

SECOND DIVISION

[G.R. NO. 168118, August 28, 2006]

**THE MANILA BANKING CORPORATION, PETITIONER, VS.
COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.**

DECISION

SANDOVAL-GUTIERREZ, J.:

Before us is a Petition for Review on Certiorari^[1] assailing the Decision^[2] of the Court of Appeals dated May 11, 2005 in CA-G.R. SP No. 77177, entitled "The Manila Banking Corporation, *petitioner*, versus Commissioner of Internal Revenue, *respondent*."

The Manila Banking Corporation, petitioner, was incorporated in 1961 and since then had engaged in the commercial banking industry until 1987. On May 22, 1987, the Monetary Board of the *Bangko Sentral ng Pilipinas* (BSP) issued Resolution No. 505, pursuant to Section 29 of Republic Act (R.A.) No. 265 (the Central Bank Act),^[3] prohibiting petitioner from engaging in business by reason of insolvency. Thus, petitioner ceased operations that year and its assets and liabilities were placed under the charge of a government-appointed receiver.

Meanwhile, R.A. No. 8424,^[4] otherwise known as the Comprehensive Tax Reform Act of 1997, became effective on January 1, 1998. One of the changes introduced by this law is the imposition of the minimum corporate income tax on domestic and resident foreign corporations. Implementing this law is Revenue Regulations No. 9-98 stating that the law allows a four (4) year period from the time the corporations were registered with the Bureau of Internal Revenue (BIR) during which the minimum corporate income tax should not be imposed.

On June 23, 1999, after 12 years since petitioner stopped its business operations, the BSP authorized it to operate as a **thrift bank**. The following year, specifically on April 7, 2000, it filed with the BIR its annual corporate income tax return and paid P33,816,164.00 **for taxable year 1999**.

Prior to the filing of its income tax return, or on December 28, 1999, petitioner sent a letter to the BIR requesting a ruling on whether it is entitled to the four (4)-year grace period reckoned from 1999. In other words, petitioner's position is that since it resumed operations in 1999, it will pay its minimum corporate income tax only after four (4) years thereafter.

On February 22, 2001, the BIR issued BIR Ruling No. 007-2001^[5] stating that petitioner is entitled to the four (4)-year grace period. Since it reopened in 1999, the minimum corporate income tax may be imposed "not earlier than 2002, i.e. the fourth taxable year beginning 1999." The relevant portions of the BIR Ruling state:

In reply, we hereby confirm 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 (reckoned at the time of registration by the corporation with the BIR) during which the MCIT (minimum corporate income tax) does not apply. If new corporations, as well as existing corporations such as those registered with the BIR in 1994 or earlier, are granted a 4-year grace period, we see no reason why TMBC, a corporation that has ceased business activities due to involuntary closure for more than a decade and is now only starting again to place its business back in order, may not be given the same opportunity. It should be stressed that although TMBC had been registered with the BIR before 1994, yet it did not have any business from 1987 to June 1999 due to its involuntary closure. 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, i.e., the fourth taxable year beginning 1999 which is the year when TMBC reopened.

Likewise, we find merit in your position that for having just come out of receivership proceedings, which not only resulted in substantial losses but actually brought about a complete cessation of all businesses, TMBC may be qualified to ask for suspension of the MCIT. The law provides that the Secretary of Finance, upon the recommendation of the Commissioner, may suspend the imposition of the MCIT on any corporation which suffers losses on account of prolonged labor dispute, or because of *force majeure*, or because of legitimate business reverses. [NIRC, Sec. 27(E) (3)] Revenue Regulations 9-98 defines the term "legitimate business reverses" to include substantial losses sustained due to fire, robbery, theft or embezzlement, or for other economic reasons as determined by the Secretary of Finance. Cessation of business activities as a result of being placed under involuntary receivership may be one such economic reason. But to be a basis for the recognition of the suspension of MCIT, such a situation should be properly defined and included in the regulations, which this Office intends to do. Pending such inclusion, the same cannot yet be invoked. Nevertheless, it is the position of this Office that the counting of the fourth taxable year, insofar as TMBC is concerned, begins in the year 1999 when TMBC reopened such that it will be only subject to MCIT beginning the year 2002.

Pursuant to the above Ruling, petitioner filed with the BIR a claim for refund of the sum of ₱33,816,164.00 erroneously paid as minimum corporate income tax for taxable year 1999.

Due to the inaction of the BIR on its claim, petitioner filed with the Court of Tax Appeals (CTA) a petition for review.

On April 21, 2003, the CTA denied the petition, finding that petitioner's payment of the amount of ₱33,816,164.00 corresponding to its minimum corporate income tax for taxable year 1999 is in order. The CTA held that petitioner is not entitled to the

four (4)-year grace period because it is not a new corporation. It has continued to be the same corporation, registered with the Securities and Exchange Commission (SEC) and the BIR, despite being placed under receivership, thus:

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, pp. 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. x x x

On June 11, 2003, petitioner filed with the Court of Appeals a petition for review. On May 11, 2005, the appellate court rendered a Decision affirming the assailed judgment of the CTA.

Thus, this petition for review on certiorari.

The main issue for our resolution is whether petitioner is entitled to a refund of its minimum corporate income tax paid to the BIR for taxable year 1999.

Petitioner contends that the Court of Tax Appeals erred in holding that it is not entitled to the four (4)-year grace period provided by law suspending the payment of its minimum corporate income tax since it is not a newly created corporation, having been registered as early as 1961.

For his part, the Commissioner of Internal Revenue (CIR), respondent, maintains that pursuant to R.A. No. 8424, petitioner should pay its minimum corporate income tax beginning January 1, 1998 as it did not close its business operations in 1987 but merely suspended the same. Even if placed under receivership, its corporate existence was never affected. Thus, it falls under the category of an existing corporation recommencing its banking business operations.

Section 27(E) of the Tax Code provides:

Sec. 27. Rates of Income Tax on Domestic Corporations. - x x x

(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 corporate income tax is greater than the tax computed under Subsection (A) of this Section for the taxable year.