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of the appellate court are clearly not borne out by the evidence of the parties and necessarily, we have to reject to them.

IN VIEW WHEREOF, the petition is *GRANTED*. The decision of the Seventh Division of the Court of Appeals promulgated on July 8, 2004 and its resolution promulgated on September 28, 2004 are *REVERSED* and *SET ASIDE*. The June 28, 2002 decision and September 16, 2002 resolution of the Metropolitan Trial Court, Pasay City, Branch 45, as well as the March 21, 2003 decision of the Regional Trial Court, Pasay City, Branch 114, are *REINSTATED*.

No costs.

SO ORDERED.

Sandoval-Gutierrez, Azcuna, and *Garcia, JJ.*, concur.

Corona, J., on leave.

SECOND DIVISION

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

THE MANILA BANKING CORPORATION, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

TAXATION; TAX ON INCOME; TAX ON CORPORATIONS; MINIMUM CORPORATE INCOME TAX; WHEN TO BE PAID BY A THRIFT BANK; CASE AT BAR.— [P]etitioner bank was registered with the BIR in 1961. However, in 1987, it was found insolvent by the Monetary Board of the BSP and was placed under receivership. After twelve (12) years, or on June 23, 1999, the BSP issued to it a Certificate of Authority to Operate as a **thrift bank**. Earlier, or on January 21, 1999, it

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registered with the BIR. Then it filed with the SEC its Articles of Incorporation which was approved on June 22, 1999. It is clear from the provision of Revenue Regulations No. 4-95 that **the date of commencement of operations of a thrift bank** is the date it was registered with the SEC or the date when the Certificate of Authority to Operate was issued to it by the Monetary Board of the BSP, whichever comes later. Let it be stressed that Revenue Regulations No. 9-98, implementing R.A. No. 8424 imposing the minimum corporate income tax on corporations, provides that for purposes of this tax, the date when business operations commence is the year in which the domestic corporation registered with the BIR. However, under Revenue Regulations No. 4-95, the date of commencement of operations of **thrift banks**, such as herein petitioner, is the date the particular thrift bank was registered with the SEC or the date when the Certificate of Authority to Operate was issued to it by the Monetary Board of the BSP, whichever comes later. Clearly then, Revenue Regulations No. 4-95, not Revenue Regulations No. 9-98, applies to petitioner, being a **thrift bank**. It is, therefore, entitled to a grace period of four (4) years counted from June 23, 1999 when it was authorized by the BSP to operate as a **thrift bank**. Consequently, it should only pay its minimum corporate income tax after four (4) years from 1999.

APPEARANCES OF COUNSEL

Puyat Jacinto & Santos and *Jose Songco* for petitioner.
Wilmer B. Dekit for respondent.

DECISION

SANDOVAL-GUTIERREZ, *J.*:

Before us is a Petition for Review on *Certiorari*[1] assailing the Decision[2] of the Court of Appeals dated May 11, 2005 in

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[1] Under Rule 45 of the 1997 Revised Rules of Civil Procedure, as amended.

[2] Penned by Associate Justice Eugenio S. Labitoria (retired) and concurred in by Associate Justice Eliezer R. de los Santos and Associate Justice Arturo D. Brion (now Secretary of Labor).

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CA-G.R. SP No. 77177, entitled "*The Manila Banking Corporation, petitioner, versus Commissioner of Internal Revenue, respondent.*"

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

Meanwhile, R.A. No. 8424,[4] otherwise known as the Comprehensive Tax Reform Act of 1997, became effective on January 1, 1998. One of the changes introduced by this law is the imposition of the minimum corporate income tax on domestic and resident foreign corporations. Implementing this law is Revenue Regulations No. 9-98 stating that the law allows a four (4) year period from the time the corporations were

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[3] Sec. 29. Proceedings upon insolvency. — Whenever, upon examination by the head of the appropriate supervising or examining department or his examiners or agents into the condition of any bank or non-bank financial intermediary performing quasi-banking functions, it shall be disclosed that the condition of the same is one of insolvency, or that its continuance in business would involve probable loss to its depositors or creditors, it shall be the duty of the department head concerned forthwith, in writing, to inform the Monetary Board of the facts, and the Board may, upon finding the statements of the department head to be true, forbid the institution to do business in the Philippines and shall designate an official of the Central Bank or a person of recognized competence in banking or finance, as receiver to immediately take charge of its assets and liabilities, as expeditiously as possible collect and gather all the assets and administer the same for the benefit of its creditors, exercising all the powers necessary for these purposes including, but not limited to, bringing suits and foreclosing mortgages in the name of the bank or non-bank financial intermediary performing quasi-banking functions.

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[4] An Act Amending the National Internal Revenue Code, as amended.

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registered with the Bureau of Internal Revenue (BIR) during which the minimum corporate income tax should not be imposed.

On June 23, 1999, after 12 years since petitioner stopped its business operations, the BSP authorized it to operate as a **thrift bank**. The following year, specifically on April 7, 2000, it filed with the BIR its annual corporate income tax return and paid ₱33,816,164.00 **for taxable year 1999**.

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

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

> In reply, we hereby confirm that the law and regulations allow new corporations as well as existing corporations a leeway or adjustment period of four years counted from the year of commencement of business operations (reckoned at the time of registration by the corporation with the BIR) during which the MCIT (minimum corporate income tax) does not apply. If new corporations, as well as existing corporations such as those registered with the BIR in 1994 or earlier, are granted a 4-year grace period, we see no reason why TMBC, a corporation that has ceased business activities due to involuntary closure for more than a decade and is now only starting again to place its business back in order, may not be given the same opportunity. It should be stressed that although TMBC had been registered with the BIR before 1994, yet it did not have any business from 1987 to June 1999 due to its involuntary closure. This Office is therefore of an opinion, that for purposes of justice, equity and consistent with the intent of the law, TMBC's reopening

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[5] *Rollo*, pp. 79-81.

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last July 1999 is akin to the commencement of business operations of a new corporation, in consideration of which the law allows a 4-year period during which MCIT is not to be applied. Hence, MCIT may be imposed upon TMBC not earlier than 2002, *i.e.*, the fourth taxable year beginning 1999 which is the year when TMBC reopened.

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

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

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

On April 21, 2003, the CTA denied the petition, finding that petitioner's payment of the amount of ₱33,816,164.00 corresponding to its minimum corporate income tax for taxable year 1999 is in order. The CTA held that petitioner is not entitled to the four (4)-year grace period because it is not a new corporation. It has continued to be the same corporation, registered with the Securities and Exchange Commission (SEC) and the BIR, despite being placed under receivership, thus:

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Moreover, it must be emphasized that when herein petitioner was placed under receivership, there was merely an interruption of its business operations. However, its corporate existence was never affected. The general rule is that the appointment of the receiver does not terminate the charter or work a dissolution of the corporation, even though the receivership is a permanent one. In other words, the corporation continues to exist as a legal entity, clothed with its franchises (65 Am. Jur. 2d, pp. 973-974). Petitioner, for all intents and purposes, remained to be the same corporation, registered with the SEC and with the BIR. While it may continue to perform its corporate functions, all its properties and assets were under the control and custody of a receiver, and its dealings with the public is somehow limited, if not momentarily suspended. x x x

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

Thus, this petition for review on *certiorari*.

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

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

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

Section 27(E) of the Tax Code provides:

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

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(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.

x x x x x x x x x

Upon the other hand, Revenue Regulation No. 9-98 specifies the period when a corporation becomes subject to the minimum corporate income tax, thus:

(5) Specific Rules for Determining the Period When a Corporation Becomes Subject to the MCIT (minimum corporate income tax) —

For purposes of the MCIT, the taxable year in which business operations commenced shall be the year in which the domestic corporation registered with the Bureau of Internal Revenue (BIR).

Firms which were registered with BIR in 1994 and earlier years shall be covered by the MCIT beginning January 1, 1998.

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The intent of Congress relative to the minimum corporate income tax is to grant a four (4)-year suspension of tax payment to newly formed corporations. Corporations still starting their business operations have to stabilize their venture in order to obtain a stronghold in the industry. It does not come as a surprise then when many companies reported losses in their initial years of operations. The following are excerpts from the Senate deliberations:

Senator Romulo: x x x Let me go now to the minimum corporate income tax, which is on page 45 of the Journal, which is to minimize tax evasion

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on those corporations which have been declaring losses year in and year out. Here, the tax rate is three-fourths, three quarter of a percent or .75% applied to corporations that do not report any taxable income on the fourth year of their business operation. Therefore, those that do not report income on the first, second and third year are not included here.

Senator Enrile: We assume that this is the period of stabilization of new company that is starting in business.

Senator Romulo: That is right.

Thus, in order to allow new corporations to grow and develop at the initial stages of their operations, the lawmaking body saw the need to provide a grace period of four years from their registration before they pay their minimum corporate income tax.

Significantly, on February 23, 1995, Congress enacted R.A. No. 7906, otherwise known as the "Thrift Banks Act of 1995." It took effect on March 18, 1995. This law provides for the regulation of the organization and operations of thrift banks. Under Section 3, thrift banks include savings and mortgage banks, private development banks, and stock savings and loans associations organized under existing laws.

On June 15, 1999, the BIR issued Revenue Regulation No. 4-95 implementing certain provisions of the said R.A. No. 7906. Section 6 provides:

Sec. 6. Period of exemption. – All thrift banks created and organized under the provisions of the Act shall be exempt from the payment of all taxes, fees, and charges of whatever nature and description, **except the corporate income tax** imposed under Title II of the NIRC and as specified in Section 2(A) of these regulations, for a period of five (5) years from the date of commencement of operations; while for thrift banks which are already existing and operating as of the date of effectivity of the Act (**March 18, 1995**), the tax exemption shall be for a period of five (5) years reckoned from the date of such effectivity.

For purposes of these regulations, "date of commencement of operations" shall be understood to mean the date when the thrift bank

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was registered with the Securities and Exchange Commission or the date when the Certificate of Authority to Operate was issued by the Monetary Board of the Bangko Sentral ng Pilipinas, whichever comes later.

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As mentioned earlier, petitioner bank was registered with the BIR in 1961. However, in 1987, it was found insolvent by the Monetary Board of the BSP and was placed under receivership. After twelve (12) years, or on June 23, 1999, the BSP issued to it a Certificate of Authority to Operate as a **thrift bank**. Earlier, or on January 21, 1999, it registered with the BIR. Then it filed with the SEC its Articles of Incorporation which was approved on June 22, 1999.

It is clear from the above-quoted provision of Revenue Regulations No. 4-95 that **the date of commencement of operations of a thrift bank** is the date it was registered with the SEC or the date when the Certificate of Authority to Operate was issued to it by the Monetary Board of the BSP, whichever comes later.

Let it be stressed that Revenue Regulations No. 9-98, implementing R.A. No. 8424 imposing the minimum corporate income tax on corporations, provides that for purposes of this tax, the date when business operations commence is the year in which the domestic corporation registered with the BIR. However, under Revenue Regulations No. 4-95, the date of commencement of operations of **thrift banks**, such as herein petitioner, is the date the particular thrift bank was registered with the SEC or the date when the Certificate of Authority to Operate was issued to it by the Monetary Board of the BSP, whichever comes later.

Clearly then, Revenue Regulations No. 4-95, not Revenue Regulations No. 9-98, applies to petitioner, being a **thrift bank**. It is, therefore, entitled to a grace period of four (4) years counted from June 23, 1999 when it was authorized by the BSP to operate as a **thrift bank**. Consequently, it should only pay its minimum corporate income tax after four (4) years from 1999.

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WHEREFORE, we *GRANT* the petition. The assailed Decision of the Court of Appeals in CA-G.R. SP No. 77177 is hereby *REVERSED*. Respondent Commissioner of Internal Revenue is directed to refund to petitioner bank the sum of ₱33,816,164.00 prematurely paid as minimum corporate income tax.

SO ORDERED.

Puno (Chairperson), Azcuna, and *Garcia, JJ.*, concur.

Corona, J., on leave.

SECOND DIVISION

[G.R. No. 168438. August 28, 2006]

SPOUSES FRANCISCO G. TUAZON* and RUTH A. TUAZON, *petitioners, vs.* **VICENTE G. TUAZON and JOHN L. TUAZON,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; TENANCY DISPUTE; REQUISITES.**— To determine whether a case involves a tenancy dispute, the following essential requisites must be present: 1. the parties are the landowner and the tenant; 2. the subject matter is agricultural land; 3. there is consent between the parties; 4. the purpose is agricultural production; 5. there is personal cultivation by the tenant; and, 6. there is sharing of the harvests between the parties.

2. **ID.; ID.; TENANCY RELATIONSHIP; ESTABLISHED WHEN A LANDOWNER INSTITUTES A TENANT TO WORK ON HIS**

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* Also spelled as Tuason in some parts of the records.