REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES, *Petitioner,*	CTA EB CRIM. CASE No. 024 (CTA CRIM CASE No. O-090)
-versus-	*Present*: DEL ROSARIO, P.J, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, and RINGPIS-LIBAN, *JJ.*
WONG YAN TAK, *Respondent.*	Promulgated: DEC 18 2013, 10:35 a.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision is a Petition for Review for the Court *En Banc* of the Amended Decision dated January 08, 2013[1] and the Resolution dated February 15, 2013[2] rendered by the Special Third Division[3] of this Court, the dispositive portions of which, respectively, read as follows:

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[1] Penned by Associate Justice Lovell R. Bautista and concurred in by Associate Justice Amelia R. Cotangco-Manalastas, Associate Justice Olga Palangca-Enriquez was already retired on the date of promulgation, *En Banc* Docket, pp. 34-38.
[2] Penned by Associate Justice Lovell R. Bautista and concurred in by Associate Justice Amelia R. Cotangco-Manalastas, Associate Justice Olga Palangca-Enriquez was already retired on the date of promulgation, *En Banc* Docket, pp. 39-40.
[3] Administrative Circular No. 01-2013 issued on March 26, 2013 already reorganized the composition of the three (3) Divisions of the Court of Tax Appeals.

Amended Decision dated January 08, 2013:

"**WHEREFORE,** the "Omnibus Motion (In the nature of Motion to Admit Accused under Probation and Partial Motion for Reconsideration)" filed by accused Wong Yan Tak, insofar as the Partial Motion for Reconsideration, is hereby **GRANTED**.

Accordingly, the order of the Court in its Decision dated October 17, 2012, insofar as the civil liability amounting to Php3,552,716.81, plus 20% delinquency interest per annum is hereby **CANCELLED**.

The resolution on the Motion to Admit Accused under Probation, is hereby **HELD IN ABEYANCE**.

SO ORDERED."

Resolution dated February 15, 2013:

"**WHEREFORE,** premises considered, the "Motion for Reconsideration (Re: Amended Decision dated January 8, 2013)" filed by the prosecution is hereby **DENIED.**

SO ORDERED."

In the instant petition for review, petitioner prays that the above-stated Amended Decision dated January 8, 2013, "insofar as the civil liability of ₱3,552,716.81 plus 20% delinquency interest per annum, be set aside, and that the Decision dated October 17, 2012 on the subject civil liability be reinstated".

Accused, in his Motion for Partial Reconsideration from the Decision dated October 17, 2012, had asked this Court to reconsider his civil liability, wherein the Court ordered him to pay the amount totalling to ₱3,552,726.81, which represents the 2002 deficiency value-added tax (VAT) assessment, plus 20% delinquency interest per annum from September 9, 2005, until fully paid.[4] *L*

[4] *Supra* note 1, p.35.

In its Amended Decision, this Court's Special Third Division ruled:

> "On the issue of civil liability, the Court finds that accused is correct in pointing out that Pic N' Pac Mart, Inc., a corporation, is a separate and distinct entity. Thus, while accused Wong Yan Tak is the president of the said corporation, he himself is **not** the corporation, but merely a responsible officer. Only when the circumstances warrant the application of the doctrine of "piercing the corporate veil" can the Court hold stockholders and/or officers of the Corporation directly liable for corporate tax liabilities.
>
> However, in this case, no allegation was ever made that the corporation was being used merely as an adjunct, business conduit or alter ego of another corporation or by its stockholders, nor was their *(sic)* an allegation that the corporation was being used to perpetuate fraud in relation to our tax laws. Only in these circumstances can the fiction of separate and distinct corporate identities shall be set aside, making the individuals liable for the tax liabilities of the said corporation.
>
> Thus, the civil liability arising from the assessment should be collected from Pic N'Pac Mart, Inc. and not the accused Wong Yan Tak. Thus, Pic N'Pac Mart, Inc. has a tax liability in the amount of Php3,552,726.81, representing the 2002 deficiency value-added tax assessment, plus 20% delinquency interest per annum from September 9, 2005, until fully paid pursuant to Section 249 of the National Internal Revenue Code of 1997, as amended, taking into consideration the amount of Php232,134.00."[5]

Petitioner argues that accused, being the president and as responsible officer of Pic N' Pac Mart, Inc., should pay the deficiency tax, citing Section 253(a) of the National Internal Revenue Code (NIRC) of 1997.[6]

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[5] *Supra* note 1, pp.36-37
[6] CHAPTER II CRIMES, OTHER OFFENSES AND FORFEITURES

In his Comment,[7] accused manifests that he could not be held liable to pay for the VAT deficiency since there is no allegation that the corporation was used as an adjunct, business conduit or alter ego of another corporation or was used to perpetuate fraud in relation to tax laws. Moreover, he contends that this Court's Third Division validly upheld the principle of separate personality of the corporation and the stockholders and officers composing the same. He also questions his conviction by this Court's Special Third Division.

The issue is whether accused, in his capacity as President of Pic N' Pac Mart, Inc., should be held liable for the civil liability arising from the assessment in the amount of ₱3,552,716.81 representing the 2002 deficiency VAT assessment of Pic N' Pac Mart, Inc., plus 20% delinquency interest per annum from September 09, 2005, until fully paid minus the amount of Php232,134.00 already paid.

We rule in the negative.

When a corporation is charged for violation of the provisions of the Tax Code, and, subsequently, found liable thereon, the penalty of imprisonment is lodged upon its responsible officers by virtue of Section 253(d) of the Tax Code.[8] However, such is not the case in the imposition of payment of deficiency tax in the form of a civil action instituted in the criminal action. The corporation remains to be liable therein. The liability of the corporation is itself the very obligation covered by the assessment addressed to the

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> SEC. 253. General Provisions. - (a) Any person convicted of a crime penalized by this Code shall, <u>in addition to being liable for the payment of the tax</u>, be subject to the penalties imposed herein: Provided, That payment of the tax due after apprehension shall not constitute a valid defense in any prosecution for violation of any provision of this Code or in any action for the forfeiture of untaxed articles. [emphasis supplied]

[7] *Docket*, pp. 44-51.
[8] SEC. 253. General Provisions. –

> (d) In the case of associations, partnerships or corporations, the penalty shall be imposed on the partner, president, general manager, branch manager, treasurer, officer-in-charge, and the employees responsible for the violation.

very corporate taxpayer and not to the accused. The collection was made pursuant to the VAT imposed in the course of business of Pic N' Pac Mart, Inc. The liability of the accused on the other hand arises from the wrongful or wilful act of not paying such deficiency tax liability of the corporation. In theory, the institution of collection of deficiency tax into the criminal case for violation of the provisions of the Tax Code against accused should not affect the liability of the corporation to pay the deficiency tax subject of the same violation, since such institution concerns the liability of the corporation, and not of the accused. Those two should not be mistaken as indistinct from each other.

It must be emphasized that accused was charged, *as the president* of the corporation who is liable to pay the tax. In other words, he was convicted not in his personal capacity, but as an officer of a corporation. The information itself stresses that what was "failed to pay" is the corporation's 2002 tax obligations, and accused herein was impleaded merely as the corporation's responsible officer.

Indeed, Section 253(a) states that any person convicted of a crime penalized under the Tax Code shall be subject to penalties imposed therein in addition to being liable for the payment of tax. However, it must be emphasized that accused was convicted not in his personal capacity for non-payment of his personal tax liability but in his capacity as the president of Pic N' Pac Mart, Inc., the entity statutorily liable to pay the tax.

Moreover, it must be stressed that the actual taxpayer in this case is Pic N' Pac Mart, Inc., which is a corporate entity separate from the incorporators. The one required by the Tax Code to pay the tax is the corporation, and it merely acts through its officers. The assessment is against the corporate entity in connection with its tax liability to the government, and not the accused.

The subject tax obligation in this instant case is charged against the corporation Pic N' Pac Mart, Inc., since the deficiency tax incurred is in relation to the VAT liability of the said corporation. The final assessment is against Pic N' Pac Mart, Inc., and not against accused. In fact, based from the records of the case, as stated by this Court's Special Third Division's Decision,[9] the prosecution admitted that accused herein was not convicted due to his personal tax liability but due to his capacity as president of Pic N' Pac Mart, Inc., which is the corporate taxpayer of the subject tax deficiency, thus:

> "The prosecution argues that <u>Pic N' Pac Mart, Inc. is a corporate taxpayer</u>, and that the accused is charged <u>in his capacity as the President</u>, for his failure to pay the 2002 deficiency VAT liabilities, amounting to Php3,552,716.81 and the compromise penalty of Php50,000.00.47 From the records of the BIR, notices/ demand for payment for the said liability were sent to the corporate address, <u>as it was Pic N' Pact *[sic]* Mart's tax liability</u>. xxx Prosecution contends that it has proven beyond reasonable doubt that the accused is the person required under the law to pay the deficiency VAT liabilities, <u>due to his position in the corporation</u>, and that his failure to pay was willful.
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> xxx xxx xxx
>
> xxx the following elements have to be proven by the prosecution beyond reasonable doubt:
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> 1. <u>the corporate taxpayer is required to pay tax and it failed to pay such tax at the time required by law</u>;
>
> 2. the accused is the president, general manager, branch manager, treasurer, officer-in-charge or employee responsible for the violation of the corporate taxpayer; and
>
> 3. the accused willfully fails to pay the corporate taxes.
>
> ***<u>Corporate Taxpayer is required to pay tax</u> and***

[9] Penned by Associate Justice Lovell R. Bautista, concurred in by Associate Justice Olga Palangca-Enriquez, Associate Justice Amelia R. Cotangco-Manalastas was on leave on the date of promulgation, *En Banc* Docket, pp. 12-33.

> ***failed to do so at the time required by law***
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> xxx xxx xxx
>
> It must be stressed that the actual taxpayer in this case is Pic N' Pac Mart, Inc., which is a corporate entity separate from the incorporators.xxx
>
> xxx xxx xxx
>
> Xxx As such, the Court finds that the assessment against the corporate entity was final and valid and that Pic N' Pac Mart, Inc. has a tax liability in favor of the Government." [underlining supplied]

More importantly, accused cannot be held liable for the obligation of Pic N' Pac Mart, Inc., the ratio being laid down under the doctrine of Separate Juridical Entity, *viz*:

> "A corporation is an artificial entity created by operation of law. xxx It has a personality separate and distinct from that of its stockholders and from that of other corporations to which it may be connected."[10]

In the case of *Heirs of Fe Tan Uy v. International Exchange Bank,*[11] the Supreme Court discussed the non-liability of an officer for the obligations incurred by the corporation, to wit:

> "Basic is the rule in corporation law that a corporation is a juridical entity which is vested with a legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it. Following this principle, obligations incurred by the corporation, acting through its directors, officers and employees, are its sole liabilities. A director, officer or employee of a corporation is generally not held personally liable for

[10] Philippine National Bank v. Hydro Resources Contractors Corporation, G.R. No. 167530, March 13, 2013.
[11] G.R. No. 166282, February 13, 2013.

> obligations incurred by the corporation."[12] [emphasis supplied]

As a consequence of its status as a distinct legal entity, Pic N' Pac Mart, Inc., incurs its own liabilities and is legally responsible for payment of its obligations.[13] In other words, by virtue of the separate juridical personality of a corporation, the corporate obligation of Pic N' Pac Mart, Inc., is not the debt or obligation of herein accused.

The doctrine of piercing the corporate veil applies only in three (3) basic areas, namely: 1) defeat of public convenience as when the corporate fiction is used as a vehicle for the evasion of an existing obligation; 2) fraud cases or when the corporate entity is used to justify a wrong, protect fraud, or defend a crime; or 3) alter ego cases, where a corporation is merely a farce since it is a mere alter ego or business conduit of a person, or where the corporation is so organized and controlled and its affairs are so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation.[14]

The prosecution asks this Court to impose upon accused the liability of the corporation. In other words, this Court is asked to pierce the corporate veil of Pic N' Pac Mart, Inc., to make accused liable for the payment of the former's obligation. However, there is no need to pierce the corporate veil of Pic N' Pac Mart, Inc., since none of the requisites are present. Those acts that are within the scope of function of accused as president of Pic N' Pac Mart, Inc., are properly attributed to the corporation alone and no personal liability is incurred by the accused. The amount of deficiency tax which the prosecution seeks to recover was a liability of Pic N' Pac Mart, Inc., being the statutory taxpayer.

Courts are always reminded to be careful in assessing the milieu where the doctrine of the corporate veil may be

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[12] Citing Garcia v. Social Security Commission Legal and Collection, G.R. No. 170735, December 17, 2007, 540 SCRA 456, 473-474.
[13] Ibid., citing Rands,William, Domination of a Subsidiary by a Parent, 32 Ind. L. Rev. 421, 423 (1999) citing Philip I. Blumberg, Limited Liability and Corporate Groups, 11 J. Corp. L. 573, 575-576 (1986) and Stephen Presser, Thwarting the Killing of the Corporation: Limited Liability, Democracy and Economics, 87 NW. U. L. Rev. 148, 155 (1992).
[14] *Supra* note 11.

applied. Otherwise an injustice, although unintended, may result from its erroneous application.[15] Hence, any application of the doctrine of piercing the corporate veil should be done with caution.

In the instant case, none is present among the three basic areas when the doctrine of piercing the corporate veil may be applied. It was not alleged, much less proven, that accused committed an act as the president of Pic N' Pac Mart, Inc., that would permit the piercing of the corporate veil. First, the prosecution was not able to establish that Pic N' Pac Mart, Inc., was used by accused to evade his existing obligation as in fact, he has none, and it was actually the corporation which has an existing tax deficiency against the government. Second, the prosecution neither raised any contention that the accused is guilty of fraud in forming Pic N' Pac Mart, Inc., nor it alleged that Pic N' Pac Mart, Inc., was used to conceal fraud. Third, there was no evidence pointing to any illegal act of accused under the guise of Pic N' Pac Mart, Inc., thereby giving no basis to hold that Pic N' Pac Mart, Inc., was a mere alter ego of accused herein. It is emphasized that the subject deficiency tax is the obligation of Pic N' Pac Mart, Inc., and not of the accused.

Consequently, this Court exonerates accused from payment of the deficiency tax and that the subject obligation falls squarely on Pic N' Pac Mart, Inc. However, the Court cannot order Pic N' Pac Mart, Inc. to pay the tax liability, because the corporation was not impleaded in the subject Petition for Review. Hence, no jurisdiction was acquired over the corporation thus, any proceeding taken against said corporation and its property would infringe on its right to due process.[16]

Insofar as accused's conviction is concerned, the proper remedy would have been to file a Petition for Review with this Court's *En Banc* and not through a Comment or an Answer to petitioner's Petition for Review. Be that as it may, considering that accused already filed a Motion to admit him

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[15] Philippine National Bank v. Andrada Electric & Engineering Company, 430 Phil. 882, 894 (2002).

[16] Kukan International Corporation, vs. Hon. Amor Reyes, in her capacity as Presiding Judge of the Regional Trial Court of Manila, Branch 21, and Romeo M. Morales, doing business under the name and style "RM Morales Trophies and Plaques," G.R. No. 182729, September 29, 2010.

under probation and the same is held in abeyance, the filing of the said motion already bars the accused from appealing his conviction before this Court.

WHEREFORE, the assailed Amended Decision dated January 08, 2013, and the Resolution promulgated on February 15, 2013 are hereby **AFFIRMED.** The order of the Court's Special Third Division in its Decision dated October 17, 2012 insofar as the civil liability amounting to ₱3,552,716.81 plus 20% delinquency interest imposed against accused **WONG YAN TAK** is hereby **CANCELLED.**

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

(*with Dissenting Opinion*)
ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

(*joins the Dissenting Opinion of PJ del Rosario*)
ESPERANZA R. FABON-VICTORINO
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES,
Petitioner,

CTA EB CRIM. CASE NO. 024
(CTA CRIM. CASE NO. O-090)

- versus -

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS,
RINGPIS-LIBAN, *J.J.*

WONG YAN TAK,
Respondent.

Promulgated:
DEC 18 2013, 10:35 a.m.

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DISSENTING OPINION

DEL ROSARIO, PJ.:

With all due respect, I dissent in the *ponencia* of my learned and esteemed colleague, the Honorable Associate Justice Cielito N. Mindaro-Grulla.

It is my humble view that as the president and responsible officer of Pic N' Pac Mart, Inc. who was found guilty beyond reasonable doubt of violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, respondent Wong Yan Tak should be made liable for the payment of the deficiency value-added tax due to the Bureau of Internal Revenue, in addition to the penalties imposed for violation of Section 255 of the NIRC of 1997, as amended.

Section 253 of the NIRC of 1997, as amended, states:

> "SEC. 253. *General Provisions.* —
>
> (a) Any **person convicted of a crime** penalized by this Code shall, **in addition to being liable for the payment of the tax**, be subject to the penalties imposed herein: *Provided*, That payment of the tax due after apprehension shall not constitute a valid defense in any prosecution for violation of any provision of this Code or in any action for the forfeiture of untaxed articles.
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> xxx xxx xxx
>
> (d) In the case of associations, partnerships or corporations, the **penalty shall be imposed** on the partner, **president**, general manager, branch manager, treasurer, officer-in-charge, and employees responsible for the violation.
>
> (e) The fines to be imposed for any violation of the provisions of this Code shall not be lower than the fines imposed herein or twice the amount of taxes, interests and surcharges due from the taxpayer, whichever is higher." (Emphases supplied)

In *People vs. Tan Boon Kong*,[1] the Supreme Court held that an officer of a corporation, as the author of the illegal act, must answer for its consequences, *viz.*:

> "The question to be decided is whether the information sets forth facts rendering the defendant, as manager of the corporation liable criminally under section 2723 of Act No. 2711 for violation of section 1458 of the same act for the benefit of said corporation. Section 1458 and 2723 read as follows:
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> > SEC. 1458. *Payment of percentage taxes — Quarterly reports of earnings.* — The percentage taxes on business shall be payable at the end of each calendar quarter in the amount lawfully due on the business transacted during each quarter; and it shall be on the duty of every person conducting a business subject to such tax, within the same period as is allowed for the payment of the quarterly installments of the fixed taxes without penalty, to make a true and complete return of the amount of the receipts or earnings of his business during the preceeding quarter and pay the tax due thereon. . . . (Act No. 2711.)
> >
> > SEC. 2723. *Failure to make true return of receipts and sales.* — Any person who, being required by law to make a return of the amount of his receipts, sales, or business, shall fail or neglect to make such return within the time required, shall be

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[1] G.R. No. L-35262, March 15, 1930.

> punished by a fine not exceeding two thousand pesos or by imprisonment for a term not exceeding one year, or both.
>
> And any such person who shall make a false or fraudulent return shall be punished by a fine not exceeding ten thousand pesos or by imprisonment for a term not exceeding two years, or both. (Act No. 2711.)
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> xxx xxx xxx
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> **In case of State *vs.* Burnam (17 Wash., 199), the court went so far as to hold that the manager of a diary corporation was criminally liable for the violation of a statute by the corporation though he was not present when the offense was committed.**
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> In the present case the information or complaint alleges that the defendant was the manager of a corporation which was engaged in business as a merchant, and as such manager, he made a false return, for purposes of taxation, of the total amount of sale made by said false return constitutes a violation of law, the defendant, as the author of the illegal act, must necessarily answer for its consequences, provided that the allegation are proven." (Emphasis supplied)

Thus, if a corporation commits offenses penalized under the NIRC of 1997, its president (among others) is necessarily criminally liable pursuant to Section 253, *supra*. In the case at bar, **there is no denying that respondent has already been convicted of violation of Section 255 of the NIRC of 1997, as amended, which conviction has attained finality**.[2]

In relation thereto, Section 253(a) of the NIRC of 1997, as amended, clearly states that the judgment in the criminal case shall not only impose the penalty <u>but shall also order payment of the taxes subject of the criminal case as finally decided by the Commissioner</u>. Incidentally, in cases involving violations of the provisions of the NIRC of 1997, as amended, the filing of the criminal action necessarily carries with it the filing of the civil action and no reservation for the filing of the civil case may be made.[3]

Truth to tell, a corporation, being a juridical entity, may act only through its directors, officers and employees.[4] Generally, obligations incurred by them, acting as such corporate agents, are not theirs but the direct accountabilities of the corporation they represent.[5] Nonetheless, by explicit mandate of Section 253 (a) and (d) of the NIRC of 1997, as amended, any offense under the NIRC committed by a corporate entity

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[2] Amended Decision dated January 8, 2013.
[3] Section 7(b) of Republic Act No. 1125, as amended by RA No. 9282.
[4] Granteq Industrial Steel Products, Inc., et al vs. Annaliza M. Estrella, G.R. No. 192416, March 23, 2011.
[5] *Id.*

becomes - - by operation of law - - the offense committed by its president (among others) upon which the corresponding penalty (together with the civil liability) shall be imposed.

Applying the foregoing to the case at bench, since respondent Wong Yan Tak, in his capacity as a president of Pic N' Pac Mart, Inc., has been convicted for violation of Section 255 of the NIRC of 1997, as amended, Section 253(a) and (d) of the NIRC of 1997, as amended, makes him liable for the payment of the corporation's tax liability to the government.

In light of the foregoing principles, I vote to GRANT the Petition for Review filed by the People of the Philippines. The Amended Decision dated January 8, 2013 rendered by the former Third Division of this Court[6] cancelling its order in its Decision dated October 17, 2012[7] insofar as the civil liability amounting to Php3,552,716.81, plus 20% delinquency interest per annum should be set aside. The Decision dated October 17, 2012 ordering respondent Wong Yan Tak "to pay the Bureau of Internal Revenue the amount of Php3,552,716.81, representing the 2002 deficiency value-added tax assessment, plus 20% delinquency interest per annum from September 9, 2005, until fully paid pursuant to Section 249 of the NIRC of 1997, as amended, taking into consideration the amount of Php232,134.00 already paid on March 17, 2009," should be reinstated.

ROMAN G. DEL ROSARIO
Presiding Justice

I CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[6] Composed of Associate Justice Lovell R. Bautista and Associate Justice Amelia R. Cotangco-Manalastas. Associate Justice Olga Palanca-Enriquez was already retired when the Amended Decision was promulgated on January 8, 2013.

[7] Penned by Associate Justice Lovell R. Bautista with Associate Justice Olga Palanca-Enriquez and Associate Justice Amelia R. Cotangco-Manalastas concurring.