REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

UPS-DELBROS TRANSPORT, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 2026
(CTA Case No. 9063)

x-------------------------------x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

UPS-DELBROS TRANSPORT, INC.,
Respondent.

CTA EB NO. 2031
(CTA Case No. 9063)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

NOV 19 2020
11:21 a.m.

x---x

DECISION

BACORRO-VILLENA, J.:

At bar are two consolidated Petitions for Review[1] filed by UPS-Delbros Transport, Inc. (**UPS-Delbros**) and the Commissioner of Internal Revenue (**CIR**) assailing the Amended Decision of 19 October 2018[2] and the subsequent Resolution dated 21 February 2019[3], respectively, of the Court's Special Third Division[4] in CTA Case No. 9063, entitled *UPS-Delbros Transport, Inc. v. Commissioner of Internal Revenue*.

UPS-Delbros is a corporation duly organized and existing under the laws of the Philippines. It is a registered taxpayer with the Bureau of Internal Revenue (**BIR**), as evidenced by its Certificate of Registration dated 03 January 1994 and Taxpayer Identification No. (**TIN**) 002-743-457-000.

The CIR, on the other hand, has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (**NIRC**) of 1997, as amended, or other laws or portions thereof administered by the BIR.

The antecedent facts follow.

On 04 September 2006, UPS-Delbros received Letter of Authority (**LOA**) No. 2001-00028936, authorizing Revenue Officer

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1 Rule 8 - Procedure in Civil Cases, Section 3(b), Revised Rules of the Court of Tax Appeals.
Section 3. *Who may appeal; period to file petition.* —
...
(b) Any party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

2 Division Docket, Volume IV, pp. 1859-1870.

3 Id., pp. 1922-1931.

4 Penned by Associate Justice Ma. Belen M. Ringpis-Liban and concurred in by Associate Justice Esperanza R. Fabon-Victorino.

(**RO**) Gilquin Tolentino (**Tolentino**) and Group Supervisor (**GS**) Crispo Y. Macarabe (**Macarabe**) to examine its books of accounts and other accounting records for calendar year (**CY**) 2005.[5]

On 08 December 2008, UPS-Delbros also received a Preliminary Assessment Notice (**PAN**) with attached Details of Discrepancies dated 05 December 2008, assessing it for alleged deficiency income tax (**IT**), value-added tax (**VAT**) and expanded withholding tax (**EWT**) for CY 2005 in the amounts of ₱42,398,361.16, ₱13,041,298.87 and ₱1,026,627.83, respectively.[6]

In disagreement with the findings in the PAN, UPS-Delbros filed its reply[7] to the PAN on 23 December 2008.

Meanwhile, on different dates, UPS-Delbros executed three (3) Waivers of the Defense of Prescription (**Waivers**) under the Statutes of Limitation of the National Internal Revenue Code.[8]

On 29 June 2010, UPS-Delbros received the Final Assessment Notice (**FAN**) with attached Details of Discrepancies, both dated 28 June 2010, demanding payment of its alleged deficiency IT, VAT and EWT for CY 2005 in the amounts of ₱49,082,932.28, ₱14,781,353.13 and ₱1,209,388.34, respectively.

On 26 July 2010, UPS-Delbros filed its protest to the FAN, with attached supporting documents, and requested for the cancellation and withdrawal of the deficiency IT, VAT and EWT assessments for CY 2005.[9]

With its protest unheeded, UPS-Delbros received the Final Decision on Disputed Assessment (**FDDA**) with attached Details of Discrepancies[10] on 08 May 2015, demanding its payment of the

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5 Paragraph 4, Stipulated Facts, Joint Stipulation of Facts and Issues (JSFI), Division Docket, Volume II, p. 790.
6 Id., Paragraph 5.
7 Id., Paragraph 6.
8 Exhibits "P-18", "P-19" and "P-20", Division Docket, Volume III, pp. 1161-1164.
9 Paragraph 7, supra at note 5.
10 Dated 05 May 2015.

deficiency taxes totalling to ₱87,229,227.61, inclusive of interest.[11] With the issuance of the FDDA, UPS-Delbros filed a Petition for Review (CTA Case No. 9063) before the Court in Division on 05 June 2015.

After trial on the merits, the Court's Third Division rendered a Decision on 22 May 2018 (**original Decision**) partially granting the Petition for Review.[12] The dispositive portion thereof reads:

> ...
>
> **WHEREFORE**, premises considered, the assessments issued by respondent against petitioner for taxable year 2005 covering deficiency income tax and value-added tax are **CANCELLED** for lack of merit, while the deficiency expanded withholding tax assessment is **AFFIRMED**. Accordingly, petitioner is hereby **ORDERED TO PAY** respondent the amount of **SEVEN HUNDRED FIFTY-SIX THOUSAND SEVEN HUNDRED FIFTY-FIVE PESOS AND 60/100 (₱756,755.60)** representing basic deficiency expanded withholding tax and the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended:

Basic Tax Due	₱605,404.48
Add: 25% Surcharge	151,351.12
Total Amount Due	**₱756,755.60**

> In addition, petitioner is hereby **ORDERED TO PAY**:
>
> (a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic expanded withholding tax computed from January 11, 2006, **until December 31, 2017** pursuant to Section 249(B) of the NIRC of 1997, as amended; and
>
> (b) Delinquency interest at the rate of 20% per annum on the total amount of ₱756,755.60 and on the deficiency interest which have accrued as afore-stated in (a) computed from June 5, 2015 **until December 31, 2017** pursuant to Section 249(C) of the NIRC of 1997, as amended; and
>
> **(c) Delinquency interest at the rate of 12% on the unpaid amount (basic tax plus surcharge plus interests computed in (a) and (b) above) from January 1, 2018 until the amount is fully paid pursuant to the relevant provision of the Republic Act No. 10963 or more**

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[11] Id., Paragraphs 9 and 10.

[12] Division Docket, Volume IV, pp. 1797-1825; Penned by Associate Justice Ma. Belen M. Ringpis-Liban and concurred in by Associate Justices Lovell R. Bautista and Esperanza R. Fabon-Victorino.

commonly known as the TRAIN Law, which took effect on January 1, 2018.

SO ORDERED.

...

Both UPS-Delbros and the CIR sought reconsideration of the original Decision. Thus, on 19 October 2018, the Court's Special Third Division[13] rendered the assailed Amended Decision, the dispositive portion of which is reproduced below:

...

WHEREFORE, premises considered, petitioner's **Motion for Partial Reconsideration (Re: Decision dated May 22, 2018) is PARTIALLY GRANTED.**

Accordingly, the Decision dated May 22, 2018 is amended to read as follows:

"**WHEREFORE**, premises considered, the assessments issued by respondent against petitioner for taxable year 2005 covering deficiency income tax and value-added tax are **CANCELLED** for lack of merit, while the deficiency expanded withholding tax assessment is **AFFIRMED with modification**. Accordingly, petitioner is hereby **ORDERED TO PAY** respondent the amount of **Two Hundred Nineteen Thousand Four Hundred Twenty One Pesos and 7/100 (₱219,421.07)**, representing basic expanded withholding tax, 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, 20% deficiency interest and 20% delinquency interest imposed under Sections 249(B) and (C), respectively, of the same Code, computed until December 31, 2017, to wit:

Basic Tax Due	₱41,730.40
Add: 25% Surcharge	10,432.60
20% Deficiency Interest from January 12, 2006 to June 5, 2015 (3,432 days)	78,476.02
Total Amount Due, June 5, 2015	**₱130,639.02**

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13 Pursuant to *Administrative Circular No. 02-2018* Reorganizing the Three (3) Divisions of the Court:
... In accordance with Section 3, Rule VII of the IRCTA, a motion for reconsideration of a decision or resolution shall be acted upon by the *ponente* and other members of the Division, whether regular or acting, who participated in the rendition of the decision or resolution sought to be reconsidered irrespective of whether such members are already in other Divisions at the time the motion for reconsideration is filed or acted upon...

Add: 20% Deficiency Interest from June 6, 2015 to December 31, 2017 (940 days; based on basic tax of ₱41,730.40)	21,494.01
20% Delinquency Interest from June 6, 2015 to December 31, 2017 (940 days; based on total amount due of P130,639.02 as of June 5, 2015)	67,288.04
Total Amount Due as of December 31, 2017	**₱219,421.07**

In addition, petitioner is liable to pay delinquency interest at the rate of 12% on the total unpaid amount of ₱139,630.02 as of June 5, 2015, as determined above, computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as the Tax Reform for Acceleration and Inclusion Law and as implemented by RR No. 21-2018.

SO ORDERED."

SO ORDERED.

...

Unyielding, both UPS-Delbros and the CIR moved for the reconsideration of the Amended Decision. The Court's Special Third Division denied both motions for reconsideration for lack of merit and affirmed the Amended Decision.

Still unsatisfied, UPS-Delbros and the CIR filed their respective Petitions for Review before the Court *En Banc*, docketed as CTA EB Nos. 2026 and 2031, respectively.

In support of its present Petition for Review, UPS-Delbros assigns the following errors to the Special Third Division's actions:

I.

THE COURT OF TAX APPEALS-DIVISION ERRED IN NOT FINDING ITS WAIVERS OF THE DEFENSE OF PRESCRIPTION VOID FOR FAILURE TO STRICTLY COMPLY WITH THE REQUIREMENTS OF SECTION 222(B) OF THE TAX CODE AND REVENUE MEMORANDUM ORDER (RMO) NO. 20-90, IN RELATION TO REVENUE DELEGATION AUTHORITY ORDER (RDAO) NO. 05-01;

II.
THE COURT OF TAX APPEALS-DIVISION ERRED IN HOLDING THAT RESPONDENT'S DEFICIENCY EXPANDED WITHHOLDING TAX FOR CALENDAR YEAR 2005 AGAINST PETITIONER IS VALID; and,

III.
THE COURT OF TAX APPEALS-DIVISION ERRED IN COMPUTING THE DEFICIENCY AND DELINQUENCY INTEREST DUE ON PETITIONER'S ALLEGED DEFICIENCY EXPANDED WITHHOLDING TAX FOR CALENDAR YEAR 2005.

UPS-Delbros maintains that its waivers are fatally defective as they are not compliant with Revenue Memorandum Order (**RMO**) No. 20-90.[14] With the nullity of the waivers, the period to assess for deficiency taxes has already prescribed. It summarizes the alleged fatal defects in the waivers, as follows:

Waiver	Date of Execution	Defects
First Waiver	January 6, 2009	• The waiver failed to specify the kind and amount of taxes covered. • The waiver's erroneous reference to the Tax Code provision on prescriptive period amounts to a material deviation from the prescribed form of waiver under RDAO No. 05-01[15].
Second Waiver	May 18, 2009	• The waiver failed to specify the kind and amount of taxes covered. • Petitioner was not furnished a copy of the waiver duly notarized and accepted by Respondent. • The waiver's erroneous reference to the Tax Code provision on prescriptive period amounts to a material deviation from the prescribed form of waiver under RDAO No. 05-01.
Third Waiver	August 17, 2009	• The waiver failed to specify the kind and amount of taxes covered. • Respondent failed to serve Petitioner a copy of the Third Waiver.

14 Proper Execution of the Waiver of the Statute of Limitations under the National Internal Revenue Code.

15 Delegation of Authority to Sign and Accept the Waiver of the Defense of Prescription Under the Statute of Limitations.

UPS-Delbros banks on the ruling in *Commissioner of Internal Revenue v. Systems Technology Institute Inc.*[16] (**Systems Technology**), where the Supreme Court cited the Court of Tax Appeals' (**CTA's**) findings that the waivers therein suffer the following defects: (1) at the time the first waiver took effect, the period for the CIR to assess for deficiency EWT and VAT had already prescribed; (2) the signatory to the three waivers had no notarized written authority from the corporation's board of directors; and, (3) similar to *Commissioner of Internal Revenue v. Standard Chartered Bank*[17], the waivers did not specify the kind of tax and the amount of tax due.

UPS-Delbros likewise insists that the EWT assessment should be cancelled for lack of legal basis. It is a mere conjecture and speculative especially so that it properly withheld and remitted the taxes to the BIR.

Lastly, the computation of deficiency and delinquency interests due on the EWT assessment should be reconsidered as it goes against the provisions of Revenue Memorandum Circular (**RMC**) No. 46-99.[18] According to UPS-Delbros, the imposition of 40% *per annum* interest (20% deficiency and 20% delinquency interest) on the deficiency taxes is an imposition that is penal, rather than compensatory, and is clearly excessive and unconscionable.

UPS-Delbros argues that the deficiency interest should be computed only from the date the deficiency tax was supposedly due (for payment under the NIRC) until the due date indicated in BIR's assessment notice. Thereafter, only delinquency interest shall run on the amount payable by the taxpayer (basic deficiency tax plus deficiency interest computed until the due date indicated in the assessment notice) until full payment thereof. Thus, the imposition of deficiency interest does not overlap with the imposition of delinquency interest as both pertain to separate and distinct periods of time.

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16 G.R. No. 220835, 26 July 2017.

17 G.R. No. 192173, 29 July 2015.

18 Computation of the Civil Penalties, Consisting of Surcharge and Interest, Incident to Deficiency and Delinquency Internal Revenue Taxes, Pursuant to Section 248 and 249 of the National Internal Revenue Code, as amended by R.A. No. 8424, and Suggested Compromise Penalty in Extra-Judicial Settlement of a Taxpayer's Criminal Liability Incident to his Violation of Certain Provision of the Code, or any of its Implementing Revenue Regulations, Pursuant to Section 204 thereof.

The CIR failed to file its comment and memorandum on UPS-Delbros' Petition for Review *per* Records Verification Report dated 18 June 2019 and 25 September 2019, respectively.

On the other hand, in his own Petition for Review, the CIR argues that the undeclared income of UPS-Delbros, amounting to ₱55,415,430.00, makes the 2005 Income Tax Return (**ITR**) a false return; thus, warranting the application of the 10-year prescriptive period. Likewise, it contends that UPS-Delbros has the burden of proof to refute the presumption of falsity of the ITR and to prove that it had filed an accurate return.

According to the CIR, UPS-Delbros International Express Ltd., Inc. (**UDE**) made income payment to UPS-Delbros amounting to ₱55,1415,430.00 on two occasions and were accordingly subjected to withholding tax by the payor in the amount of ₱1,108,308.40 for each transaction. The aforesaid withholding taxes in the aggregate amount of ₱2,216,618.80 were claimed as creditable withholding tax in UPS-Delbros' ITR but only one income payment of ₱55,415,430.00 was declared as sales/revenue. Hence, the other ₱55,415,430.00 was not subjected to income tax in clear violation of the provisions of Section 32[19] of the NIRC of 1997, as amended.

In its comment to the CIR's Petition for Review, UPS-Delbros counters that there was no falsity with intent to evade tax and that there is no legal and factual basis to apply the 10-year prescriptive period. The element of fraud must be established for the 10-year prescriptive period to apply. It maintains that fraud is a question of fact which must be alleged and proved. It is incumbent upon the CIR to allege and prove fraud with intent to evade tax in the filing of its returns. Absent such, the 10-year prescriptive period under Section 222[20] of the NIRC of 1997, as amended, cannot apply.

Moreover, UPS-Delbros echoes the decision of the Court in Division's ruling that there was no underdeclared income and that

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[19] **Sec. 32.** *Gross Income. -*

[20] **Sec. 222.** *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –
(a) In the case of a false or fraudulent return with intent to evade tax or failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission...

UDE's total payment for CY 2005 amounted to ₱55,415,420.00 only (and the same was properly reported in its ITR). UPS-Delbros explains that the discrepancy arose from the erroneous double withholding of UDE and not for underdeclaration of income as the CIR claims.

We rule below.

After an assiduous review of the records of the case and the parties' arguments, We find no cogent reason to deviate from the Special Third Division's assailed Amended Decision and Resolution.

I. THE WAIVERS OF UPS-DELBROS ARE VALID

The waivers are not fatally infirm as UPS-Delbros claims. We quote the relevant portion of the original decision of the Court in Division:

> ...
>
> A valid waiver of the statute of limitations under the NIRC of 1997, as amended, must be: (1) in writing; (2) agreed to by both the BIR Commissioner and the taxpayer; (3) before the expiration of the ordinary prescriptive periods for assessment and collection; and (4) for a definite period beyond the ordinary prescriptive periods for assessment and collection. The period agreed upon can still be extended by subsequent written agreement, provided that it is executed prior to the expiration of the first period agreed upon.
>
> In *Commissioner of Internal Revenue vs. Kudos Metal Corporation*, the Supreme Court discussed in detail Section 222(b) of the NIRC of 1997, as amended, which provides that the period to assess and collect taxes may only be extended upon a written agreement between the BIR Commissioner and the taxpayer executed before the expiration of the three-year period. Revenue Memorandum Order No. 20-90 issued on April 4, 1990 and Revenue Delegation Authority Order No. 05-01 issued on August 2, 2001 laid down the procedure for the proper execution of the waiver, to wit:
>
>> "1. The waiver must be in the proper form prescribed by RMO 20-90. The phrase but not after _____ 19 _____, which indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription, should be filled up.

2. The waiver must be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials. In case the authority is delegated by the taxpayer to a representative, such delegation should be in writing and duly notarized.

3. The waiver should be duly notarized.

4. The CIR or the revenue official authorized by him must sign the waiver indicating that the BIR has accepted and agreed to the waiver. The date of such acceptance by the BIR should be indicated. However, before signing the waiver, the CIR or the revenue official authorized by him must make sure that the waiver is in the prescribed form, duly notarized, and executed by the taxpayer or his duly authorized representative.

5. Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.

6. The waiver must be executed in three copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy must be indicated in the original copy to show that the taxpayer was notified of the acceptance of the BIR and the perfection of the agreement."

In the present case, the following are the waivers executed by the parties:

Requisites of a Valied Waiver	**First Waiver**[21]	**Second Waiver**[22]	**Third Waiver**[23]
Date of Execution	January 6, 2009	May 18, 2009	August 17, 2009
Period of Limitation	June 30, 2009	December 31, 2009	June 30, 2010
BIR Signatory	OIC Regional Director- Ma. Nieva A. Guerrero	RDO Wilfredo Z. Narnola	

[21] Exhibit "R-3", BIR Records, p. 169.
[22] Exhibit "R-5". id., p. 295.
[23] Exhibit "R-7", id., p. 311.

Taxpayer Signatory	Maria Rita B. Corvera		
Notarized Written Authority	Yes		
Date of Acceptance by the BIR	January 7, 2009	May 18, 2009	August 17, 2009
Date of Receipt by Petitioner	January 8, 2009	May 20, 2009	August 18, 2009
Duly Notarized	Yes	Yes	Yes

> Contrary to the allegations of petitioner that the subject waivers are defective, it can be perused from the above table that the waivers executed by and between petitioner and respondent complied with the requirements of a valid waiver pursuant to RMO No. 20-90.
>
> Based on the foregoing, the waivers executed by the parties validly extended the three-year prescriptive period.
>
> ...

We affirm the Special Third Division's finding that the waivers complied with requirements of Section 222(b) of the NIRC, as amended, and as discussed exhaustively in *Commisisoner of Internal Revenue v. Kudos Metal Corporation*.[24] Thus, merely citing the wrong provision of the NIRC of 1997, as amended, and failure to specify the kind and amount of tax would not readily result in the nullification of the waivers.

UPS-Delbros' reliance on the Supreme Court's ruling in *Systems Technology*[25] is also misplaced. Although the decision mentioned the failure to specify the kind of tax and the amount of tax due as one of the infirmities of the waivers, it was not the only defect that led to the nullification of the same. The more substantial defect mentioned in that case was the absence of a notarized written authority from the corporation's board of directors, authorizing the signatory thereto to execute the waivers for and in behalf of the corporation, which is one of the requirements in RMO 20-90.

Furthermore, We cannot sustain UPS-Delbros' contention that the erroneous reference to the provisions in the waivers amounts to a material deviation that would invalidate the same. The citation of the wrong provisions of the NIRC could easily pass as an inadvertent typographical error. At any rate, UPS-Delbros executed the waivers and should have copied the template provided in RDAO 05-01. While

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24 G.R. No. 178087, 05 May 2010.
25 Supra at note 16.

regrettably, the wrong provisions cited escaped the scrutiny of the BIR, both parties were not exactly faultless and UPS-Delbros cannot benefit from the infirmity in the waivers.[26]

II. UPS-DELBROS HAS NO UNDECLARED INCOME

Similarly, the cancellation of the income tax assessment for lack of merit is justified. There was no underdeclaration of income amounting to ₱55,415,430.00 on the part of UPS-Delbros. As the records show, the latter ably refuted this allegation by showing UDE's confirmation that it withheld taxes twice. Such erroneous withholding of the income twice (from the same income payment) was even confirmed by UDE's Director, Maurice Gohoc. The original Decision reads:

> ...
>
> "Q17: I noticed that UDE's income payments to [p]etitioner appeared twice in each Schedule of Withholding Tax (*Exhibits "P-62-1" to "P-73-1"*) and in the Alphalist of Payees subject to EWT (*Exhibit "P-74-1"*). Can you please explain this?
>
> A: UDE twice subjected to two percent (2%) EWT its income payments to [p]etitioner in CY 2005. The **double withholding of 2% EWT on income payments to [p]etitioner was an error on the part of UDE.** I prepared a schedule showing the double withholding of 2% EWT in UDE's payment to [p]etitioner in CY 2005.
>
> Q18: Why did UDE twice subjected to two percent (2%) EWT its income payments to [p]etitioner in CY 2005?
>
> A: UDE has been subjecting its income payment to supplier of services to 2% EWT. **However, when UDE was informed by the BIR that it was classified as one of the Top 10,000 corporations which was required to withhold 2% EWT from its income payments to suppliers of service, UDE erroneously assumed that it was required to withhold additional 2% EWT on top of the 2% EWT which it has been withholding in the past.** Hence, although UDE's income payments to [p]etitioner in CY 2005 (net of VAT), amounted only to Php55,415,420.00, this amount was twice subjected to EWT.

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26 *Commissioner of Internal Revenue v. Next Mobile Inc. (formerly Nextel Communications Phils., Inc.)*, G.R. No. 212825, 07 December 2015.

> ...
>
> In fact, UDE sent a Confirmation Certificate to BIR attesting that the former has income payments on purchase of services from petitioner during CY 2005 amounting to ₱55,415,420.00 with corresponding EWT of ₱2,216,616.81.
>
> Clearly, petitioner was able to prove that there was no undeclared income from UDE. Thus, respondent's assessment on the above item must be cancelled.[27]
>
> ...

A perusal of the records also shows that UPS-Delbros indeed received only one income payment from UDE. CIR's argument that the alleged underdeclaration of income was tantamount to a false return as to extend the prescriptive period from the regular three (3) years to ten (10) years as provided under Section 222 of the NIRC of 1997, as amended[28] is baseless. As stated, UPS Delbros was able to sufficiently prove that there was no undeclared income.

Relative to the above, We note that the audited financial statements (**AFS**) for CY 2005 disclosed in Note 10[29] indicated that the service fee (in consideration of the services provided by UPS-Delbros) amounted to ₱55,415,430.00. The same was duly declared as the correct amount of sales in its Annual ITR for CY 2005.[30] Correspondingly, a review of BIR Form No. 1604-E[31] and the Alphalist[32] (subject to EWT as of 31 December 2005) affirmed that UDE, as the withholding agent, indeed withheld taxes from the same income payment, as shown below:

ATC Code	**Amount of Income Payment**	**Tax Rate**	**Tax Withheld**
WC157	₱55,415,420.50	2%	₱ 1,108,308.41
WC160	55,415,420.50	2%	1,108,308.41
Total			**₱ 2,216,616.82**

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27 Citation omitted, emphasis supplied and italics in the original text.
28 Supra at note 20.
29 Exhibit "P-28", Related Party Transactions, Division Docket, Vol. III, pp. 1218-1219.
30 Exhibit "P-1", Division Docket, Vol. III, pp. 999-1001.
31 Exhibit "P-74", Division Docket vol. IV, pp.1557-1559.
32 Exhibit "P-73-1", Division Docket, Vol. IV, pp.1555-1556.

Based on the foregoing, UDE clearly withheld, by mistake, the taxes from the same income payment twice; believing that it was required to withhold an additional 2% on top of the 2% withholding tax it previously withheld from the same transaction (upon learning of the classification of UPS-Delbros as one of the Top 10,000 corporations).

III. EXPANDED WITHHOLDING TAX ASSESSMENT FOR THE MONTH OF DECEMBER 2005 MUST BE UPHELD

As to the EWT assessment for December 2005 which the Amended Decision affirmed, We find that it was based on the *best evidence obtainable.* Under the NIRC of 1997, as amended, such evidence may be used in making an assessment. As the Court's Special Third Division aptly ruled in the Amended Decision:

> ...
>
> As can be recalled, the amounts of income payments for the months of October, November and December 2005 were derived by the BIR from the Accounts Payable (A/P) register of the petitioner. Respondent resorted in analyzing the entries in the A/P Register for a three-month period, which was in consultation with petitioner's own Finance Controller, Ms. Dina B. Corvera, **since petitioner's system is unavailable for verification, and multiplied the findings by 12 (months) to arrive at the preliminary findings. The unavailability of petitioner's system was not denied nor controverted by petitioner.**
>
> ...
>
> Needless to say, such manner of assessment is valid pursuant to Section 6(B) of the NIRC of 1997, as amended, which authorized the Commissioner to assess taxes on the basis of the *best evidence obtainable* in case of failure on the part of the taxpayer to submit the required returns, statement, records, and other documents...
>
> ...
>
> Assessments based on estimates or approximates are valid under the *Best Evidence Obtainable Rule*. As held by the Supreme Court in the case of *Sy Po vs. Hon. Court of Tax Appeals, et al.*, the rule on the "*best evidence obtainable*" applies when a tax report required by law for the purpose of the assessment is not available or when the tax report is incomplete or fraudulent. Hence, the questioned documents may be used by respondent as basis for the

assessment of any internal revenue tax. **Assessments made as such are deemed *prima facie* correct and sufficient for all legal purposes. The burden of proving the illegality of the assessment lies upon the petitioner alleging it to be so.**

As held in the assailed Decision, petitioner failed to prove its contentions and contradict the findings of respondent by solely basing its defense on the nature of the assessment being an estimate or average of the accounts payable amounts of the last three months of CY 2005. Even in the proceedings of this case, petitioner was not able to fully substantiate its claim. Petitioner was also unsuccessful in proving proper withholding and remittance of the withholding taxes of every item listed and considered in the tax deficiency computation. There was no evidence presented to support that petitioner indeed withheld and paid the BIR the corresponding withholding taxes due on all its income payments. As such, petitioner failed to satisfactorily show the fact upon which it based its claim.

...

Nevertheless, as previously discussed above, considering that the first waiver was executed by petitioner only on January 6, 2009 and accepted on January 7, 2009, only the EWT of P41,730.40 pertaining to the month of December 2005 shall be subjected to deficiency assessment, computed as follows:[33]

Income payments per A/P-December 2005	₱2,086,519.96
EWT Rate	2%
Basic Tax Due	₱41,730.40

...

UPS-Delbros presented its Annual Information Return (BIR Form No. 1604-E), together with its attachments, to prove that it properly withheld its taxes. However, We find these documents insufficient to debunk the EWT assessment. The return merely comprises the summary of the remittances of expanded withholding tax payments during the year. While petitioner presented BIR Forms No. 1601-E[34] showing the withheld taxes due on its monthly income payments for CY 2005, it failed to prove the fact of withholding on the items listed in the tax deficiency computation. UPS-Delbros could have easily presented a breakdown of its income payments showing that the same were properly subjected to withholding taxes in relation

[33] Citations omitted, emphasis and italics in the original text and supplied.
[34] Exhibits "P-6" to "P-17", Division Docket, Volume III, pp. 1013-1160.

to the month it was paid. Unfortunately, its defense merely revolved on the nature of the assessment being based on mere conjecture and speculation.

It is settled that tax assessments by tax examiners are presumed correct and made in good faith and all presumptions are in favor of the correctness of a tax assessment unless proven otherwise.[35] Therefore, We uphold the EWT assessment for the month of December 2005, amounting to ₱41,730.40 basic tax for UPS-Delbros' failure to sufficiently refute the same.

IV. THE SIMULTANEOUS IMPOSITION OF THE DEFICIENCY AND DELINQUENCY INTERESTS ARE CORRECT

Finally, UPS-Delbros vehemently argues that the deficiency interest should be computed only from the date the deficiency tax was supposedly due for payment until the due date indicated in the CIR's assessment notice. It further asserts that only delinquency interest shall run on the amount payable by the taxpayer (that is, basic deficiency tax plus deficiency interest computed until the due date indicated in the assessment notice) until full payment thereof. The imposition of deficiency interest does not overlap with the imposition of delinquency interest as they pertain to separate and distinct periods of time.

The imposition of civil interests as explicitly stated in Section 249[36] of the NIRC of 1997, as amended, provides:

> ...
>
> **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

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[35] *Commissioner of Internal Revenue v. Hon. Raul M. Gonzalez, et al.*, G.R. No. 177279, 13 October 2010.

[36] Prior to the amendment in Republic Act No. 10963 or the Tax Reform for Acceleration and Inclusion Act (TRAIN Law).

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.**[37]

...

In the case of *Takenaka Corporation Philippine Branch v. Commissioner of Internal Revenue*[38], this Court *En Banc* thoroughly explained the basis of the simultaneous imposition of deficiency and delinquency interests, *viz*:

...

...*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.

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[37] Emphasis supplied.

[38] CTA EB Case No. 745 (CTA Case No. 7701), 04 September 2012; Citations omitted, emphasis, italics and underscoring in the original text and supplied.

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.

...

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. <u>Nevertheless, we are compelled to adopt this conclusion</u>. x x x"
>
> ...
>
> 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.
>
> ...

As discussed exhaustively above, there is no double imposition of civil interests as Section 249 of the NIRC of 1997, as amended, clearly distinguishes deficiency interest from delinquency interest.

In *First Lepanto Taisho Insurance Corporation v. Commissioner of Internal Revenue*[39], the Supreme Court ruled that the imposition of delinquency interest under Section 249(C)(3) of the NIRC of 1997, as amended, is proper. The failure to pay the deficiency tax assessed within the time prescribed for its payment justifies the imposition of the interest at the rate of 20% *per annum*, which interest shall be assessed and collected from the date prescribed for its payment until full payment is made.

The Tax Reform for Acceleration and Inclusion Act (**TRAIN Law**) introduced a substantial modification on the rate of interest *vis-à-vis* the end date of the accrual of interest for both deficiency and delinquency interest.[40] The TRAIN law now prescribes 12% interest

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[39] G.R. No. 197117, 10 April 2013.

[40] **SECTION. 75**. Section 249 of the NIRC, as amended is hereby further amended to read as follows:

SEC. 249. *Interest*. –

(A) *In General*. – There shall be assessed and collected on any unpaid amount of tax, interest at the rate of double the legal interest rate for loans or forbearance of any money in the absence of an express stipulation as set by the Bangko Sentral ng Pilipinas from the date prescribed for payment until the amount is fully paid: *Provided*, That in no case shall the deficiency and the delinquency interest prescribed under Subsections (B) and (C) hereof, be imposed simultaneously.

(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, or (double the legal interest rate for loans or forbearance of money), instead of the 20% *per annum* under the NIRC of 1997, as amended. Thus, for deficiency taxes which became due prior to the effectivity of the TRAIN Law on 01 January 2018 and full payment thereof will only be made after the said effectivity date, the interest rate of 20% shall be applied for the period up to 31 December 2017 and 12% shall be applied for the period starting 01 January 2018 until full settlement thereof.[41]

Based on the foregoing, the Court *En Banc* finds no cogent reason to depart from the Special Third Division's findings. When the language of the law is clear, there is no other recourse but to apply it regardless of its perceived harshness.[42]

WHEREFORE, the foregoing considered, the Petitions for Review filed by UPS-Delbros Transport, Inc. and the Commissioner of Internal Revenue are both **DENIED** for lack of merit. Accordingly, the Amended Decision dated 19 October 2018 and the Resolution dated 21 February 2019 of the Special Third Division, respectively, in CTA Case

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upon issuance of a notice and demand by the Commissioner of Internal Revenue, whichever comes earlier.

(C) *Delinquency Interest.* – x x x.

...

41 Revenue Regulations No. 21-2018, September 14, 2018.

...

SECTION 2. RATE OF INTEREST. – There shall be assessed and collected on any unpaid amount of tax, interest at the rate of double the effective legal interest rate for loans or forbearance of any money in the absence of an express stipulation as set by the Bangko Sentral ng Pilipinas (BSP) from the date prescribed for payment until the amount is fully paid.

The rate of interest per BSP Memorandum No. 799 series of 2013 for loans or forbearance of any money in the absence of an express stipulation is six percent (6%). Thus, the rate of legal interest imposable under Section 249 of the Tax Code, as amended, shall be twelve percent (12%). A Circular shall be issued by the Commissioner in case BSP prescribes new rate of interest.

...

SECTION 6. TRANSITORY PROVISION. – In cases where the tax liability/ies or deficiency tax/es became due before the effectivity of the TRAIN Law on January 1, 2018, and where the full payment thereof will only be accomplished after the said effectivity date, the interest rates shall be applied as follows:

Period	*Applicable Interest Type and Rate*
For the period up to December 31, 2017	Deficiency and/or delinquency interest at 20%
For the period January 1, 2018 until full payment of the tax liability	Deficiency and/or delinquency interest at 12%"

...

42 *Obiasca v. Basallote*, G.R. No. 176707, 17 February 2010.

No. 9063, entitled *UPS-Delbros Transport, Inc. v. Commissioner of Internal Revenue,* are hereby **AFFIRMED.**

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

(On Leave)
MARIA ROWENA MODESTO-SAN PEDRO
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 before the cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice