

SECOND DIVISION

[G.R. No. 179259, September 25, 2013]

**COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS.
PHILIPPINE AIRLINES, INC. (PAL), RESPONDENT.**

DECISION

PEREZ, J.:

Before the Court is a Petition for Review on *Certiorari* seeking to reverse and set aside the 19 July 2007 Decision^[1] and 23 August 2007 Resolution^[2] of the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 271 which affirmed the cancellation and withdrawal of Assessment Notice No. INC-FY-99-2000-000085 and Formal Letter of Demand for the payment by the respondent Philippine Airlines, Inc. (respondent), of deficiency Minimum Corporate Income Tax (MCIT) in the amount of P326,778,723.35, covering the fiscal year ending 31 March 2000.

The Facts

The factual antecedents of the case are undisputed:

Petitioner, the Commissioner of Internal Revenue, has the power to assess and collect national internal revenue taxes, fees, and charges, including the 2% per centum MCIT imposed under Section 27(E) of the National Internal Revenue Code (NIRC) of 1997, as amended. Respondent, on the other hand, is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines.

For the fiscal year that ended 31 March 2000, respondent filed on 17 July 2000 its Tentative Corporate Income Tax Return, reflecting a creditable tax withheld for the fourth quarter amounting to P524,957.00, and a zero taxable income for said year. Hence, respondent filed on 16 July 2001 a written claim for refund before the petitioner.

As a consequence thereof, respondent received on 10 September 2001 the Letter of Authority No. 200000002247 from the Bureau of Internal Revenue (BIR) Large Taxpayers Service, dated 3 September 2001, authorizing the revenue officers named therein to examine respondent's books of accounts and other accounting records for the purpose of evaluating respondent's "Claim for Refund on Creditable Withholding Tax – Income Tax" covering the fiscal year ending 31 March 2000.

Numerous correspondences between respondent and the Group Supervisor of the BIR Large Taxpayers Service, the revenue officers examining its accounting records, and the Chief of LT Audit & Investigation Division I of the BIR ensued, particularly as to the submission of various supporting documents and presentation of records.

On 16 July 2003, respondent received a "Summary of Creditable Withholding Tax at Source Certified by RAD Fiscal Year Ending March 31, 2000," together with a computation labelled "Compromise Penalties for Late Filing of Return." Likewise, on same date, respondent received a letter dated 8 July 2003 issued by the Chief of LT Audit & Investigation Division I, informing the former that the results of the investigation of its claim for refund on creditable withholding tax for fiscal year ending 31 March 2000 had already been submitted, and that an informal conference was set on 17 July 2003 to be held on the latter's office.

On 11 August 2003, respondent received from the same revenue officers a computation of their initial deficiency MCIT assessment in the amount of P537,477,867.64. Consequently, respondent received on 20 October 2003 a Preliminary Assessment Notice and Details of Assessment issued by the Large Taxpayers Service dated 22 September 2003, assessing respondent deficiency MCIT including interest, in the aggregate amount of P315,566,368.68. A written protest to said preliminary assessment was filed by respondent on 3 November 2003.

Thereafter, on 16 December 2003, respondent received a Formal Letter of Demand and Details of Assessment dated 1 December 2003 from the Large Taxpayers Service demanding the payment of the total amount of P326,778,723.35, inclusive of interest, as contained in Assessment Notice No. INC-FY-99-2000-000085. In response thereto, respondent filed its formal written protest on 13 January 2004 reiterating the following defenses: (1) that it is exempt from, or is not subject to, the 2% MCIT by virtue of its charter, Presidential Decree No. (PD) 1590;^[3] and (2) that the three-year period allowed by law for the BIR to assess deficiency internal revenue taxes for the taxable year ending 31 March 2000 had already lapsed on 15 July 2003.

Since no final action has been taken by petitioner on respondent's formal written protest, respondent filed a Petition for Review before the Second Division of the CTA on 4 August 2004 docketed as CTA Case No. 7029.

The Ruling of the CTA Second Division

In a Decision dated 22 August 2006,^[4] the CTA Second Division granted respondent's petition and accordingly ordered for the cancellation and withdrawal of Assessment Notice No. INC-FY-99-2000-000085 and Formal Letter of Demand for the payment of deficiency MCIT in the amount of P326,778,723.35, covering the fiscal year ending 31 March 2000, issued against respondent.

The CTA Second Division made the following factual and legal findings, to wit:

- (a) Section 13 of PD 1590 acquiring and limiting the extent of the tax liability of respondent under its franchise is coached in a clear, plain and unambiguous manner, and needs no further interpretation or construction;
- (b) Section 13 clearly provides that respondent is liable only for either the basic corporate income tax based on its annual net taxable income, or the 2% franchise tax based on gross revenue, whichever is lower;
- (c) Respondent-grantee must only choose between the two alternatives mentioned in Section 13 in the payment of its tax liability to the

government, and its choice must be that which will result in a lower tax liability;

- (d) Since the income tax return of respondent reflected a zero taxable income for the fiscal year ending 31 March 2000, obviously being lower than the 2% franchise tax, its choice of the former is definitely a better alternative as basis for its tax liability to the government;^[5]
- (e) The basic corporate income tax mentioned in Section 13 of PD 1590 does not refer to the MCIT under Section 27(E) of the NIRC of 1997, as amended, but particularly to the applicable rate of 32% income tax under Section 27(A) of the same Code, on the taxable income of domestic corporations;
- (f) The MCIT is regarded to belong to "other taxes" as it was not included in the choices provided by the franchise. To hold otherwise would be to give another option to respondent which is evidently not within the ambit of PD 1590;^[6]
- (g) The "in lieu of all other taxes" clause under Section 13 of respondent's legislative franchise exempts it from all taxes necessary in the conduct of its business covered by the franchise, except the tax on its real property for which respondent is expressly made payable;^[7] and
- (h) The rationale or purpose for the exemption from all other taxes except the income tax and real property tax granted to respondent upon the payment of the basic corporate income tax or the 2% franchise tax is that such tax exemption is part of inducement for the acceptance of the franchise and the rendition of public service by the grantee.^[8]

Simply put, it pronounced that the only qualification provided for in the law is the option given to respondent to choose between the taxes which will yield the lesser liability. Thus, if as a result of the exercise of the option, the respondent ends up without any tax liability, it should not be held liable for any other tax, such as the MCIT, except for real property tax.^[9]

On 30 January 2007, the CTA Second Division denied petitioner's Motion for Reconsideration for lack of merit.^[10]

Aggrieved, petitioner appealed to the CTA *En Banc* by filing a Petition for Review pursuant to Section 18 of Republic Act (RA) No. 9282 (should be RA No. 1125, as amended by RA No. 9282)^[11] on 1 March 2007, docketed as CTA EB No. 271.^[12]

The Ruling of the CTA En Banc

The CTA *En Banc* affirmed both the aforesaid Decision and Resolution rendered by the CTA Second Division in CTA Case No. 7029, ruling that under Section 13 of PD 1590, respondent, as consideration for the franchise, is indeed granted the privilege to choose between two options in the payment of its tax liability to the government. Naturally, its choice will be that which will result in a lower tax liability since such choice is "in lieu of all other taxes" imposed by all government entities in the country.^[13] The only exception is the real property tax.

The appellate court pointed out that even if respondent opted to be covered by the Income Tax provisions of the NIRC, it does not follow that it is covered by the MCIT provisions of the same Code. There is nothing in PD 1590 which obliges the respondent to pay other taxes, much less the MCIT, in case it suffers a net operating

loss. Otherwise, it would negate the tax relief granted under Section 13 of its franchise and would render it useless. The tax relief allows respondent 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.^[14]

Likewise, it elucidated that the MCIT is not the basic corporate income tax referred to in Section 13 of PD 1590. There is a distinction between the MCIT and the basic corporate income tax. The MCIT under Section 27(E)(1) of the NIRC of 1997, as amended, is imposed upon gross income; while the basic corporate income tax refers to the 32% income tax on the taxable income of domestic corporations under Section 27(A) of the same Code. In other words, the court a quo ruled that since the MCIT is imposed upon gross income, it cannot be made to apply to respondent by virtue of the express provision in its franchise that its basic corporate income tax shall be based on its annual net taxable income. Hence, it is in this sense that the MCIT qualifies as "other taxes" from which the respondent had been granted tax exemption by its franchise.^[15]

Moreover, the provision on MCIT, Section 27(E) of the NIRC of 1997, as amended, did not repeal respondent's franchise considering that it is a general law which cannot impliedly repeal, alter, or amend PD 1590, being a special law. Neither can Revenue Memorandum Circular (RMC) No. 66-2003 amend respondent's franchise as it is merely an administrative issuance.

Lastly, there is no provision in RA No. 8424^[16] which provides and specifies that the MCIT shall be in addition to the taxes for which respondent is liable. To rule otherwise would be violative of Section 24 of PD 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. Therefore, in the absence of a law expressly repealing PD 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.

Upon denial of petitioner's Motion for Reconsideration of the 19 July 2007 Decision of the CTA *En Banc*, it filed this Petition for Review on *Certiorari* before this Court seeking the reversal of the aforementioned Decision and the 23 August 2007 Resolution^[17] rendered in CTA EB No. 271.

The Issues

The issues submitted before this Court for consideration are as follows:

- (1) Whether or not the CTA En Banc erred in holding that the MCIT is properly categorized as "other taxes" pursuant to respondent's charter; and
- (2) Whether or not the CTA En Banc erred in ruling that respondent is not liable for the 2% MCIT deficiency for the fiscal year ending 31 March 2000.^[18]

The abovementioned issues may be consolidated and restated as follows: whether

or not the CTA *En Banc* erred when it affirmed the cancellation of Assessment Notice No. INC-FY-99-2000-000085 and Formal Letter of Demand issued by petitioner against respondent for the payment of deficiency MCIT in the amount of P326,778,723.35, covering the fiscal year ending 31 March 2000.

In support thereof, petitioner submits the following arguments: (a) respondent clearly opted to be covered by the income tax provision of the NIRC of 1997, as amended; hence, it is covered by the MCIT provision of the same Code and liable to pay the same; (b) the MCIT does not belong to the category of "other taxes" which may enable respondent to avail of the "in lieu of all other taxes" clause under Section 13 of PD 1590 because it is a category of an income tax pursuant to Section 27(E)(1) of the NIRC of 1997, as amended; (c) the MCIT provision of the NIRC of 1997, as amended, is not an amendment of respondent's charter, but an amendment of the same Code. Hence, respondent's obligation to pay the MCIT is not the result of an implied amendment of PD 1590, but rather, the consequence of respondent's option of paying income tax rather than franchise tax; (d) respondent is not only given the privilege to choose between what will give it the benefit of a lower tax, but also the responsibility of paying its share of the tax burden. Otherwise stated, it is the legislative intent to give respondent a privilege in the form of an option in paying its taxes which would result in paying a lower tax liability, but not in dispensing the sharing of a tax burden to which every taxpayer is obligated to bear; and (e) a claim for exemption from taxation is never presumed; thus, respondent is liable for the deficiency MCIT.

Respondent, in its Comment thereto, counters among others, that there is nothing in PD 1590 which obliges respondent to pay other taxes, much less the MCIT, in case it suffers a net operating loss. Since the MCIT is not the basic corporate income tax, nor the 2% franchise tax, nor the real property tax mentioned by Section 13 thereof, then it is but logical to conclude that the MCIT belongs to the category of "other taxes" for which respondent is not liable.

Our Ruling

Respondent's exemption from the MCIT is already a settled matter. Section 27 of the NIRC of 1997, as amended, provides as follows:

SEC. 27. Rates of Income Tax on Domestic Corporations.—

(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 law 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%).**

x x x x

(E) *Minimum Corporate Income Tax on Domestic Corporations.—*