**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

**SECOND DIVISION**

**SABRE TRAVEL NETWORK (PHILIPPINES), INC., (*formerly* ABACUS DISTRIBUTION SYSTEMS PHILS. INC.),**
Petitioner,

- versus -

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**CTA CASE NO. 8678**

Members:

**CASTAÑEDA, JR.**, Chairperson,
**CASANOVA**, and
**MANAHAN**, JJ.

Promulgated:

AUG 31 2018 9:55 Am

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# RESOLUTION

**CASTAÑEDA, JR., J.:**

For resolution of the Court are the following:

(1) Petitioner's **Motion for Partial Reconsideration and/or to Reopen the Case for Presentation of Evidence (Re Amended Decision Promulgated on 15 February 2018)** filed on March 7, 2018, *sans* respondent's comment;

(2) Respondent's **Motion for Partial Reconsideration Re: Amended Decision dated February 15, 2018** filed on March 7, 2018, with petitioner's **Comment/Opposition (To Respondent's Motion for Partial Reconsideration dated 7 March 2018 Re: Amended**

**Decision dated 15 February 2018)** filed on April 2, 2018; and

(3) Petitioner's **Urgent Manifestation** filed on April 13, 2018, *sans* respondent's comment.

In its motion, petitioner raised the following issues:

(1) The Honorable Court erred in affirming its ruling that petitioner failed to adduce sufficient evidence to establish that the communication expenses and marketing fees constitute mere reimbursements to AIPL;

(2) Trial should be reopened for reception of evidence which was omitted through inadvertence in the interest of justice;

(3) Assuming without admitting that the communications expenses and marketing fees are income of AIPL, the Honorable Court erred in finding that: (a) The same are subject to FVAT and FWT; and (b) The same should be disallowed as deductions from petitioner's taxable gross income for failure to withhold FWT thereon.

(4) The Honorable Court erred in imposing both 20% deficiency interest and 20% delinquency interest considering that the new TRAIN Law which took effect on 01 January 2018 has already amended Section 249(B) and 249(C) of the National Internal Revenue Code of 1997, as amended.

On the other hand, respondent raised in his motion that the revenues generated by petitioner consisting of rentals of equipment by the subscribers (travel agencies) and the fees paid through AIPL is subject to VAT at the rate of twelve percent (12%).

After considering the issues raised by both parties, the Court resolves to deny the subject motions.

Prefatorily, the Court notes that except for the issue raised by petitioner with regard to the application of the TRAIN Law in the instant case, petitioner merely rehashed the arguments it already raised in its Motion for Partial Reconsideration of Decision and/or to Reopen the Case for Presentation of Evidence filed on August 4, 2017. On this score, the Court undertook to carefully scrutinize the respective positions of the parties, which led *Us* to conclude that the amendment of its Decision dated July 19, 2017 is in order.

Again, as previously held, the Court finds no reason to reopen the case for the reception of petitioner's forgotten evidence. In fact, a perusal of the documents attached to petitioner's Urgent Manifestation would readily reveal that the documents it intends to present were available as early as year 2008 or 2009. To allow the presentation of these documents which were available for almost a decade and after an Amended Decision has already been made would constitute unjust delay in the dispensation of justice. Thus, the Court still rules that petitioner's motion to reopen the instant case should be denied.

With respect to petitioner's communication expenses and marketing fees, suffice it to state that this issue was already passed upon twice by this Court. To reiterate:

> "The Court, however, finds that these contentions raised by petitioner are the same arguments raised in his Memorandum filed on June 6, 2016, which were sufficiently passed upon and fully discussed by the Court in the assailed Decision. Thus:
>
> 'The Court finds, however, that petitioner failed to adduce sufficient evidence to overturn the presumption of correctness of respondent's treatment of the subject payments as income on the part of AIPL.
>
> While the amounts of ₱18,976,877.84 and ₱1,734,065.04 representing communication expense and marketing fees were traced to the Tax Invoices issued by AIPL to petitioner, there were no indications even in the schedules attached to the said invoices that the said expenses were initially billed by Sabre Holdings and paid by AIPL in behalf of the petitioner. In other words, petitioner failed to convince the Court through sufficient evidence that the subject expenses were mere reimbursements. Jr

Verily, the Court is constrained to uphold respondent's assessment in treating the subject payments remitted to AIPL as income pertaining to the operation of Abacus System in the Philippines. Since it is an income arising from the privilege to use the computer system in the Philippines, it necessarily follows that there is a sale of service by AIPL in the course of trade or business, hence, subject to VAT under Section 105 in relation to Section 108(A)(1) of the NIRC of 1997, as amended. Consequently, the supposed withholding of the VAT is in order pursuant to Section 114(C) of the same Code.

Also, considering that the subject payments represent income derived by AIPL in the Philippines, the same are subject to 30% FWT pursuant to Section 28(B)(1) of the NIRC of 1997, as amended.

Therefore, petitioner is liable for the basic deficiency FWVAT in the amount of ₱2,485,313.15 and deficiency FWT in the amount of ₱6,213,282.86 for taxable year 2009.'

Thus, the Court finds no reason to disturb the pertinent ruling."

With respect to the imposition of both 20% deficiency interest and 20% delinquency interest, it must be emphasized that petitioner's cause of action accrued in 2012, or almost six (6) years prior to the effectivity of the TRAIN Law on January 1, 2018. There being no provision as to its retroactive application, the Court properly applied the previous rulings on simultaneous imposition of deficiency and delinquency interests, as follows:

"In the consolidated cases of *Liquigaz Philippines Corporation v. Commissioner of Internal Revenue and Commissioner of Internal Revenue v. Liquigaz Philippines Corporation*, the Court *En Banc* ruled that the deficiency interest is imposable on all internal revenue taxes, thus:

'On the issue of imposition of deficiency interest, the case of *Takenaka Corporation Philippine Branch vs. Commissioner of Internal Revenue* (the "Takenaka Case") is in order: *gr*

'The issue is no longer novel as the same was sufficiently discussed by the Supreme Court in *Paper Industries Corporation of the Philippines (PICOP) v. Court of Appeals, et al.* The Supreme Court held that Section 247(a) of the NIRC of 1977, as amended [now Section 247(a) of the NIRC of 1997, as amended], very clearly embraces failure *to pay all taxes imposed in the Tax Code*, without any regard to the Title of the Code where provisions imposing particular taxes are textually located.' (Italicized in the original)

Thus, deficiency interest must be imposed not just on deficiency income tax but also on deficiency VAT, EWT and WTC.'

In *Takenaka*, the Court *En Banc* thoroughly explained the basis of the simultaneous imposition of deficiency and delinquency interests, to wit:

The applicable provision for imposition of civil interests is explicitly stated in Section 249 of NIRC of 1997, as amended, which reads:

'SEC. 249. Interest. –

(A) *In General.* - There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed by rules and regulations, from the date prescribed for payment until the amount is fully paid.

(B) *Deficiency Interest* - Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.

(C) *Delinquency Interest.* - In case of failure to pay:

(1) The amount of the tax due on any return to be filed, or

(2) The amount of the tax due for which no return is required, or

(3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax.'

A careful perusal of the foregoing provision reveals that there is no double imposition of interests as the law clearly differentiates deficiency interest from delinquency interest. *Deficiency* is defined as the amount still due and collectible from a taxpayer upon audit or investigation; whereas *delinquency* is defined as the failure of the taxpayer to pay the tax due on the date fixed by law or indicated in the assessment notice or letter of demand.

Consequently, *deficiency interest* is imposed upon any tax that is still due and unpaid to the government. Such interest is imposed by the fact that a portion of the tax imposed by law, which is the "deficiency tax", is still withheld by the taxpayer. Otherwise stated, it is imposed on the amount short of the full tax due and should be paid to the government, which is the deficiency tax.

*Delinquency interest,* on the other hand, is the interest imposed on failure to pay (i) the amount of tax due on any return required to be filed, (ii) the amount of tax due for which no return is required, or (iii) deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner. It is the interest upon the delay in the payment of the amount of tax due whether return is required to be filed or not, or delay in the payment of deficiency tax, surcharges and interests thereon.

Further, as to when the deficiency and delinquency interests legally accrue, Section 249 (B) and (C)(3) of the NIRC of 1997, as amended, evidently states that the deficiency interest on any deficiency tax shall be assessed *'from the date prescribed for its payment* ***until the full payment thereof***'; while the assessment of the delinquency interest that is imposed upon failure to pay a deficiency tax, or any surcharge or interest thereon, shall be reckoned from *'the due date appearing in the notice and demand of the Commissioner* ***until the amount is fully paid'***.

Clearly, these two (2) interests are different in nature. **Deficiency interest is imposed for the *shortage* of taxes paid, while delinquency interest is imposed for the *delay* in payment of taxes.** Hence, having different nature for their existence, petitioner cannot assail double imposition of interests as the law itself allows the simultaneous imposition of these two kinds of interests.

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It may be argued that the simultaneous imposition of at least 40% interest per annum on any unpaid tax is grossly excessive and unjust, which may not be reflective of the real intent of the law in imposing interest on any unpaid tax due to the government. However, it is noted that both P.D. No. 1705, which provides that deficiency interest should be assessed only *'to the date the deficiency assessed'* and its amending statute, P.D. No. 1994, which established the rule on assessment of deficiency interest *'until full payment thereof'*, were issued by then President Ferdinand E. Marcos during Martial Law. At this juncture, the eloquent words of former Associate Justice Florentino P. Feliciano in *Paper Industries Corporation of the Philippines (PICOP) v. Court of Appeals, et al.* are enlightening:

> 'It is not without reluctance that we reach the above conclusion on the basis of what may well have been an inadvertent error in legislative draftsmanship, a type of error common enough during the period of Martial Law in our country. Nevertheless, we are compelled to adopt this conclusion.xxx'

The law could not be any clearer. It states that the interests, both deficiency and delinquency interests, shall be assessed **until full payment thereof**. 'It bears stressing that the first and fundamental duty of the Court is to apply the law. When the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation.' As has been the Supreme Court's consistent ruling, where the law speaks in clear and categorical language, there is no occasion for interpretation; there is only room for application."

Finally, with respect to respondent's assertion that petitioner's equipment rentals and fees paid through AIPL are subject to VAT, the Court likewise finds the same unmeritorious.

After revisiting the records of the case, the Court still finds that petitioner has more than enough creditable input taxes to offset against the output tax due. Thus, petitioner has no deficiency VAT for the taxable year 2009. To reiterate:

"In the assailed Decision, the Court found petitioner liable for deficiency VAT for taxable year 2009 in the amount of ₱9,389,799.41, computed as follows:

| | | |
|---|---|---|
| Taxable sales per VAT Return | | ₱17,546,815.08 |
| Adjustments: | | |
| (1) Equipment rental | ₱13,037,315.00 | |
| Others | 4,433,299.00 | |
| Total Revenues | ₱17,470,614.00 | |
| Proceeds from disposal of assets | 95,934.82 | |
| Total taxable sales per audit | ₱17,566,548.82 | |
| Taxable sales per return | (17,546,815.08) | ₱ 19,733.74 |
| (2) Unaccounted remittances | | - |
| (3) Zero-rated sales subject to VAT | | 111,154,286.12 |
| (4) Undeclared income (SLS<SAWT) | | 139,928.50 |
| (5) Unaccounted source of funds (SLP<EWT) | | - |
| Total adjustments | | ₱111,313,948.36 |
| Taxable sales per audit | | ₱128,860,763.44 |
| Output tax | | ₱ 15,463,291.61 |
| Less: Creditable input tax | | (6,073,492.20) |
| **Deficiency VAT** | | **₱9,389,799.41** |

Petitioner avers that the Court erred in upholding respondent's assessment regarding its reported zero-rated sales amounting to ₱111,154,286.12. Said amount was subjected to VAT mainly for failure to reconcile the inward remittances received from its client doing business abroad with the corresponding official receipts issued for the marketing and distribution services performed.

A review of the assailed Decision and the documentary evidence presented to the Court shows an item in respondent's deficiency income tax assessment pertaining to unaccounted remittances in the amount of ₱50,538,076.40. Included in the said assessment is booking commission in the amount of ₱111,154,286.00, which corresponds to the zero-rated sales declared in petitioner's VAT returns for the taxable year 2009.

Meanwhile, the Court accounted for the total actual foreign currency inward remittances amounting to $2,982,306.83 as follows:

| Exhibit | Booking Commission | NMC (DN) | Fares Guarantee | Incentive | AIPL INV | Total |
|---|---|---|---|---|---|---|
| P-13 | 140,866.76 | 2,799.87 | 609.30 | 31,000.00 | (41,916.15) | 133,359.78 |
| P-14 | 68,773.36 | 3,042.68 | 280.00 | 154,778.45 | (31,523.49) | 195,351.00 |
| P-15 | 248,245.72 | 12,765.44 | 1,369.50 | - | (38,259.39) | 224,121.27 |
| P-16 | 244,041.11 | 257.76 | - | - | (41,061.59) | 203,237.28 |
| P-17 | 239,692.08 | 8,887.55 | 215.50 | 301,386.05 | (46,676.14) | 503,505.04 |
| P-18 | 197,928.70 | 2,032.15 | 1,445.16 | - | (42,281.35) | 159,124.66 |
| P-19 | 164,963.65 | - | 697.00 | - | (37,969.50) | 127,691.15 |
| P-20 | 180,550.09 | - | 536.35 | 86.36 | (32,367.49) | 148,805.31 |
| P-21 | 199,216.97 | 18,620.56 | 129.90 | 296,744.92 | (33,650.43) | 481,061.92 |
| P-22 | 179,426.16 | 600.00 | 2,283.73 | - | (34,709.94) | 147,599.95 |
| P-23 | 196,829.64 | 2,188.03 | 3,670.40 | 241,662.00 | (34,521.45) | 409,828.62 |
| P-24 | 197,347.41 | 762.99 | 625.80 | 85,909.10 | (36,024.45) | 248,620.85 |
| **TOTAL** | **2,257,881.65** | **51,957.03** | **11,862.64** | **1,111,566.88** | **(450,961.37)** | **2,982,306.83** |

The peso equivalent of the above amounts as booked by petitioner is shown below:

| Exhibit | Booking Commission | NMC (DN) | Fares Guarantee | Incentive | AIPL INV | Forex G(L) | Total |
|---|---|---|---|---|---|---|---|
| P-42.487 to P-42.488 | 6,675,675.76 | 133,049.82 | 28,874.72 | 1,469,090.00 | (1,991,855.45) | 5,085.12 | 6,319,919.97 |
| P-42.489 to P-42.490 | 3,259,169.53 | 144,192.61 | 13,664.00 | 7,553,188.36 | (1,538,346.31) | 100,284.62 | 9,532,152.81 |
| P-42.491 to P-42.494 | 11,796,638.62 | 622,395.70 | 66,187.94 | - | (1,849,076.32) | 194,659.04 | 10,830,804.98 |
| P-42.495 to P-42.498 | 11,794,506.85 | 12,457.34 | - | - | (1,985,327.87) | 3,919.18 | 9,825,555.50 |
| P-42.499 to P-42.501 | 11,589,112.07 | 429,713.04 | 10,203.93 | 14,270,629.47 | (2,210,115.23) | (249,526.63) | 23,840,016.65 |
| P-42.502 to P-42.504 | 9,371,923.94 | 96,222.30 | 69,555.56 | - | (2,035,001.38) | 155,006.87 | 7,657,707.29 |
| P-42.505 to P-42.507 | 7,811,028.82 | - | 33,547.58 | - | (1,825,953.26) | 121,111.31 | 6,139,734.45 |
| P-42.508 to P-42.510 | 8,689,875.83 | - | 26,173.88 | - | (1,575,319.14) | 119,992.56 | 7,260,723.13 |
| P-42.511 to P-42.514 | 9,580,344.09 | 908,683.33 | 6,155.96 | 14,062,741.76 | (1,594,693.88) | (165,706.87) | 22,797,524.39 |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| P-42.515 to P-42.518 | 8,503,005.72 | 28,434.00 | 108,774.06 | - | (1,653,234.44) | 42,230.28 | 7,029,209.62 |
| P-42.521 to P-42.523 | 9,295,308.71 | 101,086.99 | 169,572.48 | 11,164,784.40 | (1,594,890.99) | (202,703.34) | 18,933,158.25 |
| P-42.521, P-42.524 to P-42.525 | 9,315,784.49 | 35,250.14 | 28,911.96 | 3,969,000.42 | (1,664,329.59) | (199,258.15) | 11,485,359.27 |
| | **107,682,374.43** | **2,511,485.27** | **561,622.07** | **52,489,434.41** | **(21,518,143.86)** | **(74,906.01)** | **141,651,866.31** |

In this regard, the Court ruled that:

'Thus, among the amounts remitted, only the booking commissions are subject to income tax. However, respondent cannot assess petitioner of income tax based merely upon the receipt of remittances.

'Based on its Notes to FS, petitioner employs the accrual method of accounting wherein its commission income is recognized upon acceptance of bookings through the reservation system and not when cash is received. Thus, the remitted commissions, being part of its Trade Receivables, were already recorded as part of its income during or prior to the year 2009 but were only received in 2009.

Petitioner's commission income that should be subjected to income tax is that which was earned or recognized during the year 2009 in the amount of ₱111,154,286.00, and not the amount received as payment for receivables. Accordingly, petitioner reported its commission income of ₱111,154,286.00 in its Annual Income Tax Return for 2009, and, thus, was properly subjected to income tax.'

Hence, the Court cancelled the deficiency income tax assessment on the alleged unaccounted remittances for lack of merit.

It should be noted that the total booking commissions above tally with the official receipts, including the undated receipts, issued by petitioner in the sum of $2,257,881.65, detailed as follows:

| Exhibit | OR No. | OR Date | USD |
|---|---|---|---|
| P-65 | 48884 | 1/23/2009 | 140,866.76 |

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| | | | |
|---|---|---|---|
| P-65.4 | 49301 | 2/25/2009 | 68,773.36 |
| P-65.8 | 50035 | | 248,245.72 |
| P-65.12 | 50488 | 4/27/2009 | 244,041.11 |
| P-65.16 | 50691 | 5/25/2009 | 239,692.08 |
| P-65.20 | 51323 | 6/23/2009 | 197,928.70 |
| P-65.24 | 52447 | 8/24/2009 | 345,513.74 |
| P-65.33 | 52812 | | 199,216.97 |
| P-65.37 | 52893 | 10/27/2009 | 179,426.16 |
| P-65.41 | 53684 | 12/1/2009 | 196,829.64 |
| P-65.45 | 53876 | 12/23/2009 | 197,347.41 |
| | | **TOTAL** | **2,257,881.65** |

However, as previously shown, collections from booking commissions for the taxable year 2009 only amounted to ₱107,682,374.43. Taking into consideration the restatement/revaluation of the 'AR Trade-AIPL' as per the Journal Vouchers examined by the ICPA, the same is adjusted to ₱108,545,820.00.

On the other hand, petitioner declared zero-rated sales from booking commissions for the four quarters of 2009 in the aggregate amount of ₱111,154,286.12.

Comparing the peso equivalent of the booking commissions for the year 2009 as accounted for from the total remittances with the declared zero-rated sales per quarterly VAT returns yields a discrepancy of ₱2,608,466.12, thus:

| | **Booking commission (in USD)** | | **Peso equivalent** |
|---|---|---|---|
| Per OR | $2,257,881.65 | Per VAT returns | 111,154,286.12 |
| Per accounting of inward remittances | $2,257,881.65 | Per accounting of inward remittances (adjusted) | 108,545,820.00 |
| **Difference** | **$0.00** | **Difference** | **2,608,466.12** |

While the Court found that the total amount of ₱111,154,286.12 has been properly declared in petitioner's income tax return, petitioner must explain the difference of ₱2,608,466.12 for VAT purposes. *gc*

Hence, petitioner failed to completely account for the total zero-rated sales it declared in its quarterly VAT returns. Consequently, the computation of its deficiency VAT is modified as follows:

| | | |
|---|---|---|
| Taxable sales per VAT Return | | ₱ 17,546,815.08 |
| Adjustments: | | |
| (1) Equipment rental | ₱13,037,315.00 | |
| Others | 4,433,299.00 | |
| Total Revenues | ₱17,470,614.00 | |
| Proceeds from disposal of assets | 95,934.82 | |
| Total taxable sales per audit | ₱17,566,548.82 | |
| Taxable sales per return | (17,546,815.08) | ₱ 19,733.74 |
| (2) Unaccounted remittances | | - |
| (3) Zero-rated sales subject to VAT | | 2,608,466.12 |
| (4) Undeclared income (SLS<SAWT) | | 139,928.50 |
| (5) Unaccounted source of funds (SLP<EWT) | | - |
| Total adjustments | | ₱ 2,768,128.36 |
| Taxable sales per audit | | ₱ 20,314,943.44 |
| Output tax | | ₱ 2,437,793.21 |
| Less: Creditable input tax | | (6,073,492.20) |
| **Deficiency VAT** | | **₱(3,635,698.99)** |

Inasmuch as petitioner has more than enough creditable input taxes to offset against the output tax due, petitioner has no deficiency VAT for the taxable year 2009."

To end, both parties failed to raise meritorious arguments to justify the reconsideration of the assailed Amended Decision. Hence, the Court finds that the dismissal of the instant motions are in order.

**Wherefore**, petitioner's Motion for Partial Reconsideration and/or to Reopen the Case for Presentation of Evidence (Re Amended Decision Promulgated on 15 February 2018), Urgent Manifestation and respondent's Motion for Partial Reconsideration Re: Amended Decision dated February 15, 2018 are **DENIED**, for lack of merit.

**SO ORDERED.**

Juanito C. Castañeda, Jr.
**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

**CAESAR A. CASANOVA**
Associate Justice

**CATHERINE T. MANAHAN**
Associate Justice