Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

LAPANDAY FOODS CORPORATION,
Petitioner,

- *versus* -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

G.R. No. 186155

Present:

GESMUNDO, *C.J.,*
Chairperson,
HERNANDO,
ZALAMEDA,
ROSARIO, and
MARQUEZ, *JJ.*

Promulgated:
JAN 17 2023

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DECISION

HERNANDO, *J.*:

The Value-Added Tax (VAT) applies to the sale of services[1] in the course of trade or business which includes transactions incidental thereto.[2] It does not follow that an isolated transaction cannot be an incidental transaction for purposes of VAT liability.[3] However, it must be clearly established that the transaction in question must be related or connected with the conduct of the main business activity which is subject to the VAT.

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[1] NATIONAL INTERNAL REVENUE CODE ("Tax Code"), Section 108.
[2] NATIONAL INTERNAL REVENUE CODE, Section 105.
[3] *Mindanao II Geothermal Partnership v. Commissioner of Internal Revenue*, 706 Phil. 48, 87-88 (2013).

Before the Court is a Petition for Review[4] under Rule 45 of the Rules of Court filed by petitioner Lapanday Foods Corporation (Lapanday) seeking the reversal and setting aside of the January 29, 2009 Decision[5] of the Court of Tax Appeals (CTA) *En Banc* in C. T. A. EB No. 367. The CTA *En Banc* Decision affirmed the October 18, 2007 Decision[6] and the February 4, 2008 Resolution[7] of the CTA First Division in C. T. A. Case No. 7097. The CTA Division cancelled the assessments for deficiency Expanded Withholding Tax (EWT) and Documentary Stamp Tax (DST) but affirmed the assessment for deficiency VAT issued by the Bureau of Internal Revenue (Bureau) against Lapanday.

The Antecedents

Petitioner Lapanday is a domestic corporation duly organized and existing under the laws of the Philippines, and is engaged in rendering management services.[8] Respondent Commissioner of Internal Revenue (CIR), on the other hand, is authorized by law, among others, to issue assessments for deficiency taxes.

On January 21, 2004, the Bureau assessed Lapanday for deficiency taxes covering the taxable year 2000:

(1) VAT in the amount of PHP 8,561,775.88;

(2) EWT in the amount of PHP 374,749.21;

(3) Final Withholding Tax (FWT) in the amount of PHP 5,815,233.36; and

(4) DST in the amount of PHP 1,578,579.59.[9]

Lapanday protested the assessment and, after due proceedings, the Bureau rendered a Final Decision on Disputed Assessment (FDDA)[10] cancelling the FWT and maintaining the assessment for VAT, DST, and EWT with the following adjustments:[11]

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4 *Rollo*, pp. 12-55.

5 Id. at 57-75. Penned by Associate Justice Olga Palanca-Enriquez and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, and Caesar A. Casanova.

6 Id. at 313-326. Penned by Associate Justice Caesar A. Casanova and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justice Lovell R. Bautista.

7 Id. at 388-390.

8 Id. at 59.

9 Id. at 59-60.

10 Id. at 60; dated October 28, 2004.

11 Id.

	VAT	EWT	DST	TOTAL
Basic Tax	[PHP]3,473,772.15	[PHP]231,993.64 [sic]	[PHP]289,824.30	[PHP]3,995,590.09
Surcharge (50%)	[PHP]1,736,886.07			[PHP]1,736,886.07
Interest (20%)	[PHP]2,668,953.62	[PHP]178,243.15	[PHP]225,057.17	[PHP]3,072,235.94
Total	[PHP]7,879,593.84	[PHP] 410,236.79	[PHP] 514,881.47	[PHP]8,804,712.10[12]

Aggrieved, Lapanday appealed before the CTA. The case was docketed as CTA Case No. 7097 and raffled to the CTA First Division. Lapanday questioned the timeliness and the bases of the assessment issued against it. The CIR answered that the assessment was made within the prescriptive period pursuant to Section 222(a), in relation to Sec. 248 of the National Internal Revenue Code (NIRC); that pursuant to Sec. 105 of the NIRC, Lapanday is liable for VAT on its interest income from inter-company loans it extended to affiliates as a form of financial assistance in the course of its trade or business; that it is liable for EWT under Sec. 2.57.2(B) of Revenue Regulation (RR) 2-98; and that it is also liable for DST for the loan agreements it made with its affiliates pursuant to Sec. 180 of the NIRC.[13]

Ruling of the CTA Division

The CTA Division cancelled the assessments for deficiency EWT and DST but sustained the assessment for VAT. In upholding the assessment for VAT, the CTA Division relied on Sec. 105 of the NIRC which defines the phrase "in the course of trade or business" as including transactions incidental thereto. Finding that Lapanday is primarily "engage[d] in the managing, promoting, administering, or assisting in any business or activity of corporations, partnerships, association, individual or firms," [14] the tax court held that the loans granted to the affiliates of Lapanday are transactions incidental to the latter's business of providing assistance to its affiliates.[15]

On the issue of prescription, the CTA Division held that the assessment for deficiency VAT corresponding to the second and third quarters of 2000 had already prescribed, pursuant to Sec. 203[16] of the NIRC which provides for the three-year prescriptive period of assessment counted from the date of actual

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[12] Id.
[13] Id. at 61.
[14] Id. at 318.
[15] Id.
[16] SEC. 203. *Period of Limitation Upon Assessment and Collection.* – Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period; Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

filing of the return or from the last date prescribed by law for the filing of such return, whichever comes later. The court summarized the prescriptive periods as follows:[17]

Returns Filed	Reference	Date Filed	Last Day to File Return	Last Day to Assess
Monthly VAT Declaration (BIR) Form 2550M for March 2000	Exhibit C	April 25, 2000		
Quarterly VAT Returns (BIR Form 2550Q				
1st qtr-amended	Exhibit C-4	Sept. 4, 2001	April 25, 2000	Sept. 3, 2004
2nd quarter	Page 633, BIR Rec.	July 25, 2000	July 25, 2000	July 25, 2003
3rd quarter	Page 632, BIR Rec.	Oct. 25, 2000		
3rd qtr-amended	Page 631, BIR Rec.	Nov. 24, 2000	Oct. 25, 2000	Nov. 24, 2003
4th quarter	Page 630, BIR Rec.	Jan. 25, 2001	Jan. 25, 2001	Jan. 26, 2004[18]

The tax court, however, affirmed the timeliness of the assessment for the first quarter of 2000. It brushed aside Lapanday's contention that the amendment made in the amended return filed on September 4, 2001 is not substantial. The tax court observed that while both returns showed the same amounts of VAT payable, they are not the same because in the original return that was filed, which is a Monthly VAT Declaration (BIR Form 2550M), the reported figures are only for the month of March, while in the amended return, a Quarterly VAT Return (BIR Form 2550Q), the figures show accumulated sales for the months of January, February, and March 2000.[19]

The CTA Division, thus, concluded that only the VAT assessments corresponding to the first and fourth quarters of 2000 were timely issued.[20] The dispositive portion of its decision reads:

> WHEREFORE, the Petition for Review is granted as regards the assessment for deficiency EWT and DST for the taxable year 2000. The deficiency EWT and DST assessments for the respective amounts of [PHP]410,236.79 and [PHp]514,881.47 are hereby CANCELLED and WITHDRAWN for lack of basis.
>
> However, the assessment for deficiency VAT is AFFIRMED. Petitioner is liable to pay deficiency VAT in the amount of [PHP]3,464,253.56, computed as follows:
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> Undeclared Gross Receipts:
> 1st Quarter [PHP]8,043,381.56
> 4th Quarter [PHP]9,120,744.31

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17 *Rollo*, p. 320.
18 Id.
19 Id. at 320-321.
20 Id. at 322.

Total	[PHP]17,164,125.87
Deficiency Output Vat Due	[PHP]1,716,412.59
Add: 25% Surcharge	429,103.15
Interest (1-26-01 to 11-29-04)	1,318,737.82
Total Amount Due	[PHP]3,464,253.56

In addition, petitioner is liable to pay 20% delinquency interest in the amount of [PHP] 3,464,253.56 computed from November 29, 2004 until full payment thereof pursuant to Section 249(C)(3) of the Tax Code.[21]

Ruling of the CTA *En Banc*

After its motion for partial reconsideration was denied by the CTA Division,[22] Lapanday appealed to the CTA *En Banc*, raising the following issues:

I

THE FIRST DIVISION ERRED IN FINDING THAT THE RESPONDENT'S RIGHT TO ASSESS PETITIONER FOR DEFICIENCY VAT FOR THE FIRST QUARTER OF 2000 HAS NOT PRESCRIBED.

II

THE FIRST DIVISION ERRED IN FINDING THAT THE INTEREST ON LOANS EXTENDED TO AFFILIATES IS SUBJECT TO 10% VAT.

III

ASSUMING THAT THE INTEREST ON LOANS TO AFFILIATES IS SUBJECT TO VAT, THE FIRST DIVISION ERRED IN FINDING THAT THE VAT PAYABLE IS EQUIVALENT TO 10% OF THE GROSS RECEIPTS, NOT 1/11 OF GROSS RECEIPTS AS PROVIDED UNDER SECTION 108(C) OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED BY REPUBLIC ACT NO. 8424 ("TAX CODE").[23]

On the first issue, the CTA *En Banc* affirmed the CTA Division in holding that the assessment made on January 21, 2004 covering the first quarter of 2000 has not yet prescribed. Applying Sec. 203 of the NIRC, the tax court considered the quarterly VAT return of Lapanday for the first quarter of 2000 as belatedly filed on September 4, 2001, in which case the reckoning of the three-year prescriptive period for assessment shall be such date of actual filing of the return and not the deadline prescribed by law for the filing of said return. It did not consider April 25, 2000 as the starting point of the three-year period because the return filed on such date, which is also the deadline for the filing

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[21] Id. at 58.
[22] Id. at 61.
[23] Id. at 62.

filing of the quarterly VAT return for the first quarter of 2000, was not a quarterly VAT return but merely a monthly VAT declaration for the month of March 2000.

On whether the interest on the loans are subject to VAT, the CTA En Banc ruled for their taxability reasoning that in extending loans to its affiliates, Lapanday provided assistance to corporations, and thus performed services incidental to its business. The tax court ratiocinated that if the income from the main business activity is subject to VAT, then the incidental income, such as the interest income from the loans to the affiliates in this case, shall also be subject to VAT. It would not also matter that Lapanday did not realize profit so long as it received a fee, remuneration or consideration for the financial assistance granted to its affiliates.[24]

The CTA *En Banc* also upheld the computation for deficiency VAT by applying the rate of 10% on the gross receipts of Lapanday, instead of 1/11 as claimed by the latter. The reason for this is that Lapanday did not issue any VAT official receipt on the loan transactions from which it can be determined that VAT was included in the interest income collected by Lapanday.[25]

Hence, the present petition of Lapanday raising the following errors allegedly committed by the CTA *En Banc*:

> I. The Court of Tax Appeals erred in holding that the interest on the loans extended by petitioner to its parent company and subsidiaries is subject to VAT.
>
> II. Even if the interest is subject to VAT, the Court of Tax Appeals erred in not holding that the interest on the loans received by petitioner is conclusively presumed to be inclusive of the 10% VAT in accordance with the definition of "gross receipts" under Section 108(A) of the National Internal Revenue Code and, therefore, any deficiency VAT should be computed by multiplying the interest by 1/11.
>
> III. The Court of Tax Appeals erred in holding that the deficiency VAT assessment for the first quarter of 2000 is not barred by prescription.[26]

Issues

The issues may be restated as follows: *(1)* Whether the assessment for the first quarter of 2000 had already prescribed; *(2)* Whether the interest on the loan transactions of Lapanday are subject to VAT; and *(3)* Whether the determinant for VAT deficiency is 1/11 instead of 10%.

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[24] Id. at 68-71.
[25] Id. at 72-73.
[26] Id. at 29.

Our Ruling

We hold that:

(1) The assessment for the first quarter of 2000 had already prescribed; and

(2) The interest on the loans extended by petitioner Lapanday to its affiliates are not subject to VAT.

I.
Prescription had set in to bar the assessment for the first quarter of 2000.

On the issue of prescription, Lapanday, invoking *Commissioner of Internal Revenue v. Phoenix Assurance Co., Ltd. (Phoenix Assurance)*,[27] argues that the prescriptive period for assessment is reckoned from the filing of the original return unless the amended return is substantially different from the original return. In this case, Lapanday points out that the prescriptive period should be counted from April 25, 2000, the date the original VAT return was filed, considering that such return is not substantially different from the amended return filed on September 4, 2001.[28]

On the other hand, the Commissioner stresses that the first return (BIR Form 2550M, or monthly VAT declaration) that Lapanday filed is different from its second return (BIR Form 2550Q, or quarterly VAT return). Essentially quoting the CTA in its decision, the Commissioner argues that it is only and until the VAT-registered taxpayer prepares and submits to the Bureau the quarterly VAT return that one can determine with certainty the net VAT payable or excess input/overpayments. Hence, it is more reasonable for the government to assess the VAT deficiency from the time of the filing of the quarterly VAT return.[29]

We disagree.

The period of prescription for the assessment of national internal revenue taxes is provided in Sec. 203 of the Tax Code, thus –

> **Section 203.** *Period of Limitation Upon Assessment and Collection.* – Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three

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[27] 121 Phil. 832 (1965).
[28] *Rollo*, p. 49.
[29] Id. at 423-443.

(3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.[30]

Under the quoted provision, the reckoning of the three-year prescriptive period for the making of assessment is the *(1)* last day prescribed by the law for the filing of return, or *(2)* the date of actual filing of the return, whichever comes later.

With regard to VAT, every person liable to pay the same is required to submit or file two kinds of return – a monthly VAT declaration and a quarterly VAT return. The pertinent provision of the Tax Code is found in Sec. 114(A), to wit:

Section 114. *Return and Payment of Value-Added Tax.* –

(A) *In General.* – Every person liable to pay the value-added tax imposed under this Title shall file a **quarterly return** of the amount of his [or her] gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: Provided, however, That VAT-registered persons shall pay the value-added tax on a **monthly** basis. (Emphasis supplied)

Likewise, Sec. 4.110-1 of RR 7-95, as amended by RR 8-2002, the prevailing implementing rules at the time of the assessment in this case, provides:

SEC. 4.110-1. *Filing of return and payment of VAT.* –

A) *Filing of Return.* – Every person liable to pay VAT shall pay a quarterly return of the amount of his [or her] quarterly gross sales or receipts *within twenty-five (25) days following the close of the taxable quarter* using the latest version (April 2002 (ENCS) version) of **Quarterly VAT Return** (BIR Form 2550A-April 2002 (ENCS)) hereto attached as Annex "A." The term "taxable quarter" shall mean the quarter that is synchronized to the income tax quarter of the taxpayer (*i.e.*, calendar quarter or fiscal quarter).

Amounts reflected in the **monthly VAT declarations** for the first two (2) months of the quarter shall still be included in the quarterly VAT return which reflects the cumulative figures for the taxable quarter. Payments in the monthly VAT declarations shall, however, be credited in the quarterly VAT return to arrive at the net VAT payable or excess input tax/overpayment as of the end of a quarter. (Emphasis supplied)

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[30] The exceptions to this period of prescription are provided in Section 222: *(a)* In the case of a false or fraudulent return with intent to evade tax or of failure to file a return; and *(b)* In the case of an extended assessment. None of the exceptions apply to the present case.

In accordance with the foregoing rules, the running of the three-year prescriptive period for issuing an assessment for deficiency VAT commences at the last day of the 25-day period from the close of the taxable quarter within which to file the quarterly VAT return, or the date of actual filing of the quarterly VAT return, whichever comes later.

In this case, two important facts come to the fore: *one*, Lapanday filed a monthly VAT declaration (BIR Form 2550M) on **April 25, 2000**, or the last day prescribed by law for the filing of the quarterly VAT return for the first quarter of 2000 and; *two*, Lapanday filed the quarterly VAT return (BIR Form 2550Q) for the said taxable quarter on **September 4, 2001**.

As it had argued before the CTA, petitioner Lapanday claims that the filing of its quarterly VAT return for the first quarter of 2000 using BIR Form 2550M was a mistake. To correct it, Lapanday subsequently filed on September 4, 2001 BIR Form 2550Q which showed the same amount of VAT payable in the previous return. Essentially, the petitioner contends that it introduced a formal amendment only; consequently, the prescriptive period of assessment should be reckoned from the filing of the original return, in line with the doctrine laid down in *Phoenix Assurance*.[31]

The CTA *En Banc*, however, dismissed the contentions of Lapanday. It ruled that the two returns filed by Lapanday are 'distinct and different.' Relying on *Atlas Consolidated Mining and Development Corporation v. Commissioner*[32] (*Atlas*), the tax court said that "it is more practical and reasonable for the government to assess deficiency VAT from the time of the filing of the VAT quarterly return."[33]

Based on its decision, it seems that the CTA *En Banc* has dismissed the significance of the alleged 'amendment' made in the return filed by Lapanday. While Lapanday pushed for the determination on whether the **amendment** made in the second return was 'substantial' or not, the CTA *En Banc* simply dwelt on the **distinction** between a monthly VAT declaration and a quarterly VAT return. The court *a quo* explained:

> Pursuant to [Sec. 114 of the Tax Code], a person liable to pay VAT is required to file a monthly VAT declaration and quarterly VAT return. It is clear from the law that these two returns are distinct and different. A taxable person must submit a monthly VAT declaration form (BIR Form 2550M) for the monthly sales and/or receipts, as basis for paying the value-added tax thereon, within twenty days following the end of the month to which it relates. The declaration must be accomplished only for each of the first two months of each taxable quarter. On the other hand, the Vat return (BIR Form 2550Q) for the quarter must be filed not later than twenty-five days after the close of the taxable quarter. Payments made in monthly VAT declarations shall,

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[31] *Rollo*, pp. 48-51.
[32] 551 Phil. 519 (2007).
[33] *Rollo*, p. 65.

however, be credited to the quarterly Vat return to arrive at the net VAT payable or excess input tax/overpayment as of the end of the quarter. In other words, it is only and until the VAT-registered taxpayer prepares and submits to the BIR the quarterly VAT return, that one can determine with certainty the net VAT payable or excess input/overpayments *(Value-Added Tax, Mamalateo, pp. 412, 415 [2007])*. Thus, it is more practical and reasonable for the government to assess deficiency VAT from the time of the filing of the VAT quarterly return. Thus, in the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, 524 SCRA 73, 94-95*, the Supreme Court ruled:

> It is true that unlike corporate income tax, which is reported and paid on instalment every quarter, but is eventually subjected to a final adjustment at the end of the taxable year, VAT is computed and paid on a purely quarterly basis without need for a final adjustment at the end of the taxable year. However, it is also equally true that until and unless the VAT-registered taxpayer prepares and submits to the BIR its quarterly VAT return, there is no way of knowing with certainty just how much input VAT the taxpayer may apply against its output VAT, how much excess input VAT it may carry over to the following quarter; or how much of its input VAT it may claim as refund/credit. It should be recalled that not only may a VAT-registered taxpayer directly apply against his output VAT due the input VAT it had paid on its importation or local purchases of goods and services during the quarter; the taxpayer is also given the option to either carry over any excess input VAT to the succeeding quarters for the application against its future output VAT liabilities, or (2) file an application for refund or issuance of a tax credit certificate covering the amount of such input VAT. Hence, even in the absence of a final adjustment return, the determination of any output VAT payable necessarily requires that [a] VAT-registered taxpayer make adjustments in its VAT return every quarter, taking into consideration the input VAT which are creditable for the present quarter or had been carried over from the previous quarters.

Corollary to *Section 114, of the NIRC of 1997, as amended*, [and in accordance with] *Section 203 of the same Code* provides:

> x x x the three-year prescriptive period of the right of the government to assess the petitioner should be reckoned from September 4, 2001, the date when petitioner filed its VAT return for the first quarter of 2000, and not from April 25, 2000, the date when petitioner filed its VAT return for the month of March 2000. Accordingly, respondent had until September 4, 2004 to assess herein petitioner. When therefore respondent issued the Formal Assessment Notice against petitioner on January 21, 2004, clearly, it was issued within the three-year prescriptive period and therefore, is not barred by prescription.[34]

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[34] Id. at 64-67.

Lapanday's oft-repeated argument as to the nature of the amendment of its return in this appeal and in the proceedings below compels Us to lay a definitive ruling on the matter. As pleaded by Lapanday, We find that the nature of the amendment of its return is determinative of the prescriptibility of the assessment in question.

In *Phoenix Assurance*,[35] the novel issue posed before this Court was whether the running of the prescriptive period should commence from the date of the filing of the original return or amended return. Ultimately, the answer hinged on whether the amendment was substantial or not. In characterizing the amendment in that case as substantial and pegging the filing of the amended return as the reckoning point of the three-year period of prescription for assessment, the Court ratiocinated in this wise:

> To our mind, the Commissioner's view should be sustained. The changes and alterations embodied in the amended income tax return consisted of the exclusion of reinsurance premiums received from domestic insurance companies by Phoenix Assurance Co., Ltd.'s London head office, reinsurance premiums ceded to foreign reinsurers not doing business in the Philippines and various items of deduction attributable to such excluded reinsurance premiums thereby substantially modifying the original return. Furthermore, although the deduction for head office expenses allocable to Philippine business, whose disallowance gave rise to the deficiency tax, was claimed also in the original return, the Commissioner could not have possibly determined a deficiency tax thereunder because Phoenix Assurance Co., Ltd. declared a loss of [PHP]199,583.93 therein which would have more than offset such disallowance of [PHP]15,826.35. Considering that the deficiency assessment was based on the amended return which, as aforestated, is substantially different from the original return, the period of limitation of the right to issue the same should be counted from the filing of the amended income return. From August 30, 1955, when the amended return was filed, to July 24, 1958, when the deficiency assessment was issued, less than five years elapsed. The right of the Commissioner to assess the deficiency tax on such amended return has not prescribed.
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> To strengthen our opinion, we believe that to hold otherwise, we would be paving the way for taxpayers to evade the payment of taxes by simply reporting in their original return heavy losses and amending the same more than five years later when the Commissioner of Internal Revenue has lost his authority to assess the proper tax thereunder. The object of the Tax Code is to impose taxes for the needs of the government, not to enhance tax avoidance to its prejudice.[36]

It is clear that the amendment contemplated in *Phoenix Assurance* refers to the contents of the return. Here, Lapanday insists that the amendment is not substantial since what was changed was only the form (BIR Form 2550Q/Quarterly VAT Return), and such "amended" return showed the same amount of tax payable as the original return (BIR Form 2550M/Monthly VAT

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[35] Supra note 27.
[36] Id. at 839-840.

Declaration) had indicated. Upon closer examination of the two returns, however, the correction refers not only to the form prescribed by the BIR but also to the contents of the original return. As aptly observed by the CTA Division, the reported figures in the two returns are different. While the Monthly VAT Declaration **(Exhibit C)**[37] filed on April 25, 2000 covered VAT transactions for the month of March 2000 only, the Quarterly VAT Return **(Exhibit C-4)**[38] filed on September 4, 2001 reported the cumulative figures for the months of January to March of 2000. We reproduce the table showing the pertinent figures:

Per BIR Records	Jan. 2000 Page 296	Feb. 2000 Page 295	Mar. 2000 Page 293 **(Exhibit C)**	1st Qtr-2000 Page 294 **(Exhibit C-4)**
Taxable Sales/Receipts	[PHP]3,216,949.10	[PHP]2,133,892.00	[PHP]3,777,173.80	[PHP]9,128,014.90
Output VAT Due	[PHP] 321,694.91	[PHP] 213,389.20	[PHP] 377,717.38	[PHP] 912,801.49
Less: Input VAT	[PHP] 77,337.03	[PHP] 186,336.77	[PHP] 107,304.52	[PHP] 370,978.32
VAT Payable	[PHP] 244,357.88	[PHP] 27,052.43	[PHP] 270,412.86	[PHP] 541,823.17
Less: Monthly VAT Payments-previous two months	-	-	-	[PHP] 271,410.31
VAT Still Payable	[PHP] 244,357.88	[PHP] 27,052.43	[PHP] 270,412.86	[PHP] 270,412.86[39]

It is quite obvious that the contents of the Monthly VAT Declaration filed on April 25, 2000 are incomplete on the supposition that it was not intended to reflect the quarterly VAT transactions as the taxable sales for the months of January and February 2000 are not reported in such return. This notwithstanding, We do not consider the changes made in the Quarterly VAT Return subsequently filed on September 4, 2001 "substantial" as contemplated in *Phoenix Assurance*. Note that in the September 4, 2001 return, the reported sum of [PHP]9,128,014.09 in accumulated taxable sales/receipts reflects the same amount of sales/receipts of each month in the first quarter of 2000. This explains why the identical amount of [PHP]270,412.86, which is the VAT due on the sales in March 2000, appears in the two returns filed by Lapanday as the balance of the VAT payable for the first quarter of 2000 (the VAT due for the months of January and February 2000 were previously paid upon the filing of the monthly declarations for January and February 2000, respectively). As a matter of fact, Lapanday no longer paid any additional VAT when it filed its amended return on September 4, 2001 since it had already paid the total VAT due as of the filing of the original return.[40]

Put simply, whatever changes in the figures reported by Lapanday in its amended return did not amount to a substantial amendment. A substantial

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37 *Rollo*, pp. 122-123.
38 Id. Unpaginated.
39 Id. at 382.
40 Id. at 88.

amendment could have consisted of an increase or reduction of either taxable sales/receipts or input VAT for any of the months of the taxable quarter in question, which would have led also to a corresponding change in the amount of VAT payable for the entire quarter. Notably, there was no such alteration in the monthly figures in this case.

With the monthly taxable sales/receipts unchanged, the Bureau still could have determined the deficiency tax for the first quarter of 2000 **sans the amended return.** It merely had to rely on the April 25, 2000 return, solely or together with the previous two monthly declarations which were all at its disposal, to verify whether there were in fact unreported sales or receipts in the said taxable quarter. The wisdom evoked by *Phoenix Assurance* in reckoning the prescriptive period for assessment from the date of the filing of the amended return is to prevent tax evasion by the devious scheme of initially making false entries in the tax returns (*i.e.*, reporting heavy losses) and amending the same more than three years (previously five years) later when the Commissioner had lost the right to assess the proper taxes. There is hardly any reason to think that what was feared in *Phoenix Assurance* is obtaining in this case.

To reiterate, the accumulated sales/receipts reported in the three monthly declarations for the first quarter of 2000 remained the same. On the basis of the monthly declarations, including the return filed on April 25, 2000, the CIR was afforded sufficient opportunity to make an intelligent computation and determination of Lapanday's VAT liability for the first quarter of 2000.

Atlas*[41] *case not applicable in this case

We do not subscribe to the CTA *En Banc*'s invocation of *Atlas*. To be clear, *Atlas* concerned the reckoning of the two-year prescriptive period for claiming refund or credit of unutilized input VAT attributable to zero-rated sales under Sec. 112 of the Tax Code. The circumstances of that case are radically different from this case which involves an assessment of deficiency taxes. In a claim for refund under Sec. 112, it is the taxpayer who is after the government for a certain sum of money, whereas in an assessment for deficiency taxes, such as in the instant case, it is the government who has a claim against a taxpayer. Thus, the doctrinal value emanating from *Atlas* relating to the prescriptive period for claiming refund or tax credit cannot be appropriately applied to the present case. Moreover, the *Atlas* doctrine in respect to the reckoning of the prescriptive period was abandoned in the subsequent case of *Commission of Internal Revenue v. Mirant Pagbilao Corporation (Mirant)*.[42] *Mirant* was promulgated on September 12, 2008. When the CTA *En Banc* came out with its Decision in this case on January 29, 2009, *Mirant* was already firmly established. The tax court was clearly mistaken in placing doctrinal basis upon

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[41] Supra note 32.
[42] 586 Phil. 712 (2008).

Atlas for its ruling on the issue of prescription.

Given the foregoing, We are convinced that for purposes of assessment, the running of the prescriptive period should commence from the filing of the original VAT return, that is, on April 25, 2000. Correspondingly, the government had until April 25, 2003 within which to assess Lapanday for its transactions in the first quarter of 2000. Since the assessment was made only on January 21, 2004, the Bureau was already barred by prescription.

Thus, what remains is the assessment for deficiency VAT pertaining to the fourth quarter of 2000. However, and as will be discussed below, the same cannot be sustained due to lack of legal basis.

II.

The interest income on the loans granted by Lapanday to its affiliates as financial assistance are not subject to VAT

The basic provision for the VAT taxability of transactions is found in Sec. 105 of the Tax Code. It provides:

> **SEC. 105. Persons Liable.** – Any person who, ***in the course of trade or business***, sells, barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.
>
> The value-added tax is an indirect tax and the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services. This rule shall likewise apply to existing contracts of sale or lease of goods, properties or services at the time of the effectivity of Republic Act No. 7716.
>
> The phrase "***in the course of trade or business***" means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a non-stock, non-profit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.
>
> The rule of regularity, to the contrary notwithstanding, services as defined in this Code rendered in the Philippines by non-resident foreign persons shall be considered as being rendered in the course of trade or business (Emphasis supplied)

There is no question that the loans extended by Lapanday were in favor of its affiliates. The question to be resolved is whether such loans may be considered as having been made in the course of petitioner Lapanday's trade or business. The CTA held so, declaring that the granting of the loans is incidental

to the petitioner's business or managing, promoting, administering or assisting corporations. We quote the CTA *En Banc*:

> Pursuant to [Section 105 of the NIRC], any person who, in the course of his trade or business, sells, barters, exchanges or leases goods or properties, or renders services shall be liable to VAT imposed in *Section 106 or Section 108 of the NIRC of 1997, as amended.*
>
> In the case at bench, petitioner is a domestic corporation engaged in managing, promoting, administering or assisting in any business or activity of corporations, partnerships, associations, individual or firm *(Exhibit "F-1").* **When petitioner extended loans to its affiliates, it provided assistance to corporations, and thus performed services incidental to its business.**
>
> Furthermore, the loan assistance provided by petitioner to its affiliates, being incidental to its business, is deemed a transaction "in the course of trade and business." The phrase "in the course of trade and business" means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereof *(Value-Added Tax, Mamalateo, p. 82 [2007]).* "Incidental" means depending upon or appertaining to something else primary; something necessary appertaining to, or depending upon another, which is termed the principal; something incidental to the main purpose *(Black's Law Dictionary, 6th ed., p. 762).*[43]

Lapanday counters that its loan transactions were not done "in the course of trade or business."[44] Citing *Commissioner of Internal Revenue v. Magsaysay Lines, Inc. (Magsaysay)*,[45] it argues that a transaction would be subject to VAT if done regularly or in pursuit of a commercial or economic undertaking. In its case, it granted only five loans and only on three occasions during the entire year 2000, that is, on April 23, June 18, and July 21. Likewise, the said loans cannot be characterized as a commercial or economic undertaking as they were extended only as an accommodation to its parent company and two subsidiaries. It claims that it used its credit line with a bank to finance the loans and the interest charged to the affiliates was the same as the rate of interest it paid to the bank. Furthermore, it was merely compelled to impose interests on the said loans in order to comply with Revenue Memorandum order (RMO) No. 63-99 which directs the charging of interest on inter-company loans.[46]

Lapanday further cites Revenue Memorandum Circular (RMC) No. 43-2003 which provides that "interest income on loan is not subject to VAT unless the lender is a lending investor, dealer in securities or financial institution" as another basis for the non-taxability of its interest incomes. That there was no finding by the CTA that it is a lending investor confirms this. It also adds that the subject loan accommodations are not embraced in its primary purpose of "assisting" in the business operations of managed companies because such

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[43] *Rollo*, pp. 68-69.
[44] Id. at 31.
[45] 529 Phil. 64 (2006).
[46] *Rollo*, pp. 32-38.

activity (of extending financial assistance or lending money) would require a primary purpose as a lending investor or financial institution, which the petitioner is not.[47] Furthermore, its primary purpose expressly excludes the management of the managed entity's funds, securities, portfolios, and similar assets; thus, its primary purpose in entirety reads:

> [T]o engage in the managing, promoting, administering, or assisting in any business or activity of corporations, partnerships, associations, individual or firms; Provided, however, that it shall not manage the funds, securities, portfolios and similar assets of such managed entities.[48]

Lapanday also opposes the CTA's view that the loan assistance provided to its affiliates is incidental to its business. It contends that the loans, being for accommodation only, cannot be considered as transactions in pursuit of the petitioner's business as a management company. The term "incidental" means depending upon or appertaining to something else primary; however, the loans in this case did not depend upon or appertained to or was in any way related to the rendering of management services.[49]

Lastly, Lapanday harps on the interests being merely passive incomes.[50] It posits that *Commissioner of Internal Revenue v. Court of Appeals and Commonwealth Management and Services Corporation (Comaserco)*[51] relied upon by the CTA is not controlling because in that case, Comaserco was actively and regularly rendering administrative and technical services to its affiliates although the latter were billed on reimbursement-on-cost basis only. Here, however, Lapanday does not habitually lend money to its affiliates. In other words, the factual circumstances in Comaserco are different from this case.[52]

Lapanday further adds that even if the interests are considered subject to VAT, the interests on the loans it received are conclusively presumed to be inclusive of the 10%[53] VAT in accordance with the definition of "gross receipts" under Sec. 108(A) of the NIRC.[54] It claims that while Sec. 108 (C) of the Tax Code provides that the amount indicated in the official receipt should be multiplied by 1/11,[55] it should not be interpreted to mean that if no official receipt was issued, as in this case, the amount received will be multiplied by 10% to compute for the VAT, for to do so would unduly increase the contract price to the extent of the VAT.[56]

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47 Id. at 34-39.
48 Id. at 39 and 160.
49 Id. at 40-42.
50 Id. at 42.
51 385 Phil. 875 (2000).
52 *Rollo*, pp. 43-44.
53 Revenue Memorandum Circular No. 7-2006 increased the rate to 12% effective February 1, 2006 upon the recommendation of the Secretary of Finance and after certain conditions stated in Republic Act No. 9337 were satisfied.
54 *Rollo*, p. 44.
55 Now 0.12/1 or 1/9.3333 due to the increase of the VAT rate from 10% to 12%.
56 *Rollo*, p. 47.

Lapanday is correct, albeit only partially.

At the outset, We find no need to dwell on Lapanday's protestation that it is not principally engaged in business as a lending investor. The failure of the CTA to categorically proclaim Lapanday as not engaged in that type of business is already settled by its finding that it is primarily engaged in the business of providing management services. Besides, the Commissioner acknowledges that Lapanday's primary purpose is that of a management services company.

In the Answer[57] filed before the CTA, the Commissioner claims, however, that the interest income of Lapanday was derived from inter-company loans given as a form of ***financial assistance***.[58] The CTA, in fact, ruled for the taxability of said loans solely on the basis of its finding that the same was incidental to Lapanday's main business. Lapanday strongly opposes this view of the CTA. What, therefore, bears importance is the character of the loan transaction, *i.e.*, whether it may be considered an incidental transaction subject to VAT.

In this regard, We cannot support Lapanday's submission that for VAT to apply, the particular activity or transaction must always be pursued with regularity or habituality, or put in another way, the VAT is unavailing when such activity or transaction is merely occasional or isolated. The reason is significantly discernible from the text of Sec. 105 that defines the phrase "in the course of trade or business" to include a transaction "incidental" to the main business activity. The term "incidental" means depending upon or appertaining to something else primary; something necessary appertaining to, or depending upon another, which is termed the principal; something incidental to the main purpose.[59] That the primary or main activity is characterized by regularity or habituality cannot be in doubt, and that which is merely incidental to it may indeed be conducted only occasionally.

Yet, although merely occasional or isolated, a transaction may still be embraced in the definition of the phrase "in the course of the trade or business" – thus, subject to VAT – so long as it may be established that such transaction is incidental to the seller's or service provider's main business activity. Thus, We have once held that an isolated transaction can be considered an incidental transaction for purposes of VAT liability. In *Mindanao II Geothermal v. Commission on Internal Revenue (Mindanao)*,[60] We considered as taxable the sale of a Nissan Patrol by one who was not primarily engaged in the business of selling motor vehicles. We ratiocinated:

> Mindanao II's sale of the Nissan Patrol is said to be an isolated transaction. However, it does not follow that an isolated transaction cannot be an

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[57] Id. at 245-248.
[58] Id. at 246.
[59] Black's Law Dictionary (6th ed.), p. 762.
[60] Supra note 3.

> incidental transaction for purposes of VAT liability. Indeed a reading of Section 105 of the 1997 Tax Code would show that a transaction "in the course of trade or business' includes "transactions incidental thereto." Mindanao II's business is to convert the steam supplied to it by PNOC-EDC into electricity and to deliver the electricity to NPC. In the course of its business, Mindanao II bought and eventually sold a Nissan Patrol. Prior to the sale, the Nissan Patrol was part of Mindanao II's property, plant, and equipment. Therefore, the sale of the Nissan Patrol is an incidental transaction made in the course of Mindanao II's business which should be liable for VAT.[61]

Mindanao must be differentiated from the 2006 case of *Magsaysay*[62] that was cited by Lapanday. In *Magsaysay*, the sale by National Development Company (NDC) of its vessels to Magsaysay Lines, Inc. was also isolated, but the Court ruled that it was not subject to VAT. Ruling that the sale was not in the course of trade or business, the Court explained that it was made pursuant to the government's privatization program, and that the transaction could no longer be repeated or carried on with regularity.[63] It must be noted too that *Magsaysay* was decided under the 1986 NIRC when the phrase "in the course of trade or business" had not yet been defined to include incidental transactions, unlike the present NIRC.

In the recent case of *Power Sector Assets and Liabilities Management Corporation (PSALM) v. Commissioner of Internal Revenue*,[64] a case with a similar factual backdrop as *Magsaysay* (although covered by the present NIRC), We also considered the sale of power plants by PSALM as not made in the course of trade or business. We said that it was an exercise of a governmental function mandated by law for the primary purpose of privatizing NPC assets in accordance with the guidelines imposed by Republic Act No. 9136[65] or the Electric Power Industry Reform Act (EPIRA) law. As an exercise of governmental function, We said that the transaction cannot thus be considered in pursuit of a commercial or economic undertaking which should characterize the VAT.[66]

With the foregoing settled jurisprudence as background, the loan transactions entered into by Lapanday can be held taxable as incidental transactions of its regular line of business, *regardless of the fact that these were entered into on an isolated basis only*. It is imperative, however, that in order for a transaction to be considered incidental to the main line of business, there must be shown some intimate connection between the transaction in question and the main business activity. Otherwise, it makes no sense to hold a

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61 Id. at 88-89.
62 Supra note 45.
63 Id. at 73-75.
64 815 Phil. 966 (2017).
65 Entitled "AN ACT ORDAINING REFORMS IN THE ELECTRIC POWER INDUSTRY, AMENDING FOR THE PURPOSE CERTAIN LAWS AND FOR OTHER PURPOSES." Approved: June 8, 2001.
66 Supra at 1006-1017.

transaction incidental to a primary business activity where no causal link or tie could even be traced. In *Mindanao*, such connection is shown by the fact that the Nissan patrol was previously acquired for use in the seller's business. Prior to the sale, the Nissan patrol formed part of Mindanao's "Property, Plant and Equipment" account.

It is unfortunate that the CTA *En Banc* did not elaborate on why the loan transactions in this case are incidental to Lapanday's business as a management service provider. The tax court reached its conclusion solely on the basis of its finding that Lapanday's main purposes, as spelled out in the latter's articles of incorporation, include "assisting" clients. In view of such deficiency in the assailed decision, and in order to have a complete determination of the issue presented, the Court shall look into the records either to review the factual findings of the CTA or establish facts crucial to our disposition of the case.

Upon a review of the records, We find that the CTA *En Banc* erred in holding that Lapanday's loan transactions are incidental to its main line of business.

Indeed, the records support Lapanday's submission that it granted loans to affiliates only on few occasions. The loans were granted only to accommodate affiliates which did not have existing credit lines with banks. Accordingly, Lapanday used its credit line to facilitate the loan to its affiliates. That the said loans were merely for accommodation, and granted only a few times, has been Lapanday's consistent argument from the administrative level up to the proceedings before the CTA. Even the Commissioner does not dispute this. The CTA, likewise, made no express determination that the loans were not occasional or isolated.

Thus, We sustain Lapanday in its claim that whatever interest it may have earned from the loan accommodations is merely passive. Being such, it could not also be considered as derived from a commercial or economic undertaking. As correctly pointed out by Lapanday, for an activity to be subject to VAT, it must be in pursuit of a commercial or economic undertaking.

Furthermore, We observe that the term "assisting" appearing in Lapanday's primary purpose follows the phrase "managing," "administering," and "promoting." Under the principle of *ejusdem generis*, "where a general word or phrase follow an enumeration of particular and specific words of the same class, or where the latter follows the former, the general word or phrase is to be construed to include or to be restricted to persons, things or cases akin to, resembling, or of the same kind or class those specifically mentioned."[67] To "manage" means "to control and direct;" to "administer" is "manage or conduct

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[67] *Pelizloy Realty Corporation v. The Province of Benguet*, 708 Phil. 466, 480 (2013), citing *Miranda v. Abaya*, 370 Phil. 642, 658 (1999) and *Vera v. Cuevas*, 179 Phil. 307, 313 (1979).

affairs;" to "promote" is to contribute to the growth, enlargement or prosperity of or to present (merchandise) for public acceptance through advertising or publicity."[68] It is logical then to bestow on the term "assisting" in Lapanday's Articles of Incorporation as having a similar meaning as "managing," "administering," or "promoting."

Consequently, the granting of a loan to an affiliate as a form of financial assistance, and entered into but a few times, cannot by any stretch of the imagination be considered as akin to managing, controlling, or directing the affairs of, or advertising or publicizing, the business of another. As We perceive it, the financial assistance in this case could not normally be embraced in the activity of managing or administering the affairs of, or even promoting, a business.

The proviso contained in the Articles of Incorporation of Lapanday clinches it for the petitioner. We restate the Articles of Incorporation:

> [T]o engage in the managing, promoting, administering, or assisting in any business or activity of corporations, partnerships, associations, individual or firms; Provided, However, that it shall not manage the funds, securities, portfolios and similar assets of such managed entities.[69]

We can elicit from the foregoing that while Lapanday can generally control the operation of the business of its clients, it is precluded from "managing" the latter's funds, securities, portfolios, and similar assets.

In sum, although We find error in Lapanday's thesis that an occasional or isolated transaction cannot be subject to VAT, We can agree with the result that the VAT should not be applied to the interest income on the loans it granted to its affiliates. To reiterate, Our conclusion that the subject loans are not incidental transactions to Lapanday's main business is rooted not only in the fact that such loans are merely isolated and not for commercial or economic purpose, but also on the apparent lack of any showing of a connection between the granting of financial assistance and the primary purpose of providing management services to clients.

Considering Our ruling that the interest income on the loans granted by Lapanday are not subject to VAT, it is futile to discuss the matter concerning the proper computation of the VAT liability.

WHEREFORE, the petition is **GRANTED**. The January 29, 2009 Decision of the Court of Tax Appeals *En Banc* in C. T. A. EB No. 367 is hereby **REVERSED** and **SET ASIDE**.

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[68] Webster's Third New International Dictionary, pp. 27, 1372, 1815.
[69] Rollo, p. 39.

SO ORDERED.

RAMON PAUL L. HERNANDO
Associate Justice

WE CONCUR:

ALEXANDER G. GESMUNDO
Chief Justice
Chairperson

RODIL V. ZALAMEDA
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JOSE MIDAS P. MARQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ALEXANDER G. GESMUNDO
Chief Justice