REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

LUDO & LUYM CORPORATION,
Respondent.

CTA EB NO. 1559
(CTA Case No. 8613)

Present:

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

Promulgated:

SEP 27 2018 4:20 p.m.

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RESOLUTION

CASTAÑEDA, JR., *J.*:

For resolution of the Court *En Banc* is petitioner's Motion for Reconsideration Re: Decision dated June 8, 2018 filed through registered mail on June 28, 2018, with respondent's Opposition filed through registered mail on July 13, 2018.

For easy reference, the dispositive portion of the assailed Decision reads:

> "**WHEREFORE**, the instant Petition for Review is **DENIED**, for lack of merit. Accordingly, the Decision of the CTA 3rd Division in CTA Case No. 8613 is **AFFIRMED**.

SO ORDERED."[1]

In the instant motion, petitioner raises again the following arguments: (1) The principal basis for the disallowance of respondent's interest expense was Revenue Regulation (RR) No. 13-2000, not BSP Circular No. 202 dated May 27, 1999; (2) The VAT assessment was well within the ten (10) year period within which to assess cases of false or fraudulent return; and (3) Respondent is liable for deficiency income tax and Value-Added Tax for taxable year 2007 in the total amount of P57,863,909.86.

On the other hand, respondent counters that: (1) Petitioner's claim that the principal basis for disallowance of respondent's interest expense is Revenue Regulation No. 13-2000 is incorrect as the disallowance was based on BSP Circular No. 202 dated May 27, 1999; and (2) Contrary to the claim of BIR, the VAT assessment is already barred by prescription.

After careful review of the arguments raised by both parties, the Court *En Banc* resolves to deny the instant motion.

Prefatorily, the Court *En Banc* observes that petitioner merely rehashed his arguments which he already raised in his previous pleadings. These arguments had already been squarely resolved in the assailed Decision.

As to the applicability of RR No. 13-2000, the assailed Decision categorically applied the provisions of Section 3 thereof as to the requirements for deductibility of interest expense. It states:

> "Considering the foregoing, the Court *En Banc* rules that the findings of the Court in Division with respect to the alleged fictitious expenses arising from bank overdrafts should be upheld. On the other hand, the above interest expense should be added to respondent's taxable income as disallowed expense. At any rate, even if the said amount of interest expense is added to respondent's taxable income, petitioner is still not liable for any deficiency income, as shown above."[2]

Meanwhile, as to the requirement that the interest must be legally due, the assailed Decision squarely held that:

> "Petitioner asserts that the loans were already contingent liabilities, and there was no reasonable expectation that the

amount will be paid in due course. He cites Sections 1 and 4 of BSP *Circular No. 202 Series of 1999*, to wit:

> 'SECTION 1. Non-performing loans – Definition. Non-performing loans shall, as a general rule, refer to loan accounts whose principal and/or interest is unpaid for thirty (30) days or more after due date or after they have become past due in accordance with existing rules and regulations. This shall apply to loans payable in lump sum and loans payable in quarterly, semi-annual or annual installments, in which case, the total outstanding balance thereof shall be considered non-performing.
>
> In the case of loans payable in monthly installments, the total outstanding balance thereof shall be considered non-performing when three (3) or more installments are in arrears.
>
> Restructured loans which do not meet the requirements to be treated as a performing loan under Section 2 of this Circular shall be considered non-performing. **All items in litigation** as defined in the Manual of Accounts for Banks shall be considered non-performing loans.
>
> 'SECTION 4. Accrual of Interest Earned on Loans. No accrual of interest income is allowed if a loan has become non-performing as defined under this circular. **Interest on non-performing loans shall be taken up as income only when actual payments thereon are received**.'

Based on the above cited provision, petitioner contends, by analogy, that since banks are not allowed to recognize interest receivable/income on non-performing loans, the corresponding interest expense of respondent is not legally due and demandable.

To reiterate, BSP *Circular No. 202 Series of 1999* pertains to reporting of interest receivable/income on non-performing loans which **applies to banks only.** Respondent's line of business simply does not fall within the jurisdiction of the BSP.

Meanwhile, the Court in Division noted that respondent already subjects of litigation. Thus, it ruled that its indebtedness were already due and demandable. On this score, the Court *En Banc* agrees with the Court in Division."[3]

Considering the foregoing, the Court sees no reason to deviate from its earlier ruling.

With respect to the issue on prescription, the Court *En Banc* also finds no reason to reverse its findings in the assailed Decision, as follows:

> "Under *Asalus*, the presumption of falsity arises when there is a showing that a taxpayer has substantially underdeclared its sales, receipt or income.
>
> In the instant case, there is no showing that respondent has substantially underdeclared its sales, receipt or income. Meanwhile, the presumption of falsity of returns cannot arise by mere assertion that the former commissioner imposed surcharge against respondent. Hence, in the absence of proof of substantially underdeclared sales, receipt or income, the presumption of falsity of returns cannot be applied. Therefore, respondent had only three (3) years to assess respondent's deficiency VAT under Section 203 of the NIRC of 1997, as amended."[4]

Finally, the assailed Decision already made it clear that even if respondent's interest expense is disallowed, the overall effect would still be in its favor, as it may either result to a net loss if the normal income tax is applied, or to a tax overpayment if the Minimum Corporate Income Tax is applied. On the other hand, the subject VAT assessment had already prescribed and therefore, respondent may not be held liable thereto.

Considering the foregoing, the Court En Banc finds that the denial of the instant motion is in order.

WHEREFORE, the instant Motion for Reconsideration Re: Decision dated June 8, 2018 is **DENIED**, for lack of merit.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

(On Leave)
ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

(On Leave)
CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice