

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL
REVENUE,

Petitioner,

C.T.A. EB NO. 271
(C.T.A. Case No. 7029)

Present:

-versus-

Acosta, P.J.
Castañeda, Jr.
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, JJ.

PHILIPPINE AIRLINES, INC. (PAL),
Respondent.

Promulgated:

JUL 19 2007 *Gustapina*

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DECISION

BAUTISTA, J.:

The Case

Before the Court *En Banc* is a Petition for Review filed by the Commissioner of Internal Revenue, pursuant to Section 18 of Republic Act No. 9282, seeking the reversal of:



1. the Decision of the Second Division of this Court ("Court in Division") rendered on August 22, 2006 which granted herein respondent's Petition for Review, thereby canceling Assessment No. INC-FY-99-2000-000085 and Formal Letter of Demand for the payment of deficiency Minimum Corporate Income Tax ("MCIT") in the amount of ₱326,778,723.35; and
2. the Resolution of the Court in Division dated January 30, 2007, denying herein petitioner's Motion for Reconsideration.

Antecedent Facts

The material antecedents that precipitated the instant petition are summarized by the Court in Division as follows:

"In their 'Joint Stipulation of Facts', the parties stipulated as follows:

1. Petitioner PHILIPPINE AIRLINES, INC. (PAL)¹ is a domestic corporation organized in accordance with the laws of the Republic of the Philippines with principal office at the 9th Floor, PAL Center, Legaspi St., Legazpi Village, Makati City, where it may be served with summons.

2. Respondent² is the Commissioner of the Bureau of Internal Revenue (BIR), which is the government agency in charge of the assessment and collection of all national internal revenue taxes, fees, and charges, including the 2% Minimum Corporate Income Tax Return (MCIT), imposed under Sec. 27(E) of the National Internal Revenue Code (NIRC), with principal office at the BIR National Office Building, Agham Road, Diliman, Quezon City, where he may be served with summons.

3. For the fiscal year ended March 31, 2000, petitioner filed on July 17, 2000 its Tentative Corporate Income Tax Return, showing a creditable tax withheld for the fourth quarter amounting to PHP524,957.00, a copy of which is attached to the Petition for Review as Annex "A".

4. The income tax return of petitioner reflected a zero taxable income for fiscal year ending March 31, 2000.

5. Petitioner did not pay MCIT for the fiscal year ending March 31, 2000.

6. Revenue Memorandum Circular No. 66-2003 dated October 14, 2003 exists.

7. Revenue Regulations No. 9-98 exists.

¹ Herein respondent.

² Herein petitioner.



8. On July 16, 2001, petitioner also filed with the office of the respondent a written claim for refund, copy of which is attached to the Petition for Review as Annex "D".

9. On September 10, 2001, petitioner received Letter of Authority No. 200000002247 from the BIR Large Taxpayers Service, dated September 3, 2001, authorizing the revenue officers named therein to examine petitioner's books of accounts and other accounting records for 'Claim for Refund on Creditable Withholding Tax — Income Tax' for the fiscal year ending March 31, 2000. Attached to said letter of authority is a letter from Group Supervisor Ramoncito M. Ona, dated September 10, 2001, requesting petitioner to prepare and submit the documents enumerated therein within ten (10) days from receipt thereof. A copy of the letter of authority and the letter attached thereto are attached to the Petition for Review as Annexes "E" and "E-1".

10. On September 25, 2001, petitioner submitted partial documents mentioned in the accompanying letter dated September 24, 2001, a copy of which is attached to the Petition for Review as Annex "F".

11. On January 16, 2002, petitioner received another letter from Group Supervisor Ona, dated January 10, 2002, requesting the preparation and submission of additional documents enumerated therein, within ten (10) days from receipt thereof. A copy of the aforementioned letter is attached to the Petition for Review as Annex "G".

12. On January 31, 2002 petitioner filed with the office of Group Supervisor Ona a letter, a copy of which is attached to the Petition for Review as Annex "H", requesting for an extension of time to submit the additional documents requested by the latter.

13. On March 18, 2002, petitioner received another letter from Group Supervisor Ona, dated February 26, 2002, labeled "Second Request For Presentation Of Records". A copy of said letter is attached to the Petition for Review as Annex "I".

14. On April 10, 2002, petitioner partially submitted to the Group Supervisor through a letter dated April 4, 2002, a copy of which is attached to the Petition for Review as Annex "J", photocopies of validated Monthly Remittance Return of Income Taxes Withheld and Annual Information Return of the withholding agents enumerated therein.

15. On November 8, 2002 petitioner received a letter from Revenue officer Edalyn T. Dayacap dated October 18, 2002, requesting for additional documents enumerated therein.

On the same date, petitioner received also a letter from Chief LT Audit & Investigation Division I Aida N. Florencio, dated October 26, 2002 and labeled 'Final Notice', requesting for the presentation of the documents listed in their previous request. A copy of the letter from Revenue Office Dayacap and from Chief Florencio are attached to the Petition for Review as Annexes "K" and "L", respectively.

16. On June 24, 2003, petitioner submitted to Group supervisor Ona, through a letter dated June 23, 2003, a copy of which is attached to the Petition for Review as Annex "M", additional documents described therein.

17. On July 16, 2003 petitioner received from the revenue officers examining its accounting records, a "Summary of Creditable Withholding Tax at Source Certified by RAD Fiscal Year Ending March 31, 2000", together with a computation labeled "Compromise Penalties for Late



Filing of Return". A copy of the 'Summary' and the computation of compromise penalties are attached to the Petition for Review as Annexes "N" and "O", respectively.

On the same date, petitioner received a letter from Chief, LT Audit & Investigation Division I Armi S. Linsangan, dated July 8, 2003, informing the petitioner that the results of the investigation of its claim for refund on creditable withholding tax for fiscal year March 31, 2000 had already been submitted, and that the petitioner is requested to come to their office on July 17, 2003 for an informal conference. A copy of said letter is attached to the Petition for Review as Annex "P".

18. On August 11, 2003, petitioner received from the same revenue officers a computation of their initial deficiency Minimum Corporate Income Tax (MCIT) assessment amount to PHP537,77,867.64, a copy of which is hereto attached to the Petition for Review as Annex "Q".

19. On October 20, 2003, petitioner received a Preliminary Assessment notice and Details of Assessment issued by the Large Taxpayers Service, dated September 22, 2003, assessing petitioner deficiency MCIT including interest, the details of which as shown in said letter are quoted hereunder as follows:

'Revenue	P27,277,000,000.00
Less: Cost of services	17,392,118,799.00
Gross Income	P9,884,881,201.00
Add: Deduct: Non-operating Income	(273,742,279.00)
Total Gross Income for MCIT purposes	P9,611,138,922.00
Rate of tax	2%
Tax Due	P 192,222,778.44
Add: 20% Interest fr. 8-16-00 to 10-31-03 (.64167)	123,343,590.24
TOTAL AMOUNT DUE	P 315,566,368.68'
	=====

A copy of the Preliminary Assessment Notice and the Details of Assessment are attached to the Petition for Review as Annexes "R" and "R-1", respectively.

20. On December 16, 2003, petitioner received a Formal Letter of Demand and Details of Assessment from the Large Taxpayers Service, dated December 1, 2003, demanding the payment of the total amount of PHP326,778,733.35, the details of which as shown in said letter are quoted hereunder as follows:

Assessment No. INC-FY-99-2000-000085	
Revenue	P27,277,000,000.00
Less: Cost of services	17,392,118,799.00
Gross Income	P 9,884,881,201.00
Add: Deduct: Non-operating Income	(273,742,279.00)
Total Gross Income for MCIT purposes	P9,611,138,922.00
Rate of Tax	2%
Tax Due	P 192,222,778.44



Add: 20% Interest fr. 8-16-00 to 2-16-04 (.7)	134,555,944.91
TOTAL AMOUNT DUE	P 326,778,723.35
	=====

A copy of respondent's December 1, 2003 Formal Letter of Demand and the Details of Assessment are attached to the Petition for Review as Annexes "T" and T-1", respectively.

21. On January 13, 2004, petitioner filed a formal written protest dated January 8, 2004, addressed to the respondent protesting the PHP326,778,723.35 assessment contained in its December 1, 2003 formal letter of demand, reiterating its defenses that PAL is exempt from, or is not subject to, the 2% MCIT by virtue of its charter, PD 1590, and that the three-year period allowed by law for the BIR to assess deficiency internal revenue taxes for the taxable fiscal year ending March 31, 2000 had already lapsed on July 15, 2003. A copy of the petitioner's January 8, 2004 formal written protest is attached to the Petition for Review as Annex "U".

In his answer, respondent alleged by way of special and affirmative defenses that petitioner is liable for the computed deficiency MCIT of P326,778,723.35 under Section 27 (E) of the Tax code, and Revenue Memorandum Circular No. 66-2003, dated October 14, 2003; that Revenue Memorandum Circular No. 66-2003 did not alter, modify or amend the intent of the law insofar as the imposition of the MCIT is concerned; that issues and defenses not raised in the administrative level cannot be raised for the first time on appeal; and that the assessment was issued in accordance with existing law and regulations.

Petitioner presented Ms. Evelyn Taghap, its Manager for Tax Division, as witness, and documentary evidence, marked as Exhibits 'A' to 'V', inclusive of submarkings.

On the other hand, at the hearing on October 5, 2005, counsel for respondent manifested that she is dispensing the presentation of her evidence and submitted the case for decision.

Thereafter, both parties were ordered to file their respective memoranda within thirty (30) days from notice. Both parties having complied thereto, the case was deemed submitted for decision on January 16, 2006."³

The Ruling of the Court in Division

In a Decision promulgated on August 22, 2006, the Court in Division granted herein respondent's Petition for Review and ordered the cancellation and withdrawal of Assessment 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.

³ Pages 2 to 8. Assailed Decision.



According to the Court in Division, it is clear that under Section 13 of Presidential Decree ("P.D.") No. 1590,⁴ herein 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. Respondent opted to pay the corporate income tax for the fiscal year ending March 31, 2000 as shown by its Annual Income Tax Return and Amended Corporate Income Tax Returns. Hence, the basic corporate income tax shall be based on respondent's annual net taxable income computed pursuant to Section 27 of the National Internal Revenue Code ("NIRC") of 1997, as amended. The income tax return of respondent reflected a zero taxable income for the fiscal year ending March 31, 2000.

The Court in Division further held that the basic corporate income tax mentioned in Section 13 of P.D. No. 1590 does not refer to the MCIT under Section (E) of the 1997 NIRC. Rather, it particularly refers to the applicable rate of 32% income tax, under Section 27 (A) of the same Code, on the taxable income of domestic corporations. The tax base thereof is respondent's annual net taxable income. In contrast, the MCIT is based on the gross income of a corporation. Thus, the MCIT qualifies as "other taxes" from which respondent is exempt.

The *fallo* of the aforementioned Decision reads as follows:

"WHEREFORE, premises considered, the present Petition For Review is hereby **GRANTED**. Accordingly, Assessment No. INC-FY-99-2000-000085 and Formal Letter of Demand for the payment of deficiency Minimum Corporate Income Tax in the amount of P326,778,723.35 are hereby **CANCELLED** and **WITHDRAWN**.

SO ORDERED."

⁴ An Act Granting a New Franchise to Philippine Airlines, Inc. to Establish, Operate, and Maintain Air-Transport Services in the Philippines and Between the Philippines and Other Countries.



Dissatisfied, herein petitioner filed a Motion for Reconsideration on September 7, 2006, which was denied for lack of merit by the Court in Division in its Resolution promulgated on January 30, 2007.

Hence, the present recourse.

The Issues

In his Petition for Review, petitioner raises the following issues:

1. Whether or not the Honorable Division erred in holding that MCIT is properly categorized as "other taxes" pursuant to respondent's Charter; and
2. Whether or not the Honorable Division erred in ruling that respondent is not liable for the deficiency 2% MCIT for the fiscal year ending March 31, 2000.

Petitioner's Arguments

Petitioner insists that respondent is actually liable for the subject deficiency MCIT. Since respondent opted to pay the corporate income tax instead of the franchise tax, it is covered by the provisions of Title II of the same Code. If covered by the Income Tax provision, it follows that the MCIT provision shall also apply, unless specifically exempted from the application of the law or if the corporation applied for a suspension from the imposition of the MCIT provision which must be approved by the Secretary of Finance. Respondent is not one of the entities specifically exempt from the payment of MCIT nor did it show that it applied for the suspension from the application of the MCIT. Hence, respondent who opted to be covered by the income tax provision is very well covered by the MCIT provision, it being a domestic corporation, and MCIT being a species of income tax.

Petitioner also avers that MCIT is not one of the "other taxes" mentioned in respondent's Charter. It is not sourced from a passive income which need not be included in the computation of the income tax liability nor required to be declared as part of its income. Neither is it similar to an overseas communication tax which is a



business tax. The MCIT is a category of an income tax pursuant to Section 27 (E) (1) of the 1997 NIRC and its implementing regulations, Revenue Regulations ("RR") No. 9-98. The BIR even clarified the taxability of respondent for income tax purposes as well as other franchise grantees similarly situated in Revenue Memorandum Circular ("RMC") No. 66-2003.

Petitioner likewise contends that the MCIT is not an amendment of respondent's Charter but of the NIRC. Since the grant of respondent's Charter, numerous changes have already occurred in the income tax provisions of the NIRC. To apply the Honorable Division's ratiocination to these changes would lead to absurd interpretations. Respondent's obligation to pay the MCIT is not the result of implied amendment of its Charter, but rather the consequence of respondent's option of paying the income tax rather than the franchise tax.

Petitioner further submits that respondent is not only given the privilege to choose between what will give it the benefit of a lower tax, but also the responsibility to pay its share of tax burden. Such is evident in the wordings of Section 22 of Republic Act No. 9337 ("R.A. 9337"), which provides for the abolition of franchise tax of respondent and its liability for the corporate income and value-added taxes of the NIRC, as amended.

Lastly, petitioner posits that a claim for exemption from taxation is never presumed. Respondent failed to show proof of exemption from the coverage of MCIT. Hence, the MCIT assessment should be properly sustained.

Respondent's Counter-arguments

Respondent, in its Comment, asserts that assuming that it opted to be covered by the Income Tax provisions of the NIRC, it does not follow that it is covered by MCIT provisions of the same Code. There is nothing in P.D. No. 1590



which obliges the respondent to pay other taxes, much less the MCIT, in case it suffers a net operating loss. To make the respondent liable for MCIT when it suffers a net operating loss would negate the tax relief granted under Section 13 of its franchise and would render it useless, where respondent is allowed 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.

Respondent also posits that neither is there any provision in Republic Act No. 8424 ("R.A. No. 8424") when it introduced the MCIT effective January 1, 1998, which provides and specifies that the MCIT shall be in addition to the taxes for which respondent is liable. To make the MCIT as introduced by R.A. 8424, one of the taxes for which respondent is liable under P.D. No. 1590, as petitioner insists, is to violate Section 24 of P.D. No. 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.

Respondent further asseverates that since the MCIT is not the basic corporate income tax, nor the 2% franchise tax nor the real property tax mentioned in Section 13 of P.D. No. 1590, then it is logical to conclude that the MCIT belongs to the category of "other taxes" in lieu of which respondent is liable only for said basic corporate income tax, 2% franchise tax and real property tax.

The Ruling of the Court En Banc

The Petition for Review is devoid of merit.

The resolution of the present case hinges on the interpretation of Section 13 of P.D. No. 1590, which states in part:

"SEC. 13. In consideration of the franchise and rights hereby granted, the grantee shall pay to the Philippine Government during the life of this franchise whichever of subsections (a) and (b) hereunder will result in a lower tax:



- (a) **The basic corporate income tax based on the grantee's annual net taxable income** computed in accordance with the provisions of the National Internal Revenue Code; or
- (b) **A franchise tax of two per cent (2%) of the gross revenues** derived by the grantee from all sources, without distinction as to transport or non-transport operations; provided that with respect to international air-transport service, only the gross passenger, mail, and freight revenues from its outgoing flights shall be subject to this tax.

The tax paid by the grantee under either of the above alternatives shall be in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges of any kind, nature, or description imposed, levied, established, assessed, or collected by any municipal, city, provincial, or national authority or government agency, now or in the future, including but not limited to the following:

xxx

xxx

xxx

The grantee, shall, however, pay the tax on its real property in conformity with existing law.

For purposes of computing the basic corporate income tax as provided herein, the grantee is authorized:

- a. To depreciate its assets to the extent of not more than twice as fast the normal rate of depreciation; and
- b. 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." (*Emphasis supplied*)

As correctly pointed out by the Court in Division, under the foregoing provision, respondent is granted the privilege to choose between the two options in the payment of its tax liability to the government, as consideration for the franchise. Naturally, its choice will be that which will result in a lower tax liability and the tax paid is "in lieu of all other taxes" imposed by all government entities in the country. In the instant case, respondent decided to pay the corporate income tax for the fiscal year ending March 31, 2000, pursuant to Section 13 (a) of its franchise as shown by its Annual Income Tax Return and Amended Corporate Income Tax



Returns.⁵ Thus, the basic corporate income tax shall be based on respondent's annual net taxable income computed, pursuant to Section 27 of the 1997, the pertinent portion of which reads:

"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 laws 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%).

In the case of corporations adopting the fiscal-year accounting period, the taxable income shall be computed without regard to the specific date when specific sales, purchases and other transactions occur. Their income and expenses for the fiscal year shall be deemed to have been earned and spent equally for each month of the period xxx."

According to the Court in Division, the income tax return of respondent reflected a zero taxable income for the fiscal year ending March 31, 2000.⁶ Since zero tax liability is lower than the 2% franchise tax, respondent chose a better alternative in availing of the basic corporate income tax as basis for its tax liability to the government. However, petitioner assessed respondent for deficiency MCIT for the same fiscal year.

R.A. No. 8424⁷ introduced in Section 27 (E) of the NIRC, the MCIT of two percent (2%) of the gross income as of the end of the taxable year on a corporation, beginning on the fourth taxable year immediately following the year in which such corporation commenced its business operations, when the minimum income tax is greater than the tax computed under the ordinary corporate rates prescribed in R.A.

⁵ Exhibits "A", "B" and "C-1", pages 10 to 67, CTA Records.

⁶ Exhibit "C-1", pages 64 to 67, CTA Records.

⁷ Otherwise known as the Tax Reform Act of 1997 which amended majority of the provisions of the 1977 NIRC, particularly on Income Taxation.



No. 8424 for the taxable year. The underlying purpose for the MCIT is to impede those corporations which report losses on their operations year by year.⁸ Section 27(E) of the 1997 NIRC provides:

"Sec. 27. Rates of Income Tax on Domestic Corporations. — . . .

(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.

(2) Carry Forward of Excess Minimum Tax. — Any excess of the minimum corporate income tax over the normal income tax as computed under Subsection (A) of this Section shall be carried forward and credited against the normal income tax for the three (3) immediately succeeding taxable years.

(3) Relief from the Minimum Corporate Income Tax Under Certain Conditions. — The Secretary of Finance is hereby authorized to suspend the imposition of the minimum corporate income tax on any corporation which suffers losses on account of prolonged labor dispute, or because of force majeure, or because of legitimate business reverses.

The Secretary of Finance is hereby authorized to promulgate, upon recommendation of the Commissioner, the necessary rules and regulations that shall define the terms and conditions under which he may suspend the imposition of the minimum corporate income tax in a meritorious case.

(4) Gross Income Defined — For purposes of applying the minimum corporate income tax provided under Subsection (E) hereof, the term 'gross income' shall mean gross sales less sales returns, discount and allowances and cost of goods sold. . . ."

The Court *En Banc* finds merit in respondent's contention 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 P.D. No. 1590 which obliges the respondent to pay other taxes, much less the MCIT, in case it suffers a net operating loss. To make the respondent liable for P326,778,723.35 MCIT assessed by petitioner for the fiscal year ending March 31,

⁸ JUSTICE JOSE C. VITUG AND JUDGE ERNESTO D. ACOSTA, TAX LAW AND JURISPRUDENCE 72 (2000).



2000, when it suffered a net operating loss would negate the tax relief granted under Section 13 of its franchise and would render it useless, where respondent is allowed 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. In this connection, the Supreme Court has recently ruled as follows:

"A careful reading of Section 13 rebuts the argument of the CIR that the "in lieu of all other taxes" proviso is a mere incentive that applies only when PAL actually pays something. It is clear that PD 1590 intended to give respondent the option to avail itself of Subsection (a) or (b) as consideration for its franchise. Either option excludes the payment of other taxes and dues imposed or collected by the national or the local government. PAL has the option to choose the alternative that results in lower taxes. It is not the fact of tax payment that exempts it, but the exercise of its option.

Under Subsection (a), the basis for the tax rate is respondent's annual net taxable income, which (as earlier discussed) is computed by subtracting allowable deductions and exemptions from gross income. By basing the tax rate on the annual net taxable income, **PD 1590 necessarily recognized the situation in which taxable income may result in a negative amount and thus translate into a zero tax liability.**

Notably, PAL was owned and operated by the government at the time the franchise was last amended. **It can reasonably be contemplated that PD 1590 sought to assist the finances of the government corporation in the form of lower taxes. When respondent operates at a loss (as in the instant case), no taxes are due; in this instance, it has a lower tax liability than that provided by Subsection (b).**

The fallacy of the CIR's argument is evident from the fact that the payment of a measly sum of one peso would suffice to exempt PAL from other taxes, whereas a zero liability arising from its losses would not. There is no substantial distinction between a zero tax and a one-peso tax liability.

The Court is bound to effectuate the lawmakers' intent, which is the controlling factor in interpreting a statute."⁹ (*Emphasis supplied*)

Moreover, the Court *En Banc* agrees with the ruling of the Court in Division that respondent cannot be held liable to pay the P326,778,723.35 MCIT assessed by petitioner for the fiscal year ending March 31, 2000 as the MCIT is *not* the basic corporate income tax referred to in Section 13 of P.D. No. 1590. This is apparent from the afore-quoted Section 13 of P.D. No. 1590.

⁹ Commissioner of Internal Revenue v. Philippine Airlines, Inc., G.R. No. 160528, October 9, 2006.



Indubitably, the Court in Division correctly explained that the *basic corporate income tax* mentioned in Section 13 of P.D. No. 1590 refers to the 32% income tax¹⁰ on the *taxable income* of domestic corporations under Section 27 (A) of the 1997 NIRC. The tax base thereof, as expressly specified in Section 13 of respondent's franchise, is respondent's *annual net taxable income*. On the other hand, the MCIT under Section 27 (E) (1) is imposed on the *gross income* of a corporation. Thus, since the MCIT is imposed upon gross income, it cannot be made to apply to herein 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*. It is in this sense that the MCIT qualifies as "other taxes" from which the respondent had been granted tax exemption by its franchise.

Corollary thereto, the Court, citing two decisions of the Honorable Court of Appeals, has aptly ruled¹¹ that the MCIT belongs to the category of "other taxes" in the same manner as the 20% final tax imposed on the amount of interest on currency bank deposit and yield on deposit substitutes and the 10% overseas communications tax. Thus:

"The Court of Appeals had likewise ruled that petitioner is exempt from the payment of the 20% final tax on the amount of interest income from its bank deposits because it is, in contemplation of Sec. 13 of P.D. 1590, considered as 'other taxes', thus:

'The evidence show, however, that after computation, the petitioner appears to have no corporate income tax liability, which reasonably explains why the petitioner need not pay any corporate tax as there was nothing at all to pay because there was in fact no tax due to the government during the taxable year involved, after computations in accordance with the NIRC. Since no tax payment was made, is petitioner required, as contended by the respondent, to pay the 2% franchise tax in order to be exempted from the payment of other taxes such as the 20% final withholding tax on interest income being claimed herein by the petitioner? We believe the law does not say so. The provision of Section 13 is explicit and unequivocal. The petitioner-grantee must choose between the two aforementioned

¹⁰ Now 35% pursuant to R.A. No. 9337.

¹¹ *Philippine Airlines, Inc. (PAL) v. Commissioner of Internal Revenue*, C.T.A. Case No. 7010, July 31, 2006, citing *Philippine Airlines, Inc. v. Hon. Court of Tax Appeals and The Commissioner of Internal Revenue*, CA-G.R. SP NO. 67970, September 30, 2003 and *Philippine Airlines, Inc. v. Honorable Court of Tax Appeals and The Commissioner of Internal Revenue*, CA-G.R. SP NO. 69388, November 25, 2003.



alternatives in the payment of its tax liability to the government and its choice must be that which will result in a lower tax liability. Obviously, zero tax liability is lower than the 2% franchise tax; hence, the petitioner chose a better alternative in availing of the basic corporate income tax as basis for its tax liability to the government.

Moreover, the law does not say that to avail of the exemption from payment of all other taxes, there must be, after computation, a tax due coupled with an "actual" payment thereof. The law simply states that the petitioner-grantee must choose between the two alternatives and such choice must be that whichever will result in a lower tax liability. **Any tax paid under either of the two alternatives shall exempt the petitioner-grantee from the payment of the other taxes as the said tax payment is considered by law "in lieu of all other taxes."** In this case, as earlier stated, the petitioner availed of the right and privilege granted to it by law by opting to choose the basic corporate income tax as basis for its tax liability, which however, after considering the factors allowed by law, resulted in a zero tax liability. Such zero tax liability as a result of the exercise of its lawful privilege should not be taken against the petitioner nor deprive it of availment of exemption granted by the law. (Emphasis supplied)

In another case involving a claim for refund of the 10% overseas communications tax filed by the petitioner, the Court of Appeals categorically ruled that the "in lieu of all taxes" clause under Section 13 of petitioner's legislative franchise exempts PAL from all other taxes necessary in the conduct of its business covered by the franchise, except the tax on its real property. The Court of Appeals ruled:

It is likewise erroneous to conclude that "it is mandatory that (the petitioner) must pay its franchise tax of two percent (2%) or to pay its corporate income tax to avail of the incentives provided under the last paragraph that the 'tax paid by the grantee under either of the above alternative shall be in lieu of all other taxes, duties, royalties, registration, license and other fees and charges . . . , regardless of whether or not it suffered a net loss during a particular taxable year." To repeat, the only qualification provided for in the law is the option given to PAL to choose between the tax which will yield the lesser liability. Nothing is said about exemption from other taxes if PAL, choosing the payment of corporate income tax, does not pay income tax at all if the lawmakers intended to provide such a condition, then they would have included such a provision. More importantly, if We were to uphold this interpretation, this would effectively negate the rationale of the law, by stripping PAL of the right given to it by virtue of its franchise to avail of tax incentives, such as the 'in lieu of all other taxes' clause.

The aforementioned rulings are applicable by analogy to the present Petition for Review in view of the following considerations: *First*, Section 13 of its franchise expressly defined the income tax liabilities of the petitioner, consequently, any other tax such as the 20% final tax, the 10% overseas communications tax or the MCIT are considered as 'other taxes' from which it has been granted tax exemption.

Second, if petitioner chooses Section 13 (a) of its franchise and after computation, no income tax appears to be due from petitioner, it is not mandatory for petitioner to pay its franchise tax of 2% of its gross revenues under option (b) of Section 13 before it could avail of its tax exemption under the 'in lieu of all other taxes' clause in its franchise. Otherwise, petitioner will be deprived of the right to choose the income tax option it desires, which right has been clearly granted to it by its franchise. Similarly, the imposition of the MCIT



will also negate petitioner's right to choose the income tax option that will result to a lesser income tax liability thereby defeating the tax incentives expressed in petitioner's franchise." (*Citations omitted*)

Notably, the High Court recently affirmed the ruling of the Honorable Court of Appeals that the category of "other taxes" in Section 13 of PD No. 1590 includes the 20% final withholding tax on bank deposits.¹²

Furthermore, Section 27 (E) of the 1997 NIRC on MCIT did not repeal respondent's franchise since the 1997 NIRC is a general law whereas P.D. No 1590 is a special law. It is axiomatic that a general law cannot impliedly repeal, alter or amend a special law.¹³ "A subsequent statute, general in Charter as to its terms and application, is not to be construed as repealing a special or specific enactment, unless the legislative purpose to do so is manifested. This is so even if the provisions of the latter are sufficiently comprehensive to include what was set forth in the special act."¹⁴ Neither can RMC No. 66-2003 amend respondent's franchise as it is merely an administrative issuance.

More importantly, there is no provision in R.A. No. 8424 when it introduced the MCIT effective January 1, 1998, which provides and specifies that the MCIT shall be in addition to the taxes for which respondent is liable. To make the MCIT as introduced by R.A. 8424, one of the taxes for which respondent is liable under P.D. No. 1590, as petitioner insists, is to violate Section 24 of P.D. No. 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. In the absence of a law expressly repealing P.D. No. 1590 at the time the subject assessment was issued and for the period covered by the assessment, respondent's tax exemption privilege under the

¹² *Supra*, note 9.

¹³ *Camacho v. Commissioner of Internal Revenue*, 80 Phil. 848.

¹⁴ *Villegas v. Subido*, G.R. No. L-31711, September 30, 1971, 41 SCRA 190.



"in lieu of all other taxes" clause of Section 13 thereof, must be applied. In this regard, the ratiocination of the Court in C.T.A. Case No. 7010¹⁵ is enlightening, viz:

"Moreover, Section 27 (E) of the 1997 NIRC on MCIT did not repeal petitioner's franchise in view of the following reasons:

1. The 1997 NIRC is a general law whereas P.D. No. 1590 is a special law. There was neither an express nor an implied repeal of P.D. No. 1590. As a rule, a general law cannot impliedly alter, repeal, or amend a special law;
2. There is an express prohibition against implied repeal found in Section 24 of P.D. No. 1590.

A careful perusal of Section 27(E) of the 1997 NIRC reveals that it did not expressly provide that it modifies, amends or repeals the provisions of P.D. No. 1590 pertaining to the tax privileges of petitioner. As held by the Supreme Court, as far back as in the case of *The Manila Railroad Company vs. James J. Rafferty, as Collector of Internal Revenue*, a general law which does not expressly repeal a prior special law will not affect the provisions of the special law, thus:

'Repeals of laws by implication are not favored; and the mere repugnance between two statutes should be very clear in order to warrant the court in holding that the later in time repeals the other, when it does not in terms purport to do so. (Cooley's Constitutional Limitations [6th Ed.], p. 182, and cases cited; Sutherland Stat. Construction, Vol. 1, p. 465 [2d Ed.]; Kinney vs. Mallory, 3 Ala., 626; Banks vs. Yolo County, 104 Cal., 258; People vs. Pacific Import Co., 130 Cal., 442; Reese vs. Western Union etc. Co., 123 Ind., 294; 7 L. R. A., 583; Cope vs. Cope, 137 U. S., 682.)

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In addition to the foregoing, Section 24 of P.D. 1590 expressly provides that petitioner's franchise can only be modified, amended, or repealed "expressly by a special law or decree" that shall specifically modify any section or provision thereof. Therefore, repeal by implication is prohibited. Said section provides:

'SEC. 24. This franchise, as amended, or any section or provision hereof may only be modified, amended, or repealed expressly by a special law or decree that shall specifically modify, amend, or repeal this franchise or any section or provision thereof.'

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The National Internal Revenue Code is a general law, therefore, it cannot impliedly repeal petitioner's franchise which is a special law. In upholding the precedence of a special law over a general law, the Supreme Court ruled as follows:

'When there appears to be an inconsistency or conflict between two statutes and one of the statutes is a general law, while the other is a special law, then repeal by implication is not the primary rule applicable. The following rule should principally govern instead:

¹⁵ *Supra*, Note 8.



Specific legislation upon a particular subject is not affected by a general law upon the same subject unless it clearly appears that the provisions of the two laws are so repugnant that the legislators must have intended by the later to modify or repeal the earlier legislation. The special act and the general law must stand together, the one as the law of the particular subject and the other as the general law of the land. (*Ex Parte United States*, 226 U. S., 420; 57 L. ed., 281; *Ex Parte Crow Dog*, 109 U. S., 556; 27 L. ed., 1030; *Partee vs. St. Louis & S. F. R. Co.*, 204 Fed. Rep., 970.)

Where there are two acts or provisions, one of which is special and particular, and certainly includes the matter in question, and the other general, which, if standing alone, would include the same matter and thus conflict with the special act or provision, the special must be taken as intended to constitute an exception to the general act or provision, especially when such general and special acts or provisions are contemporaneous, as the Legislature is not to be presumed to have intended a conflict. (*Crane v. Reeder and Reeder*, 22 Mich., 322, 334; *University of Utah vs. Richards*, 77 Am. St. Rep., 928.)

It has, thus, become an established rule of statutory construction that between a general law and a special law, the special law prevails — *Generalia specialibus non derogant*.

As previously discussed, Section 27(E) of the NIRC of 1997 did not modify, amend or repeal P.D. No. 1590, *a fortiori*, RMC No. 66-2003 cannot amend PAL's franchise. A scrutiny of the provisions of RMC No. 66-2003 shows that even if PAL suffers losses in its business operations, it is still liable to pay the 2% MCIT based on its gross income. Clearly, this is contrary to the intention of Section 13 of P.D. 1590 allowing petitioner to choose the income tax option that will result to a lesser tax liability as an incentive for undertaking a line of business impressed with public service. It went beyond interpreting the law it seeks to implement. 'Although it is widely accepted that the interpretation placed upon a statute by the executive officers, whose duty is to enforce it, is entitled to great respect by the courts, this interpretation is not conclusive and will have to be ignored if judicially found to be erroneous and clearly absurd or improper. An administrative issuance that overrides the law it merely seeks to interpret, instead of remaining consistent and in harmony with it, will not be countenanced by this Court.' It is only the legislature that has the prerogative to alter or modify the terms of any previously granted franchise." (*Citations omitted*)(*Emphasis supplied*)

Lastly, the Supreme Court's disquisition on this matter is explicit, thus:

"While the Court recognizes the general rule that the grant of tax exemptions is strictly construed against the taxpayer and in favor of the taxing power, **Section 13 of the franchise of respondent leaves no room for interpretation.** Its franchise exempts it from paying any tax other than the option it chooses: either the "basic corporate income tax" or the two percent gross revenue tax.

Determining whether this tax exemption is wise or advantageous is outside the realm of judicial power. This matter is addressed to the sound

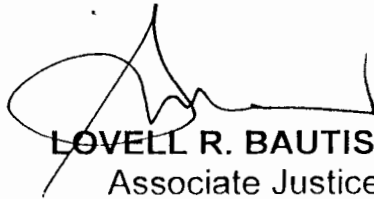


discretion of the lawmaking department of government."¹⁶ (*Emphasis supplied*)

In the light of the foregoing discussion, the Court *En Banc* finds no reversible error committed by the Court in Division that would warrant a reversal of the assailed Decision promulgated on August 22, 2006 and the Resolution dated January 30, 2007.

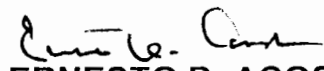
WHEREFORE, the Petition for Review is hereby **DISMISSED**. Accordingly, the assailed Decision and Resolution are hereby **AFFIRMED**.

SO ORDERED.



LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:



ERNESTO D. ACOSTA
Presiding Justice



JUANITO C. CASTAÑEDA, JR.
Associate Justice



ERLINDA P. UY
Associate Justice

(On Leave)
CAESAR A. CASANOVA
Associate Justice

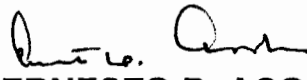


OLGA PALANCA-ENRIQUEZ
Associate Justice

¹⁶ Commissioner of Internal Revenue v. Philippine Airlines, Inc. G.R. No. 160528, October 9, 2006.

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 this Court.


ERNESTO D. ACOSTA
Presiding Justice