REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

HARD ROCK CAFÉ (MAKATI CITY), INC., Petitioner,	CTA CASE NO. 9279
	Members:
-versus-	BAUTISTA, *Chairperson* FABON-VICTORINO, *and* RINGPIS-LIBAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUL 12 2018 9:44 a.m.

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DECISION

***Fabon-Victorino, J.*:**

This Petition for Review[1] filed on February 29, 2016 by Hard Rock Café (Makati City), Inc., prays for the cancellation of the assessment issued against petitioner by respondent Commissioner of Internal Revenue (CIR) for alleged deficiency percentage tax of ₱27,799,898.28, inclusive of surcharge and interest, as well as compromise penalty of ₱25,000.00, or in the aggregate amount of ₱27,824,898.28 for calendar year (CY) 2013, pursuant to Sections 125(b) and 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, in relation to Revenue Memorandum Circular (RMC) No. 18-2010.

Petitioner Hard Rock Café (Makati City), Inc. is a domestic corporation, with principal office located at Level III, Glorietta 3, Ayala Center, Makati City.[2] It is registered with the Bureau of Internal Revenue (BIR) with Tax Identification Number (TIN) 004-730-226-000 and

[1] Docket, vol. 1, pp. 10-39.
[2] Exhibit "P-1", docket, vol. 2, p. 776.

Certificate of Registration No. OCN9RC0000218609 issued on January 31, 1996.[3]

Per its Articles of Incorporation, petitioner's primary purpose is to "establish and maintain restaurants, coffee shops, refreshment parlors, cocktail lounges, make, cook, arrange, serve and cater goods, drinks, refreshments and other foods or commodities commonly served in such establishments, to offer such other services to the public in connection with the operation of restaurant and catering enterprises, including the provision of music, disco dancing and other forms of entertainment, to buy, sell and generally deal in souvenir goods, wares, and merchandise of any and every description related to its restaurant and catering business, and to do and perform such other acts and things necessary or incidental to the accomplishment of the foregoing corporate business and objects in so far as may be allowed by applicable laws and rules and regulations."[4]

On the other hand, respondent is the Commissioner of the BIR, with power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the NIRC, as amended, or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On August 6, 2014, petitioner received Letter of Authority (LOA) No. LOA-047-2014-00000373 with SN eLA201100079185[5] dated July 15, 2014, authorizing revenue officers to examine its books of accounts and other accounting records for all internal revenue taxes for the period January 1, 2013 to December 31, 2013.

On December 18, 2014, petitioner received a copy of the Preliminary Assessment Notice (PAN) Part I, with Details of Discrepancies and PAN Part II, all dated November 28,

[3] Par. 1, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), docket, vol. 2, p. 656; Exhibit "P-2", docket, vol. 2, p. 783.
[4] Exhibit "P-1", docket, vol. 2, pp. 774-775.
[5] Exhibit "R-2", BIR Records, p. 3.

2014[6] issued by BIR Revenue Region No. 8 - Makati, assessing it for alleged deficiency percentage tax for CY 2013 in the amount of ₱26,158,906.16, inclusive of surcharge and interest, as well as, compromise penalty in the amount of ₱25,000.00.[7] Petitioner filed a Reply[8] to the said PAN on January 5, 2015.[9]

On May 6, 2015, petitioner received the Formal Assessment Notice (FAN) Part I, with Details of Discrepancies and FAN Part II, with Assessment Notices, all dated May 5, 2015[10] issued by BIR Revenue Region No. 8 - Makati[11], assessing it for alleged deficiency percentage tax this time in a slightly increased amount of ₱27,799,898.28, inclusive of surcharge and interest[12], as well as, compromise penalty in the amount of ₱25,000.00 for CY 2013, pursuant to Sections 125(b) and 255 of the NIRC of 1997, as amended, in relation to RMC No. 18-2010.[13]

On June 5, 2015, petitioner filed a Protest[14] to the FAN and submitted to BIR Revenue Region No. 8 - Makati additional documents in support thereof on August 4, 2015.[15]

Due to respondent's inaction on the administrative protest, petitioner filed the present Petition for Review on February 29, 2016.

In his Answer[16] posted on April 14, 2016, which the Court received on April 28, 2016, respondent challenged the jurisdiction of the Court to review the subject assessment on the ground that the Petition for Review was filed beyond the 30-day period to appeal to this Court pursuant to Section 228 of the NIRC, as amended. Respondent claimed that

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[6] Exhibit "P-3", docket, vol. 2, pp. 784-788.
[7] Par. 3, Admitted Facts, JSFI, docket, vol. 2, p. 657.
[8] Exhibit "P-4", docket, vol. 2, pp. 791-805.
[9] Par. 4, Admitted Facts, JSFI, docket, vol. 2, p. 657.
[10] Exhibit "P-5", docket, vol. 2, pp. 806-812.
[11] Par. 5, Admitted Facts, JSFI, docket, vol. 2, p. 657.
[12] Par. 6, Admitted Facts, JSFI, docket, vol. 2, p. 657.
[13] Par. 7, Admitted Facts, JSFI, docket, vol. 2, p. 658.
[14] Exhibit "P-6", docket, vol. 2, pp. 813-833.
[15] Exhibit "P-7", docket, vol. 2, pp. 834-835.
[16] Docket, vol. 1, pp. 257-269.

petitioner received the FAN on May 6, 2015, to which it filed a protest on June 5, 2015. On August 4, 2015, or within 60 days from the filing of the protest, petitioner submitted supporting documents but such is of no consequence as the 180-day period for him to act on the protest should be reckoned from the filing of the protest on June 5, 2015 and not from the submission of supporting documents on the protest on August 4, 2015. Counting the 180 days from June 5, 2015, he had until December 2, 2015 to rule on the protest. Since there was no action on his part, petitioner had 30 days, or until January 1, 2016 to seek judicial intervention. Thus, the Petition for Review was filed out of time on February 29, 2016, depriving the Court of jurisdiction to determine the case.

Assuming that the Court has jurisdiction, the subject assessment is proper as during the administrative investigation, it was shown that petitioner's business activities rendered it liable for deficiency percentage tax/amusement tax for CY 2013 pursuant to Section 125(b) of the NIRC, as amended, in relation to Revenue Memorandum Circular (RMC) No. 18-2010.

Further, petitioner cannot challenge the validity of RMC No. 18-2010 which is an interpretation of the law issued by the administrative agency charged with the interpretation and application of the said law.

Moreover, the Court does not have jurisdiction to rule on the constitutionality or validity of any law, or rule and regulations, such as RMC No. 18-2010.

Petitioner was also appraised of the factual and legal bases of the assessment in observance of the due process requirement mandated under Section 228 of the NIRC, as amended, through the PAN and the FAN, precisely it was able to file separate protests on both the PAN and FAN.

The assessment was as well timely issued within ten (10) years after the discovery of the falsity, fraud or omission, pursuant to Section 222 of the NIRC, as amended. Respondent opined that since petitioner failed to file percentage tax return and to pay the corresponding tax, the 10-year period to assess was correctly applied.

To cap the foregoing grounds, respondent invoked the presumption of validity in favor of the subject tax assessments.

In its Reply (To Respondent's Answer dated 14, 2016)[17], petitioner countered that the 180-day period under Section 228 of the NIRC, as amended, should be reckoned from its submission of additional supporting documents on August 4, 2015 and not from the filing of its protest on June 5, 2015, as respondent failed to provide the legal or factual bases for his contention that the submitted documents were irrelevant or immaterial. Reckoning from such submission, the judicial appeal through the instant Petition for Review was timely filed on February 29, 2016.

Further, contrary to respondent's contention, the Court has jurisdiction to rule on the constitutionality or validity of any law, or rule and regulations, such as RMC No. 18-2010. The Supreme Court has already declared that the Court of Tax Appeals has the power to review the rulings of respondent, including Revenue Memorandum Orders (RMO) and RMCs. More importantly, the instant Petition appeals respondent's inaction on its protest against the subject assessment, over which the Court has jurisdiction.

The parties filed their Joint Stipulation of Facts and Issues[18] on September 2, 2016, thereafter, the Court issued the Pre-Trial Order[19] on September 15, 2016.

Petitioner's sole witness, **Joseph Y. Ang**,[20] testified that as petitioner's Treasurer and Finance Controller, he is in

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[17] Docket, vol. 1, pp. 271-285.
[18] Docket, vol. 2, pp. 656-686.
[19] Docket, vol. 2, pp. 688-704.
[20] Minutes of the hearing dated January 24, 2017, docket, vol. 2, p. 749; Amended Sworn Statement dated January 16, 2017, docket, vol. 2, pp. 729-747; with cross examination conducted, see TSN dated January 24, 2017.

charge of the entire administrative, finance and accounting operations of the company, including its tax compliance.

As indicated in its Amended Articles of Incorporation, petitioner is mainly into the establishment of restaurants, coffee shops, refreshment parlors, and cocktail lounges.

The instant case pertains to the assessment against petitioner for deficiency percentage tax for CY 2013 as stated in the PAN dated November 28, 2014, and the FAN dated May 5, 2015. Petitioner filed its protest to the FAN on June 5, 2015, through a Letter dated June 4, 2015, and submitted supporting documents thereto by registered mail on August 4, 2015, and by personal service on August 5, 2015. Due to respondent's inaction on the protest, petitioner filed this Petition for Review on February 29, 2016.

The deficiency percentage tax assessment was basically based on Section 125(b) of the NIRC, as amended, and as implemented by RMC No. 18-2010, which imposes amusement tax on cabarets, and night or day clubs. Petitioner however operates a themed restaurant, evidenced by its Amended Articles of Incorporation, Audited Financial Statements (AFS) for CY 2013, its webpage, and its license to operate/Certification issued by the City Government of Makati, its menu and the services it offers, its Certification of Accreditation issued by the Department of Tourism, a brochure map entitled " A Walking Map and Guide, Makati in 10 Minutes." Thus, it does not fall under the category of cabarets, and night or day clubs, consequently, it is not liable for percentage tax/amusement tax under Section 125(b) of the NIRC, as amended.

He added that petitioner's 2013 AFS shows that its sales transactions for the period comprised of food, beverages, merchandise, and banquet sales, which indicate that it operates as a themed restaurant. Even petitioner's floor plan, containing a main dining area, merchandise store, mezzanine floor, guitar bar, piano bar, and saxophone bar, is consistent with the fact that it is a themed restaurant.

The guitar, piano, and saxophone bars are simply areas in which the said musical instruments are on display providing the theme for each but all serve as dining areas for its customers.

A live band at certain times performs on the stage but no tickets are sold to view such performance as they are for the entertainment of the diners. Recorded music is also played at times. The restaurant has no dance floor. All these, according to the witness, prove that petitioner is not into the entertainment business, hence, not liable for amusement tax.

Finally, petitioner's philanthropic and charitable activities negate respondent' classification of petitioner as a night club or cabaret, or a place of vices, to justify the imposition of amusement tax.

Petitioner rested its case after its Formal Offer of Evidence[21] was resolved by the Court in the Resolution dated March 24, 2017[22].

Respondent's sole witness, Revenue Officer (RO) Erwin G. Mallari testified[23] that he was part of the group that conducted the audit to determine petitioner's tax liability for CY 2013 pursuant to a Letter of Authority (LOA) issued by the Regional Director of BIR Revenue Region 8, Makati City. Their investigation and inspection of petitioner's business premises revealed that it is an "amusement place" within the definition of 'night and day club and cabaret' under RMC No. 18-2010 mainly because it serves liquor and food to its customers, with stage performances by musicians and dancers. It is also a venue for dancing which encourages prolonged stay resulting in more revenue from sales of food and drinks to its customers.

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[21] Docket, vol. 2, pp. 752-770.
[22] Docket, vol. 2, pp. 926-927.
[23] Minutes of the hearing dated April 3, 2017, docket, vol. 2, p. 928; Judicial Affidavit dated August 3, 2016, docket vol. 1, pp. 311-317; with cross examination conducted, see TSN dated April 3, 2017.

The conclusion that customers go to petitioner's establishment for entertainment or amusement rather than for food is merely his personal opinion. He did not also verify if tickets are sold to the customers for the performances of the live band inside the restaurant.

Being a place of amusement, petitioner is subject to amusement/percentage tax on its gross sales of food, refreshment, services, and merchandise served to its customers as imposed under Section 125(b) of the NIRC, as amended. More specifically, petitioner failed to subject its gross sales/receipts amounting to P100,835,374.21 to 18% percentage/amusement tax, and failed to file percentage tax return and pay amusement tax, for CY 2013.

The Memorandum Report dated January 6, 2015 contained their finding and upon their recommendation, the FAN Parts I and II both dated May 5, 2015 with Details of Discrepancies were issued, assessing petitioner for deficiency percentage tax for CY 2013.

Since petitioner failed to file amusement tax return and pay the corresponding tax, the ten (10) year period to assess commencing from the recovery of such omission shall apply pursuant to Section 222 of the NIRC, as amended.

The witness further declared that on June 5, 2015, petitioner filed with the BIR a Letter Protest dated June 4, 2015 against the FAN. It was however denied through the Letter dated April 20, 2016, received by petitioner on April 25, 2016.

In the Resolution dated May 30, 2017[24], the Court admitted all the exhibits formally offered[25] by respondent. Thereafter, the case was submitted for decision[26].

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[24] Docket, vol. 2, pp. 947-948.
[25] Docket, vol. 2, pp. 934-938.
[26] Resolution dated August 30, 2017, docket, vol. 2, p. 1012.

STATEMENT OF THE ISSUE

The parties submitted the following issue for the disposition of the Court:

> Whether respondent's assessment for deficiency percentage tax against petitioner for CY 2013 should be cancelled and withdrawn for lack of legal and factual bases.[27]

DISCUSSION/RULING

On the timeliness of the filing of instant Petition for Review, Section 228 of the NIRC of 1997, as amended, is instructive, thus:

> SEC. 228. *Protesting of Assessment.* - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however,* That a preassessment notice shall not be required in the following cases:
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> xxx xxx xxx
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> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
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> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
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> Such assessment may be protested administratively by filing a request for

[27] JSFI, docket, vol. 2, p. 667.

> reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

The above provision states that the taxpayer has thirty (30) days from receipt of the FAN within which to file its administrative protest. It has sixty (60) days from filing of such administrative protest to submit all relevant supporting documents. Petitioner then has thirty (30) days from receipt of the BIR Commissioner's adverse decision, or from the lapse of one hundred eighty (180)-day period from submission of documents, for it to file a Petition for Review with the Court of Tax Appeals (CTA).

It was established that petitioner received the FANs Part I and II, both dated May 5, 2015[28], issued by BIR Revenue Region No. 8 – Makati[29] on May 6, 2015.

Petitioner had thirty (30) days from receipt of the FANs on May 6, 2015 or until June 5, 2015 within which to file its administrative protest. Clearly, petitioner timely filed its Protest to the FAN on June 5, 2015. From June 5, 2015, petitioner had sixty (60) days or until August 4, 2015 to submit additional documents to substantiate its protest. On August 4, 2015, which was within the 60-day period from

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[28] Exhibit "P-5", docket, vol. 2, pp. 806-812.
[29] Par. 5, Admitted Facts, JSFI, docket, vol. 2, p. 657.

the filing of the protest, petitioner submitted additional supporting documents to its Protest.

To be sure, respondent cannot just ignore the filing of these additional documents on the pretext that they are irrelevant. Note that the term "relevant supporting documents" must be understood as those documents necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer. x x x The BIR cannot demand what type of supporting documents should be submitted. Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit.[30]

From the submission of supporting documents on August 4, 2015, respondent had 180 days or until January 31, 2016 within which to act on the protest. Respondent obviously failed to act on the protest within the period of 180 days allowed by the rules. There being no action on his part, petitioner had thirty (30) days from the lapse of 180 days from submission of documents on January 31, 2016 or until March 1, 2016, within which to seek judicial intervention from this Court. Hence, the Petition for Review was timely filed by petitioner on February 29, 2016.

On the merits of the instant Petition for Review, Section 125 of the NIRC of 1997, as amended, relevantly provides:

> SEC. 125. *Amusement Taxes.* - There shall be collected from the proprietor, lessee or operator of cockpits, cabarets, night or day clubs, boxing exhibitions, professional basketball games, Jai-Alai and racetracks, a tax equivalent to:
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> (a) Eighteen percent (18%) in the case of cockpits;
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> (b) **Eighteen percent (18%) in the case of cabarets, night or day clubs**;

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[30] Commissioner of Internal Revenue vs. First Express Pawnshop, G.R. Nos. 172045-46, June 16, 2009.

(c) Ten percent (10%) in the case of boxing exhibitions: *Provided, however,* That boxing exhibitions wherein World or Oriental Championships in any division is at stake shall be exempt from amusement tax: *Provided, further*, That at least one of the contenders for World or Oriental Championship is a citizen of the Philippines and said exhibitions are promoted by a citizen/s of the Philippines or by a corporation or association at least sixty percent (60%) of the capital of which is owned by such citizens;

(d) Fifteen percent (15%) in the case of professional basketball games as envisioned in Presidential Decree No. 871: *Provided, however*, That the tax herein shall be in lieu of all other percentage taxes of whatever nature and description; and

(e) Thirty percent (30%) in the case of Jai-Alai and racetracks of their gross receipts, irrespective, of whether or not any amount is charged for admission.

For the purpose of the amusement tax, the term "*gross receipts*" embraces all the receipts of the proprietor, lessee or operator of the amusement place. Said gross receipts also include income from television, radio and motion picture rights, if any. A person or entity or association conducting any activity subject to the tax herein imposed shall be similarly liable for said tax with respect to such portion of the receipts derived by him or it.

The taxes imposed herein shall be payable at the end of each quarter and it shall be the duty of the proprietor, lessee or operator concerned, as well as any party liable, within twenty (20) days after the end of each quarter, to make a true and complete return of the amount of the gross receipts derived during the preceding quarter and pay the tax due thereon.

The cited amusement tax imposed on the gross receipts of the proprietor, lessee, or operator of cockpits, racetracks and cabarets was first imposed in Section 260 of the 1939 Tax Code.[31] It was carried over to Section 123 of the 1977 Tax Code, as amended,[32] which included, among others, night or day clubs in the coverage of amusement tax. Thereafter, the provision imposing amusement tax on cabarets, night and day clubs under the 1977 Tax Code was further carried over to Section 125 of the NIRC of 1997, as amended.

Per the issued FANs, respondent assessed petitioner for deficiency percentage tax (amusement tax) in the amount of ₱27,799,898.28, inclusive of surcharge and interest, as well as, the amount of ₱25,000.00 as compromise penalty, or in the aggregate amount of ₱27,824,898.28 for CY 2013. Respondent allegedly found that petitioner failed to subject its Gross Sales/Receipts of ₱100,835,374.21 to 18% amusement tax imposed on proprietors, lessees or operators of cabarets, night or day clubs, as mandated under Sections 125(b) and 255 of the NIRC of 1997, as amended, in relation to RMC No. 18-2010.

In other words, to hold petitioner liable for percentage or amusement tax, there must be sufficient proof that petitioner operates as a cabaret, night or day club.

Section 2 of Revenue Regulations (RR) No. 14-67, defines cabarets, night and day clubs, as follows:

> (m) "Cabaret" includes cafes, restaurants and all similar establishments where patrons are entertained by performers who dance and sing and/or **where the patrons are allowed to dance with said performers or entertainers who are ordinarily professional hostesses.**
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> (n) "Night Clubs" are resorts frequented by pleasure seekers at night where foods and wines and drinks are served and music furnished and **the patrons allowed to dance whether with**

[31] Commonwealth Act No. 466.
[32] Presidential Decree No. 1158.

> **their own partners or professional hostesses furnished by such resorts.**
>
> (o) "Day Clubs" are resorts frequented by pleasure seekers during the day where foods and wines and drinks are served and music furnished and **the patrons allowed to dance whether with their own partners or professional hostesses furnished by such resorts.**
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> (p) "Professional hostess" shall include any woman employed in public resorts, such as cabarets, night clubs, and day clubs, to provide partners for pleasure seekers who may desire for one, usually for an honorarium in an amount discretionary to the pleasure seekers.
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> (q) Professional dancer" shall include any woman employed in cabarets or similar establishments who offers herself as dancing partner for a fixed fee for all such who may pick her. (*Emphasis supplied*)

The foregoing definitions of cabarets, night and day clubs have been upheld by no less than the Supreme Court in relation to gross receipts of the establishments.

In one case, the High Court defined a cabaret as a place of amusement where customers go because of their desire to dance and where the "bailarinas" are the main attraction. **Dancing is the main business and customers patronize the place attracted by the "bailarinas". As a matter of fact, "bailarinas" are the indispensable factor in the operation of the business.** Whatever is paid to them should, therefore, be considered as paid on account of the business, and as such it should be considered as part of petitioner's gross receipts. [33]

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[33] Chiuco vs. Collector of Internal Revenue, G.R. No. L-13387, March 28, 1960.

On the other hand, the Supreme Court defined a night club as "a place or establishment selling to the public food or drinks, **where the customers are allowed to dance.**" [34]

It appears from the definitions that the primary and common activity to cabarets, night and day clubs is dancing. In the said places, the customers are allowed to dance either with their own partners or with professional hostesses provided by the cabarets or clubs.

The definitions of cabarets, night and day clubs have remained unchanged in this jurisdiction since the enactment of the 1939 Tax Code until the enactment of the NIRC of 1997.

Accordingly, the scope of the terms cabarets and night and day clubs has likewise remained unchanged since the enactment of the 1939 Tax Code, until the provision on amusement tax on cabarets, night and day clubs was carried over to Section 125 of the NIRC of 1997, as amended.

The principle of *stare decisis et non quieta movere*, as embodied in Article 8 of the Civil Code of the Philippines, enjoins adherence to judicial precedents. It requires our courts to follow a rule already established in a final decision of the Supreme Court. That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land[35], this Court included.

Thus, for petitioner to be deemed a cabaret, or night and day club, it must be established that its operations involve dancing as the main business and customers patronize the place in order to dance either with their own partners or with professional hostesses engaged by petitioner for that purpose.

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[34] Collector of Internal Revenue vs. Junior Women's Club of the Philippines, G.R. No. L-6992, February 28, 1956.
[35] Filinvest Development Corporation vs. Commissioner of Internal Revenue and Court of Tax Appeals, G.R. No. 146941, August 09, 2007.

The evidence however show that the business activities of petitioner do not fall within the scope or coverage of cabarets and/or night or day clubs, since there is no indication that its customers frequent its establishment to dance, either with their own partners, or with professional hostesses provided by petitioner.

This is evident in the testimony of petitioner's witness Joseph Y. Ang, who testified that petitioner has no dance floor, nor does it encourage its customers to dance. Admittedly, petitioner provides entertainment to its customers through live bands and singers, but these are incidental to the main restaurant business of providing food and drinks to its diners and are merely for the purpose of advertisement and promotion of petitioner's restaurant.[36]

Even the documents presented indubitably show that petitioner operates as a restaurant, chiefly serving food and drinks to its customers.

Petitioner's Amended Articles of Incorporation states that its primary purpose[37] is to establish and maintain restaurants, coffee shops, refreshment parlors, cocktail lounges, and in the furtherance of such business, to provide its customers with entertainment, including music, and disco dancing, as well as the selling of souvenir items and goods, and catering services in relation to its restaurant business.

The Articles of Incorporation has been described as one that defines the charter of the corporation and the contractual relationships between the State and the corporation, the stockholders and the State, and between the corporation and its stockholders.[38] The contents of the Articles of Incorporation bind the corporation and its stockholders. Its contents cannot be disregarded considering that it was the basic document which legally triggered the creation of the corporation.[39]

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[36] Exhibit "P-20," Amended Sworn Statement of Mr. Joseph Ang dated January 16, 2017, docket, vol. 2, pp. 743-744.
[37] Exhibit P-1, docket pp. 774-775.
[38] Lanuza, et al. vs. Court of Appeals, et al., G.R. No. 131394, March 28, 2005.
[39] Nautica Canning Corporation, et al. vs. Yumul, G.R. No. 164588, October 19, 2005.

The City Government of Makati itself licensed petitioner to operate as a restaurant and recognized it as such in its Certification[40] dated February 17, 2014. Likewise, petitioner has been accredited by the Department of Tourism as a restaurant with Accreditation No. RST-NCR-00000190-2013[41].

More importantly, the evidence presented show that the actual business activities of petitioner are those of a restaurant, with the entertainment usually by the performances of live bands, which is merely incidental to its main business to encourage or attract customers with the end in view of promoting sales of food and drinks served in the restaurant. Moreover, witness Joseph Y. Ang categorically declared that no tickets are sold by petitioner to its customers to view the live band as it is but a part of the service to customers as they dine.[42]

Petitioner's menu[43] as well indicates that petitioner operates as a restaurant whose main line of business is to serve food and drinks to its customers. The Notes to Financial Statements,[44] which is an attachment to petitioner's Financial Statements[45] for December 31, 2013 and 2012 shows that petitioner's revenues are generated from its sales of food and drinks to its customers or habitues.

Anent RMC No. 18-2010[46] or the Clarification on the Coverage and Taxability of Amusement Places under Section

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[40] Exhibit "P-10," docket, vol. 2, p. 876.
[41] Exhibit "P-14," docket, vol. 2, p. 888.
[42] TSN dated January 24, 2017, pp. 16-17.
[43] Exhibit "P-16", docket, vol. 2, pp. 889-906.
[44] Exhibit "P-9-1", docket, vol. 2, p. 862.
[45] Exhibit "P-9," docket, vol. 2, pp. 840-848.
[46] Section 125 (b) of the Tax Code, as amended, provides that an 18% amusement tax be imposed on proprietors, lessees or operators of cabarets, night or day clubs.

Night and day clubs are drinking, dancing and entertainment venues which oftentimes also serve food and provide entertainment. Cabarets, on the other hand, are restaurants or clubs where liquor and food are served, with a stage provided for performances by musicians, dancers or comedians, including a venue for dancing by patrons/customers, similar to that of nightclubs. With the advent of modern interactive entertainment, along with recorded music (and/or music video) using a microphone and public address system, the proprietors/lessees or operators of these amusements places have pursued a new form of lounge and club entertainment. Most of these establishments provide facilities to allow patrons to sing with the expectation that

125(b) of the NIRC of 1997, as amended, issued on March 1, 2010, it undeniably expanded if not widened the scope of cabarets, night and day clubs under Section 125(b) of the NIRC of 1997, as amended. By virtue of the said RMC, the terms cabarets, night and day clubs now include other places which offer similar pleasurable diversion entertainment and function such as videoke bars, karaoke bars, karaoke televisions, karaoke boxes and music lounges, for purposes of imposing amusement tax.

With such inclusion of other places or enterprises, petitioner would seem to fall under the terms cabarets, night and day clubs.

While it is true that revenue memorandum circulars are considered administrative rulings issued from time to time by the CIR, they are actually opinions of the CIR issued in connection with the implementation of the provisions of the internal revenue law as authorized under Section 4 of the NIRC of 1997, as amended.[47]

Although "[i]t is widely accepted that the interpretation placed upon a statute by the executive officers, whose duty is to enforce it, is entitled to great respect by the courts," this interpretation is not conclusive and will have to be "ignored if judicially found to be erroneous[48]" and "clearly absurd x x x or improper." An administrative issuance that overrides the law it merely seeks to interpret, instead of remaining consistent and in harmony with it, as obtaining in this case, will not be countenanced by this Court.[49]

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sufficient revenue will be made selling food and drinks to the customers. The 'terms' night and day clubs and cabarets have become passe. Amusement places which offer the same pleasurable diversion entertainment and function now include videoke bars, karaoke bars, karaoke televisions, karaoke boxes and music lounges.

As such, the proprietors, lessees or operators of the aforementioned establishments are deemed also subject to the 18% amusement tax under Section 125 (b) of the Tax Code of 1997, as amended, and not to the 12% VAT on gross receipts.

[47] Bloomberry Resorts and Hotels, Inc. vs. Bureau of Internal Revenue, Represented by Commissioner Kim S. Jacinto-Henares, G.R. No. 212530, August 10, 2016.
[48] Philippine Bank of Communications vs. Commissioner of Internal Revenue, G.R. No. 112024. January 28, 1999.
[49] Commissioner of Internal Revenue vs. American Express, G.R. No. 152609, June 29, 2005.

It is undisputed that the definition of cabarets, night and day clubs in RMC No. 18-2010 is a radical departure from the previous definition of the said terms. Simply put, RMC No. 18-2010 unilaterally changed and expanded or widened the scope or meaning of the terms cabarets, night and day clubs as defined under the Tax Code and in existing jurisprudence.

Further, when there is a conflict between administrative issuances and jurisprudence, it is the latter which shall prevail.

As part of the legal system, administrative issuances must be interpreted and implemented in a manner consistent with statutes, jurisprudence, and other rules.[50] Judicial decisions, though not laws, are nonetheless evidence of what the laws mean, and it is for this reason that they are part of the legal system of the Philippines. Judicial decisions of the Supreme Court assume the same authority as the statute itself.[51] Article 8 of the Civil Code recognizes judicial decisions, applying or interpreting statutes as part of the legal system of the country. But administrative decisions do not enjoy that level of recognition.[52]

Further, the basis for the imposition of amusement tax is Section 125 of the NIRC of 1997, as amended. As earlier discussed, from the inception of Section 125 of the NIRC of 1997, with its previous incarnation in Section 260 of the 1939 Tax Code, and subsequently Section 123 of the 1977 Tax Code, the same has remained unchanged, with the implication that the interpretation and definition of the terms therein as well remained the same.

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[50] Saturnino C. Ocampo, et al. vs. Rear Admiral Ernesto C. Enriquez, et al., G.R. No. 225973; Rep. Edcel C. Lagman, et al. vs. Executive Secretary Salvador C. Medialdea, et al., G.R. No. 225984; Loretta Ann Pargas-Rosales, et al. vs. Executive Secretary Salvador C. Medialdea, et al., G.R. No. 226097; Heherson T. Alvarez, et al. vs. Executive Secretary Salvador C. Medialdea, et al., G.R. No. 226116; Zaira Patricia B. Baniaga, et al. vs. Secretary Of National Defense Delfin N. Lorenzana, et al., G.R. No. 226117; Algamar A. Latiph vs. Secretary Delfin N. Lorenzana, et al., G.R. No. 226120; Leila M. De Lima vs. Hon. Salvador C. Medialdea, et al., G.R. No. 226294, all promulgated on November 08, 2016.

[51] Columbia Pictures, Inc., Orion Pictures Corporation, Paramount Pictures Corporation, Twentieth Century Fox Film Corporation, United Artists Corporation, Universal City Studios, Inc., The Walt Disney Company, and Warner Brothers, Inc., vs. Court of Appeals, Sunshine Home Video, Inc. and Danilo A. Pelindario, G.R. No. 110318, August 28, 1996.

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

The amusement tax imposed on the gross receipts of the proprietor, lessee, or operator of cockpits, racetracks and cabarets was first imposed in Section 260 of the 1939 Tax Code.[53] It was carried over to Section 123 of the 1977 Tax Code, as amended,[54] which included, among others, night or day clubs in the coverage of amusement tax. Thereafter, the provision imposing amusement tax on cabarets, night and day clubs under the 1977 Tax Code was further carried over to Section 125 of the NIRC of 1997, as amended.

Not being expressly covered by the terms "cabaret" and "night or day club", pursuant to RR No. 14-67 and the cited relevant decisions of the Supreme Court, petitioner thus cannot be held liable for the payment of percentage tax (amusement tax) under Section 125(b) of the NIRC of 1997, as amended.

For a law will not be construed as imposing a tax unless it does so clearly, expressly, and unambiguously. x x x Thus, unless a statute imposes a tax clearly, expressly and unambiguously, what applies is the equally well-settled rule that the imposition of a tax cannot be presumed. In fact, in case of doubt, tax laws must be construed strictly against the government and in favor of the taxpayer.[55]

The rule that tax exemptions should be construed strictly against the taxpayer presupposes that the taxpayer is clearly subject to the tax being levied against him. Unless a statute imposes a tax clearly, expressly and unambiguously, what applies is the equally well-settled rule that the imposition of a tax cannot be presumed. Where there is doubt, tax laws must be construed strictly against the government and in favor of the taxpayer. This is because taxes are burdens on the taxpayer, and should not

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[53] Commonwealth Act No. 466.
[54] Presidential Decree No. 1158.
[55] Commissioner of Internal Revenue vs. SM Prime Holdings, Inc. and First Asia Realty Development Corporation, G.R. No. 183505, February 26, 2010.

be unduly imposed or presumed beyond what the statutes expressly and clearly import.[56]

WHEREFORE, the Petition for Review dated February 29, 2016 filed by Hard Rock Café (Makati City), Inc. is **GRANTED**.

Accordingly, the Formal Assessment Notices Part I and Part II both dated May 5, 2015 issued by respondent Commissioner of Internal Revenue against petitioner Hard Rock Café (Makati City) for alleged deficiency percentage tax for the calendar year 2013, are hereby **CANCELLED** and **SET ASIDE**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

[56] Commissioner of Internal Revenue vs. The Philippine American Accident Insurance Company, Inc., The Philippine American Assurance Company, Inc., and The Philippine American General Insurance Co., Inc., G. R. No. 141658. March 18, 2005.

ATTESTATION

I attest 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's Division.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Division Chairperson's Attestation, 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice