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:

FEB 15 2018
4:30 p.m.

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AMENDED DECISION

CASTAÑEDA, JR., ***J.***:

For resolution of the Court are the following:

1. Petitioner's **Motion for Partial Reconsideration of Decision and/or to Reopen the Case for Presentation of Evidence**, filed on August 4, 2017, *sans* respondent's Comment; and

2. Respondent's **Motion for Partial Reconsideration Re: Decision promulgated on July 19, 2017**, filed through registered mail on August 4, 2017 and received by the Court on August 10, 2017, with petitioner's **Comment/Opposition (To Respondent's Motion for**

Partial Reconsideration dated 04 August 2017), filed on August 29, 2017.

For easy reference, the dispositive portion of the assailed Decision reads:

"**WHEREFORE,** the assessment issued by respondent against petitioner for taxable year 2009 covering deficiency WTC in the amount of ₱162,153.34 is **CANCELLED AND WITHDRAWN**. However, the assessments for deficiency EWT, FWVAT, FWT, income tax, VAT and DST are **PARTIALLY UPHELD**. Accordingly, petitioner is ordered to pay respondent the amount of **THIRTY ONE MILLION FOUR HUNDRED SIXTY THOUSAND FIVE HUNDRED NINETY-SEVEN PESOS AND 17/100 (₱31,460,597.17)** representing basic deficiency EWT, FWVAT, FWT, Income Tax, VAT and DST and the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

Tax Type	Basic Deficiency	25% Surcharge	Total
EWT	₱ 250,073.83	₱ 62,518.46	₱ 312,592.29
FWVAT	2,485,313.15	621,328.29	3,106,641.43
FWT	6,213,282.86	1,553,320.72	7,766,603.58
INCOME TAX	6,829,783.49	1,707,445.87	8,537,229.36
VAT	9,389,799.41	2,347,449.85	11,737,249.26
DST	225.00	56.25	281.25
Total	**₱ 25,168,477.73**	**₱ 6,292,119.43**	**₱ 31,460,597.17**

In addition, petitioner is liable to pay:

a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency EWT, FWVAT, FWT, Income Tax, VAT and DST computed from the dates indicated below until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended:

Tax Type	Basic Tax Due	20% Deficiency Interest Computed from:
EWT	₱ 250,073.83	15-Jan-10
FWVAT	2,485,313.15	10-Jan-10
FWT	6,213,282.86	15-Jan-10

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INCOME TAX	6,829,783.49	15-Apr-10
VAT	9,389,799.41	25-Jan-10
DST	225.00	5-Jan-10
Total	**₱ 25,168,477.73**	

b) Delinquency interest at the rate of twenty percent (20%) per annum on the total amount of **₱31,460,597.17** and on the deficiency interest which have accrued as afore-stated in (a) computed from June 27, 2013 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED."[1]

Petitioner raised the following arguments in its motion:

I. The Honorable Court erred in ruling that petitioner's Booking Commissions do not qualify as VAT Zero-rated Sales.

II. The Honorable Court erred in ruling that petitioner failed to adduce sufficient evidence to establish that the Communications Expenses and Marketing Fees constitute mere reimbursements to Abacus International Pte. Ltd. (AIPL).

III. Trial should be reopened to afford petitioner an opportunity to substantiate that the Communications Expenses and Marketing Fees are mere reimbursements to AIPL.

IV. 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 (2) the same should be disallowed as deductions from petitioner's taxable gross income for failure to withhold FWT thereon.

V. The Honorable Court erred in ruling that: (a) deficiency interest should be paid on the basic EWT, FVAT, FWT, VAT and DST assessments; and (b) Je

[1] Docket, Vol. III, pp. 1547-1548.

> delinquency interest should be paid on the deficiency interest which have accrued in relation to the basic EWT, FVAT, FWT, VAT and DST assessments.[2]

On the other hand, respondent raised the following grounds in his motion:

> I. The Honorable Court erred in holding that the petitioner's "Other-rent" and "Storage Rental" were properly subjected to EWT.
>
> II. The Honorable Court erred in cancelling the deficiency assessment for withholding tax on compensation.
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> III. The findings of the Honorable Court that the remittances received by petitioner from AIPL represent not only booking commissions but also other items, namely promotional and advertising expenses or NMC expenses, fares guarantee and incentives which are not income payments subject to income tax was not supported by any document.
>
> IV. Contrary to the findings of the Honorable Court, the unaccounted remittances in the amount of ₱50,538,076.40, unaccounted source of funds in the amount of ₱16,764,878.70 and the unearned income in the amount of ₱139,928.50 must be subjected to VAT.[3]

After careful consideration of the grounds raised by the parties, the Court rules partly in favor of petitioner.

The instant case cannot be reopened for the reception of petitioner's alleged additional evidence

Petitioner moves that the case be reopened in order for it to present an exhaustive and comprehensive set of all relevant

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[2] Docket, Vol. IV, p. 1556.
[3] Docket, Vol. IV, p. 1709.

evidence, in relation to its position that the communication expenses and marketing fees were mere reimbursements to AIPL.

However, the Court is not inclined to grant the reopening of this case.

In *Republic of the Philippines v. Sandiganbayan*,[4] the Supreme Court explained the basis for a motion to reopen a case to introduce further evidence, as follows:

> "The basis for a motion to reopen a case to introduce further evidence is Section 5, Rule 30 of the Rules of Court, which reads:
>
> > **Sec. 5.** *Order of trial.* Subject to the provisions of section 2 of Rule 31, and unless the court for special reasons otherwise directs, the trial shall be limited to the issues stated in the pre-trial order and shall proceed as follows:
> >
> > x x x x
> >
> > (f) The parties may then respectively adduce rebutting evidence only, **unless** the court, for **good reasons and in the furtherance of justice**, permits them to **adduce evidence upon their original case**[.]
>
> Under this rule, a party who has the burden of proof must introduce, at the first instance, all the evidence he relies upon and such evidence cannot be given piecemeal. The obvious rationale of the requirement is to avoid injurious surprises to the other party and the consequent delay in the administration of justice.
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> A party's declaration of the completion of the presentation of his evidence prevents him from introducing further evidence; but where the evidence is *rebuttal* in character, whose necessity, for instance, arose

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[4] G.R. No. 152375, December 16, 2011.

> from the shifting of the burden of evidence from one party to the other; or where the evidence sought to be presented is in the nature of *newly discovered* evidence, the party's right to introduce further evidence must be recognized. Otherwise, the aggrieved party *may* avail of the remedy of *certiorari.*
>
> Largely, the exercise of the courts discretion under the exception of Section 5(f), Rule 30 of the Rules of Court depends on the **attendant facts** *i.e.*, on whether the evidence would qualify as a good reason and be in furtherance of the interest of justice. xxx xxx xxx
>
> In *Lopez v. Liboro,* we had occasion to make the following pronouncement:
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>> After the parties have produced their respective direct proofs, they are allowed to offer rebutting evidence only, but, it has been held, the court, for good reasons, in the furtherance of justice, may permit them to offer evidence upon their original case, and its ruling will not be disturbed in the appellate court where no abuse of discretion appears. **So, generally, additional evidence is allowed** when it is newly discovered, or **where it has been omitted through inadvertence or mistake**, or where the purpose of the evidence is to correct evidence previously offered. xxx xxx xxx"[5]

In the said case, the Supreme Court stressed the general rule that evidence may not be given piecemeal. However, when the attendant facts warrant the introduction of further evidence that would qualify as a good reason for reopening the case and would serve the interest of justice, the Court may allow the reception of additional evidence. *ju*

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[5] Id., citing James M. Henderson, 6 *Commentaries on the Law of Evidence in Civil Cases Based Upon the Works of Burr W. Jones,* 2502, pp. 4950-4951; *Director of Lands v. Roman Archbishop of Manila,* 41 Phil. 121 (1920); John Henry Wigmore, 6 *A Treatise on the Anglo-American System of Evidence in Trials at Common Law,* 1940, p. 519; *Seares v. Hernando, etc., et al.,* 196 Phil. 487 (1981); 88 C.J.S. 104, p. 217; 5A C.J.S. 1606, p. 102; and *Lopez v. Liboro,* 81 Phil. 431 (1948); *Land Bank of the Philippines v. Court of Appeals,* 456 Phil. 755 (2003); *San Fernando Rural Bank, Inc. v. Pampanga Omnibus Development Corporation,* G.R. No. 168088, April 4, 2007, 520 SCRA 564; and *Leviste v. Court of Appeals,* G.R. No. 189122, March 17, 2010.

Here, petitioner failed to justify that the evidence it shall present is newly discovered, or that the same was omitted through inadvertence or mistake. What petitioner seeks is for this Court to allow it to present "an exhaustive and comprehensive set of all relevant evidence", which is broad or vague enough to include even evidence in the nature of forgotten evidence, which is not excusable.

Thus, the Court finds no reason to reopen the instant case. As such, the Court shall now proceed to rule on the other issues presented by the parties in their respective motions.

Disallowed Zero-Rated Sales for failure to reconcile the inward remittances

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:[6]

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

[6] Decision, pp. 47-48.

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."[7]

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
P-65.4	49301	2/25/2009	68,773.36
P-65.8	50035		248,245.72

[7] Docket, Vol. III, p. 1526.

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,[8] the same is adjusted to ₱108,545,820.00.[9]

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.

Hence, petitioner failed to completely account for the total zero-rated sales it declared in its quarterly VAT returns.

[8] As summarized in Exhibit "P-37-b.1".
[9] Decision, p. 48.

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.

Disallowed Communications Expense and Marketing Fees as mere reimbursements

Petitioner insists that the Communications Expenses and Marketing Fees it incurred are mere reimbursements to AIPL for legitimate expenses and these were indubitably proven by the terms of the Sub-Distribution Agreement it executed with AIPL. As such, these are not income payments made to AIPL for which FWT and FVAT should be imposed and for which, appropriate deductions from petitioner's taxable gross income must be allowed.

Petitioner further argues that even assuming that the said expenses were income payments made to AIPL, the same are still not subject to FWT and FVAT on the ground that the services performed by the latter do not pertain to the privilege to use the Abacus System in the Philippines. Rather, such services were rendered via the mainframe located outside the Philippines.

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.
>
> 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.

Imposition of deficiency interest on deficiency EWT, FWVAT, FWT, VAT and DST assessments and delinquency interest on the deficiency interest which have accrued in relation to the basic EWT, FWVAT, FWT, VAT and DST assessments

Petitioner claims that the deficiency interest under Section 249 of the NIRC of 1997 applies only to three (3) types of internal revenue taxes, namely: income tax, estate tax and donor's tax, pursuant to Sections 56, 93 and 104 of the NIRC of 1997. Further, it claims that the imposition of deficiency interest on its EWT, FWVAT, FWT, VAT and DST liabilities must be cancelled.

Moreover, petitioner asserts that the imposition of delinquency interest on the deficiency interest which have accrued in relation to the basic EWT, FWVAT, FWT, VAT and DST assessments must likewise be cancelled.

The Court is not persuaded.

In the consolidated cases of *Liquigaz Philippines Corporation v. Commissioner of Internal Revenue and Commissioner of Internal Revenue v. Liquigaz Philippines Corporation*,[10] 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*[11] (the "Takenaka Case") is in order:
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>> '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,

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[10] CTA EB Case Nos. 1117 and 1119 (CTA CASE No. 8149), June 3, 2016.
[11] CTA EB Case No. 745 (CTA Case No. 7701), September 4, 2012.

> 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."[12]

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

[12] CTA EB Case Nos. 1117 & 1119, June 3, 2016.

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** *k*

***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.

xxx xxx xxx

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, upon examination of respondent's motion, the Court found that respondent merely rehashed his arguments which were already passed upon in the assailed Decision.

Thus, Court finds that the denial of respondent's motion is in order. On the other hand, the Court finds it proper to partially grant petitioner's motion.

WHEREFORE, respondent's Motion for Partial Reconsideration Re: Decision promulgated on July 19, 2017 is **DENIED**, for lack of merit. On the other hand, petitioner's Motion for Partial Reconsideration of Decision and/or to Reopen the Case for Presentation of Evidence is **PARTIALLY GRANTED**. Accordingly, the Decision dated July 19, 2017 is amended to read, as follows:

> "**WHEREFORE,** the assessment issued by respondent against petitioner for taxable year 2009 covering deficiency VAT and WTC in the amounts of ₱34,050,266.06 and ₱162,153.34, respectively, are **CANCELLED AND WITHDRAWN.** However, the assessments for deficiency EWT, FWVAT, FWT, income tax, and DST are **PARTIALLY UPHELD**. Accordingly, petitioner is ordered to pay respondent the amount of **NINETEEN MILLION SEVEN HUNDRED TWENTY-THREE THOUSAND THREE HUNDRED FOURTY-SEVEN AND 92/100 (₱19,723,347.92)** representing basic deficiency EWT, FWVAT, FWT, Income Tax, and DST and the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

Tax Type	Basic Deficiency	25% Surcharge	Total
EWT	₱ 250,073.83	₱ 62,518.46	₱ 312,592.29
FWVAT	2,485,313.15	621,328.29	3,106,641.43
FWT	6,213,282.86	1,553,320.72	7,766,603.58
INCOME TAX	6,829,783.49	1,707,445.87	8,537,229.36
DST	225.00	56.25	281.25
Total	**₱ 15,778,678.33**	**₱ 3,944,669.59**	**₱ 19,723,347.92**

In addition, petitioner is liable to pay: ge

a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency EWT, FWVAT, FWT, Income Tax, and DST computed from the dates indicated below until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended:

Tax Type	**Basic Tax Due**	**20% Deficiency Interest Computed from:**
EWT	₱ 250,073.83	15-Jan-10
FWVAT	2,485,313.15	10-Jan-10
FWT	6,213,282.86	15-Jan-10
INCOME TAX	6,829,783.49	15-Apr-10
DST	225.00	5-Jan-10
Total	**₱ 15,778,678.33**	

b) Delinquency interest at the rate of twenty percent (20%) per annum on the total amount of **₱19,723,347.92** and on the deficiency interest which have accrued as afore-stated in (a) computed from June 27, 2013 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice