REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THE MANILA BANKING CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 6442

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
APR 2 1 2003

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DECISION

This petition for review involves a claim for refund or tax credit in the amount of THIRTY THREE MILLION EIGHT HUNDRED SIXTEEN THOUSAND and ONE HUNDRED SIXTY FOUR PESOS (P33,816,164.00) allegedly representing the Minimum Corporate Income Tax (MCIT) erroneously paid by petitioner for taxable year 1999.

The antecedents, as culled from the records, are summarized as follows:

Petitioner is a corporation organized and existing under Philippine laws, engaged primarily in business as a thrift bank. It has its principal place of business at the TMBC Building, 6772 Ayala Avenue, Makati City *(Admitted Facts, pars. 1(a) & 1(b), CTA docket, p. 88).* Petitioner was incorporated in 1961 and was engaged in business as a commercial bank until 1987 *(Admitted Facts, par. 1(f), CTA docket, p.89).*

On May 22, 1987, the Monetary Board, through Resolution No. 505, forbade the petitioner to do business in the Philippines pursuant to Section 29 of Republic Act No. 265. Petitioner ceased operations in 1987 and its assets and liabilities were placed under the charge of a government-appointed receiver *(Admitted Facts, pars. 1(g) & 1(h), CTA docket, p.89).*

On December 11, 1997, the Comprehensive Tax Reform Act of 1997 (*hereinafter "CTRP"*) was enacted into law, to take effect on January 1, 1998. Among the changes introduced by the CTRP to the Tax Code is the Minimum Corporate Income Tax (*hereinafter "MCIT"*) under Section 27(E)(1) thereof *(Admitted Facts, pars. 1(i) & 1(j), CTA docket, p.89).*

On June 23, 1999, the Bangko Sentral ng Pilipinas (*hereinafter BSP*) granted permit to petitioner to operate as a thrift bank *(Admitted Facts, par. 1(k), CTA docket, p.89).*

On April 17, 2000, petitioner filed its annual corporate income tax return for the taxable year 1999 *(Exhibit A, Petition for Review)* and paid the amount of Thirty Three Million Eight Hundred Sixteen Thousand One Hundred Sixty Four Pesos (Php33,816,164.00) as its MCIT for the said year. Payment was made to Philippine National Bank (PNB), an authorized agent bank of respondent. *(Admitted Facts, pars. 1(l) to 1(n), CTA docket, p.90).*

On September 2, 2000, respondent issued Letter of Authority No. 00031623 *(Exhibit G, Petition for Review)* authorizing Revenue Officer Mariza Torres, under Group Supervisor Cecilia Campos, of respondent's Revenue District Office (RDO) No. 47 to examine the books of accounts of petitioner for taxable year 1999 to verify all internal revenue taxes *(Admitted Facts, par. 1(o), CTA docket, p.90).*

Pursuant to the power vested on respondent under Section 4 of the Tax Code, wherein he was granted exclusive and original jurisdiction to interpret the provisions of the Tax Code and other tax laws, subject to the review of the Secretary of Finance, respondent issued BIR ruling No. 007-2001 confirming that petitioner is only subject to MCIT beginning year 2002 *(Admitted Facts, pars. 1(p) and 1(q), CTA docket, p. 90)*. The pertinent portion of the said ruling is hereunder quoted *(Exhibit E, Petition for Review)* as follows:

> "This Office is therefore of an opinion, that for purposes of justice, equity and consistent with the intent of the law, TMBC's reopening last July 1999 is akin to the commencement of business operations of a new corporation, in consideration of which the law allows a 4-year period during which MCIT is not to be applied. Hence, MCIT may be imposed upon TMBC not earlier than 2002, ie. the fourth taxable year beginning 1999 which is the year when TMBC reopened."

On March 30, 2001, petitioner filed with the Large Taxpayers' District Office (LTDO)-Makati of the Bureau of Internal Revenue its claim for refund or credit of the MCIT erroneously paid for the year 1999 *(Exhibit B, Petition for Review; Admitted Facts, par. 1(t), CTA docket, p.91)*.

Meanwhile, on August 17, 2001, respondent issued Letter of Authority No. 00035449 *(Exhibit F, Petition for Review)* authorizing Revenue Officers L. Loveres, A. Luna, M. Quiambao, M. Zeta, F. Tumang and R. Ty of LTDO-Makati to examine the books of accounts and other accounting records of the petitioner for taxable year 1999 to verify petitioner's claim for tax credit/refund of the MCIT *(Admitted Facts, par. 1(u), CTA docket, p.91)*.

In view of the issuance of both LA No. 00031623 and LA No. 00035449, petitioner had to contend with two groups of revenue examiners examining its books of accounts and accounting records for the same taxable year. Hence, petitioner requested on December 11, 2001 that the authority to examine its books of accounts for the year 1999 be consolidated in one group. On January 14, 2002, respondent through the Revenue District Officer of RDO No. 47, informed the petitioner that its request to have the audit consolidated in one group has been granted *(Exhibits H & I, Petition for Review; Admitted Facts, pars. 1(v), 1(w) & 1(x), CTA docket, p.91).*

Up to this date, respondent has not yet acted upon petitioner's request for refund/credit of the MCIT *(Admitted Facts, par. 1(y), CTA docket, p.91).* Hence, this petition for review filed by petitioner on April 12, 2002.

In answer to the instant petition, respondent specifically denied some material averments in the petition and forthwith raised the following Special and Affirmative Defenses, thus:

1. Petitioner's alleged claim for refund/tax credit is subject to administrative routinary examination/investigation by the respondent's bureau;

2. Rulings issued by the Commissioner of Internal Revenue command respect and weight. However, such rulings are not conclusive upon the courts and will be ignored if found to be erroneous ***(Nippon Life Insurance Company of the Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6142, February 4, 2002)***;

3. Petitioner is subject to the Minimum Corporate Income Tax (MCIT) when it filed its Annual Income Tax Return for the taxable year 1999, considering that it has been engaged in business operation since 1961, pursuant to Section 27(E)(1) of the 1997 Tax Code and Revenue Regulations No. 9-98;

4. Petitioner failed miserably to show that the total amount of Php: 33,816,164.00 allegedly representing MCIT paid for taxable year 1999 was erroneously or illegally collected, or that the same was properly documented;

5. Taxes paid and collected are presumed to have been paid in accordance with law; hence; not refundable;

6. In an action for tax refund/credit, the taxpayer has the burden to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund;

7. It is incumbent upon petitioner to show that it has complied with the provisions of Section 204 (c) in relation to Section 229 of the Tax Code;

8. Well-established is the rule that refunds/tax credits are construed strictly against the taxpayer as they partake the nature of exemption from tax *(Respondent's Answer, CTA docket pp. 66-68)*

On August 28, 2002, petitioner filed a "Motion for Summary Judgment" contending that since respondent had already admitted all the material allegations in the petition and had alleged no new facts in his answer, then there remains no genuine issue as to any material facts in this case. Upon hearing of the motion on October 11, 2002, petitioner's motion was granted by the court.

On January 16, 2003, this case was considered submitted for decision.

The pivotal issue to be resolved by the court, which was presented by the parties in their Joint Admission of Facts and Issues is "Whether the Minimum Corporate Income Tax paid by petitioner in the amount of P 33,816,164.00 was erroneously or illegally collected by respondent and thus, whether petitioner may claim for a refund or credit of the said tax".

One of the changes introduced by the 1997 Tax Code is the imposition of the Minimum Corporate Income Tax or the MCIT, which primarily aims to forestall tax evasion by corporations who, despite business operations, have been declaring losses year in and year out. Thus, a corporation, albeit incurring a net loss in its business operations is still subject to an MCIT of two percent (2%) of its gross income as defined under the law.

The issue besetting the instant case actually involves the correct interpretation of the provisions of the 1997 Tax Code on Minimum Corporate Income Tax, more particularly Section 27(E)(1) thereof which provides:

> "***SEC. 27 Rates of Income Tax on Domestic Corporations. -***
>
> ***(E) - Minimum Corporate Income Tax on Domestic Corporations. -***
>
> ***(1) Imposition of Tax.***- A minimum corporate income tax of two percent (2%) of the gross income as of the end of the taxable year, as defined herein, is hereby imposed on a corporation taxable under this Title, beginning on the fourth taxable year immediately following the year in which such corporation commenced its business operations, when the minimum income tax is greater than the tax computed under Subsection (A) of this Section for the taxable year."

The law provides that the MCIT shall be imposed on the fourth taxable year immediately following the year in which such corporation commenced its business operations. This is the crux of the controversy.

According to petitioner, for almost twelve years, it did not conduct any business activity as it was placed under receivership proceedings. Thus, its reopening in 1999 is akin to the commencement of business operations of a new corporation. Consequently, consistent with the intent of the law to give newly started companies the chance to build their business prior to being subjected to MCIT, the four-year grace period granted to newly started companies must necessarily apply to its case.

To support its position that it is entitled to the refund of its 1999 MCIT amounting to Php 33,816,164.00, petitioner even requested for a ruling from the BIR which, as quoted earlier, ruled that the law and regulations allow new corporations **as well as existing corporations** a leeway or adjustment period of four years counted from the year of commencement of business operations during which the MCIT does not apply.

Respondent, however, asserts that petitioner is subject to the 2% MCIT for the year 1999 pursuant to Section 27(E)(1) of the 1997 Tax Code, as implemented by Section 2.27(E)(1) & (5) of Revenue Regulations No. 9-98. It is respondent's position that conformably with these provisions of law, for purposes of the MCIT, the taxable year in which business operations commenced shall be the year in which the domestic corporation registered with the BIR, and firms which were registered with the BIR in 1994 and earlier years shall be covered by the MCIT beginning January 1, 1998.

We agree with the respondent.

At this juncture, it is imperative to look at the provisions of Section 2.27(E)(1) & (5) of Revenue Regulations 9-98, implementing Section 27 (E) of the 1997 Tax Code, to wit:

> ***Section 2.27 (E) Minimum Corporate Income Tax (MCIT) on Domestic Corporations –***
>
> (1) Imposition of the Tax – A 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 hereby imposed upon any domestic corporation <u>beginning the fourth (4th) taxable year immediately following the taxable year in which such corporation commenced its business operations.</u> The MCIT shall be imposed whenever such corporation has zero or negative taxable income or whenever the amount of minimum corporate income tax is greater then the normal income tax due from such corporation.
>
> xxx xxx xxx
>
> ***(5) Specific Rules for Determining the Period When a Corporation Becomes Subject to the MCIT -***
>
> For purposes of the MCIT, the taxable year in which business operations commenced shall be <u>the year in which the domestic</u>

corporation registered with the Bureau of Internal Revenue (BIR). *(Underlining ours).*

From the foregoing, it is clear that the MCIT is imposed upon any domestic corporation beginning on the fourth taxable year immediately following the year in which such corporation commenced its business operations. In the same revenue regulations, the term "commencement of business" was further defined to mean the year when the domestic corporation was registered with the BIR. We uphold the application of Section 2.27(E)(5) of Revenue Regulations No. 9-98 to determine when a corporation becomes subject to the MCIT. Since what is involved is the payment of the tax, naturally what is to be considered is the time the corporation was registered with the BIR as a taxpayer. Only from this moment can a corporation be considered as legitimately operating its business.

We cannot agree with BIR Ruling No. 007-2001, relied upon by petitioner, that the law allowing the suspension of the imposition of MCIT applies to both newly-created and existing corporations. It is significant to note that the four-year grace period provided in Section 27(E)(1) of the Tax Code is for the purpose of allowing new businesses to stabilize first, make their ventures durable, before subjecting them to the imposition of the MCIT. Evidently, what is contemplated by law to be given the four-year leeway in the imposition of the MCIT are newly-formed corporations and not existing corporations such as petitioner in this case. This is clear from the transcript of records on the Senate deliberation on the matter, thus:

> *"Senator Romulo: x x x Let me now go to the minimum corporate income tax, which is on page 45 of the Journal, which is to minimize tax evasion on those corporations which have been declaring losses year in and year out. Here, the tax rate is three-fourths, three quarter of a percent or .75% applied to corporations that do not report any taxable income on the fourth year of their business operation. Therefore, those*

> *that do not report income on the first, second and third year are not included here.*
>
> *Senator Enrile: We assume that this is the period of stabilization of* ***new company*** *that is starting in business.*
>
> *Senator Romulo: That is right" (underscoring ours).*

Clearly, petitioner cannot avail of the four-year grace period (*before it becomes liable for the MCIT*) as it is no longer considered a new corporation. The phrase "the fourth taxable year immediately following the year in which such corporation commenced its business operations" correctly applies only to newly-formed corporations/businesses and not to an existing corporation which has stopped business operations because it has been placed under receivership.

Well-settled is the rule 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. Nevertheless, such interpretation is not conclusive and will be ignored if judicially found to be erroneous. Thus, courts will not countenance administrative issuances that override, instead of remaining consistent and in harmony with the law which they seek to apply and implement (***Philippine Bank of Communications vs. Commissioner of Internal Revenue, GR No. 112024, 302 SCRA 241, January 28, 1999***).

Moreover, it must be emphasized that when herein petitioner was placed under receivership, there was merely an interruption of its business operations. However, its corporate existence was never affected. The general rule is that the appointment of the receiver does not terminate the charter or work a dissolution of the corporation, even though the receivership is a permanent one. In other words, the corporation continues to exist as a legal entity, clothed with its franchises ***(65 Am Jur 2d, p. 973-974)***. Petitioner, for all intents and purposes, remained to be the same corporation, registered with the

SEC and with the BIR. While it may continue to perform its corporate functions, all its properties and assets were under the control and custody of a receiver, and its dealings with the public is somehow limited, if not momentarily suspended. Thus, in ***BF Homes, Incorporated vs. Court of Appeals, et al., GR No. 76879, October 3, 1990,*** the Supreme Court held:

> "Under Sec. 6(d) of P.D. No. 902-A, the management committee or rehabilitation receiver is empowered to take custody and control of all existing assets and properties of such corporations under management; to evaluate the existing assets and liabilities, earnings and operations of such corporations; to determine the best way to salvage and protect the interest of investors and creditors; to study, review and evaluate the feasibility of continuing operations and restructure and rehabilitate such entities if determined to be feasible by the SEC."

When petitioner was again granted a permit to do business, the receiver has already ascertained the viability of the corporation to continue its operations. Thus, when petitioner resumed its business, there is merely what we call a recommencement of business and not commencement. As defined, commencement means to initiate by performing the first act or step. To begin, institute or start ***(Black's Law Dictionary, 6th edition)***. This presupposes "firsts" in all actions, which of course cannot be performed by an already existing corporation which has long been registered with the BIR as a taxpayer. That is why upon resumption of its business operations, petitioner need not go all the way to the "nitty-gritty" process of registration with the SEC or with the BIR for that matter.

It must be pointed out that an existing corporation may nonetheless avail of relief from the payment of the MCIT. This is explicitly provided in Section 27(E)(3) of the 1997 Tax Code, as implemented by Section 2.27(E)(3) of Revenue Regulations No. 9-98, thus:

> ***SEC. 27. Rates of Income Tax on Domestic Corporations. -***
>
> ***(E) Minimum Corporate Income Tax on Domestic Corporations.–***
> ***(3) Relief from the Minimum Corporate Income Tax Under Certain Conditions.***- The Secretary of Finance is hereby authorized to suspend the imposition of the minimum corporate income tax on any corporation which suffers losses on account of prolonged labor dispute, or because of *force majeure*, or because of legitimate business reverses.
>
> The Secretary of Finance is hereby authorized to promulgate, upon recommendation of the Commissioner, the necessary rules and regulations that shall define the terms and conditions under which he may suspend the imposition of the minimum corporate income tax in a meritorious case.
>
> ***Sec. 2.27(E) Minimum Corporate Income Tax (MCIT) on Domestic Corporations. –***
>
> ***(3) Relief from the Minimum Corporate Income Tax under Certain Conditions.***- The Secretary of Finance, upon recommendation of the Commissioner, may suspend imposition of the MCIT upon submission of proof by the applicant-corporation, duly verified by the Commissioner's authorized representative, that the corporation sustained substantial losses on account of a prolonged labor dispute or because of "*force majeure*" or because of legitimate business reverses.

From the foregoing, it is clear that in meritorious cases, the Secretary of Finance, upon recommendation of the Commissioner, is authorized to suspend the imposition of the minimum corporate income tax upon submission of proof by the applicant-corporation, duly verified by the Commissioner's authorized representative, that the corporation sustained substantial losses on account of a prolonged labor dispute or because of "*force majeure*" or because of legitimate business reverses. While petitioner may have suffered substantial losses which eventually resulted to a cessation of its operations for a period of 12 years, nothing in the records would show that it availed of the benefit granted by the aforequoted provisions of law to warrant the granting of a refund.

All told, we rule that petitioner's payment of the amount of P33,816,164.00 representing its MCIT for taxable year 1999 is proper and in order.

WHEREFORE, in view of the foregoing, the instant petition for review is hereby **DENIED** for lack of merit. Accordingly, BIR Ruling 007-2001 dated February 22, 2001 is declared void and without force and effect.

SO ORDERED.

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

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

LOVELL R. BAUTISTA
Associate Judge

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge