REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 1960** *(CTA Case No. 9279)*
	Present:
-versus-	**DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR.,** **UY,** **FABON-VICTORINO,** **MINDARO-GRULLA,** **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
HARD ROCK CAFÉ (MAKATI CITY), INC., *Respondent.*	Promulgated: FEB 10 2020 3:42 p.m.

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RESOLUTION

DEL ROSARIO, P.J.:

In the interest of justice, respondent's **Motion for Leave of Court to Admit Attached Comment**[1] posted on December 9, 2019 is hereby **GRANTED**. The attached Comment is **ADMITTED** as part of the records of the case.

With the admission of respondent's Comment, the Court will now resolve petitioner's[2] **Motion for Reconsideration**[3] filed on October 23, 2019.

In his Motion for Reconsideration, petitioner seeks the reversal and setting aside of the Court's Decision dated October 1, 2019, which

[1] CTA EB No. 1960 Docket, pp. 185-209.
[2] The incumbent Commissioner of Internal Revenue is Hon. Caesar R. Dulay.
[3] CTA EB No. 1960 Docket, pp. 161-174.

affirmed the cancellation of the assessment for deficiency percentage tax for calendar year 2013 against respondent, to wit:

> WHEREFORE, premises considered, the Petition for Review filed by the Commissioner of Internal Revenue on October 30, 2018 is **DENIED** for lack of merit. Accordingly, the July 12, 2018 Decision and October 10, 2018 Resolution of the Court in Division in CTA Case No. 9279 are **AFFIRMED**.[4]

In support of his motion, petitioner argues that *(i)* pursuant to the rule-making power of petitioner as provided in Section 4 of the National Internal Revenue Code (NIRC) of 1997, as amended, he modified the previous definition of the terms 'night and day clubs' and 'cabarets' under Section 2 of Revenue Regulations (RR) No. 14-67 which applies prospectively to the instant case; *(ii)* in *Hard Rock Café (Makati City), Inc., vs. Commissioner of Internal Revenue*, CTA Case No. 9135, a similar case involving the same parties herein, the Court in Division found based on the testimony of respondent's witness, Mr. Joseph Y. Ang, Financial Controller, that respondent's business provides entertainment similar to a 'cabaret and nightclub'; *(iii)* the issuance of Revenue Memorandum Circular (RMC) No. 18-2010 is not erroneous or absurd and does not override the law (*i.e.*, Section 125 (b) of the NIRC of 1997, as amended) it seeks to interpret; *(iv)* the Court has no power to rule on the constitutionality or validity of RMC No. 18-2010 since it does not fall under "other matters"; and, *(v)* the factual investigation of the Bureau of Internal Revenue on the business premises of respondent revealed that it is considered as an amusement place within the definition of 'night and day club' and cabaret' under RMC No. 18-2010.

Respondent, on the other hand, asserts that petitioner's arguments are mere reiterations of his arguments in his Petition for Review which have been exhaustively discussed in the assailed Decision dated October 1, 2019. Nonetheless, respondent submits that *(i)* RR No. 14-67 and the Supreme Court decisions cited by the Court have not been expressly and effectively overturned by any subsequent law or jurisprudence, and therefore remain the controlling definition of the terms 'night and day clubs' and 'cabarets'; *(ii)* RMC No. 18-2010 is void for unduly expanding the intended coverage of Section 125 of the NIRC of 1997, as amended; *(iii)* the Court correctly ruled that RMCs are actually opinions of the CIR issued in connection with the implementation of the provisions of the NIRC of 1997, as amended, as authorized under Section 4 thereof; *(iv)* the Supreme Court has already held that the CTA has jurisdiction to rule on the constitutionality or validity of a revenue issuance issued by the CIR in the exercise of his power under Section 4 of the NIRC of 1997, as amended; and, *(v)*

[4] Decision, CTA EB No. 1960 Docket, p. 159.

contrary to petitioner's allegation, the Court in Division in *Hard Rock Café (Makati City), Inc., vs. Commissioner of Internal Revenue*, CTA Case No. 9135, ordered the cancellation of the deficiency percentage tax (amusement tax) assessment against respondent because it was not proven that respondent's establishment functions as a night club.

RULING OF THE COURT

Petitioner's Motion for Reconsideration is bereft of merit.

It is at once glaring that no new issues or arguments are raised in the Motion for Reconsideration. Petitioner's arguments are mere reiterations and amplifications of his previous arguments, all of which have been considered and rejected in the assailed Decision dated October 1, 2019 as well as in the challenged Decision dated July 12, 2018 and Resolution dated October 10, 2018 of the Court in Division. As such, there is no compelling reason for the Court to modify, much more, reverse its assailed Decision dated October 1, 2019.

WHEREFORE, in view of the foregoing consideration, the Motion for Reconsideration filed by the Commissioner of Internal Revenue on October 28, 2019 is **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice