REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

MCDONALD'S PHILIPPINES REALTY CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8506

Members:

CASTAÑEDA, JR., *Chairperson*
CASANOVA, and
COTANGCO-MANALASTAS, *JJ.*

Promulgated:
FEB 20 2015
4:20 pm

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RESOLUTION

CASTAÑEDA, JR., *J.*:

This resolves petitioner and respondent's Motions for Partial Reconsideration questioning the Decision dated October 29, 2014 with the corresponding Comments thereto.

In the assailed Decision, the Court partly upheld the final decision on disputed assessment ("FDDA") issued by the respondent pertaining to deficiency value-added tax ("VAT") for calendar year 2008. The Court in Division ordered payment of the sum of P3,698,006.76 consisting of the basic deficiency VAT and surcharge exclusive of deficiency and delinquency interests.

In the Motion for Partial Reconsideration, petitioner alleges the following grounds:

A. RESPONDENT'S RIGHT TO ASSESS PETITIONER'S DEFICIENCY VAT FOR THE 1ST, 2ND AND 3RD QUARTERS OF CALENDAR YEAR 2008 HAS ALREADY PRESCRIBED.

THE COURT ERRED IN HOLDING THAT ANY ERROR OR OMMISSION IN THE RETURN WOULD MAKE IT A "FALSE RETURN" UNDER SECTION 222(a), TAX CODE, WHICH WOULD JUSTIFY THE APPLICATION OF THE EXTRAORDINARY 10-YEAR PRESCRIPTIVE PERIOD.

IN ORDER TO RENDER A RETURN MADE BY A TAXPAYER A "FALSE RETURN" WITHIN THE MEANING OF SECTION 222, TAX CODE, THERE MUST APPEAR, A DESIGN TO MISLEAD OR DECEIVE ON THE PART OF THE TAXPAYER, OR AT LEAST CULPABLE NEGLIGENCE.

APPLYING THE *EJUSDEM GENERIS* RULE IN STATUTORY CONSTRUCTION, THE FALSITY OF THE RETURN IN SECTION 222 (A), TAX CODE SHOULD BE CONSTRUED AS REFERRING TO A FALSE RETURN THAT IT IS AKIN TO A FRAUDULENT RETURN WITH INTENT TO EVADE TAX, OR TANTAMOUNT TO THE NON-FILING OF A RETURN.

THE APPLICATION OF THE EXTRAORDINARY 10-YEAR PRESCRIPTION PERIOD UNDER SECTION 222(a), TAX CODE IN CASE OF ANY ERROR OR OMISSION IN THE TAXPAYER'S TAX RETURN WOULD RENDER INOPERATIVE THE ORDINARY 3-YEAR PRESCRIPTION PERIOD UNDER SECTION 203, TAX CODE, SINCE ALL DEFICIENCY TAX ASSESSMENTS WOULD NECESSARILY SPRING FROM AN ERROR IN THE RETURN. Jr

B. EVEN ASSUMING FOR THE SAKE OF ARGUMENT THAT RESPONDENT'S RIGHT TO ASSESS PETITIONER'S DEFICIENCY VAT FOR CALENDAR YEAR 2008 HAS NOT YET PRESCRIBED, THE ASSESSMENT SHOULD NEVERTHELESS BE CANCELLED BECAUSE PETITIONER'S INTEREST INCOME IS NOT SUBJECT TO VAT.

PETITIONER'S INTEREST INCOME WAS NOT INCURRED IN THE COURSE OF TRADE OR BUSINESS.

PETITIONER'S INTEREST INCOME IS NOT INCIDENTAL TO PETITIONER'S LEASING BUSINESS.[1]

Respondent on the other hand, raises the following grounds in the Motion for Partial Reconsideration:

I. THERE IS NO EVIDENCE THAT THE ADVANCE VAT WAS PAID AND REMITTED TO THE BIR.

II. THE HONORABLE COURT ERRONEOUSLY DENIED THE IMPOSITION OF THE 50% SURCHARGE.[2]

The Motions for Partial Reconsideration are unmeritorious.

The grounds interposed by petitioner and respondent in their Motions have been fully explained in the assailed Decision. We reiterate the following salient points:

[1] Rollo, pp. 550, 551, 555, 559, 560, 563, 564 & 566.
[2] Rollo, pp. 506-507.

1. In the case of *Aznar vs. Court of Tax Appeals*[3], the Supreme Court distinguished between "false" and "fraudulent" returns requiring prescription of assessment of ten (10) years as follows:

> xxx**That there is a difference between 'false return' and 'fraudulent return' cannot be denied. While the first merely implies deviation from the truth, whether intentional or not, the second implies intentional or deceitful entry with intent to evade the taxes due**.

Adhering to the doctrine declared in the *Aznar* case, in this case, **petitioner committed falsity in its 2008 Quarterly VAT Returns as it did not declare substantial receipts from interest income in the amount of ₱24,653,378.41**. Since there is a deviation from the truth, the ten (10)-year assessment period applies.

1a. In the recent Supreme Court case of *Samar-I Electric Cooperative v. Commissioner of Internal Revenue*[4], it is declared that substantial underdeclaration of withholding taxes constituted as falsity of returns. Thus, the assessment on deficiency VAT for year 2008 has not yet prescribed in this case.

2. Under the law, persons liable to VAT are those who, in the course of trade or business, sell, barter, exchange, lease goods or properties, render services, and those who import goods. In the course of trade or business refers to regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto.[5]

2a. The loan granted by petitioner to Golden Arches Development Corporation ("GADC") in the amount of ₱57,431,435.38 was in the pursuit of its leasing business with

[3] G.R. No. L-20569, August 23, 1974, 58 SCRA 519.
[4] G.R. No. 193100, December 10, 2014.
[5] *Commissioner of Internal Revenue v. Court of Appeals and Commonwealth Management and Services Corporation*, G.R. No. 125355, March 30, 2000, 329 SCRA 237. See *CS Garments, Inc. v. Commissioner of Internal Revenue*, CTA EB Case No. 287, January 14, 2008 and *Lapanday Foods Corporation v. Commissioner of Internal Revenue*, CTA EB Case No. 367, January 29, 2009.

the latter on account that petitioner established its branch office in the Philippines for the purpose of purchasing and leasing back two (2) existing McDonald's Restaurants to GADC and developing new McDonald's Restaurant sites which will then be leased to McGeorge Foods, Inc. as stated in its License to Transact Business in the Philippines issued by the SEC on November 12, 1984[6]. Consequently, the interest income derived from the said loan, being incidental to its leasing business, is deemed a transaction "in the course of trade and business" subject to VAT pursuant to Section 105 in relation to Section 108(A) of the NIRC of 1997, as amended.

2b. Likewise, the interest income derived by petitioner from GADC's unpaid rentals, is considered a transaction made in the course of petitioner's lease business, and is subject to VAT pursuant to Section 105 in relation to Section 108(A) of the NIRC of 1997, as amended.

3. For failure to pay the deficiency tax within the time prescribed for its payment in the assessment notice, 25% surcharge is the proper penalty to be imposed against petitioner under Section 248 of the 1997 NIRC, as amended.

3a. **The underdeclaration in petitioner's gross receipts on interest income for year 2008 did not arise from a deliberate attempt on its part to evade tax nor from willful neglect but on the honest belief that it is not subject to VAT.** This is supported by the fact that the interest income amounting to ₱25,755,318.00, as well as the rental and interest receivables as of December 31, 2007 and 2008 in the respective amounts of ₱38,866,011.00 and ₱26,005,282.00 used by the respondent in computing the deficiency VAT assessment are **disclosed in petitioner's Audited Financial Statements[7] for the years ended December 31, 2008 and 2007 and 2008 Annual Income Tax Return.[8]** Thus, respondent was not prevented from assessing the VAT on petitioner's gross receipts from interest income for year 2008.

[6]Exhibit "X".
[7] Exhibit "T", Notes to Financial Statements, under Note 9, par. b.
[8] Exhibit "S", Line 20B.

4. Contrary to respondent's assertion, the amended Quarterly VAT return for the fourth quarter of 2007 showed that the amount of P1,680,056.96 pertaining to output VAT on rent income for the rent rebuild stores for 2006 and 2007 was paid in advance on March 26, 2008. The VAT return supported by payment transaction number 80501312 for filing reference number 100800002143254[9], is sufficient proof of payment and remittance to the BIR. The tax return is the best evidence to determine whether the proper taxes have been assessed and paid.[10]

The Court sees no cogent reason to reverse, much less, modify the assailed Decision.

WHEREFORE, premises considered, petitioner and respondent's Motions for Partial Reconsideration are hereby **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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[9] Exhibit "VVV-2".
[10] See *Paseo Realty & Development Corporation v. Court of Appeals et al.*, G.R. No. 119286, October 13, 2004.