REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

MCDONALD'S PHILIPPINES REALTY CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1638
(CTA Case No. 8766)

Present:

DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, *JJ.*

Promulgated:
JUN 10 2019 4:25 p.m.

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RESOLUTION

MINDARO-GRULLA, J.:

Submitted for resolution on March 7, 2019 of this Court En Banc is petitioner McDonald's Philippines Realty Corporation's (MPRC) Motion for Partial Reconsideration (Re: Decision dated October 11, 2018) of the Decision[1] promulgated on October 11, 2018, the dispositive portion of which reads as follows:

Decision dated October 11, 2018:

> "**WHEREFORE**, premises considered, the instant petition is **PARTIALLY GRANTED**. Accordingly, the Final Decision of Disputed Assessment issued by respondent against petitioner

[1] En Banc Docket, pp. 168-198.

covering deficiency VAT for the taxable year 2007 is partly **UPHELD WITH MODIFICATIONS**. Petitioner is **ORDERED TO PAY NINE MILLION TWO HUNDRED SIX THOUSAND TWO HUNDRED THIRTEEN AND 6/100 PESOS (P9,206,213.06)** representing basic deficiency VAT, the 25% surcharge and deficiency and delinquency interests imposed under Sections 248(A)(3) and 249(B) and (C) of the NIRC of 1997, as amended, respectively computed until December 31, 2017.[2]

Basic Deficiency VAT	P1,779,368.82
Add: 25% Surcharge	P444,842.20
Deficiency Interest computed from January 26, 2008[3] through January 17, 2014.	P1,779,368.82 20% * 5.9836 years
Subtotal	**P2,129,392.60**
Total Amount Due as of January 17, 2014 *(Deficiency VAT with surcharge plus Deficiency Interest)*	**P4,353,603.63**
Deficiency Interest computed from January 18, 2014[4] through December 31, 2017.	P1,779,368.82 20% * 3.9562 years
Subtotal	**P1,407,895.11**
Delinquency interest computed from January 18, 2014 through December 31, 2017.	P4,353,603.63 20% * 3.9562 years
Subtotal	**P3,444,714.32**
TOTAL AMOUNT DUE- December 31, 2017 *(Deficiency VAT with Deficiency interest plus Delinquency Interest)*	**P9,206,213.06**

Accordingly, in applying the provisions on the TRAIN law, petitioner should be held liable to pay delinquency interest at the rate of 12%[5] on the total unpaid basic deficiency tax, surcharge, deficiency interest as of January 17, 2014 amounting to P4,353,603.63, computed from

[2] Section 6 of Revenue Regulations No. 21-2018 dated September 14, 2018.
[3] Section 114(A) of the NIRC of 1997, as amended, and Section 4.114-1(A) of Revenue Regulations No. 16-2005.
[4] Section 114(A) of the NIRC of 1997, as amended, and Section 4.114-1(A) of Revenue Regulations No. 16-2005.
[5] Section 2 of Revenue Regulations 21-2018 dated September 14, 2018.

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January 1, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by the TRAIN Law.

SO ORDERED."

In the instant motion, MPRC contends that this Court erred in applying the extraordinary ten-year prescription period under Section 222(a) of the NIRC of 1997 on the ground that MPRC's Quarterly VAT Returns for CY 2007 may be considered "false returns".

Likewise, MPRC maintains its position that the interest income it derived from the unpaid rentals and the loan were not incidental to its leasing business, and is therefore, not subject to VAT.

The Court is not persuaded and finds no merit in the Motion for Partial for Reconsideration.

A perusal of the Motion for Partial Reconsideration shows that the grounds raised therein are mere reiterations of the MPRC's arguments, which have already been comprehensively discussed and passed upon by this Court in the assailed Decision.

Let petitioner be reminded that all presumptions are in favor of the correctness of the tax assessment. In the case of *Commissioner of Internal Revenue vs. Bank of the Philippine Islands*,[6] the Supreme Court held that:

> "Tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments."

As already discussed in the assailed decision, Section 222 mandatorily provides that a false or fraudulent return

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[6] G.R. No. 134062, April 17, 2007, citing Sy Po v. Court of Appeals, G.R. No. L-81446, August 18, 1988, 164 SCRA 524, 530.

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with intent to evade tax or failure to file a return, the tax may be assessed at any time within ten years after the discovery of the falsity, fraud or omission.

A false return implies deviation from the truth whether intentional or not. Since MPRC did not declare in its 2007 Quarterly VAT Returns, substantial receipts from its interest income in the amount of P25,522,729.00, its deviation from the truth justifies the application of the ten (10)-year prescriptive period for assessment under Section 222 of the NIRC.

Pursuant to the *Aznar Case*,[7] the ten (10) year prescriptive period to assess would apply for all false returns, whether done intentionally or not. In other words, as long as the returns indicate any false entry, the BIR can assess the taxpayer within ten (10) years from the discovery of the said falsification.

Unless and until modified by the Supreme Court En Banc, the pronouncement of the Supreme Court in the Aznar case stands. It need not be emphasized that in our judicial hierarchy, the Supreme Court reigns supreme. All courts, tribunals and administrative bodies exercising quasi-judicial functions are obliged to conform to its pronouncements. It has the last word on what the law is; it is the final arbiter of any justiciable controversy. In other words, there is only one Supreme Court from whose decisions all other courts should take their bearings.

In the same vein, in the case of *Commissioner of Internal Revenue vs. The Estate of Benigno P. Toda, Jr.*[8]*, et. al.*, the Supreme Court ruled that even if the return merely failed to reflect the true or actual amount without fraud on the part of the taxpayer, the prescriptive period to assess the correct taxes is ten years from the discovery of the falsity, to wit:

> "And **even assuming arguendo that there was no fraud, we find that the income tax return filed by CIC for the year 1989 was false**. It did not reflect the true or actual amount gained from the sale of the Cibeles property."

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[7] Aznar vs. Court of Tax Appeals, G.R. No. L-20569, August 23, 1974.
[8] G.R. No. 147188, September 14, 2004.

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Under the foregoing pronouncements, whether or not petitioner MPRC intentionally or unintentionally made an under-declaration of its receipts, the mere deviation from the truth satisfies the definition of a "false return".

Anent the issue on whether MPRC's interest bearing loans from Golden Arches Realty Corporation (GADC) should be subject to VAT, a reading of Section 105 of the 1997[9] NIRC, as amended, would show that a transaction "in the course of trade or business" includes "transactions incidental thereto.[10]

Likewise, as cited in the assailed decision, in the case of *Lapanday Foods Corporation vs. CIR*,[11] this Court ruled that 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.

Based on the foregoing, a perusal the loan agreement[12] would reveal that MPRC 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. Consequently, it can be concluded that the loan was in the pursuit of its leasing business with GADC. It follows as well that the interest income it derived from the said loan, being incidental to its leasing business, is deemed a transaction *"in the course of trade or business"* which is subject to VAT

[9] 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. 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 likewise apply to existing contracts of sale or lease of goods, properties or services at the time of the effectivity of Republic Act No. 7716.

The phrase **"in the course of trade or business" means the course of trade or 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.

[10] Mindanao II Geothermal Partnership vs. Commissioner of Internal Revenue, G.R. Nos. 193301 & 194637, March 11, 2013.

[11] CTA EB No. 367, January 29, 2009.

[12] En Banc Docket, Decision, pp. 17-19.

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pursuant to Section 105, in relation to Section 108(A) of the NIRC of 1997, as amended.

Notably, the same holds true with regard to GADC's debt to MPRC.

Lastly, on the imposition of interest, We reiterate the pertinent portion of the assailed decision as follows:

> "x x x, this Court finds no reason nor rhyme to discuss them anew as the law itself provides that imposition of deficiency and delinquency interest on taxes due from petitioner. There is no double imposition of interests as the law clearly differentiates deficiency interest from delinquency interest. Deficiency is defined as the amount still due and collectible from a taxpayer upon audit or investigation; whereas delinquency is defined as the failure of the taxpayer to pay the tax due on the date fixed by law or indicated in the assessment notice or letter of demand."

All told, the Court finds no compelling reason to reverse or set aside the assailed Decision.

WHEREFORE, premises considered, MPRC's Motion for Partial Reconsideration (Re: Decision dated October 11, 2018) is hereby **DENIED** for lack of merit.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

(I maintain my Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

(On Leave)
MA. BELEN M. RINGPIS LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice