OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

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LAPANDAY FOODS CORPORATION, *Petitioner,*	**C.T.A. EB NO. 367** **(C.T.A. CASE NO. 7097)**
	Present:
-versus-	ACOSTA, Presiding Justice, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, and PALANCA-ENRIQUEZ, JJ.
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** JAN 29 2009 Apolinario 1:35 p.m.

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DECISION

PALANCA-ENRIQUEZ, J.:

THE CASE

This is a Petition for Review filed by Lapanday Foods Corporation (hereafter "petitioner") under *Section 2, Rule 4 of the Revised Rules of the Court of Tax Appeals,* in relation to *Rule 43* of the *1997 Rules of Civil Procedure, as amended*, which seeks to modify the Decision dated October 18, 2007 and to set aside the Resolution dated February 4, 2008 denying petitioner's "Motion for Partial Reconsideration" and "Supplement to Motion for Partial Reconsideration" rendered by the First Division of this Court in C.T.A. Case No. 7097, the respective dispositive portions of which read, as follows:

> "**WHEREFORE**, the Petition for Review is granted as regards the assessment for deficiency EWT and DST for the taxable year 2000. The deficiency EWT and DST assessments for the respective amounts of P410,236.79 and P514,881.47 are hereby **CANCELLED** and **WITHDRAWN** for lack of basis.
>
> However, the assessment for deficiency VAT is **AFFIRMED**. Petitioner is liable to pay deficiency VAT in the amount of P3,464,253.56, computed as follows:

Undeclared Gross Receipts:	
1st Quarter	P8,043,381.56
4th Quarter	9,120,744.31
Total	P17,164,125.87
Deficiency Output VAT Due	P1,716,412.59
Add: 25% Surcharge	429,103.15
Interest (1-26-01 to 11-29-04)	1,318,737.82
Total Amount Due	P3,464,253.56

> In addition, petitioner is liable to pay 20% delinquency interest on the amount of P3,464,253.56 computed from November 29, 2004 until full payment thereof pursuant to Section 249 (C) (3) of the Tax Code.
>
> **SO ORDERED.**"
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> "**WHEREFORE**, finding no cogent reason to reverse, amend or modify the Decision dated October 18, 2007,

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> petitioner's "Motion for Partial Reconsideration" is hereby DENIED for lack of merit.
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> **SO ORDERED.**"

THE PARTIES

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at 2263 Lapanday Centre, Pasong Tamo Extension, Makati City. It is engaged in rendering management services.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue and holds office at the Bureau of Internal Revenue (BIR) National Office Building, BIR Road, Diliman, Quezon City.

THE FACTS

The facts are not in dispute:

On January 21, 2004, petitioner received a Formal Assessment Notice, with several Assessment Notices, all dated January 21, 2004, and was assessed by respondent for alleged deficiency value added tax (VAT) in the amount of P8,561,775.88, expanded withholding tax (EWT) in the amount of P374,749.21, final withholding tax in the amount of

P5,815,233.36 and documentary stamp tax (DST) in the amount of P1,578,579.59 for the taxable year 2000.

On February 20, 2004, petitioner filed a formal protest to the disputed assessments. Thereafter, on March 23, 2004, a supplemental protest was filed by petitioner.

On April 20, 2004, petitioner completed the submission of the pertinent documents to prove its defenses in the protest.

On October 29, 2004, petitioner received from respondent the Final Decision on Disputed Assessment dated October 28, 2004, together with the Amended Assessment Notices, reducing the alleged deficiency on VAT and DST, cancelling the final withholding tax, and reiterating the EWT assessment. The Amended Assessment Notices are summarized, as follows:

	VAT	EWT	DST	TOTAL
Basic Tax	P3,473,772.15	P231,993.64.30	P289,824.30	P3,995,590.09
Surcharge (50%)	P1,736,886.07			P1,736,886.07
Interest (20%)	P2,668,953.62	P178,243.15	P225,057.17	P3,072,235.94
Total	**P7,879,593.84**	**P410,236.79**	**P514,881.47**	**P8,804,712.10**

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Not amenable to pay the revised assessments under the Final Decision and Amended Assessment Notices, petitioner filed a Petition for Review with this Court, docketed as C.T.A. Case No. 7097.

In his Answer, respondent alleged by way of special and affirmative defenses that the disputed assessment was made within the prescriptive period pursuant to *Section 222 (a),* in relation to *Section 248 (B) of the 1997 Tax Code, as amended*; under *Section 105 of the same Code*, petitioner is liable to pay the aggregate amount of P7,879,593.84 as deficiency VAT, which resulted from the interest income it derived from inter-company loans to affiliates, as form of financial assistance in the course of its trade and business; petitioner is also liable to pay P410,236.79 deficiency EWT under *Section 2.57.2 (B) of Revenue Regulation 2-98*; under *Section 180 of the 1997 Tax Code, as amended*, petitioner is liable to pay P514,881.47 DST for the loan agreements it made with its affiliates, which were presumed to be in writing as they earned interest.

On October 18, 2007, the First Division rendered judgment in the terms earlier set forth.

On November 9, 2007, petitioner filed a "Motion for Partial Reconsideration" and on December 5, 2007, a "Supplement to Motion for

Partial Reconsideration", which were both denied for lack of merit by the First Division in its Resolution dated February 4, 2004.

Hence, this Petition for Review, raising the following:

ISSUES

I

THE FIRST DIVISION ERRED IN FINDING THAT THE RESPONDENT'S RIGHT TO ASSESS PETITIONER FOR DEFICIENCY VAT FOR THE FIRST QUARTER OF 2000 HAS NOT PRESCRIBED.

II

THE FIRST DIVISION ERRED IN FINDING THAT THE INTEREST ON LOANS EXTENDED TO AFFILIATES IS SUBJECT TO 10% VAT.

III

ASSUMING THAT THE INTEREST ON LOANS TO AFFILIATES IS SUBJECT TO VAT, THE FIRST DIVISION ERRED IN FINDING THAT THE VAT PAYABLE IS EQUIVALENT TO 10% OF THE GROSS RECEIPTS, NOT 1/11 OF GROSS RECEIPTS AS PROVIDED UNDER SECTION 108 (C) OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED BY REPUBLIC ACT NO. 8424 ("TAX CODE").

On May 7, 2008, without necessarily giving due course to the petition, We required the respondent to file her comment, not a motion to dismiss, within (10) days from notice.

Respondent failed to file her comment, despite notice.

Hence, this petition is now deemed submitted for decision.

THE COURT *EN BANC'* S RULING

The petition is devoid of merit.

First Issue: Whether or not respondent's right to assess the petitioner for deficiency VAT for the first quarter of 2000 has prescribed.

Petitioner maintains that respondent's right to assess it for VAT deficiency for the first quarter of 2000 had prescribed, pursuant to *Section 203 of the NIRC of 1997, as amended;* that the three year prescriptive period should be counted from April 25, 2000, the date when petitioner filed its Monthly VAT Declaration using BIR FORM 2550M, and not when it filed its Quarterly VAT Return on September 4, 2001; when it filed its amended VAT Return using BIR FORM 2550Q on September 4, 2001, the figures reported on the previously filed Monthly VAT Return are just the same, thus, there is no substantial amendment; the three year prescriptive period should be reckoned from April 25, 2000; since the formal assessment notice for VAT deficiency covering year 2000 was only issued on January 21, 2004, the VAT assessment made by respondent is therefore beyond the three year period, and is thus barred by prescription.

Petitioner's contentions are without merit.

Section 114 of the NIRC of 1997, as amended, provides:

> "SEC. 114. **Return and Payment of Value-Added Tax.** –
>
> **(A) In General.** - Every person liable to pay the value-added tax imposed under this title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: Provided, however, that VAT-registered persons shall pay the value-added tax on a monthly basis."

Pursuant to the above provision, a person liable to pay VAT is required to file a monthly VAT declaration and quarterly VAT return. It is clear from the law that these two returns are distinct and different. A taxable person must submit a monthly VAT declaration form (BIR FORM 2550 M) for the monthly sales and/or receipts, as basis for paying the value added tax thereon, within twenty days following the end of the month to which it relates. The declaration must be accomplished only for each of the first two months of each taxable quarter. On the other hand, the VAT return (BIR FORM 2550 Q) for the quarter must be filed not later than twenty five days after the close of the taxable quarter. Payments

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made in monthly VAT declarations shall, however, be credited to the quarterly VAT return to arrive at the net VAT payable or excess input tax/overpayment as of the end of the quarter. In other words, it is only and until the VAT-registered taxpayer prepares and submits to the BIR the quarterly VAT return, that one can determine with certainty the net VAT payable or excess input/overpayments *(Value Added Tax, Mamalataeo, pp.412, 415, [2007])*. Thus, it is more practical and reasonable for the government to assess deficiency VAT from the time of the filing of the VAT quarterly return. Thus, in the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, 524 SCRA 73, 94-95*, the Supreme Court ruled:

> "It is true that unlike corporate income tax, which is reported and paid on installment every quarter, but is eventually subjected to a final adjustment at the end of the taxable year, VAT is computed and paid on a purely quarterly basis without need for a final adjustment at the end of the taxable year. However, it is also equally true that until and unless the VAT-registered taxpayer prepares and submits to the BIR its quarterly VAT return, there is no way of knowing with certainty just how much input VAT the taxpayer may apply against its output VAT, how much output VAT it is due to pay for the quarter or how much excess input VAT it may carry-over to the following quarter; or how much of its input VAT it may claim as refund/credit. It should be recalled that not only may a VAT-registered taxpayer directly apply against his output VAT due the input VAT it had paid on its importation or local purchases of goods and services during the quarter; the taxpayer is also

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> given the option to either carry over any excess input VAT to the succeeding quarters for the application against its future output VAT liabilities, or (2) file an application for refund or issuance of a tax credit certificate covering the amount of such input VAT. Hence, even in the absence of a final adjustment return, the determination of any output VAT payable necessarily requires that VAT-registered taxpayer make adjustments in its VAT return every quarter, taking into consideration the input VAT which are creditable for the present quarter or had been carried over from the previous quarters."

Corollary to *Section 114, of the NIRC of 1997, as amended, Section 203 of the same Code* provides:

> "SEC. 203. Period of Limitation Upon Assessment and Collection.— Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period; Provided, that in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day."

It is clear from the above provision that the three year prescriptive period of the right of the government to assess the petitioner should be reckoned from September 4, 2001, the date when petitioner filed its VAT return for the first quarter of 2000, and not from April 25, 2000, the date when petitioner filed its VAT return for the month of March 2000.

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Accordingly, respondent had until September 4, 2004 to assess herein petitioner. When therefore respondent issued the Formal Assessment Notice against petitioner on January 21, 2004, clearly, it was issued within the three year prescriptive period and therefore, is not barred by prescription.

Second Issue: Whether or not the interests on loans extended to its affiliates are subject to VAT.

Petitioner argues that the First Division erred in finding that the interest income on loans extended by petitioner to its affiliates is subject to VAT; it is not a lending investor nor a dealer in securities or a financing company; it does not lend money to clients or customers in the ordinary course of trade or business and does not even habitually extend loans to its affiliates.

Petitioner's contention has also no merit.

Section 105 of the NIRC of 1997, as amended, provides:

> "SEC. 105. Persons Liable.— Any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.
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> The value added tax is an indirect tax and the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services. This rule shall

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> likewise apply to existing contracts of sale or lease of goods, properties or services at the time of the effectivity of Republic Act 7716.
>
> The phrase 'in the course of trade or business' means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a nonstock, nonprofit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.
>
> The rule of regularity, to the contrary, notwithstanding, services as defined in this Code rendered in the Philippines by nonresident foreign persons shall be considered as being rendered in the course of trade or business."

Pursuant to the above provision, any person who, in the course of his trade or business, sells, barters, exchanges or leases goods or properties, or renders services shall be liable to VAT imposed in *Section 106 or Section 108 of the NIRC of 1997, as amended.*

In the case at bench, petitioner is a domestic corporation engaged in managing, promoting, administering or assisting in any business or activity of corporations, partnerships, associations, individual or firm *(Exhibit "F-1")*. When petitioner extended loans to its affiliates, it provided assistance to corporations, and thus performed services incidental to its business.

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Furthermore, the loan assistance provided by petitioner to its affiliates, being incidental to its business, is deemed a transaction "in the course of trade and business." The phrase "in the course of trade and business" means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto *(Value Added Tax, Mamalateo, p. 82 [2007])*. "Incidental" means depending upon or appertaining to something else primary; something necessary appertaining to, or depending upon another, which is termed the principal; something incidental to the main purpose *(Black's Law Dictionary, 6th ed. p. 762)*.

Considering the foregoing, We hold that the income generated by petitioner from the loans granted to its affiliates is subject to VAT, pursuant to *Section 105,* in relation to *Section 108 of the NIRC of 1997, as amended.*

In addition, if the income from the main business activity is subject to VAT, the incidental income shall also be subject to VAT, provided that there is no particular provision applicable to the specific transaction *(Value Added Tax, Mamalateo, p. 83 [2007])*. Considering that petitioner's income from its management services is subject to VAT, it necessarily follows then, that the interests from loan which is an incidental income, is also subject to VAT.

Petitioner further contends that it does not profit from lending to its affiliates, as the interest charged by the bank which funded the loans was the interest passed on to the affiliates; the loans were just an accommodation and the only reason why petitioner charged interest on the loans was to comply with Revenue Memorandum Order No. 63-99 dated July 19, 1999; and Revenue Memorandum Circular 43-2003 dated July 15, 2003 expressly provides that interest income on loans is subject to VAT only if the lender qualifies as a lending investor, dealer in securities, financial institution.

Again, this contention of the petitioner has no merit.

In the case of *Commissioner of Internal Revenue vs. Court of Appeals and Commonwealth Management and Services Corporation, 329 SCRA 237, 245*, the Supreme Court ruled:

> "Section 108 of the National Internal Revenue Code of 1997 defines the phrase 'sale of service' as the 'performance of all kinds of services for others for a fee, remuneration or consideration.' It includes 'the supply of technical advice, assistance or services rendered in connection with technical management or administration of any scientific, industrial or commercial undertaking or project.'

> On February 5, 1998, the Commissioner of Internal Revenue issued BIR Ruling No. 010-98 emphasizing that a domestic corporation that provided technical, research, management and technical assistance to its affiliated companies and received payments on a reimbursement-of-cost basis, without any intention of realizing profit, was subject to VAT on services rendered. In fact, even if such corporation was organized without any intention of realizing profit, any income or profit generated by the entity in the conduct of its activities was subject to income tax.
>
> Hence, it is immaterial whether the primary purpose of a corporation indicates that it receives payments for services rendered to its affiliates on a reimbursement-on-cost basis only, without realizing profit, for purposes of determining liability for VAT on services rendered. As long as the entity provides service for a fee, remuneration or consideration, then the service rendered is subject to VAT."

Pursuant to the above ruling of the Supreme Court, petitioner's income from loans extended to its affiliates is subject to VAT. Whether petitioner has realized profit or not is insignificant, as long as the petitioner has provided financial assistance or services for a fee, remuneration or consideration, such service rendered is subject to VAT.

Third Issue: Whether or not the gross receipts should be multiplied by 1/11 or 10%

Petitioner claims that interest income from loans is not subject to VAT, however, assuming *arguendo* that the interest income is subject to VAT, the determination for VAT deficiency should be 1/11, as provided for in *Section 108 (C) of the NIRC of 1997, as amended,* and not by 10%, as provided in *Section 108 (A) of the same Code*.

The contention of petitioner is untenable.

Section 108 (A) of the NIRC of 1997, as amended, provides that there shall be levied, assessed and collected, a value added tax equivalent to 10% of gross receipts derived from the sale or exchange of services, including the use or lease of properties. The term "*gross receipts*" means the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advanced payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding value added tax. On the other hand, *Section 108 (D)* provides that tax shall be computed by multiplying the total amount indicated in the official receipt by one-eleventh (1/11).

In the instant case, it is clear from the evidence presented that petitioner's actual interest income received/collected for taxable year 2000 is P26,753,063.52, exclusive of VAT. Petitioner admitted that it did not issue VAT official receipts to its affiliates *(Petition For Review, p.19)*, and also failed to present the same before the Court. Consequently, there is no documentary evidence that will show that VAT was indeed included in the interest income collected by petitioner. Consequently, the provision in *Section 108 (C)* cannot be applied in the absence of official receipts, instead the amount of P26,753,063.52, which is the actual interest income received, should be multiplied by 10%, as provided for in *Section 108 (A) of the NIRC of 1997, as amended.*

As aptly ruled by the First Division:

"As petitioner is legally liable to pay 10% VAT thereon, the taxable gross receipts should be P26,753,063.52 instead of P34,737,721.49, computed as follows:

Interest on Loans to Affiliates	**1st Quarter**	**2nd Quarter**	**3rd Quarter**	**4th Quarter**	**Total**
Interest Rec. Beg.	P -	P -	P 471,276.26	P 5,975,386.68	P -
Add: Interest Income	8,043,381.56	1,424,492.83	14,139,831.50	11,615,392.59	35,223,098.48
Less: Interest Rec. End.	-	(471,276.26)	(5,975,386.68)	(8,470,034.96)	(8,470,034.96)
Gross Receipts	P 8,043,381.56	P 953,216.57	P 8,635,721.08	P 9,120,744.31	P26,753,063.52

The above computation is based on actual interest income received/collected by petitioner for taxable year 2000. Pursuant to Section 108(A) of the Tax Code, the VAT on sale of services is imposed on gross receipts, which is defined as 'the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or loyalty, including the amount charged for materials supplied with the services and deposits and advanced payments actually or constructively received during the taxable quarter for the services performed or to be performed to another person, excluding value-added tax.'

The same section of the Tax Code also provides that: '[t]here shall be levied, assessed, and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties.' Inasmuch as no VAT official receipts were presented corresponding to the interest income collected, the deficiency VAT shall be computed by multiplying ₱26,753,063.52 by 10%, not 1/11 as claimed by petitioner."

Finding no reversible error, We affirm the assailed Decision dated October 18, 2007 and Resolution dated February 4, 2008 of the First Division.

WHEREFORE, premises considered, the present Petition for Review is hereby **DENIED DUE COURSE**, and accordingly **DISMISSED** for lack of merit.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice