REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PHILIPPINE AIRLINES, INC. (PAL), *Petitioner,*	**C.T.A. CASE No. 7840**
-versus-	Members: **Acosta,** *Chairperson.* **Bautista,** *and* **Casanova,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** AUG 27 2009; 9:40am

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DECISION

ACOSTA, *PJ:*

This Petition for Review seeks the cancellation of respondent's Formal Letter of Demand dated December 3, 2007, assessing petitioner for deficiency Minimum Corporate Income Tax for fiscal year ending March 31, 2005 in the amount of P106,245,189.46, inclusive of interest, and corollary, to declare petitioner as exempt from the 2% deficiency Minimum Corporate Income Tax (MCIT) by virtue of its franchise, Presidential Decree (PD) No. 1590.

THE FACTS

As stipulated by the parties in the Joint Stipulation of Facts and Issues and as borne by the records of this case, the following are the undisputed facts:

Petitioner PHILIPPINE AIRLINES, INC. (PAL) is a domestic corporation organized in accordance with the laws of the Republic of the Philippines with principal office at the 8th Floor, PNB Financial Center, Diosdado Macapagal Ave., CCP Complex, Pasay City, where it may be served with summons.[1]

Respondent is the Commissioner of the Bureau of Internal Revenue (BIR), which is the government agency in-charge of the assessment and collection of all national internal revenue taxes, fees and charges, including the 2% Minimum Corporate Income Tax on Domestic Corporations (MCIT), imposed under Sec.27 (E) of the National Internal Revenue Code, with principal office at the BIR National Office Building, Agham Road, Diliman, Quezon City, where he may be served with summons.[2]

On July 15, 2005, petitioner filed its Annual Income Tax Return (BIR Form No. 1702) for the fiscal year ended March 31, 2005, showing a zero taxable income in Item 20A thereof, and creditable tax withheld for the first three quarters of PHP27,639,086.50 in Item 27C, and creditable tax withheld per BIR Form No. 2307 for the fourth quarter of PHP28,213,483.45 in item 27D.[3]

On December 15, 2005, petitioner filed its Amended Annual Income Tax Return (BIR Form No. 1702) for the fiscal year ended March 31, 2005, showing a zero taxable income in Item 20A thereof, and creditable tax withheld for the first three quarters of PHP27,639,086.50 in Item 27C, and creditable tax withheld per BIR Form No. 2307 for the fourth quarter of PHP29,396,991.60 in item 27D.[4]

On May 2, 2006, petitioner received Letter of Authority LOA 2000 00096345, dated April 06, 2006, issued by the Large Taxpayers Service, Large Taxpayers Audit & Investigation Division I of the Bureau of Internal Revenue, signed by the OIC-Large Taxpayers Service, Merlinda L. Ordoyo, informing the petitioner that the Revenue Officers mentioned therein "are authorized to examine your books of accounts and other accounting records for all Internal Revenue Taxes for the period from FY ending March 31, 2005". Attached to the LOA is a "First Notice, List of Requirements, All Internal Revenue Tax Liabilities, Fiscal Year Ending March 31, 2005", dated April 21, 2006.[5]

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[1] Par. 1, Joint Stipulation of Facts and Issues (JSFI), Rollo, p. 237.
[2] Par. 2, *Ibid*, p. 237.
[3] Par. 11, *Id*, p. 239.
[4] Par. 12, *Id*, p. 239.
[5] Par. 3, *Id*, p. 238.

On October 03, 2006, the petitioner received a letter, signed by Gerardo R. Florendo, Chief, Large Taxpayers Audit & Inv. Div. I, dated September 14, 2006, informing the petitioner that the bearer is authorized to assist in the examination of its books of account and accounting records for all internal revenue tax liabilities for the year ending March 31, 2005, pursuant to Letter of Authority No. 00096345 dated April 6, 2006. Attached to said letter is a "Second Request for Presentation of Records".[6]

In reply to the request for records of Gerardo R. Florendo, Chief, Large Taxpayers Audit & Inv. Div. I, the petitioner wrote the Chief on November 29, 2006 submitting photocopies of documents enumerated therein.[7]

On July 27, 2007, petitioner received a Preliminary Assessment Notice from the OIC, Assistant Commissioner, Large Taxpayers Service, Nestor S. Valeroso, without any date, informing petitioner that after investigation there has been found allegedly due from petitioner Minimum Corporate Income Tax for the Fiscal Year ending March 31, 2005, the details of the computation of which are as follows:

"MINIMUM COPORATE INCOME TAX"[8]

Sales/Revenue per F/S		54,940,678,437.29
Less: Non-Taxable Income	526,521,884.00	
Financing & Administrative Expenses	47,849,491,170.12	- 48,376,013,054.12
Taxable Gross Income		P 6,564,665,383.17
MCIT Due		131,293,307.66
Less: Tax Paid/Due per Return		60,069,073.93
Deficiency MCIT		P 71,224,233.73
Interest from July 15, 2005 to July 9, 2007		27,585,145.72
TOTAL DEFICIENCY MCIT		**P 98,809,379.45**

On August 08, 2007, petitioner filed a written protest, dated August 02, 2007, of the above-mentioned Minimum Corporate Income Tax (MCIT) assessment, stating that under Section 13 of its franchise, PD No. 1590, petitioner is liable only for the basic corporate income tax based on the annual net taxable income, or the 2% franchise tax based on gross revenue, whichever is lower, in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges of any kind, nature, or description, imposed, levied,

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[6] Par. 4, *Id.*
[7] Par. 13, *Id*, p. 239.
[8] Par. 5, *Id*, p. 238.

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established, assessed, or collected by any municipal, city, provincial, or national authority or government agency, now or in the future, attaching thereto a copy of:[9]

a. Petitioner's franchise, Presidential Decree No. 1590
b. Court of Tax Appeals' Decision in CTA Case No. 7020
c. Court of Tax Appeals' Decision in CTA Case No. 7010
d. Supreme Court Decision in SC G.R. No. 160528

On February 15, 2008, petitioner received a Formal Letter of Demand from the respondent, dated December 3, 2007, demanding the payment of the total amount of PHP 106,245,189.46, the details of which as shown in said letter are quoted hereunder as follows:

"MINIMUM COPORATE INCOME TAX"[10]

Sales/Revenue per F/S		54,940,678,437.29
Less: Non-Taxable Income	526,521,884.00	
Financing & Administrative Expenses	47,849,491,170.12	- 48,376,013,054.12
Taxable Gross Income		P 6,564,665,383.17
MCIT Due		131,293,307.66
Less: Tax Paid/Due per Return		60,069,073.93
Deficiency MCIT		P 71,224,233.73
Interest from July 15, 2005 to July 9, 2007	(49.17%)	35,020,955.73
TOTAL DEFICIENCY MCIT		**106,245,189.46**

On March 13, 2008, petitioner filed a formal protest, dated March 6, 2008 against the above-mentioned MCIT assessment, covered by the December 3, 2007 Formal Letter of Demand, reiterating its arguments contained in its written protest to the Preliminary Assessment Notice, attaching thereto a copy of:[11]

a. Petitioner's franchise, Presidential Decree No. 1590
b. Court of Tax Appeals' Decision in CTA Case No. 7020
c. Court of Tax Appeals' Decision in CTA Case No. 7010
d. Supreme Court Decision in SC G.R. No. 160528

Without any action by the respondent on petitioner's formal protest, petitioner filed this instant petition for review on October 9, 2008 praying that

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[9] Par. 14, *Id*, p. 240.
[10] Par. 10, *Id*, p. 239.
[11] Par. 15, *Id*, p. 240.

judgment be rendered declaring petitioner to be not subject to the deficiency 2% Minimum Corporate Income Tax for the fiscal year ending March 31, 2005 and ordering the cancellation and withdrawal of the subject assessment against petitioner in the total amount of P 106,245,189.46.

On January 9, 2009, respondent filed a Motion to Admit Attached Answer[12] which was granted in the Resolution[13] of this Court on January 19, 2009.

In his Answer[14], respondent raised the following special and affirmative defenses:

5. Previously, petitioner was not covered by the normal income tax rate. However, with the advent of the National Internal Revenue Code (NIRC) of 1997, petitioner is now subject to the normal income tax rate for corporations, same with all franchise grantees. This matter has been clarified in Revenue Memorandum Circular No. 66-2003 dated 14 October 2003. Section I thereof states:

> "In consideration of the franchise and rights granted by the Government to Philippine Airlines (PAL) pursuant to Presidential Decree No. 1590, Section 13 thereof provides that 'the grantee shall pay the Philippine Government during the life of this franchise whichever of subsections (a) or (b) hereunder will result in a lower tax: (a) The basic corporate income tax based on the grantee's annual net taxable income, computed in accordance with the provisions of the National Internal Revenue Code; or (b) A franchise tax of two percent (2%) of the gross revenues derived by the grantee from all sources, without distinction as to transport or nontransport corporations; provided that with respect to international air transport services, only the gross passengers, mail and freight revenues from its outgoing flights shall be subject to this tax."

Hence, under RMC No. 66-2003, it was elucidated that "the legislative charter of PAL clearly provides two options for the payment of income tax, namely, the normal corporate income tax imposed on domestic corporations under Section 27(A) of the Tax Code of 1997 (Code) or the 2% franchise tax mentioned in item (b) of the aforementioned provision, whichever is lower. Given that PAL has been operating at a loss for many years, it is evident that in applying the provisions of Section 13 of said Charter, for the computation of its income tax liability, it chose to use the normal corporate income taxation under Section 27(A) of the Code as basis thereof in order to exempt itself from tax liability. This is without, however, considering the adjunct provision introduced by RA 8424 on the imposition of minimum corporate income tax (MCIT)."

6. As implemented under Revenue Regulations No. 9-98, Section 27(E) of the NIRC of 1997 provides that Minimum Corporate Income Tax (MCIT) of two percent (2%) of the gross income as of the end of the taxable year (whether calendar or fiscal year, depending on the accounting period employed) is imposed upon any domestic corporation beginning the 4th taxable year immediately following the taxable year in which such corporation commenced its business operations. The MCIT shall be imposed whenever such corporation

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[12] Rollo, p. 196-206.
[13] Rollo, p. 214.
[14] Rollo, p. 201-206.

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has zero or negative taxable income or whenever the amount of MCIT is greater than the normal income tax due from such corporation. In case of operating loss, petitioner may either opt to subject itself to minimum corporate income tax or to the 2% franchise tax, whichever is lower. On the other hand, if petitioner is operating at a profit, the income tax liability shall be the lower amount between normal income tax or MCIT whichever is higher; and the two percent (2%) franchise tax. Thus, beginning 01 January 1998 domestic corporations subject to normal income tax as well as those which choose to be subject thereto, such as PAL, are bound to pay income tax regardless of whether they are operating at a profit or loss.

7. The previous preferential tax enjoyed by petitioner must give way to the provisions of the NIRC of 1997 and pertinent regulations thereto. The source of such previous preferential tax rate is a franchise granted by the State to deserving citizens, subject to modifications and even reversal in the hands of the legislature and the government agencies with the power to do so.

8. Prescinding from the foregoing, petitioner was assessed deficiency MCIT in the aggregate amount of P98,809,379.45 for Fiscal Year ending 31 March 2005, broken down as follows:

Sales/Revenue per F/S		54,940,678,437.29
Less: Non-Taxable Income	526,521,884.00	
Financing & Administrative Expenses	47,849,491,170.12	-48,376,013,054.12
Taxable Gross Income		P 6,564,665,383.17
MCIT Due		131,293,307.66
Less: Tax Paid/Due per Return		- 60,069,073.93
Deficiency MCIT		71,224,233.73
Interest from July 15, 2005 to July 9, 2007		27,585,145.72
TOTAL DEFICIENCY MCIT		**P 98,809,379.45**

9. In the Details of Discrepancies of the Preliminary Assessment Notice, it was intimated to petitioner that RMC No. 66-2003 clarified the taxability of petitioner for income tax purposes, particularly the computation of MCIT. Based on the MCIT computation, it was disclosed that the amount computed was higher than the regular income tax. Under RMC No. 66-2033, MCIT should be the basis in comparing the franchise tax of 2%. This procedure resulted in a deficiency MCTI amounting to P98,809,379.45.

Respondent and petitioner filed their Pre-trial Briefs[15] on January 29, 2009 and February 17, 2009, respectively.

On March 23, 2009, the Joint Stipulation of Facts and Issues (JSFI)[16] was filed by the parties. A corresponding Resolution[17] dated March 26, 2009 approved said JSFI and thereafter terminated the pre-trial.

The Respondent, on April 1, 2009, transmitted the BIR records of the case to which the Court noted in a Minute Resolution[18] dated April 3, 2009.

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[15] Rollo, p. 215-232.
[16] Rollo, p. 237-242.
[17] Rollo, p. 247.
[18] Rollo, p. 260.

On April 24 2009, the Court promulgated a resolution[19] ordering both parties to submit their respective memoranda within thirty (30) days from receipt thereof, after ascertaining that the issues remain to be purely legal issues as stipulated in the parties' JSFI and as agreed upon by the parties in the Pre-trial Conference held on February 20, 2009.

Respondent and petitioner submitted their Memoranda[20] on May 18, 2009 and May 29, 2009, respectively.

On May 29, 2009, the Court issued a resolution[21] submitting the case for decision.

THE ISSUES

By agreement of the parties in the JSFI[22], the issues to be tried and resolved in this case are the following:

1. Whether or not petitioner is exempt by virtue of its franchise, Presidential Decree No. 1590, from the 2% Minimum Corporate Income Tax imposed by Section 27(E) of the NIRC, and therefore, not liable for the PHP106,245,189.46 deficiency MCIT assessment issued against it by respondent for the fiscal year ending March 31, 2005, and

2. Whether or not Republic Act 8424, which incorporated the 2% Minimum Corporate Income Tax in the National Internal Revenue Code, amended the petitioner's franchise P.D. No. 1590 by subjecting the latter to the said tax.

3. Whether or not petitioner is subject to the normal income tax rate after the effectivity of the National Internal Revenue Code of 1997.

THE ARGUMENTS OF THE PARTIES

Petitioner's Arguments

Petitioner argues that its franchise PD No. 1590, specifically Section 13 thereof, is coached in a clear, plain and unambiguous manner in providing that *First*, petitioner is liable to pay either (a) its basic corporate income tax based on its net taxable income, as computed under the NIRC; or (b) a franchise tax of two percent (2%) based on its gross revenues, whichever is lower, and *Second*, the tax paid is 'is in lieu of all other taxes' imposed by all government entities.

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[19] Rollo, p. 262.
[20] Rollo, p. 263-288.
[21] Rollo, p. 289.
[22] *supra*.

Petitioner alleges that applying the privilege of choice as provided in its franchise, its zero taxable income means zero corporate income tax liability which is definitely lower than the 2% franchise tax. While it did not pay any income tax because of its zero taxable income for the fiscal year involved and by opting to pay its basic corporate income tax liability, petitioner alleges that it is no longer liable to pay the said 2% franchise tax and is exempt from all other taxes under the "in lieu of' provision under if franchise, including the P106,245,189.46 MCIT assessed by respondent for the fiscal year ending March 31, 2005.

Moreover, petitioner reiterates that Republic Act (RA) No. 8424 or the 1997 National Internal Revenue Code (NIRC) which incorporated the 2% MCIT did not amend PD No. 1590 since the latter did not provide nor specify the inclusion of MCIT among the taxes for which petitioner is liable under its franchise. Imposing the MCIT on petitioner will negate petitioner's right to choose the income tax option that will result to lesser income tax, hence, is violative of its franchise.

Respondent's Arguments

Respondent, on the other hand, anchors its defense of the assessment on the advent of Section 27(E) of the 1997 NIRC which provides for the imposition of the MCIT of two percent (2%) on the gross income of domestic and foreign corporations as of the end of the taxable year. Respondent posits that Revenue Regulation (RR) No. 9-98, the implementing regulation of Section 27 of the 1997 NIRC; and, Revenue Memorandum Circular (RMC) No. 66-2003, which reiterated the privileged granted petitioner in its legislative charter, specifically, the provision giving petitioner the two options for the payment of its tax liabilities, namely, the normal corporate income tax imposed on domestic corporation under Section 27(A) of the 1997 NIRC or the two percent (2%) franchise tax mentioned in item (b) of the abovementioned provision, whichever is lower, makes petitioner liable for MCIT. Respondent reiterates that the preferential tax rate enjoyed by petitioner must give way to the provision of the 1997 NIRC.

Since the MCIT computation made by respondent shows that petitioner's MCIT is higher than the regular income tax, respondent avers that the MCIT should be the basis in comparing the franchise tax of 2% pursuant to RMC No.

66-2003 , hence, the computation resulted to a deficiency MCIT amounting to P98,809,379.45 inclusive of interest therein. Respondent emphasizes that the presumption of correctness of the assessment in favor of the revenue examiners must stand.

THE DECISION OF THE COURT

The petitioner for review is meritorious.

The Court shall jointly discuss the issues raised herein since they are interrelated. Simply put, the issues boil down to whether or not the petitioner is liable to pay the MCIT in the amount of PHP106,245,189.46 for the fiscal year ending March 31, 2005.

The issues raised are not novel. In a number of Decisions by the Court of Tax Appeals *En Banc*, involving the same parties and issues but different taxable year, the Court *En Banc* ruled that petitioner PAL cannot be held liable to pay the MCIT assessed by respondent.[23] The same holds true in this case.

On the outset, We quote the provision of petitioner's franchise, particularly, Section 13 of PD No. 1590, which interpretation is pivotal in the resolution of this case, thus:

> **Section 13.** In consideration of the franchise and rights hereby granted, the grantee shall pay to the Philippine Government during the life of this franchise **whichever of subsections (a) and (b) hereunder will result in a lower tax:**
>
> (a) **The basic corporate income tax based on the grantee's annual net taxable income** computed in accordance with the provisions of the National Internal Revenue Code; or
>
> (b) **A franchise tax of two per cent (2%) of the gross revenues derived by the grantee from all sources, without distinction as to transport or nontransport operations**; provided, that with respect to international air-transport service, only the gross passenger, mail, and freight revenues from its outgoing flights shall be subject to this tax.
>
> **The tax paid by the grantee under either of the above alternatives shall be in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges of any kind,** nature, or description, imposed, levied, established, assessed, or collected by any municipal, city, provincial, or national authority or government agency, now or in the future, including but not limited to the following: XXX

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[23] CTA EB Case No. 271, July 19, 2007and CTA EB Case No. 246, August 9, 2007.

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> The grantee, shall, however, pay the tax on its real property in conformity with existing law.
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> For purposes of computing the basic corporate income tax as provided herein, the grantee is authorized:
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> (a) To depreciate its assets to the extent of not more than twice as fast the normal rate of depreciation; and
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> (b) To carry over as a deduction from taxable income any net loss incurred in any year up to five years following the year of such loss. (Emphasis Ours)

Under the *verba legis* rule, if the statute is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without interpretation. This principle rests on the presumption that the words used by the legislature in a statute correctly express its intent and preclude the court from construing it differently.[24]

Two points are evident from Section 13 of PD No. 1590. *First*, as consideration for the franchise, petitioner is liable to pay either: a) its basic corporate income tax based on its net taxable income, as computed under the NIRC, or b) a franchise tax of two percent (2%) based on its gross revenues, *whichever is lower*. *Second*, the tax paid is "in lieu of all other taxes" imposed by all government entities in the country.[25]

We have repeatedly emphasized that petitioner-grantee, by virtue of its franchise, has the privilege to choose between the two options in the payment of its tax liability to the government, to which such choice will result in the lower tax liability. Said franchise also states that petitioner's payment, when made, is "in lieu of all other taxes", which, as explained by the Honorable Supreme Court in its latest PAL ruling[26], means all-inclusive, to wit:

> The language used in Section 13 of Presidential Decree No. 1590, **granting respondent tax exemption, is clearly all-inclusive**. The basic corporate income tax or franchise tax paid by respondent shall be "in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges of any kind, nature, or description imposed, levied, established, assessed or collected by any municipal, city, provincial, or national authority or government agency, now or in the future x x x," except only real property tax. Even a meticulous examination of Presidential Decree No. 1590 will not reveal any

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[24] *PAGCOR, represented by Atty. Carlos R. Bautista, Jr. vs. PEJI, Zamboanga City Special Economic Zone Authority, Et. Al.* G.R. No. 177333, April 24, 2009.
[25] *Commissioner of Internal Revenue vs. PAL*, G.R. No. 160528, October 9, 2006.
[26] *Commissioner of Internal Revenue vs. PAL,* G.R. No. 180043, July 14, 2009.

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> provision therein limiting the tax exemption of respondent to final withholding tax on interest income or excluding from said exemption the OCT. (Emphasis Ours)

In the case at bar, it appears that petitioner opted to pay that which is described in Section 13 (a) of PD No. 1590 or the payment of corporate income tax for the fiscal year ending March 31, 2005, as evidenced by petitioner's Annual Income Tax Return and Amended Income Tax Return.[27] Hence, the basic corporate income tax shall be based on petitioner's annual net taxable income computed pursuant to Section 27 of the 1997 NIRC, as amended, viz:

> (A) *In General.* - Except as otherwise provided in this Code, an income tax of thirty-five percent (35%) is hereby imposed upon the taxable income derived during each taxable year from all sources within and without the Philippines by every corporation, as defined in Section 22(B) of this Code and taxable under this Title as a corporation, organized in, or existing under the laws of the Philippines: Provided, That effective January 1, 1998, the rate of income tax shall be thirty-four percent (34%); effective January 1, 1999, the rate shall be thirty-three percent (33%); and effective January 1, 2000 and thereafter, the rate shall be thirty-two percent (32%).
>
> In the case of corporations adopting the fiscal-year accounting period, the taxable income shall be computed without regard to the specific date when specific sales, purchases and other transactions occur. Their income and expenses for the fiscal year shall be deemed to have been earned and spent equally for each month of the period. XXX

The Annual Income Tax Return and the Amended Income Tax Return filed by petitioner both exhibit zero taxable income for fiscal year ending March 31, 2005.[28] With the zero tax liability obviously lower than the 2% franchise tax, petitioner chose to exercise its better option under its franchise which is Section 13(a) of PD No. 1590 or the payment of basic corporate income tax per computation under the NIRC, as basis for its tax liability to the government. Nonetheless, respondent assessed petitioner for deficiency MCIT for the same fiscal year.

While it appears that the MCIT is a component of the corporate income tax system, the basic corporate income tax mentioned in Section 13 of PD No. 1590 does not refer to MCIT under Section 27(E) of the 1997 NIRC, as amended. Instead, the "basic corporate income tax" identified in Section 13 (a)

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[27] Par 11 and 12, JSFI, page 239.
[28] *Ibid.*

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of the franchise relates to the general rate of 35 percent (35%) as stipulated in Section 27(a) of the Tax Code. Such has been aptly illustrated by the Honorable Supreme Court in the case of *Commissioner of Internal Revenue vs. PAL*[29], which stated that:

> To repeat, the pertinent provision in the case at bar reads: "basic corporate income tax based on the grantee's annual net taxable income computed in accordance with the provisions of the National Internal Revenue Code." The Court has already illustrated that, under the Tax Code, "taxable income" does not include passive income subjected to final withholding taxes. **Clearly, then, the "basic corporate income tax" identified in Section 13 (a) of the franchise relates to the general rate of 35 percent as stipulated in Section 27 of the Tax Code.** The final 20 percent taxes disputed in the present case are not covered under Section 13 (a) of PAL's franchise; thus, a refund is in order. (Emphasis Supplied)

There is a very clear distinction between basic corporate income tax and the MCIT. The tax base of both taxes is different; the former being imposed on the net taxable income while the latter, being imposed on the gross profit. Moreover, the MCIT is only applied when the minimum corporate income tax is greater than the corporate income tax computed under the ordinary corporate rates prescribed in the 1997 NIRC. Clearly, since the MCIT is only compared with the corporate income tax, it is not the basic corporate income tax defined by Section 13 of PD 1590. The MCIT cannot be made to apply to petitioner in view of the clear provision of its franchise which explicitly states, on the alternative, that it is liable to pay *the "basic corporate income tax based on the grantee's annual net taxable income"*. The MCIT, therefore, is distinct and is considered as 'other taxes' under the "in lieu of" provision of petitioner's franchise.

The "in lieu of other taxes" provision under Section 13 of petitioner's franchise exempts petitioner from all taxes all inclusive, except real property tax, as discussed above. Said provision has been upheld by the Supreme Court in the franchises of a number of grantees. Pertinent to quote the discussion made on this by the Court *En Banc* in the case of *Commissioner of Internal Revenue vs. Philippine Airlines, Inc (PAL)*[30], viz:

> Corollary, the "in lieu of all other taxes" proviso in the franchises of numerous grantees which has been the subject of many controversies has been consistently upheld by no less than the Supreme Court. In the case of Province

[29] *supra.*
[30] CTA EB Case No. 246, August 9, 2007.

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of Misamis Oriental vs. Cagayan Electric Power and Light Company, Inc., it cited several instances where validity and effectivity of the "in lieu of all taxes" provision found in various franchise of different entities were previously upheld, to wit:

> "In an earlier case, the phrase 'shall be in lieu of all taxes and at any time levied, established by, or collected by any authority' found in the franchise of the Visayan Electric Company was held to exempt the company from payment of the 5% tax on corporate franchise provided in Section 259 of the Internal Revenue Code (Visayan Electric Co. vs. David, 49 O.G. [No. 4] 1385).
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> Similarly, we ruled that the provision: 'shall be in lieu of all taxes of every name and nature' in the franchise of the Manila Railroad (Subsection 12, Section 1, Act No. 1510) exempts the * Manila Railroad vs. Rafferty, 40 Phil. 224).
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> The same phrase found in the franchise of the Philippine Railway Co. (Sec. 13, Act No. 1497) justified the exemption of the Philippine Railway Company from payment of the tax on its corporate franchise under Section 259 of the Internal Revenue Code, as amended by R.A. No. 39 (Philippine Railway Co. vs. Collector of Internal Revenue, 91 Phil. 35).
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> Those magic words: 'shall be in lieu of all taxes' also excused the Cotabato Light and Ice Plant Company from the payment of the tax imposed by Ordinance No. 7 of the City of Cotabato (Cotabato Light and Power Co. vs. City of Cotabato, 32 SCRA 231).
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> So was the exemption upheld in favor of the Carcar Electric and Ice Plant Company when it was required to pay the corporate franchise tax under Section 259 of the Internal Revenue Code as amended by R.A. No. 39 (Carcar Electric and Ice Plant Company vs. Collector of Internal Revenue, 53 O.G. [No. 4] 1068). This Court pointed out that such exemption is part of the inducement for the acceptance of the franchise and the rendition of public service by the grantee. As a charter is in the nature of a private contract, the imposition of another franchise tax on the corporation by the local authority would constitute an impairment of the contract between the government and the corporation."

Noteworthy also is the last paragraph of Section 13 of petitioner's franchise which allows a carry over as a deduction from taxable income any net loss incurred in any year up to five years following the year of such loss. Said provision presupposes the possibility of a net loss which conversely, the MCIT wishes to substitute. To make the petitioner liable for the MCIT assessed for fiscal year ending March 31, 2005 because of petitioner's net loss negates the intention of the lawmakers to grant petitioner the option to choose the kind of tax

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that will make it liable for the least amount. The Honorable Supreme Court enunciated the same in the latest PAL case[31], to wit:

> Section 13 of Presidential Decree No. 1590 clearly gives respondent the option to "pay" either basic corporate income tax on its net taxable income or franchise tax on its gross revenues, whichever would result in lower tax. The rationale for giving respondent such an option is explained in the PAL case, to wit:
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> > Notably, PAL was owned and operated by the government at the time the franchise was last amended. It can reasonably be contemplated that PD 1590 sought to assist the finances of the government corporation in the form of lower taxes. When the respondent operates at a loss (as in the instant case), no taxes are due; in this [sic] instances, it has a lower tax liability than that provided by Subsection (b).
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> **In the event that respondent incurs a net loss, it shall have zero liability for basic corporate income tax, the lowest possible tax liability. There being no qualification to the exercise of its options under Section 13 of Presidential Decree No. 1590, then respondent is free to choose basic corporate income tax, even if it would have zero liability for the same in light of its net loss position for the taxable year. Additionally, a ruling by this Court compelling respondent to pay a franchise tax when it incurs a net loss and is, thus, not liable for any basic corporate income tax would be contrary to the evident intent of the law to give respondent options and to make the latter liable for the least amount of tax.**
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> Moreover, then **President Ferdinand E. Marcos, the author of Presidential Decree No. 1590, was mindful of the possibility that respondent would incur a net loss for a taxable year, resulting in zero tax liability for basic corporate income tax,** when he included in the franchise of respondent the following provisions:
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> > For the purposes of computing the basic corporate income tax as provided herein, the grantee is authorized:
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> > x x x x
> >
> > (2) To carry over as a deduction from taxable income any net loss incurred in any year up to five years following the year of such loss.
>
> In allowing respondent to carry over its net loss for five consecutive years following the year said loss was incurred, Presidential Decree No. 1590 takes into account the possibility that respondent shall be in a net loss position for six years straight, during which it shall have zero basic corporate income tax liability. The Court also notes that net loss carry-over may only be used in the computation of basic corporate income tax. Hence, if respondent is required to pay a franchise tax every time it has zero basic corporate income tax liability due to net loss, then it shall never have the opportunity to avail itself of the benefit of net loss carry-over. (Emphasis Ours)

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[31] *supra* on 11.

To reiterate, given that MCIT is not considered as the corporate income tax provided in Section 13(a) of the petitioner's franchise but considered to belong to the category of 'other taxes' from which petitioner is exempt from liability by virtue of its "in lieu of other taxes" provision in its franchise, petitioner's exercise of its option by Section 13(a) of its franchise PD No. 1590, petitioner is, therefore, exempt from the MCIT.

Addressing now the issue of whether RA No. 8424, which incorporated the 2% Minimum Corporate Income Tax in the 1997 NIRC, amended petitioner's franchise or PD No. 1590 by subjecting the petitioner to the said tax, the Court rules that RA No. 8424 did not repeal petitioner's franchise.

The provision imposing an MCIT or Section 27(E) of the 1997 NIRC is a general law while PD No. 1590 is a special law. As already laid down by the Supreme Court in a plethora of cases, *repeals by implication are not favored as laws are presumed to be passed with deliberation and full knowledge of all laws existing on the subject. A general law cannot be construed to have repealed a special law by mere implication unless the intent to repeal or alter is manifest*[32] *and it must be convincingly demonstrated that the two laws are so clearly repugnant and patently inconsistent that they cannot co-exist.*[33] Neither do RR 9-98 and EMC No. 66-2003 amend the franchise of petitioner since these are merely administrative issuances.

Apt is the exposition of the Court *En Banc* in CTA EB Case No. 271, to wit::

> **Furthermore, Section 27 (E) of the 1997 NIRC on MCIT did not repeal respondent's franchise since the 1997 NIRC is a general law whereas P.D. No 1590 is a special law**. It is axiomatic that a general law cannot impliedly repeal, alter or amend a special law. "A subsequent statute, general in Charter as to its terms and application, is not to be construed as repealing a special or specific enactment, unless the legislative purpose to do so is manifested. This is so even if the provisions of the latter are sufficiently comprehensive to include what was set forth in the special act." **Neither can RMC No. 66-2003 amend respondent's franchise as it is merely an administrative issuance.**
>
> More importantly, there is no provision in R.A. No. 8424 when it introduced the MCIT effective January 1, 1998, which provides and specifies that the MCIT shall be in addition to the taxes for which respondent is liable. **To make the MCIT as introduced by R.A. 8424, one of the taxes for which**

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32 *Laguna Lake Development Authority vs. Court of Appeals*, 251 SCRA 42 at 56 (1995).
33 *Villegas vs. Subido*, 41 SCRA 190 at 197 (1971).

respondent is liable under P.D. No. 1590, as petitioner insists, is to violate Section 24 of P.D. No. 1590 which states that respondent's franchise may only be modified, amended, or repealed expressly by a special law or decree that shall specifically modify, amend or repeal the franchise or any section or provision thereof. In the absence of a law expressly repealing P.D. No. 1590 at the time the subject assessment was issued and for the period covered by the assessment, respondent's tax exemption privilege under the "in lieu of all other taxes" clause of Section 13 thereof, must be applied. In this regard, the ratiocination of the Court in C.T.A. Case No. 7010 is enlightening, viz:

> "Moreover, Section 27 (E) of the 1997 NIRC on MCIT did not repeal petitioner's franchise in view of the following reasons:
>
> > 1. The 1997 NIRC is a general law whereas P.D. No. 1590 is a special law. There was neither an express nor an implied repeal of P.D. No. 1590. As a rule, a general law cannot impliedly alter, repeal, or amend a special law;
> > 2. There is an express prohibition against implied repeal found in Section 24 of P.D. No. 1590.
>
> A careful perusal of Section 27(E) of the 1997 NIRC reveals that it did not expressly provide that it modifies, amends or repeals the provisions of P.D. No. 1590 pertaining to the tax privileges of petitioner.
>
> xxx xxx xxx
>
> As previously discussed, Section 27(E) of the NIRC of 1997 did not modify, amend or repeal P.D. No. 1590, a fortiori, RMC No. 66-2003 cannot amend PAL's franchise. A scrutiny of the provisions of RMC No. 66-2003 shows that even if PAL suffers losses in its business operations, it is still liable to pay the 2% MCIT based on its gross income. Clearly, this is contrary to the intention of Section 13 of P.D. 1590 allowing petitioner to choose the income tax option that will result to a lesser tax liability as an incentive for undertaking a line of business impressed with public service. It went beyond interpreting the law it seeks to implement. 'Although it is widely accepted that the interpretation placed upon a statute by the executive officers, whose duty is to enforce it, is entitled to great respect by the courts, this interpretation is not conclusive and will have to be ignored if judicially found to be erroneous and clearly absurd or improper. An administrative issuance that overrides the law it merely seeks to interpret, instead of remaining consistent and in harmony with it, will not be countenanced by this Court.' It is only the legislature that has the prerogative to alter or modify the terms of any previously granted franchise."(Emphasis supplied)

In closing, the Court reiterates the disquisition of the Supreme Court in this matter, viz:

> "While the Court recognizes the general rule that the grant of tax exemptions is strictly construed against the taxpayer and in favor of the taxing power, Section 13 of the franchise of respondent leaves no room for interpretation. Its franchise exempts it from paying any tax other than the option

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> it chooses: either the "basic corporate income tax" or the two percent gross revenue tax.
>
> **Determining whether this tax exemption is wise or advantageous is outside the realm of judicial power. This matter is addressed to the sound discretion of the lawmaking department of government."** [34](Emphasis supplied)

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED.** Accordingly, Assessment No. INC-FY 05-000212 for the payment of deficiency Minimum Corporate Income Tax in the amount of P106,245,189.46 for the fiscal year ending March 31, 2005 is hereby **CANCELLED** and **WITHDRAWN.**

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
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's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division

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[34] *supra.*