REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

MAXICARE HEALTHCARE CORPORATION, Petitioner,	**CTA EB NO. 1312** (CTA Case No. 8441)
- versus -	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	

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COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 1317** (CTA Case No. 8441)
	Present:
- versus -	Del Rosario, *P.J.*, Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, and Manahan, *JJ.*
MAXICARE HEALTHCARE CORPORATION, Respondent.	
	Promulgated: DEC 12 2017 4:05 p.m.

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AMENDED DECISION

DEL ROSARIO, P.J.:

This resolves Maxicare Healthcare Corporation's *(Maxicare, for brevity)* **Manifestation** filed on May 9, 2017, and its **Motion for Reconsideration [of the Decision dated 8 May 2017]** filed on June 1, 2017, without comment of the Commissioner of Internal Revenue *(CIR, for brevity)* despite notice.

In the May 8, 2017 Decision,[1] the Court *En Banc* denied Maxicare's Petition for Review in CTA EB No. 1312 for lack of merit, granted the Petition for Review of the CIR in CTA EB No. 1317, reversed the Amended Decision of the Court in Division, and ordered Maxicare to pay the following: (i) deficiency VAT liability in the aggregate amount of P200,149,302.69, inclusive of 25% surcharge as imposed under Section 248(A)(3) of the 1997 NIRC, as amended, and (ii) deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency VAT of P34,393,238.58, P24,476,512.77, P39,747,965.34, and P61,501,725.47 for the 1st, 2nd, 3rd and 4th quarters of 2008, reckoned from April 25, 2008, July 25, 2008, October 25, 2008, and January 25, 2009, respectively, until full payment thereof pursuant to Section 249(B) of the 1997 NIRC, as amended; and (iii) delinquency interest at the rate of twenty percent (20%) per annum on the basic deficiency VAT of P160,119,442.15 and 25% surcharge of P40,029,860.54 computed from April 30, 2012 until full payment pursuant to Section 249(C)(3) of the 1997 NIRC, as amended.

In its May 9, 2017 Manifestation, Maxicare states that one of the main issues presented in these consolidated petitions is whether or not the eighty percent (80%) of its enrollment fees, which it earmarked and utilized for medical/hospitalization expenses of its clients, should form part of its gross receipts for purposes of computing Value Added Tax (VAT); and that this issue has been resolved by the Supreme Court in ***Medicard Philippines, Inc. vs. Commissioner of Internal Revenue***,[2] where it was held that the definition of gross receipts under Revenue Regulations (RR) Nos. 16-2005 and 4-2007, in relation to Section 108(A) of the National Internal Revenue Code (NIRC), as amended by Republic Act (RA) No. 9337, for purposes of determining the VAT liability of Health Maintenance Organization, shall exclude the eighty percent (80%) of the amount of the contract price earmarked as fiduciary funds for the medical utilization of its members.

In its Motion for Reconsideration [of the Decision dated 8 May 2017], Maxicare raised the following grounds:

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[1] Penned by Associate Justice Juanito C. Castañeda, Jr., and concurred by Associate Justice Caesar A. Casanova, and Associate Justice Cielito N. Mindaro-Grulla, with Concurring and Dissenting Opinion of Presiding Justice Roman G. Del Rosario joined by Associate Justice Erlinda P. Uy, Separate Concurring Opinion of Associate Justice Ma. Belen M. Ringpis-Liban, Concurring and Dissenting Opinion of Associate Justice Catherine T. Manahan, and Associate Justice Lovell R. Bautista and Associate Justice Esperanza R. Fabon-Victorino maintained their position in the assailed Decision.
[2] G.R. No. 222743, April 5, 2017.

I.

The Honorable Court erred in pronouncing that the Health Maintenance Organizations' ("HMOs") gross receipts for Value Added Tax ("VAT") purposes shall be the total amount of money or its equivalent actually received from members undiminished by any amount paid or payable to the owners/operators of hospitals, clinics and medical and dental practitioners.

A. In the 2007 case of Medicard Philippines, Inc. vs. Commissioner of Internal Revenue ("CIR"), the Supreme Court held that the definition of gross receipts under Revenue Regulations ("RR") Nos. 16-2005 and 4-2007, in relation to Section 108(A) of the National Internal Revenue Code, as amended by Republic Act No. 9337 ("Tax Code"), for purposes of determining the VAT of HMOs, shall exclude the amount earmarked as fiduciary funds for medical utilization of its members.

B. The Honorable Court erred in ruling that the general definition of gross receipts provided under RR No. 16-2005, as amended by RR NO. 4-2007, which allows exclusion of amounts earmarked for payment to unrelated third party or received as reimbursement for advance payment on behalf of another which do not redound to the benefit of the payor, does not apply to HMOs. This pronouncement of the Honorable Court is inconsistent with the Tax Code and the ruling of the Supreme Court in Medicard.

C. To insist that the definition of "Gross Receipts" as amended under RR No. 4-2007 does not apply to HMOs would be violative of the rule on "Uniformity of Taxation Clauses."

D. To sustain the interpretation of the Honorable Court will be highly iniquitous and arbitrary, tantamount to a violation of the "Equal Protection Clause" enshrined in our Philippine Constitution.

E. To maintain the Honorable Court's ruling that the entire amount of Maxicare's membership fees would be subjected to VAT is not only unfair to Maxicare, in light of its objective as an HMO, but is gravely prejudicial to the right to health of Filipinos who rely on HMOs for affordable and accessible healthcare services.

II.

The Honorable Court's findings that Maxicare failed to adduce relevant evidence in support of its position on the amounts earmarked as medical/hospitalization expenses is based on the erroneous premise that Maxicare's utilization is a disputed matter. In any case, Maxicare witness, Mr. Jean Paul Gines, testified that 80% of Maxicare's enrollment fess *(sic)* are actually earmarked for medical/hospital utilization expenses. Moreover, Maxicare was able to establish that its earmarking of 80% of the premiums it received is pursuant to its service agreements with its members.

III.

The Honorable Court erred in ruling that "the facts do not support Maxicare's assertion that there was good faith reliance in BIR Ruling No. DA-(VAT-026) 375 issued on 31 October 2008."

A. The Honorable Court's reliance on the ruling in the case of "Philippine Health Care Providers, Inc. vs. CIR" (CTA Case No. 6166) is highly misplaced. The definition of "Gross Receipts for HMOs" in the said case was already changed upon the advent of new tax laws.

B. The Honorable Court's reliance on previous CIR rulings and issuances is similarly misplaced.

IV.

Maxicare is entitled to the benefit of non-retroactivity of rulings guaranteed under Section 246 of the Tax Code, in the absence of showing of bad faith on its part.

V.

The Honorable Court erred in sustaining CIR's arguments that the BIR official who issued BIR Ruling No. DA-(VAT-0260)-375-08 has exceeded his authority.

A. The Honorable Court should not have considered the said argument in the interest of fairness and due process.
B. The BIR official who issued BIR Ruling No. DA-(VAT-0260)-375-08 did not exceed his authority.

VI.

The Honorable Court erred in ruling that Maxicare could be shielded only with respect to its 4th quarter 2008 VAT Return, which it filed after the issuance of BIR Ruling No. DA-(VAT-0260)-375-08. Maxicare had basis in declaring only 20% of its enrollment fees or premiums fees as gross receipts for VAT purposes for the year 2008 notwithstanding the fact that BIR Ruling No. DA-(VAT-0260)-375-08 was issued only on 31 October 2008.

VII.

The Honorable Court erred in finding that Maxicare filed false returns, and in consequently ruling that the ten-year prescriptive period under Section 222(A) of the Tax Code applies to the VAT assessments against Maxicare. Maxicare filed its Quarterly VAT Returns for 2008 in consonance with (i) BIR RR No. 16-2005 and BIR RR No. 4-2007; and (ii) BIR Ruling Nos. DA-(VAT-019)-121-08, DA-(C-032)-122-08 and DA-(VAT-0260)-375-08. Thus, it cannot be said that Maxicare filed false returns, and the ten-year period cannot be made to apply. In fact, Maxicare's position that only 20% of the enrollment fees should be declared for VAT purposes was validated by the Supreme Court in the 2017 Medicard case.

VIII.

Even assuming that Maxicare is liable for deficiency VAT, the Honorable Court erred in imposing deficiency interest.

A. Deficiency interest does not apply to VAT.

B. Deficiency interest may not be imposed simultaneously with delinquency interest.

Maxicare, therefore, prays in its Motion for Reconsideration, that the assailed Decision and Amended Decision of the Court in Division with respect to the pronouncement that the HMOs gross receipts for VAT purposes shall be the total amount of money or its equivalent actually received from members undiminished by any amount paid or payable to the owners/operators of hospitals, clinics and medical and dental practitioners be reversed and set aside, and that the CIR's Petition be denied for lack of merit and legal basis.

The Court *En Banc* noted the foregoing Manifestation and Motion for Reconsideration in the Resolution dated June 22, 2017. In the same Resolution, the Court *En Banc* required the CIR to comment on both the Manifestation and the Motion for Reconsideration of Maxicare, within ten (10) days from receipt of the Resolution.[3] Despite notice, the CIR failed to file such comment as per Records Verification dated August 9, 2017. The aforesaid Manifestation and Motion for Reconsideration were submitted for resolution on August 14, 2017, and supposedly due for resolution on November 14, 2017. In view, however, of the diversity of opinion on issues involved the present case, the case was eventually re-raffled, with the concomitant approval of the original *ponente's* request for extension within which to resolve Maxicare's Motion for Reconsideration.

In the Decision issued on May 8, 2017, the Court *En Banc* ruled, *inter alia*, that the definition of gross receipts of HMOs for VAT purposes should be the total amount of money or its equivalent actually received from members undiminished by any amount paid or payable to the owners/operators of hospitals, clinics and medical and dental practitioners.

THE COURT'S RULING

After a judicious re-evaluation of the case and the arguments raised by Maxicare in its Motion for Reconsideration, the Court *En Banc* is constrained to reconsider the assailed

[3] CTA EB Docket, p. 832.

Decision dated May 8, 2017 in light of the pronouncement of the Supreme Court in *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue (Medicard)*[4] rendered on April 5, 2017 and promulgated on April 26, 2017 or few days before the assailed Decision was rendered by the Court *En Banc* on May 8, 2017.

It has been said that the Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is. It is the final arbiter of any justiciable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.[5] Once a case has been decided one way, any other case involving exactly the same point at issue, as in the present case, should be decided in the same manner.[6]

In ***Medicard***, the Supreme Court made the following declaration, viz.:

> "Prior to RR No. 16-2005, an HMO, like a pre-need company, is treated for VAT purposes as a dealer in securities whose gross receipts is the amount actually received as contract price without allowing any deduction from the gross receipts. This restrictive tenor changed under RR No. 16-2005. Under this RR, an HMO's gross receipts and gross receipts in general were defined, thus:
>
> **Section 4.108-3. xxx**
>
> **x x x x**
>
> HMO's gross receipts shall be the total amount of money or its equivalent representing the service fee actually or constructively received during the taxable period for the services performed or to be performed for another person, excluding the value-added tax. **The compensation for their services representing their service fee, is presumed to be the total amount received as enrollment fee from their members plus other charges received.**
>
> Section 4.108-4. x x x. ***"Gross receipts"*** refers to 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 applied as **payments for services rendered**, and advance payments actually or constructively received during the

[4] G.R. No. 222743, April 5, 2017.
[5] Nacuray, et al. vs. National Labor Relations Commission, G.R. Nos. 114924-27, March 18, 1997.
[6] Ty vs. Banco Filipino Savings and Mortgage Bank, G.R. No. 188302, June 27, 2012.

> taxable period **for the services performed or to be performed** for another person, excluding the VAT.

In 2007, the BIR issued RR No. 4-2007 amending portions of RR No. 16-2005, including the definition of gross receipts in general.

According to the CTA *en banc*, the entire amount of membership fees should form part of MEDICARD's gross receipts because the exclusions to the gross receipts under RR No. 4-2007 does not apply to MEDICARD. What applies to MEDICARD is the definition of gross receipts of an HMO under RR No. 16-2005 and not the modified definition of gross receipts in general under the RR No. 4-2007.

The CTA *en banc* overlooked that the definition of gross receipts under ***RR No. 16-2005 merely presumed that the amount received by an HMO as membership fee is the HMO's compensation for their services. As a mere presumption, an HMO is, thus, allowed to establish that a portion of the amount it received as membership fee does NOT actually compensate it but some other person, which in this case are the medical service providers themselves.*** It is a well-settled principle of legal hermeneutics that words of a statute will be interpreted in their natural, plain and ordinary acceptation and signification, unless it is evident that the legislature intended a technical or special legal meaning to those words. The Court cannot read the word "presumed" in any other way.

xxx xxx xxx

As to the CIR's argument that the act of earmarking or allocation is by itself an act of ownership and management over the funds, the Court does not agree. On the contrary, it is MEDICARD's act of earmarking or allocating 80% of the amount it received as membership fee at the time of payment that weakens the ownership imputed to it. ***By earmarking or allocating 80% of the amount, MEDICARD unequivocally recognizes that its possession of the funds is not in the concept of owner but as a mere administrator of the same. For this reason, at most, MEDICARD's right in relation to these amounts is a mere inchoate owner which would ripen into actual ownership if, and only if, there is underutilization of the membership fees at the end of the fiscal year.*** Prior to that, MEDICARD is bound to pay from the amounts it had allocated as an administrator once its members avail of the medical services of MEDICARD's healthcare providers.

Before the Court, the parties were one in submitting the legal issue of whether the amounts MEDICARD earmarked, corresponding to 80% of its enrollment fees, and paid to the medical service providers should form part of its gross receipt for VAT purposes, after having paid the VAT on the amount comprising the 20%. It is significant to note in this regard that ***MEDICARD established that upon receipt of payment of membership fee it actually issued two official receipts, one pertaining to the VAT able portion,***

> ***representing compensation for its services, and the other represents the non-vatable portion pertaining to the amount earmarked for medical utilization.*** Therefore, the absence of an actual and physical segregation of the amounts pertaining to two different kinds · of fees cannot arbitrarily disqualify MEDICARD from rebutting the presumption under the law and from proving that indeed services were rendered by its healthcare providers for which it paid the amount it sought to be excluded from its gross receipts.
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> xxx xxx xxx
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> In fine, the foregoing discussion suffices for the reversal of the assailed decision and resolution of the CTA *en banc* grounded as it is on due process violation. ***The Court likewise rules that for purposes of determining the VAT liability of an HMO, the amounts earmarked and actually spent for medical utilization of its members should not be included in the computation of its gross receipts.***" *(Boldfacing with italics and underlining supplied)*

Thus, the Supreme Court in defining "gross receipts" made the following conclusion in its dispositive portion, *viz.*:

> "**WHEREFORE,** in consideration of the foregoing disquisitions, the petition is hereby **GRANTED.** The Decision dated September 2, 2015 and Resolution dated January 29, 2016 issued by the Court of Tax Appeals *en bane* in CTA EB No. 1224 are **REVERSED and SET ASIDE. The definition of gross receipts under Revenue Regulations Nos. 16-2005 and 4-2007, in relation to Section 108(A) of the National Internal Revenue Code, as amended by Republic Act No. 9337, for purposes of determining its Value-Added Tax liability, is hereby declared to EXCLUDE the eighty percent (80%) of the amount of the contract price earmarked as fiduciary funds for the medical utilization of its members.** Further, the Value-Added Tax deficiency assessment issued against Medicard Philippines, Inc. is hereby declared unauthorized for having been issued without a Letter of Authority by the Commissioner of Internal Revenue or his duly authorized representatives." *(Additional boldfacing supplied)*

From the foregoing, it is clear that, for purposes of determining gross receipts under RR No. 16-2005, the amount received by an HMO as membership fee is simply **presumed** to be the compensation of its services; and that an HMO is allowed to rebut the presumption by establishing that portion of the amount it received as membership fee does not actually compensate it but some other person like the medical service providers. Significantly, in the cited case, Medicard actually issued two (2) official receipts, one pertaining to the VATable portion (representing compensation of an HMO's compensation for its services), and the other relating to the non-vatable portion (representing the amount earmarked for medical

utilization); thereby, suggesting that the presumption pursuant to RR No. 16-2005 has been rebutted. Thus, the applicability of the pronouncement in ***Medicard*** to this case concerning the concept of gross receipt of an HMO for VAT purposes cannot be ignored, *albeit* the issue of whether Maxicare was able to rebut the presumption created by virtue of RR No. 16-2005 remains to be the subject of an appropriate determination based on evidence which Maxicare may present before the Court.

Aside from an HMO's issuance of two (2) official receipts showing on one receipt the VATable portion representing an HMO's compensation for its services, and on the other receipt representing the non-vatable portion pertaining to the amount earmarked for medical utilization as illustrated in ***Medicard***, Section 4.108-4 of RR No. 16-2005 as amended by RR No. 4-2007 is likewise categorical as regards the proof to establish payment of obligation to a third party which amounts do not redound to the benefit of the payor, viz.:

> "SEC. 4.108-4. Definition of Gross Receipts. —'Gross receipts' refers to 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 applied as payments for services rendered and advance payments actually or constructively received during the taxable period for the services performed or to be performed for another person, excluding the VAT, **except those amounts earmarked for payment to unrelated third (3rd) party or received as reimbursement for advance payment on behalf of another which do not redound to the benefit of the payor**.
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> **A payment is a payment to a third (3rd) party if the same is made to settle an obligation of another person, e.g., customer or client, to the said third party, which obligation is evidenced by the sales invoice/official receipt issued by said third party to the obligor/debtor** (e.g., customer or client of the payor of the obligation)" *(Boldfacing and underscoring supplied)*

In other words, a sales invoice or official receipt issued by a third party, like the medical service providers, to an HMO in order that the amount earmarked for payment to such third party may be excluded from the gross receipts of an HMO for VAT purposes, appears indispensable.

Review of the records, however, disclosed the absence of evidence proving the earmarking of the 80% enrollment fees and the actual payment of the earmarked amount to the medical service providers. Maxicare did not present the copies of the official receipts

it issued to its members, and the sales invoice and official receipts issued by the said medical service providers to Maxicare.

Maxicare, however, could not be faulted for this deficiency in evidence as both parties proceeded on a mistaken belief that the issue involved in this case is purely legal, and does not concern the substantiation of the earmarked amounts. This circumstance is apparent in the parties' Joint Stipulation of Facts with Manifestation and Motion filed on September 4, 2012,[7] where the following issues were identified by them:

> I. Statement of Issues of the Petitioner *[Maxicare]*
>
> **A) Purely Legal Issue**
>
> **1. Whether or not the subject tax assessment, especially VAT assessment on gross receipts not subjected to VAT or exempt sales per VAT returns which refers to deductions or exclusions from gross receipt of medical utilization expenses such as medical and dental fees, hospital bills, laboratory fees, etc. is invalid for violation of the relevant provisions on VAT of the Tax Code and other related tax issuances/authorities.**
>
> 2. Whether or not the subject tax assessment is inconsistent with BIR Revenue Regulations No. 4-2007 on the determination of gross receipts of HMOs for purposes of VAT.
>
> i. Whether or not deductions, exclusions or those earmarked for payment to unrelated third party for medical utilization expenses of HMOs are subject to VAT.
>
> **ii. Whether or not HMOs gross receipts for purposes of VAT computation shall be the total amount of money or its equivalent representing the service fee actually or constructively received during the taxable period, undiminished by any amount paid or payable to owners/operators of hospitals, clinics and medical and dental practitioners.**
>
> 3. Whether or not the subject tax assessment is in violation of BIR Ruling DA-(VAT-026)-375-08 and other revenue issuances on the declaration of gross receipts of HMOs for VAT purposes.
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> 4. Whether or not the subject tax assessment is invalid for retroactively applying Revenue Memorandum Circular No. 39-2010.
>
> 5. Whether or not the subject tax assessment is invalid for erroneously relying on a Revenue Memorandum Circular instead of a Revenue Regulation.

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[7] CTA Case No. 8441 Docket, pp. 294-304.

6. Whether or not the subject tax assessment is invalid for amounting to double auditing of the same tax type covering similar taxable period.

B. Factual Issue

1. Whether or not the subject tax assessment was issued in accordance with Section 228 of the Tax Code requiring that the assessment must state the law and facts upon which it is based.

2. Whether or not the subject tax assessment, particularly with respect to the VAT assessment on vatable sales erroneously classified as zero-rated, proceeds from sale of assets, input tax on sales to government closed to expense, and deferred input tax on purchase of capital goods, is supported by factual basis.

II. Statement of Issue of the Respondent *[CIR]*

Whether or not HMOs gross receipts for purposes of VAT computation shall be the total amount of money or its equivalent representing the service fee actually or constructively received during the taxable period, undiminished by any amount paid or payable to owners/operators of hospital, clinics and medical and dental practitioners.[8]

It appears that the parties did not reach a common issue; thus, they were constrained to seek the Court in Division's intervention in the determination of the proper and/or appropriate statement of the issues.[9] Subsequently, the Court in Division defined the following issues of the case in the September 13, 2012 Pre-Trial Order[10] by **adopting the "purely legal issues" proposed by petitioner as indicated in the parties' Joint Stipulation of Facts with Manifestation and Motion [specifically I(A)(1) and (A)(2)(ii)]**, to wit:

"1. Whether or not the subject tax assessment, especially anent the VAT assessment on gross receipts not subjected to VAT or exempt sales per VAT returns which refers to deductions or exclusion to gross receipts for medical utilization expenses such as medical and dental fees, et., is invalid for violation of the relevant provision on VAT of the Tax Code and other related tax issuances/authorities;

2. Whether or not HMOs gross receipts for purposes of VAT computation shall be the total amount of money or its equivalent representing the service fee actually or constructively received during the taxable period, undiminished by any amount paid or

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[8] CTA Case No. 8441 Docket, pp. 299-302.
[9] CTA Case No. 8441 Docket, p. 302.
[10] CTA Case No. 8441 Docket, pp. 306-312.

> payable to owners/operators of hospitals, clinics and medical and dental practitioners."[11]

Parenthetically, the factual issue of *"whether there was **actual earmarking** of the 80% of enrollment fees and its subsequent payment to the medical service providers"* was mistakenly not included in the parties' Joint Stipulation of Facts as well as the Court in Division's Pre-Trial Order.

As the determination of the earmarking of the enrollment fees and actual payment of the earmarked amount to medical service providers is indispensable in order for the Court to properly rule on the assessed VAT on gross receipts consistent with ***Medicard***, a necessity to remand the case to the Court in Division to give the parties full opportunity to present their respective evidence on this particular factual issue is warranted.

In view of the foregoing, the Court *En Banc* finds the other issues raised by Maxicare in its Motion for Reconsideration no longer necessary in the disposition of this case.

WHEREFORE, the **Motion for Reconsideration [of the Decision dated 8 May 2017]** filed by Maxicare Healthcare Corporation is **GRANTED**. Accordingly, the May 8, 2017 Decision of the Court *En Banc*, and the April 21, 2014 Decision and May 5, 2015 Amended Decision of the Court in Division are **SET ASIDE**. The case is **REMANDED** to the Court in Division for further proceedings.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

(See Dissenting Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

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[11] CTA Case No. 8441 Docket, pp. 308-309.

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

(I maintain my position in the Amended Decision of May 5, 2016 and concur with the position that it should be remanded to the Division for reception of further evidence)
ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

MAXICARE HEALTHCARE CORPORATION, Petitioner, -versus- **COMMISSIONER OF INTERNAL REVENUE,** Respondent.	**CTA EB NO. 1312** **(CTA Case No. 8441)**
x----------x	
COMMISSIONER OF INTERNAL REVENUE, Petitioner, -versus- **MAXICARE HEALTHCARE CORPORATION,** Respondent.	**CTA EB NO. 1317** **(CTA Case No. 8441)** Present: Del Rosario, *P.J.*, Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, *and* Manahan, *JJ.* Promulgated: DEC 12 2017 4:05 p.m.

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DISSENTING OPINION

CASTAÑEDA, JR., J.:

For resolution by the Court *En Banc* is the May 9, 2017 Manifestation[1] and the June 1, 2017 Motion for Reconsideration [of the Decision dated 8 May

[1] Rollo (CTA EB No. 1312) Vol. II, pp. 743-767.

2017] [2] filed by Maxicare Healthcare Corporation (Maxicare), formerly Philippine Healthcare Providers, Inc., without any comment from the Commissioner of Internal Revenue (CIR).[3]

Maxicare assails the May 8, 2017 Decision, the dispositive portion of which reads:

> **"WHEREFORE**, premises considered, the Petition for Review filed by Maxicare in CTA EB Case No. 1312 is **DENIED** for lack of merit. The Petition for Review filed by the CIR in CTA EB Case No. 1317 is **GRANTED** in part.
>
> The Amended Decision is hereby **REVERSED**. Maxicare is **ORDERED TO PAY** deficiency VAT liability in the aggregate amount of ₱200,149,302.69, inclusive of 25% surcharge as imposed under Section 248(A)(3) of the 1997 NIRC, as amended, computed as follows:

	1st Qtr-2008	2nd Qtr-2008	3rd Qtr-2008	4th Qtr-2008	Total
Cost to render service (Exempt sales per VAT returns)	₱ 330,063,761.96	₱ 247,386,731.43	₱ 376,254,627.49	₱ 572,012,745.55	₱1,525,717,866.43
Output tax due thereon	₱ 39,607,651.44	₱ 29,686,407.77	₱ 45,150,555.30	₱ 68,641,529.47	₱ 183,086,143.97
Less: Input tax attributable to Exempt Sales - now allowed as input tax	(5,214,412.86)	(5,209,895.00)	(5,402,589.96)	(7,139,804.00)	(22,966,701.82)
Basic deficiency VAT	**₱34,393,238.58**	**₱24,476,512.77**	**₱39,747,965.34**	**₱61,501,725.47**	**₱160,119,442.15**
Add: 25% Surcharge	8,598,309.64	6,119,128.19	9,936,991.33	15,375,431.37	40,029,860.54
Total Amount Due	**₱42,991,548.22**	**₱30,595,640.96**	**₱49,684,956.67**	**₱76,877,156.83**	**₱200,149,302.69**

In addition, Maxicare is **ORDERED TO PAY**:

(a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency VAT computed from the following dates until full payment thereof pursuant to Section 249(B) of the 1997 NIRC, as amended:

Period Covered	Basic Deficiency VAT	Reckoning Date
1st Quarter 2008	₱34,393,238.58	April 25, 2008
2nd Quarter 2008	₱24,476,512.77	Jul 25, 2008
3rd Quarter 2008	₱39,747,965.34	October 25, 2008
4th Quarter 2008	₱61,501,725.47	January 25, 2009

(b) Delinquency interest at the rate of twenty percent (20%) per annum on the total deficiency taxes of ₱200,149,302.69, representing basic deficiency VAT of ₱160,119,442.15 and 25% surcharge of ₱40,029,860.54, computed from April 30, 2012[4] until full payment thereof pursuant to Section 249(C)(3) of the 1997 NIRC, as amended.

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[2] Rollo (CTA EB No. 1312) Vol. II, pp. 768-824.
[3] Minute Resolution dated June 8, 2017, Rollo (CTA EB No. 1312) Vol. II, p. 829.
[4] Exhibit L, Final Decision on Disputed Assessment, Maxicare's Formal Offer of Documentary Evidence, Division Docket Vol. 1, pp. 496-497.

SO ORDERED."

The motion prays for the reversal of the Court's decision and the denial of the CIR's petition. Briefly, its states that the Court *En Banc* erred:

1. In pronouncing that the gross receipts of Health Maintenance Organizations (HMOs) shall be the "total amount of money or its equivalent actually received from members undiminished by any amount paid or payable to the owners/operators of hospitals, clinics and medical and dental practitioners." Maxicare cites Revenue Regulations No. (RR) 16-2005, as amended by RR 4-2007, *the revoked* BIR Ruling No. DA-(VAT-026) 375-08 and, finally, the recent 2017 case of *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*[5] to support its position;

2. In holding that Maxicare *did not rely in good faith* on BIR Ruling No. DA-(VAT-026) 375-08 insofar as the delegated authority ruling was issued by the Assistant Commissioner Legal Service contrary to Section 7 of the National Internal Revenue Code (NIRC) and was consequently revoked by the CIR in Revenue Memorandum Circular No. (RMC) 6-2009;

3. In finding that Maxicare filed false returns which, therefore, called for the application of the extended ten-year prescription under Section 222(a) of the NIRC; and finally,

4. In applying deficiency interest on Maxicare's Value-Added Tax (VAT) liabilities and imposing the same simultaneously with the delinquency interest.

With due respect, I vote to deny Maxicare's motion for lack of merit and to affirm *in toto* the May 8, 2017 Decision of which I was the ponente.

First, the motion suffers from procedural infirmity by failing to include a notice of hearing as required in Sections 4 and 5, Rule 15 of the Rules of Court:

> "*Section 4. Hearing of motion.* - Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.
>
> Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.

[5] G.R. No. 222743, April 5, 2017.

> *Section 5. Notice of hearing.* - The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion."

In a number of cases,[6] the Supreme Court has ruled that a motion which does not meet the requirements of Sections 4 and 5 of Rule 15 of the Rules of Court is considered a mere scrap of paper which the clerk has no right to receive and which the court has no authority to act upon. Service of copy of a motion containing notice of the time and place of hearing of said motion is a mandatory requirement and the failure of the movant to comply with said requirements renders his motion fatally defective.[7]

Second, on the substantive aspects of the motion, Maxicare insists that it relied in *good faith* on its interpretation of a *difficult point of law* and cites the revenue regulations and a *revoked* delegated authority ruling to defend this position.

Facts are stubborn things.[8] And the facts prove Maxicare otherwise.

In 2008, when Maxicare filed its quarterly VAT returns, it cannot deny that the law as applied and administered by the Bureau of Internal Revenue (BIR) and as interpreted by the courts quite clearly states that gross receipts shall be:

1. "xxx 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." (Section 108 of the NIRC, January 1, 1998)

2. "xxx as defined xxx under Sec. 102 of the Tax Code [now Section 108], as amended, which in the case of the HMOs shall be the membership fees received from the members undiminished by any amount paid or payable to owners/operators of hospitals, clinics and medical and dental practitioners." (*Aetna* Ruling, VAT Ruling No. 018-98, June 23, 1998, issued by CIR Liwayway Vinzons-Chato)

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[6] *Marylou Cabrera v. Felix Ng,* G.R. No. 201601, March 12, 2014; *Pallada et. al. v. Regional Trial Court of Kalibo, Aklan, Branch I et. al.*, G.R. No. 129442, March 10, 1999; *Pojas v. Gozo-Dadole et. al.*, G.R. No. 76519, December 21, 1990, 192 SCRA 575; *Manila Electric Company v. La Campana Food Products, Inc., et al.*, G.R. No. 97535, August 4, 1995; *Vda. De Azarias v. Hon. Manalo L. Maddela et. al.*, G.R. No. L-25932, March 19, 1971.

[7] *Annie Tan* v. *Court of Appeals, et. al.,* G.R. No. 130314, September 22, 1998.

[8] "Facts are stubborn things; and whatever may be our wishes, our inclinations, or the dictates of our passions, they cannot alter the state of facts and evidence." John Adams, Second President and Founding Father of the United States, Argument in defense of the British soldiers in the Boston Massacre Trials (December 1770), quoted from John Bartlett, Familiar Quotations, 15th and 125th Anniversary Edition, p. 380.

3. "the payments for medical plans and application fees actually received from the members, undiminished by any amount paid or payable to owners/operators of hospitals, clinics and medical and dental practitioners." (*Philippine Health Care Providers, Inc. v. The Commissioner of Internal Revenue*, CTA Case No. 6166, April 5, 2002, this definition was undisturbed by the Court of Appeals in *Commissioner of Internal Revenue v. Philippine Health Care Providers, Inc.*, CA-G.R. SP No. 76449, February 18, 2005 and by the Supreme Court in *Commissioner of Internal Revenue v. Philippine Health Care Providers, Inc.*, G.R. No. 168129, April 24, 2007)

4. "xxx the payments for medical plans and application fees actually received from the members, undiminished by any amount paid or payable to owners/operators of hospitals, clinics and medical and dental practitioners." (RMC 56-2002, December 13, 2002, issued by CIR Guillermo L. Parayno)

5. "xxx the total amount of money or its equivalent representing the service fee actually or constructively received during the taxable period for the services performed or to be performed for another person, excluding the value-added tax. The compensation for their services representing their service fee, is presumed to be the total amount received as enrollment fee from their members plus other charges received." (Section 4.108-4, RR 16-2005, September 1, 2005)

6. "xxx 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." (Section 108 of the NIRC, as amended by R.A. 9337, November 1, 2005)

7. "xxx without any deduction." (RMC 81-2007, December 4, 2007, issued by CIR Lilian B. Hefti)

8. "as defined under Sec. 108 (A) of the Tax Code, as amended, which in [sic] the undiminished by any amount paid or payable to owners/operators of hospitals, clinics and medical and dental practitioners. (VAT Ruling No. 03-2008, March 26, 2008, issued by Deputy Commissioner Gregorio V. Cabantac)

In addition, its 2007 and 2008 Audited Financial Statements disclosed the contingency of the *Philippine Health Care Providers, Inc.* cases which

settled the same issue on how the gross receipts of HMOs should be calculated for VAT purposes by upholding the *Aetna* definition.[9]

Accordingly, when Maxicare filed its quarterly VAT returns in 2008 and excluded ₱1,525,717,866.43 from its VATable receipts, it was certainly *not unaware* of the consistent and explicit interpretations of the law in effect at that time. To be sure, Maxicare was *not free from the knowledge of these circumstances* which ought to have put it on notice. This knowledge of the current interpretation placed a burden upon Maxicare to proceed with utmost prudence when it reported its taxable gross receipts. In other words, it deliberately took an unqualified risk by ignoring what has been the consistent interpretation by *both the courts and the CIR*.

On what it concedes arguably as a difficult point of law, Maxicare tenaciously clings to its own reading of the law and *disregards the binding and authoritative interpretations from the two separate branches of government*. It does so at its own peril. The taxpayer is now before the court using the same self-serving reliance on its interpretation to claim the mantle of good faith and the protection such *bona fides* entails.

Contrary to Maxicare's claim of good faith, the Court should not overlook the pattern of facts which reveal how the taxpayer has planned its way out of its obligation to pay VAT on its gross receipts through the technicalities of law.

The concept of good faith, *when viewed in the light of the above circumstances*, is an intangible and abstract quality with no technical meaning or statutory definition, and it encompasses, among other things, an honest belief, the absence of malice and the absence of design to defraud or to seek an unconscionable advantage. It implies *honesty of intention*, and *freedom from knowledge of circumstances which ought to put the holder upon inquiry*.[10]

Also discussed in the assailed decision is the definition of good faith that was lifted in the same Supreme Court decision[11] involving Maxicare itself (*then* Philippine Healthcare Providers, Inc.) and also involving the issue of whether VAT can be imposed on its services:

> "xxx. In *Civil Service Commission v. Maala*, we described good faith as 'that state of mind denoting honesty of intention and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even through technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render transaction unconscientious.'" (underscoring supplied and citation omitted)

[9] May 8, 2017 Decision, p. 21, Rollo (CTA EB No. 1312) Vol. II, p. 700.
[10] *The Heirs of Victorino Sarili v. Lagrosa*, G.R. No. 193517, January 15, 2014.
[11] *Commissioner of Internal Revenue v. Philippine Health Care Providers, Inc.*, G.R. No. 168129, April 24, 2007.

Finally, Bouvier Law Dictionary defines good faith in a similar vein:

> "The honest and fair pursuit of one's stated and reasonable purposes. Good faith is sincerity, a measure to assess one's own conduct and the conduct of others. Good faith is subjective, measuring what one knows, rather than entirely determining what one should reasonably believe under the circumstances. Yet, the subjective aspect of good faith has an objective limit in that contradictions between knowledge and the purpose for which one acquires or employs knowledge may bar good faith. That is, willful ignorance, or deliberate naivete, or intentionally ambiguous motives cannot be held or asserted in good faith"[12]

Most significantly, Maxicare's representations on its reliance on BIR Ruling No. DA-(VAT-026) 375-08 and its failure to disclose that the same ruling was subsequently revoked is a material omission. Such material omission strongly contradicts and heavily undermines the good faith being invoked by Maxicare.

It is important to note at this point that Maxicare, in its Motion for Reconsideration, while underscoring its good faith reliance on the ruling *did not* address why it failed to disclose its revocation. Its failure to declare this material fact exposes its scheme to skew technicalities and present only selected facts to serve its cause, however untenable under the law.

Third, Section 4.108-3(k) of RR 16-2005 states very clearly the presumption that the compensation of HMOs for their services is the "total amount received as enrollment fee from their members plus other charges received."

Maxicare failed to overcome this presumption *in the absence of credible evidence to the contrary*.

As discussed, Maxicare has been less than forthright in disclosing the *complete picture* and the *whole truth* before the Court. For the same reason, the testimony of Mr. Jean Paul Gines, the taxpayer's Assistant Treasurer and Vice President for Finance and lone witness, deserves little consideration.

While he emphasized on the BIR Ruling No. DA-(VAT-026) 375-08 dated October 31, 2008 which Maxicare obtained in its favor and which was used as the basis to oppose the VAT assessment, he failed to declare during trial that the very ruling, allegedly the basis of Maxicare's good faith, was no longer valid and subsisting because it was eventually revoked by RMC 2-2009 dated January 15, 2009 and by RMC 6-2009 dated January 27, 2009:

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[12] The Walters Kluwer Bouvier Law Dictionary, Compact Edition (2011), p. 417.

"During the trial, petitioner presented its Assistant Treasurer and Vice President for Finance, **Jean Paul I. Gines,** who executed a judicial affidavit for his direct testimony.

He declared that petitioner assails the Assessment Notice No. VT-LA12161-08-11-0517 and Formal Assessment Notice dated May 17, 2011 issued by respondent for deficiency VAT in the amount of P337,911,970.96, inclusive of charges and interests on the following grounds, to wit: inconsistency with BIR Revenue Regulation No. 4-2007; violation of BIR Ruling DA-(VAT-026)-375-08 and other related tax rulings; erroneous reliance on a Revenue Memorandum Circular; incorrect retroactive application of RMC No. 39-2010; double auditing and lack of factual and legal bases.

xxx xxx xxx

The witness elaborated that prior to the issuance of RMC No. 39-2010, the tax base for VAT purposes of HMOs such as petitioner, comprised only of twenty percent (20%) of their actual gross receipts or total enrollment fees/premiums as the eighty percent (80%) of such gross receipts was earmarked for medical/hospital utilization expenses. The witness claimed that this is consistent with Section 11 of BIR RR No. 4-2007, which provides that the gross receipts for VAT purposes do not include amounts earmarked for payment to unrelated third (3rd) party or received as reimbursement for advance payment on behalf of another which do not redound to the benefit of the payor. This view likewise finds support in BIR Ruling Nos. DA-(VAT-019) 121-08, DA-(C-032) 122-08 and DA-(VAT-026) 375-08 which provide that only twenty percent (20%) of the enrollment fees or premiums shall be considered as gross receipts for purposes of computing VAT considering that HMOs act only as intermediaries between the purchaser of health care services known as members and the healthcare providers for a fee like hospitals and clinics."[13] (*Underscoring supplied; citations omitted*)

In other words, what the witness conveniently excluded from his testimony was that the VAT ruling was revoked shortly after it was issued. Accordingly, it was no longer valid when the:

- VAT Assessment Notice was received on May 18, 2011.
- Petition for Review was filed with the CTA in division on March 13, 2012
- Trial was conducted in 2012 where Mr. Gines testified *under oath to tell the whole truth.*

No credible evidence was presented by Maxicare apart from its own employee, Mr. Gines, whose testimony was self-serving and *incomplete* through the omission of the foregoing material fact.

[13] Decision, pp. 5-6, Rollo (CTA EB No. 1312) Vol. I, pp. 58-59.

Fourth, the recent *Medicard* case invoked by Maxicare ruled that for "purpose of determining the VAT liability of an HMO, the amounts earmarked and actually spent for medical utilization of its members should not be included in the computation of its gross receipts."[14]

In this connection, the Supreme Court also made a finding that the HMO was able to establish that upon receipt of the payment of membership fee it *actually* issued two official receipts, one pertaining to the portion subject to VAT and another to the amount not subject to VAT pertaining to the amount earmarked for medical utilization:

> "Before the Court, the parties were one in submitting the legal issue of whether the amounts MEDICARD earmarked, corresponding to 80% of its enrollment fees, and paid to the medical service providers should form part of its gross receipt for VAT purposes, after having paid the VAT on the amount comprising the 20%. It is significant to note in this regard that MEDICARD established that upon receipt of payment of membership fee it actually issued two *official receipts*, one pertaining to the VATable portion, representing compensation for its services, and the other represents the non-vatable portion pertaining to the amount earmarked for medical utilization. Therefore, the absence of an actual and physical segregation of the amounts pertaining to two different kinds of fees cannot arbitrarily disqualify MEDICARD from rebutting the presumption under the law and from proving that indeed services were rendered by its healthcare providers for which it paid the amount it sought to be excluded from its gross receipts." (Underscoring supplied)

As discussed, Maxicare failed to present credible evidence to prove that, out of the total amount it received as enrollment fees, 80% pertains to those earmarked and *actually* spent for medical utilization. On this significant point, the holding in *Medicard* clearly cannot be applied to the case at bench.

On this point, the Amended Decision penned by our Presiding Justice, stated that Maxicare could not be faulted for this deficiency in evidence, specifically:

> "Review of the records, however, disclosed the absence of evidence proving the earmarking of the 80% enrollment fees and the actual payment of the earmarked amount to the medical service providers. Maxicare did not present the copies of the official receipts it issued to its members, and the sales invoice and official receipts issued by the said medical service providers to Maxicare.
>
> **Maxicare, however, could not be faulted for this deficiency in evidence as both parties proceeded on a mistaken belief that the issue involved in this case is purely legal, and does not concern the**

[14] Underscoring supplied.

> **substantiation of the earmarked amounts.** This circumstance is apparent in the parties' Joint Stipulation of Facts with Manifestation and Motion filed on September 4, 2012, where the following issues were identified by them." (*Underscoring supplied and citations omitted*)

I respectfully disagree. As a rule, a judicial admission in the joint stipulation is binding on the declarant. This rule is subject to the exception when there is a showing that the admission was made through palpable mistake or that no such admission was made.[15] However, the records of the case do not show that Maxicare or the CIR made a mistake in their stipulations. The May 8, 2017 Decision even highlighted the fact that during the trial Maxicare was given all the opportunity to present its case but failed to do so despite said opportunity:

> "***Fifth,*** Maxicare's position which calls for the exemption of its receipts from VAT must be proven beyond bare allegations considering that tax exemptions are construed strictly against the taxpayer. During the trial, Maxicare has had ample time to adduce relevant evidence in support of its position on the amounts earmarked as medical/hospital utilization expenses. It failed to do so during the presentation of evidence and when its eleventh-hour attempt to reopen trial, after filing its memorandum, was denied by the Court below." (Citations omitted and underscoring supplied)

What is apparent is that Maxicare, since 2008, has already exploited several means to avoid VAT liability and to delay the collection of tax that is justly due to the government --- by hastily securing a favorable ruling, which was subsequently revoked; by invoking the same ruling to support its position in the pleadings filed before this Court and the Court in Division; and, by failing to disclose the revocation of the ruling to the very Court before whom it seeks redress.

If the case were to be remanded and reopened for trial to accommodate the presentation Maxicare's evidence, Maxicare will have *once again* taken advantage of the technicalities of law to serve its end--- at the expense of the government.

Fifth, the issue raised by Maxicare with respect to the imposition of deficiency interest on VAT and the simultaneous imposition with delinquency interest has been thoroughly addressed in the Separate Concurring Opinion of J. Ringpis-Liban to the May 8, 2017 Decision.

Finally, the arguments against the application of the extended ten-year prescription have already been discussed and ruled upon by the Court in the

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[15] *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 134467, November 17, 1999.

assailed decision and no new points of merit were raised by Maxicare to justify reversal of my position.

Accordingly, in view of the foregoing, there is no cogent reason to modify or disturb the findings of the Court in the assailed decision.

JUANITO C. CASTAÑEDA, JR.
Associate Justice