at all, similar to Sections 248 and 249 (C) of the NIRC.

Since it is only with respect to the donor's tax, income tax and estate tax which incorporate provisions that specifically **define "deficiency"** and considering that Section 249(B) of the NIRC is categorical that deficiency interest shall be imposed only on any deficiency in the tax due **as the term is defined in the NIRC**, I reiterate that the deficiency interest must be imposed only on these three (3) types of taxes. The liability to pay deficiency interest springs from Section 249(B) of the NIRC and its imposition must be strictly exercised in accordance with its precepts. This is consistent with Article 1158 of the Civil Code of the Philippines which provides that "**Obligations derived from law are not presumed**. Only those

expressly determined in this Code or in special laws are demandable, and shall be regulated by the precepts of the law which establishes them; xxx xxx xxx."

In sum, deficiency interest may be imposed only on tax specifically covered and defined by the relevant provisions of the NIRC, *i.e., income tax, donor's tax and estate tax*; **conversely, deficiency interest may not properly be imposed on the VAT assessed against Maxicare.**

All told, I VOTE to GRANT the Petition for Review filed by the CIR in CTA EB No. 1317. On the other hand, I VOTE to DENY the Petition for Review filed by Maxicare in CTA EB No. 1312. The Amended Decision of the Court in Division should be REVERSED. Maxicare should be ordered to pay deficiency VAT in the aggregate amount of Php200,149,302.69, inclusive of 25% surcharge as imposed under Section 248(A)(3) of the NIRC of 1997, as amended. Likewise, Maxicare should be ordered to pay delinquency interest at the rate of 20% per annum on the total deficiency VAT of Php200,149,302.69, inclusive of the 25% surcharge, computed from April 30, 2012 until full payment thereof pursuant to Section 249(C)(3) of the NIRC of 1997, as amended.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

MAXICARE HEALTHCARE CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1312
(CTA CASE NO. 8441)

x----------x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

MAXICARE HEALTHCARE CORPORATION,
Respondent.

CTA EB NO. 1317
(CTA Case No. 8441)

Present:

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

Promulgated:

MAY 08 2017 2:00 pm

x----------x

SEPARATE CONCURRING OPINION

RINGPIS-LIBAN, *J.*:

I concur with the Ponencia of J. Castañeda and this Separate Concurring Opinion is to emphasize the basis of my concurrence with respect to the imposition of deficiency interest on deficiency value-added tax (VAT), expanded withholding tax (EWT) and withholding tax on compensation (WTC).

With due respect to my esteemed colleagues, Presiding Justice Ramon G. Del Rosario and Associate Justice Erlinda P. Uy, I do not agree with their position (as expressed in P.J. Del Rosario's Concurring & Dissenting Opinion) that deficiency interest under Section 249(B) of the National Internal Revenue Code (NIRC) of 1997, as amended, should be applied only where there is deficiency income tax, deficiency estate tax and deficiency donor's tax.

On this score, I adopt the Separate Concurring Opinions of Justices Castañeda and Cotango-Manalastas in *Philippine Aerospace Development Corporation v. Commissioner of Internal Revenue*[1], which expound on why deficiency interest should be applied to all kinds of taxes. The relevant portions are quoted below:

Justice Castañeda wrote in his Separate Concurring Opinion:

> "The law is clear. There is no room left for interpretation.
>
> Section 24 7 of the 1997 NIRC provides:
>
> **'TITLE X**
> **STATUTORY OFFENSES AND PENALTIES**
>
> **CHAPTER I**
> **ADDITIONS TO THE TAX**
>
> SECTION 247. General Provisions.-
>
> (a) The additions to the tax or deficiency tax prescribed in this Chapter shall apply to **all taxes,** fees and charges **imposed in this Code**. The amount so added to the tax shall be collected at the same time, in the same manner and as part of the tax." (emphasis and underscoring supplied)

The text of Section 247(a) states without any doubt that the additions under Chapter I, Title X are applicable to all taxes imposed under the code, i.e. the 1997 NIRC. The authority under that provision extends to all taxes regardless of the title under which they are classified.

Thus, contrary to the position taken in the dissent, the law does not limit these additions to only the three (3) types of

[1] CTA EB. No. 1035, February 9, 2016.

internal revenue taxes, namely, income (Title II), estate (Title III) and donor's tax (Title III). Their imposition applies with equal force and effect to the other taxes under the 1997 NIRC such as the value-added tax (Title IV), other percentage taxes (Title V), excise tax (Title VI) and documentary stamp tax (Title VII).

Accordingly, the additions to the tax or deficiency tax such as, among others, *Civil Penalties or Surcharges* under Section 248, *Deficiency Interest* under Section 249(B), *Delinquency Interest* under Section 249(C), and *Installment on Extended Payment* under Section 249(D) are applicable to petitioner's deficiency EWT, WTC and VAT, as well.

The dissent reasoned that because there is no definition for deficiency EWT, WTC and VAT unlike those for income tax in Section 56(B), for estate tax in Section 93 and for donor's tax in Section 104 then no deficiency interest can be imposed on the deficiency EWT, WTC and VAT due from the petitioner. The lacuna or the missing definition noted in the dissent was precisely addressed by Section 247(a) when this provision was first legislated through the amendments to the 1977 NIRC and which were then subsequently reenacted in the 1997 NIRC.

The Supreme Court had the occasion to discuss the history of this provision in *Paper Industries Corporation of the Philippines (PICOP) v. Court of Appeals, et al.*[2]

In said case, the Supreme Court held that PICOP was not liable for interest and surcharge on the unpaid transaction tax because the 1977 Tax Code then applicable authorized the imposition of interest and surcharge only on taxes within Title II of the code (Income Tax). Therefore, since the transaction tax was embraced under a different title, Title V (Taxes on Business), then the Court concluded that transaction tax was not one of the taxes for which interest and surcharge could be imposed. Nonetheless, it further expounded that this inadvertence in the 1977 NIRC was cured subsequently by fiat. Thus:

> "The CIR, both in its petition before the Court of Appeals and its Petition in the instant case, points to Section 51 (e) of the 1977 Tax Code as its source of authority for assessing a surcharge and penalty

[2] *Citing* G.R. No. 106949-50, December 1, 1995 consolidated with Commissioner of Internal Revenue v. Paper Industries Corporation of the Philippines (PICOP), et al., G.R. No. 106984-85, December 1, 1995.

interest in respect of the thirty-five percent (35%) transaction tax due from Picop.

It will be seen that Section 51(c)(1) and (e)(1) and (3), of the 1977 Tax Code, authorize the imposition of surcharge and interest only in respect of a "*tax imposed by this Title*," that is to say, *Title II on "Income Tax."* It will also be seen that Section 72 of the 1977 Tax Code imposes a surcharge only in case of failure to file a return or list *"required by this Title,"* that is, *Title II on "Income Tax."* The thirty-five percent (35%) transaction tax is, however, imposed in the 1977 Tax Code by *Section 210 (b) thereof which Section is embraced in Title V on "Taxes on Business" of* that Code. Thus, while the thirty-five percent (35%) transaction tax is in truth a *tax imposed on* interest *income* earned by lenders or creditors purchasing commercial paper on the money market, the relevant provisions, i.e., Section 21 O(b), were *not* inserted in Title II of the 1977 Tax Code. The end result is that the thirty-five percent (35%) transaction tax is not one of the taxes in respect of which Section 51 (e) authorized the imposition of surcharge and interest and Section 72 the imposition of a fraud surcharge.

It is not without reluctance that we reach the above conclusion on the basis of what may well have been an inadvertent error in legislative draftsmanship, a type of error common enough during the period of Martial Law in our country. Nevertheless, we are compelled to adopt this conclusion. We consider that the_authority *(sic)* to impose what the present Tax Code calls (in Section 248) *civil penalties* consisting of additions to the tax due, must be expressly given in the enabling statute, in language too clear to be mistaken. The grant of that authority is not lightly to be assumed to have been made to administrative officials, even to one as highly placed as the Secretary of Finance.

The state of the present law tends to reinforce our conclusion that Section 51 (c) and (e) of the 1977 Tax Code did not authorize the imposition of a surcharge and penalty interest for failure to pay the thirty-five percent (35%) transaction tax imposed under Section 210 (b) of the same Code. The

corresponding provision in the *current* Tax Code very clearly embraces failure *to pay all taxes imposed in the Tax Code*, without any regard to the Title of the Code where provisions imposing particular taxes are textually located. Section 247 (a) of the NIRC, as amended, reads:

'Title X
Statutory Offenses and Penalties

Chapter I
Additions to the Tax

SECTION 247. *General Provisions.*- (a) The additions to the tax or deficiency tax prescribed in this Chapter shall apply to all taxes. fees and charges imposed in this Code. The amount so added to the tax shall be collected at the same time, in the same manner and as part of the tax ....

SECTION 248. *Civil Penalties.* - (a) There shall be imposed, *in addition to the tax required to be paid, penalty equivalent to twenty-five percent (25%) of the amount due*, in the following cases:

xxx xxx xxx

(3) failure to pay the tax within the time prescribed for its payment; or

xxx xxx xxx

(c) the penalties imposed hereunder shall form part of the tax and the entire amount shall be subject to the interest prescribed in Section 249.

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 regulations*, from the date

> prescribed for payment until the amount is fully paid .....' (Emphases supplied)
>
> In other words, Section 247 (a) of the current NIRC supplies what did not exist back in 1977 when Picop's liability for the thirty-five percent (35%) transaction tax became fixed. **We do not believe we can fill that legislative lacuna by judicial fiat. There is nothing to suggest that Section 247(a) of the present Tax Code, which was inserted in 1985, was intended to be given retroactive application by the legislative authority.** (underscoring and emphases supplied; citations omitted)

In fact, this Court En Banc, under the ponencia of J. Mindaro-Grulla in *Takenaka Corporation Philippine Branch v. CIR*[3], relied upon the same PICOP holding to stress its position that the deficiency interest imposed under Section 249(B) of the 1997 NIRC does not apply merely to the deficiency income, deficiency estate and deficiency donor's tax by virtue of Section 247(a) of the same law. It reads:

> 'Anent the issue on the applicability of deficiency interest under Section 249(B) of the NIRC of 1997, as amended, only to deficiency income tax, deficiency estate tax, and deficiency donor's tax, as held by the Court a quo, petitioner asseverates that such an interpretation would result to absurd conclusions as it would mean triple imposition of 20% interest under Sections 249(A), 249(8), and 249(C) of the NIRC of 1997, simultaneously, effectively giving rise to at least 60% interest *per annum.*
>
> We agree with petitioner.
>
> The issue is no longer novel as the same was sufficiently discussed by the Supreme Court in *Paper Industries Corporation of the Philippines (PICOP) v. Court of Appeals, et al.* The Supreme Court held that Section 24 7(a) of the NIRC of 1977, as amended [now Section 247(a) of the NIRC of 1997, as amended], "very clearly embraces failure to pay all taxes

[3] *Citing* CTA EB Case No. 745, September 4, 2012.

> imposed in the Tax Code, without any regard to the Title of the Code where provisions imposing particular taxes are textually located." (emphases and underscoring supplied; citations omitted)

In sum, petitioner's deficiency EWT, WTC and VAT should be subject to deficiency interest as provided for under Section 249 of the 1997 NIRC."

In the same *Aerospace* Case, the Separate Concurring Opinion of Justice Cotango-Manalastas also elucidates on the subject of deficiency interest thus:

> "At the outset, Section 247 of the NIRC of 1997, as amended, provides that the additions (i.e., surcharge, interest) to deficiency tax prescribed under Chapter I[4] (Additions to the Tax), Title X (Statutory Offenses and Penalties) are applicable to ***all taxes*** imposed under the Tax Code. Thus, the NIRC does not limit deficiency interest to only three (3) types of internal revenue taxes.
>
> A reading of the definitions of the term "deficiency" found in Sections 56(8), 93 and 104 of the NIRC of 1997, as amended, shows that these definitions relate to how deficiency income, estate and donor's tax are computed, the relevant provisions are quoted hereunder:
>
> **'SECTION 56.** *Payment and Assessment of Income Tax for Individuals and Corporations.* -
>
> xxx xxx xxx
>
> (B) Assessment and Payment of Deficiency Tax. - After the return is filed, the Commissioner shall examine it and assess the correct amount of the tax. The tax or deficiency income tax so discovered shall be paid upon notice and demand from the Commissioner.
>
> As used in this Chapter, in respect of a tax imposed by this Title, the term 'deficiency' means:

[4] Includes Sections 247-252 of the NIRC.

(1) The amount by which the tax imposed by this Title exceeds the amount shown as the tax by the taxpayer upon his return; but the amount so shown on the return shall be increased by the amounts previously assessed (or collected without assessment) as a deficiency, and decreased by the amount previously abated, credited, returned or otherwise repaid in respect of such tax; or

(2) If no amount is shown as the tax by the taxpayer upon his return, or if no return is made by the taxpayer, then the amount by which the tax exceeds the amounts previously assessed (or collected without assessment) as a deficiency; but such amounts previously assessed or collected without assessment shall first be decreased by the amounts previously abated, credited, returned or otherwise repaid in respect of such tax.

SECTION 93. *Definition of Deficiency.* -As used in this Chapter, the term deficiency' means:

(a) The amount by which the tax imposed by this Chapter exceeds the amount shown as the tax by the executor, administrator or any of the heirs upon his return; but the amount so shown on the return shall first be increased by the amounts previously assessed (or collected without assessment) as a deficiency and decreased by the amounts previously abated, refunded or otherwise repaid in respect of such tax; or

(b) If no amount is shown as the tax by the executor, administrator or any of the heirs upon his return, or if no return is made by the executor, administrator, or any heir, then the amount by which the tax exceeds the amounts previously assessed (or collected without assessment) as a deficiency; but such amounts previously assessed or collected without assessment shall first be decreased by the amounts previously abated, refunded or otherwise repaid in respect of such tax.

SECTION 104. *Definitions.* - xxx

> The term 'deficiency' means: (a) the amount by which the tax imposed by this Chapter exceeds the amount shown as the tax by the donor upon his return; but the amount: so shown on the return shall first be increased by the amount previously assessed (or collected without assessment) as a deficiency, and decreased by the amounts previously abated, refunded or otherwise repaid in respect of such tax, or (b) if no amount is shown as the tax by the donor, then the amount by which the tax exceeds the amounts previously assessed (or collected without assessment) as a deficiency, but such amount previously assessed, or collected without assessment, shall first be decreased by the amount previously abated, refunded or otherwise repaid in respect of such tax.'

These definitions, which are similar for the three types of taxes, are basic and standard definition of "deficiency" which can likewise be adopted by analogy in defining "deficiency" as to other internal revenue taxes. Hence, I believe the phrase "[a]ny deficiency in the tax due, as the term is defined in this Code" generally refers to deficiency tax that arises when the correct amount of tax due, as determined by the CIR, is more than the amount of tax shown in the taxpayer's return.

I described "deficiency" as one determined by the CIR because the word "deficiency" was used in Section 56(B)[under Chapter IX[5] , Title II] as follows:

> '(B) *Assessment and Payment of Deficiency Tax.* - After the return is filed, the **Commissioner shall examine it and assess the correct amount of the tax**. The tax or **<u>deficiency</u>** income tax **so discovered** shall be paid upon notice and demand from the Commissioner.'

and in Section 92 (under Chapter I[6], Title III) as follows:

> 'SECTION 92. *Discharge of Executor or Administrator from Personal Liability.* - xxx. The executor or administrator, upon payment of the amount of which he is notified, shall be discharged from

[5] Returns and Payment of Tax.
[6] Estate Tax.

> personal liability for **any <u>deficiency</u> in the tax thereafter found to be due** and shall be entitled to a receipt or writing showing such discharge.

Notably, the word "deficiency" was not mentioned anywhere else in Chapter II (Donor's Tax) of Title III except when it was defined in Section 104.

Moreover, Section 6 of the NIRC of 1997, as amended, provides:

> 'SECTION 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* -
>
> (A) *Examination of Returns and Determination of Tax Due.*- After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax: *Provided, however*, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
>
> The tax or any **deficiency** tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative. xxx'

The Tax Code follows the pay-as-you-file system of taxation under which the taxpayer computes his own tax liability, prepares the return, and pays the tax as he files the return. The pay-as-you-file system is a self-assessing tax system.[7] Hence, after the return is filed (or even if no return is filed), the Bureau of Internal Revenue (BIR) will examine such return and will make a determination as to the correct amount of tax and make the corresponding assessment of deficiency tax, if any, found due from the taxpayer.

Hence, from the foregoing, it appears that 'deficiency in the tax due' refers to deficiency as determined by the CIR. This distinction finds significance in determining whether interest is

[7] *PNOC vs. Court of Appeals*, G.R. No. 109976 and 112800, April 26, 2005.

imposed under Section 249(A) or 249(8) of the NIRC of 1997, as amended.

Section 249(A) of the NIRC of 1997, as amended, provides:

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

Based on the above provision, Section 249(A) of the NIRC of 1997, as amended, applies to 'any unpaid amount of tax' and interest would run 'from the date prescribed for payment until the amount is fully paid' which is the same period provided in Section 249(B) of the NIRC of 1997, as amended.

Since 'any unpaid amount of tax' is an all-encompassing phrase, it follows that deficiency tax also falls within that phrase since, basically, deficiency tax is unpaid tax. Hence, it is reasonable to conclude that generally, any unpaid tax is subject to interest under Section 249(A) of the NIRC of 1997, as amended.

For example, a taxpayer filed his income tax return for taxable year 2003 and paid the income tax due as shown in his return (which was due for filing on April 15, 2004) only on May 30, 2004. Pursuant to Section 249(A) of the NIRC of 1997, as amended, the taxpayer is required to pay 20°/o interest p.a. from April 15, 2004 to May 30, 2004. However, if specifically, the unpaid amount of tax refers to 'deficiency in the tax due', then Section 249(B) of the NIRC of 1997, as amended, applies.

From the foregoing, assuming arguendo that deficiency interest is not applicable to the other types of taxes because they are not considered 'deficiency in the tax due, as the term is defined in this Code', then these other types of taxes will fall under Section 249(A) of the NIRC of 1997, as amended, since it applies to 'any unpaid amount of tax', an all-encompassing phrase.

Also, if deficiency interest under Section 249(B) of the NIRC of 1997, as amended, is not applicable to internal revenue taxes other than income, estate and donor's tax, then a taxpayer that was issued a deficiency tax assessment (Final Assessment

Notice/Formal Letter of Demand) would be placed in a better position than a taxpayer who was not yet issued a deficiency tax assessment. In the former case, the taxpayer with an assessment is not required to pay interest from the date prescribed for its payment until full payment while the latter who self-assessed his unpaid tax, would have to pay for the same.

For example, a taxpayer filed his VAT return for the 1st quarter of 2003 (calendar year) and paid the tax due thereon on April 25, 2003. Later on, he discovered that he underpaid his VAT due and hence, he filed an amended return on June 10, 2003 and paid the corresponding deficiency VAT. Pursuant to Section 249(A) of the NIRC of 1997, as amended, he has to pay for interest from April 25, 2003 to June 10, 2003. On the other hand, if another taxpayer was assessed by the BIR for deficiency VAT for the 1st quarter of 2003, based on the position expressed in the Dissenting Opinion, then, he will not be required to pay for deficiency interest under Section 249(B) of the NIRC of 1997, as amended, from April 25, 2003 until full payment.

Moreover, applying the argument that deficiency interest is only applicable for deficiencies that were defined in the NIRC, it would appear that 'deficiency' exists only for these particular tax types (income tax, estate tax and donor's tax). Does that mean the BIR cannot assess a taxpayer for 'deficiency' on taxes other than income, estate and donor's tax since the same were not defined in the NIRC? This could not have been the intention of Congress."

It is for the reasons above that, as held in the ponencia, deficiency interest is not limited to merely deficiency income tax, deficiency estate tax and deficiency donor's tax.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

MAXICARE HEALTHCARE CORPORATION, *Petitioner,*	**CTA *EB* NO. 1312** (CTA Case No. 8441)
-versus-	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	

x----------x

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 1317** (CTA Case No. 8441)
-versus-	Present: **DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** *and* **MANAHAN,** *JJ.*
MAXICARE HEALTHCARE CORPORATION, *Respondent.*	Promulgated: MAY 08 2017 2:00 pm

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Concurring and Dissenting Opinion

MANAHAN, J.:

I concur with the *ponencia*'s conclusion, but not the rationale used in arriving at said conclusion that Maxicare should be held liable for deficiency value-added tax (VAT), but only for the 2nd, 3rd, and 4th quarters of taxable year 2008.

The *ponencia* reasoned that the gross receipts derived by health maintenance organizations (HMOs) for VAT purposes,

shall be the total amount of money or its equivalent actually received from members undiminished by any amount paid or payable to owners/operators of hospitals, clinics and medical and dental practitioners.

However, I disagree with the blanket application of this definition which does not allow the recognition of receipt of payments that do not redound to the benefit of Maxicare.

The definition of "gross receipts" for VAT sales of service is provided in Section 108 of the 1997 National Internal Revenue Code, as amended (NIRC), as follows:

> Sec. 108. Value-added Tax on Sale of Services and Use or Lease of Properties. –
>
> xxx
>
> The term '**gross receipts**' means the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advanced payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax.

This definition is further clarified in Revenue Regulations No. (RR) 16-2005[1], as amended by RR 04-2007[2], which provides:

> Sec. 4.108-4. **Definition of Gross Receipts. – "Gross receipts"** refers to the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits applied as payments for services rendered and advance payments actually or constructively received during the taxable period for the services performed or to be performed for another person, excluding the VAT, except those amounts earmarked for payment to unrelated third (3rd) party or received as reimbursement for advance payment on

[1] Consolidated VAT Regulations of 2005, November 1, 2005.
[2] March 20, 2007.

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> behalf of another which do not redound to the benefit of the payor.
>
> A payment is a payment to a third (3rd) party if the same is made to settle an obligation of another person, e.g. customer or client, to the said third party, which obligation is evidenced by the sales invoice/official receipt issued by the said third party to the obligor/debtor (e.g. customer or client of the payor of the obligation).
>
> An advance payment is an advance payment on behalf of another if the same is paid to a third (3rd) party for a present or future obligation of said another party which obligation is evidenced by a sales invoice/official receipt issued by the obligee/creditor to the obligor/debtor (i.e. the aforementioned 'another party') for the sale of goods or services by the former to the latter.
>
> For this purpose 'unrelated party' shall not include taxpayer's employees, partners, affiliates (parent, subsidiary and other related companies), relatives by consanguinity or affinity within the fourth (4th) civil degree, and trust fund where the taxpayer is the trustor, trustee or beneficiary, even if covered by an agreement to the contrary.[3]

From the foregoing, the exclusion of earmarked payments to third parties and advance payments on behalf of another from gross receipts appeared in RR 16-05 as amended, which recognizes the peculiar aspect of service contractors receiving payments that are to be paid out to other parties. This peculiarity also applies to HMOs and was also recognized in the definition of gross receipts for HMOs contained in RR 16-05:

> Sec. 4.108-3. Definitions and Specific Rules on Selected Services. –
>
> xxx
>
> (k) Health Maintenance Organizations (HMOs) are entities, organized in accordance with the provisions of the Corporation Code of the Philippines and licensed by

[3] Underscoring supplied.

> the appropriate government agency, which arranges for coverage or designated managed care services needed by plan holders/members for fixed prepaid membership fees and for a specified period of time.
>
> HMOs' gross receipts shall be the total amount of money or its equivalent representing the service fee actually or constructively received during the taxable period for the services performed or to be performed for another person, excluding the value-added tax. The compensation for their services representing their service fee is **presumed** to be the total amount received as enrollment fee from their members plus other charges received.

To my mind, this statement in RR16-05 that the total amount received as enrollment fee plus other charges received is **presumed** to be the HMO's service fee is critical. While it is a presumption made by law, it remains disputable. This means that the HMO can prove otherwise, and should be given the chance to do so, if indeed the total amounts received from its members do not all constitute service fees and should therefore not be considered as part of gross receipts subject to VAT.

Thus, I am of the position that HMOs should be allowed to prove which portions of their receipts do not constitute service fees and therefore will not form part of gross receipts subject to VAT. In this aspect, RR 16-05, Sec. 4.108-4 also provides how the same may be proved, to wit:

> A payment is a payment to a third (3rd) party if the same is made to settle an obligation of another person, e.g. customer or client, to the said third party, which obligation is evidenced by the sales invoice/official receipt issued by the said third party to the obligor/debtor (e.g. customer or client of the payor of the obligation).
>
> An advance payment is an advance payment on behalf of another if the same is paid to a third (3rd) party for a present or future obligation of said another party which obligation is evidenced by a sales invoice/official receipt issued by the obligee/creditor to the obligor/debtor (i.e. the aforementioned 'another party')

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> for the sale of goods or services by the former to the latter.[4]

In the instant case, Maxicare failed to adduce evidence to prove that the amount of Php1,525,717,866.43 which it declared as exempt VAT sales in its tax returns, were paid out to third parties and therefore, were not part of its service fees. For the foregoing reasons, I find that Maxicare's entire gross receipts for the 2nd, 3rd, and 4th quarters of taxable year 2008 should be subject to VAT as concluded by the *ponencia*.

However, with respect to the applicable prescriptive period for the 1st quarter of 2008, I disagree with the *ponencia*'s conclusion that the ten-year prescriptive period should apply.

The *ponencia* applied the Supreme Court decision in *Aznar v. Court of Tax Appeals*[5] (*Aznar*), which declared that a return is false as long as there is a deviation from the truth, whether intentional or not. In the instant case, the Court *En Banc* found that Maxicare filed false returns when it excluded the medical/hospital utilization expenses from its taxable gross receipts against the established interpretation by the Commissioner of Internal Revenue (CIR) and jurisprudence, thereby, justifying the application of the ten-year prescriptive period.

I am not unaware of the recent Supreme Court decision in CIR v. Asalus Corporation[6], which again reiterated the Aznar case in that a "mere showing that the returns filed by the taxpayer were false, notwithstanding the absence of intent to defraud, is sufficient to warrant the application of the ten (10) year prescriptive period under Section 222 of the NIRC."

However, and with due respect, it is my position that the applicability of the ten-year period does not apply to every "false" return and that the definition of a "false" return should be revisited in light of *Commissioner of Internal Revenue v. B.F. Goodrich Phils. Inc.*[7] (*Goodrich*), as I will discuss below.[8]

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[4] Underscoring supplied.
[5] G.R. No. L-20569, August 23, 1974.
[6] G.R. No. 221590, February 22, 2017.
[7] G.R. No. 104171, February 24, 1999.
[8] Part of the discussion is based on my article: *False Returns*, 55 Ateneo Law Journal 354, September 2010.

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In *Aznar*, the taxpayer was assessed with deficiency income tax for six consecutive taxable years due to his gross under-declaration of taxable income. These substantial under-declarations were noted by the Supreme Court and were made the indicia of the falsity of income tax returns. The Court went on to state that the "very substantial under-declarations of income for six consecutive years eloquently demonstrate the falsity or fraudulence of the income tax returns with an intent to evade the payment of tax." Furthermore, the Court expounded on the concept of false returns as being distinct from fraudulent returns with intent to evade taxes, as follows:

> We believe that the proper and reasonable interpretation of said provision should be that in the three different cases of (1) false return, (2) fraudulent return with intent to evade tax, (3) failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the (1) falsity, (2) fraud, (3) omission. Our stand that the law should be interpreted to mean a separation of the three different situations of false return, fraudulent return with intent to evade tax, and failure to file a return is strengthened immeasurably by the last portion of the provision which segregates the situations into three different classes, namely – 'falsity,' 'fraud[,]' and 'omission.' That there is a difference between 'false return' and 'fraudulent return' cannot be denied. While the first merely implies deviation from the truth, whether intentional or not, the second implies intentional or deceitful entry with intent to evade the taxes due.[9]

Based on this decision, the Court has categorized wrongful entries, intentional or unintentional, or mistakes made, whether in good faith or in bad faith, appearing on the face of tax returns, as "falsity" which constitutes a legal ground for the imposition of the ten-year period of prescription.

Almost 25 years later, the Supreme Court promulgated its *Goodrich* decision, which shows a softening of the Court's stance on the scope and coverage of "false return" as compared to the position in *Aznar*.

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[9] G.R. No. L-20569, August 23, 1974 (underscoring supplied).

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In *Goodrich*, the taxpayer sold a piece of real property at a price which was lower than its declared fair market value. The Bureau of Internal Revenue (BIR) insisted that "falsity" was committed thereby justifying the issuance of the assessment beyond the normal three-year prescriptive period. In finding that the assessment had prescribed, the Supreme Court commented on the issue of falsity, as follows:

> Petitioner insists that private respondent committed "falsity" when it sold the property for a price lesser than its declared fair market value. This fact alone did not constitute a false return which contains wrong information due to mistake, carelessness or ignorance. It is possible that real property may be sold for less than adequate consideration for a *bona fide* business purpose; in such event, the sale remains an "arm's length" transaction. In the present case, the private respondent was compelled to sell the property even at a price less than its market value, because it would have lost all ownership rights over it upon the expiration of the parity amendment. Xxx
>
> Furthermore, the fact that private respondent sold its real property for a price less than its declared fair market value did not by itself justify a finding of false return. Indeed, private respondent declared the sale in its 1974 return submitted to the BIR. Within the five-year prescriptive period [now, three-year prescriptive period], the BIR could have issued the questioned assessment, because the declared fair market value of the said property was of public record. This it did not do, however, during all those five years. Moreover, the BIR failed to prove that respondent's 1974 return had been filed fraudulently. Equally significant was its failure to prove respondent's intent to evade the payment of the correct amount of tax.[10]

While *Aznar* and *Goodrich* have radically different factual milieus, both these cases impacted on how "false returns" are defined. From the broad *Aznar* definition that a false return is any deviation from the truth, *Goodrich* provided an instance wherein a "deviation" from the truth as found by the BIR, did not automatically render the return as a "false return" which would justify the application of the ten-year prescriptive period.

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[10] G.R. No. 104171, February 24, 1999 (underscoring supplied).

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Furthermore, in *Goodrich*, the Supreme Court required that the BIR prove the presence of fraudulent intent or intent to evade payment of the correct amount of tax on the part of the taxpayer. The Supreme Court also found that the BIR could have issued the assessment within the ordinary prescriptive period considering that the declared fair market value was in the public record. In *Goodrich*, the "deviation" did not put the BIR at a disadvantage in issuing its assessment, as opposed to the situation in *Aznar* which involved exorbitant under-declarations for six consecutive years which could not have been easily traced from the returns itself.

This is consistent with the statement in *Aznar*:

> The ordinary period of prescription of 5 years within which to assess tax liabilities under Sec. 331 of the NIRC should be applicable in normal circumstances, but <u>whenever the government is placed at a disadvantage so as to prevent its lawful agents from proper assessment of tax liabilities due to false returns, fraudulent return intended to evade payment of tax or failure to file returns, the period of ten years ...from the time of the discovery of the falsity, fraud or omission...should be the one enforced</u>.[11]

Thus, as early as *Aznar*, a qualification had been made that there should be a disadvantage to the government agents resulting from falsity, fraud or omission, which would prevent said agents from assessing the tax within the ordinary period of prescription. Without such disadvantage, the normal three-year prescriptive period should apply.

It is perhaps interesting to note that even prior to *Goodrich*, the CTA, in 1995, had also recognized this limitation in *Aznar*, to wit:

> Respondent also contends in the alternative, that petitioner's omission of its sales of bottled and tetra-packed milk from its sales tax return rendered said returns "false" within the meaning of Section 223 of the Tax Code. In support of this, reliance is placed on the ruling in the case of Aznar vs. Court of Tax Appeals (58 SCRA 519), wherein it was held that the term "false return" merely implied a deviation from truth, irrespective of whether such omission is intentional or

[11] G.R. No. L-20569, August 23, 1974 (underscoring supplied).

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> not. Thus, respondent argues, since petitioner's sales tax returns did not disclose the "truth" regarding its sales of bottled and tetra-packed milk to outlets other than the Armed Forces of the Philippines Commissary and Exchange Service (AFPCES) and the US Military Installations (USMI), such omission rendered said returns "false" within the contemplation of Section 223 of the Tax Code.
>
> We find respondent's reliance on Aznar misplaced. There is nothing in the said case which establishes a hard and fast rule that every "deviation" from the truth necessarily brings a particular return under the coverage of Section 223 of the Tax Code. As pointed out by the petitioner, it is only where the falsity or "deviation" would place the government at a disadvantage so as to prevent the assessment and collection of the correct amount of taxes that the ordinary prescriptive period ...should not be applied.[12]

Finally, it is necessary to apply the *Aznar* and *Goodrich* doctrines in light of the purpose and rationale for providing a prescriptive period.

> It must be kept in mind that the very reason why the law provided for prescription is to give taxpayers peace of mind, that is, to safeguard them from unreasonable examination, investigation, or assessment. The law on prescription, being a remedial measure, should be liberally construed in order to afford such protection. As a corollary, the exceptions to the law on prescription should perforce be strictly construed.[13]

Guided by the foregoing, the application of *Aznar* should not be one of unbridled discretion.[14] This is especially true considering that taxes are self-assessed, as discussed by the Supreme Court:

> Taxes are generally self-assessed. They are initially computed and voluntarily paid by the taxpayer. The government does not have to demand it. If the tax payments are correct, the BIR need not make an assessment.

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[12] San Miguel Corporation v. Commissioner of Internal Revenue, CTA Case No. 4675, January 6, 1995 (underscoring supplied).
[13] Commissioner of Internal Revenue v. Standard Chartered Bank, G.R. No. 192173, July 29, 2015, citing CIR v. B.F. Goodrich Phils, Inc.
[14] Ayala Hotels, Inc. v. Commissioner of Internal Revenue, CTA Case No. 6002, January 10, 2002.

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> The self-assessing and voluntarily paying taxpayer, however, may later find that he or she has erroneously paid taxes.[15]

Upon finding that a tax has been paid erroneously, the taxpayer is allowed to file a claim for refund. On the reverse side, should the taxpayer find that there is an error in its return, the taxpayer may file an amended return, or should the BIR be the one to detect the error, then an assessment shall be issued.

The very meaning of a deficiency assessment is that there was an error or omission on the part of the taxpayer in the preparation of its return or the payment of its tax. But each and every error, as discussed previously, does not and should not result to the operation of the ten-year prescriptive period. Otherwise, on the strength of the *Aznar* doctrine, BIR examiners conducting regular tax audits, who, logically as a matter of course, would always come up with tax findings of either under-declaration of income or over-declaration of deductions, or both, could mercilessly and arbitrarily raise the argument of false return giving rise to the ten-year prescriptive period. The result would be a lackadaisical implementation of the statutory principle that the statute of limitations is a remedial measure and should be strictly construed against the taxing authority and liberally in favor of the taxpayer.

It is unfortunate that the case of *Commissioner of Internal Revenue v. Ayala Hotels, Inc.*[16] (*Ayala*) was not ruled upon by the Supreme Court due to the failure of therein petitioner to file its petition for review on certiorari. However, the Court of Appeals' discussion aptly described the effect of a sweeping application of *Aznar*, as quoted below:

> Reliance on the *Aznar Case* with regard to the issue of prescription is misplaced. Although in the said case, the Supreme Court ruled that a "false return" merely implies a deviation from the truth, whether intentional or not, <u>such pronouncement should not be given a sweeping application in all cases where a mistake in ITR entries are made by taxpayers. Otherwise, any mistake, however slight, in a return filed by a taxpayer in good faith would justify the application</u>

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[15] SMI-ED Phils. Technology, Inc. v. Commissioner of Internal Revenue, G.R. No. 175410, November 12, 2014.
[16] G.R. No. 163595, April 11, 2005; CA-G.R. SP No. 70025, April 19, 2004.

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> of the ten-year prescriptive period for assessment. Consequently, the protection provided for under Section 203 of the 1997 NIRC is rendered nugatory. Logically therefore, not all "false returns" would call for an application of Section 222 of the 1997 NIRC. Only "false returns" which are filed by a taxpayer with intent to evade tax should warrant an application of the ten-year prescriptive period.
>
> In order to render a return made by a taxpayer a "false return" within the meaning of Section 222, of the Tax Code, there must appear, a design to mislead or deceive on the part of the taxpayer, or at least culpable negligence. A mistake, not culpable in respect of its value would not constitute a false return.[17]

Notwithstanding, there is sufficient basis provided by *Aznar* and *Goodrich* to limit the application of the ten-year period to certain factual circumstances.

Applying the foregoing to the instant case:

1. There was no design to mislead or deceive on the part of Maxicare since the issue involved here is a difficult question of law which gave rise to differing issuances by the BIR;

2. The alleged deviation was not an intentional mistake or omission so as to put the BIR at a disadvantage in the investigation and assessment. The BIR was not prevented from issuing an assessment within the three-year period. This is highlighted by the fact that the BIR, in fact, issued the assessment within the three-year period for the 2nd, 3rd, and 4th quarters of taxable year 2008; and

3. There was no fraudulent intent or intent to evade the payment of the correct amount of tax as shown by Maxicare's disclosure of its "exempt sales" in the VAT returns based on its understanding and determination of its gross receipts.

Hence, the foregoing circumstances do not justify the application of the ten-year period.

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[17] CA-G.R. SP No. 70025, April 19, 2004 (underscoring supplied).

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On a final note, I join Justice Ma. Belen M. Ringpis-Liban's Concurring Opinion with respect to the imposition of deficiency and delinquency interests.

For all the foregoing, I vote to partially grant the Petition for Review filed by the Maxicare in CTA EB No. 1312 only with respect to the 1st quarter of taxable year 2008. On the other hand, I vote to partially grant the CIR's Petition for Review in CTA EB No. 1317.

CATHERINE T. MANAHAN
Associate Justice