Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

TAKENAKA CORPORATION PHILIPPINE BRANCH,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB CASE NO. 745
(CTA Case No. 7701)

Present:
ACOSTA, P.J.,
CASTAÑEDA, JR.
BAUTISTA
UY
CASANOVA
PALANCA-ENRIQUEZ
FABON-VICTORINO
MINDARO-GRULLA
COTANGCO-MANALASTAS, JJ.

Promulgated:
SEP 04 2012 2:00 p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision is a Petition for Review for the Court *En Banc* under *Section 2(a)(1), Rule 4*, in relation to *Section 4(b), Rule 8 of the 2005 Revised Rules of the Court of Tax* Appeals, *as amended*, of the Decision[1] and Resolution[2] rendered by the Former Second Division of this Court on October 4, 2010 and March 8, 2011, respectively, the dispositive portions of which read as follows:

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[1] Penned by Associate Justice Erlinda P. Uy and concurred in by Associate Justices Juanito C. Castañeda, Jr. and Olga Palanca-Enriquez. *En Banc* Docket, pp. 29-46.

[2] Penned by Associate Justice Erlinda P. Uy and concurred in by Associate Justice Juanito C. Castañeda, Jr. Associate Justice Olga Palanca-Enriquez concurred in the result of the Resolution but not as to the discussion limiting the imposition of deficiency interest under Section 249(B) of the NIRC of 1997, as amended, only to income, estate and donor's taxes. *En Banc* Docket, pp. 61-74.

Decision dated October 4, 2010:

"WHEREFORE, in view of the foregoing considerations, the instant Petition for Review is hereby DENIED. Accordingly, the deficiency expanded withholding tax assessment issued by respondent against petitioner for taxable year 2003 is hereby UPHELD. Petitioner is hereby ORDERED TO PAY the amount of FIVE HUNDRED EIGHTY NINE THOUSAND FOUR HUNDRED THIRTY ONE PESOS AND FOURTEEN CENTAVOS (P 589,431.14), computed as follows:

Amount per General Ledger/FS/ITR	P 7,457,219.00
Less: Amount per Alphalist	2,741,769.90
Amount not subjected to EWT	4,715,449.10
Multiply by 10%	10%
Expanded Withholding Tax due	P 471,544.91
Penalty equivalent to 25% imposed under Section 248(A)(3), NIRC of 1997	117,886.23
Total	P 589,431.14

In addition to the foregoing amount, petitioner is hereby ORDERED TO PAY respondent the following:

(a) interest at the rate of twenty percent (20%) per annum on the same amount, computed from January 16, 2004 until full payment thereof, pursuant to Section 249(A) of the NIRC of 1997; and
(b) delinquency interest at the rate of twenty percent (20%) per annum on the unpaid amount (i.e., P 761,189.81) until full payment thereof, pursuant to Section 249(C)(3) of the NIRC of 1997.

SO ORDERED."[3]

Resolution dated March 8, 2011:

"WHEREFORE, premises considered, the instant Motion for Partial Reconsideration" is hereby DENIED for lack of merit.

Moreover, petitioner's Manifestation alleging payment to the Bureau of Internal Revenue of the amount of One Million Five Hundred Thirty One Thousand Seven Hundred Fifty Nine Pesos and Eighty Nine Centavos (P 1,531,759.89) is hereby NOTED. However, petitioner is ORDERED to pay the additional amount still due pursuant to the Decision promulgated by this Court on October 4, 2010 and in accordance with this Resolution.

SO ORDERED."[4]

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[3] *En Banc* Docket, pp. 45-46.
[4] *Id.* at 73.

The antecedent facts taken from the Decision of the Former Second Division of this Court are as follows:

> "Petitioner is a foreign corporation organized and existing under the laws of Japan, duly licensed to transact business in the Philippines, with principal office address at 18th Floor, Tower II Enterprise Center, Ayala Avenue, Makati City. It is registered with the Bureau of Internal Revenue (BIR) as an income tax and value-added tax taxpayer, with Taxpayer Identification No. 005-301-571-000.
>
> Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue, vested by law with the authority to decide disputed assessment and to enforce the provisions of the National Internal Revenue Code (NIRC) and other tax laws, with office address at the BIR National Office Building, Diliman, Quezon City.
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> On April 15, 2004, petitioner filed its original Income Tax Return for taxable year 2003, and on October 7, 2004, its final amended Income Tax Return.
>
> A Preliminary Assessment Notice (PAN), together with the Details of Discrepancies dated December 5, 2006 was received by petitioner on December 22 , 2006 representing deficiency income tax and expanding withholding tax, in the amounts of ₱ 169,650,228.93 and ₱ 752,921.59, respectively, for taxable year 2003. On January 5, 2007, petitioner, through its tax counsel , wrote respondent a letter which : (a) acknowledged receipt of the PAN on December 22, 2006; (b) recognized the fact that the last day given by the BIR for filing the Reply to the PAN fell on a Saturday, January 6, 2007, thus the same may be done on the next working day which is Monday, January 9, 2007; and (c) requested for an extension of time of fifteen (15) days to file its Reply to the PAN in view of the fact that the PAN was received during the Christmas holiday season, resulting in insufficiency of time to study and evaluate the said PAN.
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> On January 8, 2007, petitioner filed a protest letter to the above-mentioned PAN, stating its objections to the assessment and showing why the same has no merit or basis. On January 12, 2007, petitioner received a Formal Assessment Notice, together with the Details of Discrepancies dated January 6, 2007, representing deficiency income tax and expanded withholding tax in the respective amounts of ₱ 171,558,285.13 and ₱ 761,189.81 for taxable year 2003.
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> On February 9, 2007, petitioner filed a formal protest disputing the said assessments and requested its withdrawal and cancellation. On February 12, 2007, petitioner, through counsel, received a letter from respondent dated February 6, 2007, stating that: (a) respondent has denied petitioner's request for a fifteen (15)-day extension to file a protest against the PAN; (b) respondent acknowledged receipt of petitioner's reply to the PAN; (c) respondent will consider petitioner's reply to the PAN as petitioner's formal protest to the Final Assessment Notice (FAN); (d) the FAN was issued in view of petitioner's non-submission of a Waiver of the Statute of Limitations; and (e) the

docket of the case has been forwarded to Revenue District Office (RDO) No. 47-East Makati under 1st Indorsement dated February 6, 2007 for reinvestigation of the above-mentioned deficiency taxes.

On April 4, 2007, petitioner submitted supporting documents to its protest, such as its Income Tax Returns for taxable years 2004 and 2005 and its Audited Financial Statements for taxable year 2005.

On October 24, 2007, petitioner availed of the tax amnesty under Republic Act No. 9480 and completed its requirements. Consequently, only the issue regarding the deficiency expanded withholding tax assessment remains in dispute.

Due to respondent's inaction on petitioner's Formal Protest filed on February 9, 2007, the instant Petition for Review was filed on October 31, 2007.

In the Answer filed on January 8, 2008, respondent interposes the following Special and Affirmative Defenses:

> '5. The assessments in question were made and issued in accordance with law, rules and regulations.
>
> 6. Petitioner was assessed of deficiency expanded withholding tax for its failure to withhold and remit the corresponding withholding tax on its professional fees and temporary staff costs in the amount of P4,715,449.1 0 claimed as deductions its income tax return for taxable year 2003.
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> 7. All presumptions are in favor of the correctness of the tax assessment **(Interprovincial Autobus** vs. **Collector of Internal Revenue, 98 Phil. 290)**.'

After pre-trial held on March 13, 2008, the parties filed their Joint Stipulation of Facts and Issues on April 1, 2008, which was approved by the Court in the Resolution dated on April 8, 2009. Among the facts admitted by the parties, are the following matters:

> '13. It is the respondent's position that Petitioner failed to withhold and remit the corresponding withholding tax due on professional fees and temporary staff costs amounting to P761,189.81 inclusive of interest.
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> 14. Petitioner claimed as deduction in its income tax return for taxable year 2003 professional fees and temporary staff costs amounting to P4,715,449.10.
>
> xxx xxx xxx
>
> 20. The following firms are general professional partnerships:
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> a. Accounting firm of SyCip Gorres Velayo & Co
> b. Law firm of Castillo Laman Tan Pantaleon San Jose

c. Law firm of Angara Abello Concepcion Regala & Cruz (ACCRA)
d. Law firm of Aranas Consunji Barleta & Co
e. Accounting firm of Joaquin Cunanan & Co'.

During trial, the parties presented their respective testimonial and documentary evidence in support of their respective claims and assertions. Upon admission of respondent's documentary evidence in the Resolution dated September 3, 2009, the parties were directed to file their respective Memorandum within thirty (30) days from notice.

In the Resolution dated October 16, 2009, this case was submitted for decision, considering petitioner's Memorandum filed on October 8, 2009 and the report of this Court's Record Division that respondent failed to file a Memorandum."[5]

On October 4, 2010, the Former Second Division of this Court promulgated a Decision[6] denying the Petition for Review and ordered petitioner to pay the amount of ₱ 589,431.14 representing its deficiency expanded withholding tax for the taxable year 2003, including 20% interest per annum counted from January 16, 2004 until full payment thereof pursuant to Section 249(A) of the NIRC of 1997; and 20% delinquency interest per annum on the unpaid amount of ₱ 761,189.81 until full payment thereof, pursuant to Section 249(C)(3) of the NIRC of 1997.

Petitioner filed its Motion for Partial Reconsideration[7] of the above-cited Decision, which seeks reconsideration and clarification of the dispositive portion of the Decision which imposed separate interests

[5] *Id.* at 29-33.
[6] *Supra* note 1.
[7] Filed on October 21, 2010, Division Docket, pp. 711-716.

on its alleged deficiency expanded withholding tax for taxable year 2003, *i.e.,* (i) 20% per annum pursuant to Section 249(A) of the NIRC of 1997; and (ii) 20% delinquency interest per annum based on Section 249(C)(3) of the NIRC of 1997.

Thereafter, on November 3, 2010, petitioner filed a Manifestation[8] informing the Court *a quo* that it already paid the BIR the amount of ₱1,531,759.89, which allegedly represents full payment of the subject assessment, including surcharge, deficiency interest, and delinquency interest as of October 29, 2010, which was computed based on the formula stated in its Motion for Partial Reconsideration.

On March 8, 2011, the Former Second Division of this Court rendered a Resolution[9] denying petitioner's Motion for Partial Reconsideration and ordered petitioner to pay the balance of its withholding tax liability for taxable year 2003 based on the computation therein presented:

"Deficiency Withholding Tax		₱ 471,554.91
Add:		
Surcharge (25%)		117,886.23
Interest per annum (from January 16, 2004)		673,612.96
(₱ 471,554.91 x 142.849315068%)		
Computation of interest rate:		
- seven (7) years (January 16, 2004 to January 15, 2011) x 20%	140%	

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[8] Division Docket, pp. 719-725.
[9] *Supra* note 2.

- fifty two (52) days (January 16, 2010 to March 8, 2011) x [20% / 365 days]	2.849315068%	
Total Interest rate	142.849315068%	
Delinquency Interest per annum (from February 13, 2007) (₱ 761,189.81 x 81.315068493%)		618,962.01
Computation of interest rate:		
- four (4) years (February 13, 2007 – February 12, 2011) x 20%	80%	
- twenty four (24) days (February 13, 2011 – March 8, 2011) x [20% / 365 days]	1.315068493%	
Total Interest rate	81.315068493%	
Total Income Tax Liability as of March 8, 2011		₱ 1,882,016.11
Less: Amount paid on October 29, 2010		1,531,759.89
Amount still to be paid by petitioner as of March 8, 2011		₱ 350,256.22

It must be noted that the above computation of the interest and delinquency interest is computed only as of the promulgation of this Resolution. The amount of ₱ 350,256.22 would still be increased by the amount of P 675.48 per day until the date of full payment is made. The amount of P675.48 represents interest and delinquency interests on a daily basis, computed as follows:

Interest per day (₱ 471,554.91 x [20% / 365])	₱ 258.39
Delinquency interest per day (₱ 761,189.81 x [20% / 365])	417.09
Total interest per day	₱675.48"[10]

Hence, petitioner filed this instant Petition for Review.

Petitioner raised the following arguments before the Court *En Banc*, to wit:

1. The questioned decision and resolution are contrary to the relevant law, jurisprudence, and regulations that prescribe the proper computation of interest in tax cases, which do not sanction double imposition of 20% per annum interest.

2. There is no legal basis to hold that deficiency interest under Section 249(B) of the Tax Code applies only to deficiency income tax, deficiency estate tax, and deficiency donor's tax, and not to deficiency withholding tax.

[10] *En Banc* Docket, pp. 72-73.

3. Even assuming for the sake of argument that the Honorable Court in division's computation in the questioned decision is correct, only the balance between the amount so computed (P1,794,204.17) and the amount petitioner already paid (P1,531,759.89) may be subjected to further interest.[11]

In its petition, petitioner argues that Section 249(A) and (C) of the NIRC of 1997, as amended, do not provide for separate impositions of 20% interest per annum.[12] Instead, petitioner asserts that Section 249(A) states the general rule that unpaid taxes are subject to 20% interest per annum, while Sections 249(B) and 249(C) specify the situation when such interest is payable, as well as the reckoning point/date and the amount upon which the said interest shall be computed.[13] Simply stated, petitioner opines that simultaneous imposition of deficiency and delinquency interests has no legal basis.

We are not persuaded.

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,

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[11] *Id.* at 11.
[12] *Id.* at 12.
[13] *Id.*

> or such higher rate as may be prescribed by rules and regulations, from the date prescribed for payment until the amount is fully paid.
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> (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.
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> (C) *Delinquency Interest.* - In case of failure to pay:
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> (1) The amount of the tax due on any return to be filed, or
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> (2) The amount of the tax due for which no return is required, or
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> (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.
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> x x x"[14]

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.[15]

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

[14] Emphasis supplied.
[15] De Leon, Hector. The National Internal Revenue Code Annotated. Rex Publishing: Manila (1991), p. 567.

tax", is still withheld by the taxpayer. Otherwise stated, it is imposed on the amount short of the full tax due and should be paid to the government, which is the deficiency tax.

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

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

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

Corollary thereto, to determine the recent legislative intent in imposing both deficiency and delinquency interests simultaneously, a brief legislative history of Section 249 of NIRC of 1997, as amended, is in order.

Under Section 51(e) the old National Internal Revenue Code (NIRC) of 1939,[16] a delinquent taxpayer is required to pay, *in addition* to the unpaid tax, a 5% surcharge thereon computed from the time the tax become due, plus interest on the whole unpaid amount at the rate of 1% a month.[17] Notably, there is no limitation as to the number of months

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[16] Commonwealth Act No. 466 entitled, "AN ACT TO REVISE, AMEND AND CODIFY THE INTERNAL REVENUE LAWS OF THE PHILIPPINES", took effect on July 1, 1939.
[17] *Commissioner of Internal Revenue v. Connel Bros. Company (Phil.), et al.,* G.R. Nos. L-27752-53, August 30, 1971.

that the 1% monthly interest may be imposed.[18] The pertinent provision reads:

> SEC. 51 (e). *Surcharge and interest in case of delinquency.* — To any sum or sums due and unpaid after the dates prescribed in subsections (b), (c) and (d) for the payment of the same, there shall be added the sum of five *per centum* on the amount of tax unpaid and interest at the rate of *one per centum* a month upon said tax from the time the same became due, except from the estates of insane, deceased, or insolvent persons. [Emphasis supplied.]

On June 20, 1959, Republic Act (R.A.) No. 2343[19] took effect amending Commonwealth Act No. 466 including Section 51 thereof, which provides:

> "Sec. 51. Payment and assessment of income tax.
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> "(d) Interest on deficiency. Interest upon the amount determined as a deficiency shall be assessed at the same time as the deficiency and shall be paid upon notice and demand from the Commissioner of Internal Revenue; and shall be collected as a part of the tax, at the rate of six per centum per annum from the date prescribed for the payment of the tax (or, if the tax is paid in installments, from the date prescribed for the payment of the first installment) to the date the deficiency is assessed: *Provided*, That the maximum amount that may be collected as interest on deficiency shall in no case exceed the amount corresponding to a period of three years, the present provisions regarding prescription to the contrary notwithstanding."
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> "(e) Additions to the tax in case of nonpayment.
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> xxx
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> "(2) Deficiency. Where a deficiency, or any interest assessed in connection therewith under paragraph (d) of this section, or any addition to the taxes provided for in section seventy-two of this Code is not paid in full within thirty days from the date of notice and demand from the Commissioner of Internal Revenue, there shall be collected upon the unpaid amount, as part of the tax, interest at the rate of one per centum a month from the date of such notice and

[18] *Castro v. Collector of Internal Revenue*, G.R. No. L-12174, December 28, 1962.
[19] Entitled, "AN ACT TO AMEND CERTAIN SECTIONS OF COMMONWEALTH ACT NUMBERED FOUR HUNDRED SIXTY-SIX, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES."

> demand until it is paid: *Provided*, That the maximum amount that may be collected as interest on deficiency shall in no case exceed the amount corresponding to a period of three years, the present provisions regarding prescription to the contrary notwithstanding.
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> "(3) Surcharge. If any amount of the tax included in the notice and demand from the Commissioner of Internal Revenue is not paid in full within thirty days after such notice and demand, there shall be collected in addition to the interest prescribed herein and in paragraph (d) above and as part of the tax a surcharge of five per centum of the amount of tax unpaid." [Emphasis supplied.]

Based on the amendatory act, a "delinquent taxpayer shall pay, in addition to the tax, a deficiency interest thereon at the rate of 6% *per annum* computed from the date prescribed for payment of the income tax up to the assessment of the delinquency tax, but which shall not exceed the amount corresponding to a period of 3 years. The interest of 1% a month and surcharge of 5% on the whole unpaid amount shall be imposed only in case the delinquency tax and deficiency interest are not paid within 30 days from the date they become due."[20]

In other words, upon effectivity of R.A. No. 2343, the law imposes upon the taxpayer in case there is a tax deficiency, a *deficiency interest* to be assessed from the date of payment of the tax *up to the date of Commissioner's assessment for deficiency*, but the amount to be paid should not exceed the amount corresponding to a period of three years. In case of non-payment of the deficiency tax and the deficiency interest

[20] *Commissioner of Internal Revenue v. Connel Bros. Company (Phil.), et al.,* G.R. Nos. L-27752-53, August 30, 1971.

imposed thereon within 30 days from date of notice and demand of the Commissioner, a *delinquency interest,* as imposed by subsection (e)(2) of the same section, shall be assessed and collected from the date of notice and demand *until fully paid,* but the amount to be paid for such delinquency interest should not exceed the amount corresponding to a period of three (3) years.

It is interesting to note that the foregoing legal provision makes no distinctions nor does it establish exceptions.[21] "It directs the collection of the surcharge and interest at the stated rate upon any sum or sums due and unpaid after the dates prescribed in subsections (b), (c), and (d) of the Act for the payment of the amounts due. The provision therefore is mandatory in case of delinquency. This is justified because the intention of the law is precisely to discourage delay in the payment of taxes due to the State and, in this sense, the surcharge and interest charged are not penal but compensatory in nature - they are compensation to the State for the delay in payment, or for the

[21] *CIR v. Limpan Investment Corporation, et al.,* G.R. No. L-28571 and L-28644, July 31, 1970 *citing Castro v. Collector*, Resolution on Motion for Reconsideration, L-12174, December 28, 1962.

concomitant use of the funds by the taxpayer beyond the date he is supposed to have paid them to the State."[22]

Thereafter, pursuant to Proclamation No. 1081,[23] dated September 21, 1972, and General Order No. 1, dated September 22, 1972, then President Ferdinand E. Marcos issued several Presidential Decrees amending the old NIRC of 1939 in order to make the tax system more responsive to the requirements of a developing economy. Among others, Section 51 of the old NIRC of 1939, as amended by R.A. No. 2343, was further amended by (i) Presidential Decree (P.D.) No. 69;[24] (ii) P.D. No. 1158, otherwise known as the National Internal Revenue Code of 1977;[25] (iii) P.D. No. 1705;[26] and (iv) P.D. No. 1994.[27]

Consequently, by virtue of P.D. No. 69 and P.D. No. 1158, Section 51 was further amended. The amendatory laws impose upon the taxpayer the same that were imposed under the old NIRC, as

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[22] *Republic v. The Philippine Bank of Commerce*, G.R. No. L-20951, July 31, 1970 *citing Castro vs. Collector*, Resolution on Motion for Reconsideration, G.R. No. L-12174, December 28, 1962.
[23] PROCLAIMING A STATE OF MARTIAL LAW IN THE PHILIPPINES.
[24] AMENDING CERTAIN SECTIONS OF THE NATIONAL INTERNAL REVENUE CODE, which took effect on January 1, 1973.
[25] A DECREE TO CONSOLIDATE AND CODIFY ALL THE INTERNAL REVENUE LAWS OF THE PHILIPPINES, which took effect on June 3, 1977.
[26] AMENDING CERTAIN SECTIONS OF THE NATIONAL INTERNAL REVENUE CODE OF 1977, which took effect on August 1, 1980.
[27] FURTHER AMENDING CERTAIN PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE, which took effect on July 3, 1986. *See Bank of the Philippine Islands v. Commissioner of Internal Revenue*, G.R. No. 137002, July 27, 2006.

amended by R.A. 2343, but increased the respective interest rates under subsections (d) and (e), thus:

> Sec. 51. Payment and assessment of income tax.
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> (d) *Interest on deficiency.* Interest upon the amount determined as a deficiency shall be assessed at the same time as the deficiency and shall be paid upon notice and demand from the Commissioner and shall be collected as a part of the tax, at the rate of ***fourteen per centum per annum*** from the date prescribed for the payment of the tax (or, if the tax is paid in installments, from the date prescribed for the payment of the first installment) to the date the deficiency is assessed: Provided, That the maximum amount that may be collected as interest on deficiency shall in no case exceed the amount corresponding to a period for three years, the present provisions regarding prescription to the contrary notwithstanding.
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> (e) *Additions to the tax in case of nonpayment.*
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> xxx
>
> (2) *Deficiency.* Where a deficiency, or any interest assessed in connection therewith under paragraph (d) of this section, or any addition to the taxes provided for in section seventy-two of this Code is not paid in full within thirty days from the date of notice and demand from the Commissioner, there shall be collected upon the unpaid amount as part of the tax, interest at the rate of ***fourteen per centum per annum*** from the date of such notice and demand until it is paid; Provided, That the maximum amount that may be collected as interest on deficiency shall in no case exceed the amount corresponding to a period of three years, the present provisions regarding prescription to the contrary notwithstanding.
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On August 1, 1980, P.D. No. 1705 took effect and further amended subsections (a), (d) and (e) of Section 51 of the NIRC of 1977. Aside from the increase in the rates for both interests from fourteen percent (14%) *per annum* rate to twenty percent (20%) *per annum*, the date when these interests legally accrue remains the same. Significantly, the nature of the interest imposed under subsection (e) was changed from "deficiency" to "delinquency" in order to reflect its correct description.[28] Hence, the term *delinquency interest* was created. Thus:

> "Sec. 51. Payment and assessment of income tax.
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> xxx
>
> (e) *Additions to the tax in case of nonpayment.* –
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> xxx
>
> "(2) *Deficiency.* Where a deficiency, or any interest assessed in connection therewith under paragraph (d) of this section, or any addition to the taxes provided for in Section seventy-two of this Code is not paid in full within thirty days from the date of notice and demand from the Commissioner of Internal Revenue, **there shall be collected upon the unpaid amount as part of the tax, interest at the rate of twenty per centum per annum from the date of such notice and demand until it is paid: Provided, That the maximum amount that may be collected as interest on deficiency shall in no case exceed the amount corresponding to a period of three years, the present provisions regarding prescription to the contrary notwithstanding."** [Emphasis supplied.]

Thereafter, on July 3, 1986,[29] P.D. No. 1994 took effect and consolidated all kinds of civil interests into one provision, *i.e.*, Section 283, which is an exact reproduction of the present provision under Section 249 of the NIRC of 1997, as amended. However, the proviso on the three-year limit imposed on the amount to be collected for both deficiency and delinquency interests under the laws prior to P.D. No. 1994 were deleted. Most importantly, the periods for the assessment and collection of these interests were entirely changed. The pertinent provision reads:

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[28] *Arañas, Jose.* Annotations and Jurisprudence on The National Internal Revenue Code Of 1977. Rex Printing: Manila (1978, 4th Ed.), P. 412.

[29] *See Bank of the Philippine Islands v. Commissioner of Internal Revenue*, G.R. No. 137002, July 27, 2006.

Sec. 283. 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 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 paragraph (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 required 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 collected, on the unpaid amount, interest at the rate prescribed in paragraph(a) hereof ***until the amount is fully paid***, which interest shall form part of the tax.

xxx

[Emphasis supplied.]

Based on the above-quoted provision, *deficiency interest* "shall be *assessed and collected from the date prescribed for its payment* ***until the full payment thereof.***"[30] Similarly, *delinquency interest* shall be assessed and collected on the due date appearing in the notice and demand of the Commissioner ***until the amount is fully paid.***[31]

For emphasis, the deletion of the three-year limit imposed on the amount to be collected for both deficiency and delinquency interests coupled with the amendment on the period for assessment and

[30] Section 283(b) of NIRC of 1977, as amended by P.D. No. 1994 [now Section 249 (B) of the NIRC of 1997, as amended]; Emphasis supplied.

[31] Section 283(c) of NIRC of 1977, as amended by P.D. No. 1994 [now Section 249(C) of the NIRC of 1997, as amended].

collection of deficiency interest clearly reveal the legislative intent to impose deficiency and delinquency interests simultaneously until full payment of the tax due without limitation as to the amount of interest to be collected by the government.

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.*[32] 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. x x x "[33]

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[32] G.R. Nos. 106949-50, December 1, 1995.
[33] Emphasis supplied.

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."[34] 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.[35]

Anent the issue on the applicability of deficiency interest under Section 249(B) of the NIRC of 1997, as amended, only to deficiency income tax, deficiency estate tax, and deficiency donor's tax, as held by the Court *a quo*, petitioner asseverates that such an interpretation would result to absurd conclusions as it would mean triple imposition of 20% interest under Sections 249(A), 249(B), and 249(C) of the NIRC of 1997, simultaneously, effectively giving rise to at least 60% interest *per annum*.[36]

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[34] *Abello v. Commissioner*, G.R. No. 120721, February 23, 2005, *citing Cebu Portland Cement Co. v. Municipality of Naga*, 24 SCRA 708 [1968] and *Rizal Commercial Banking Corporation v. Intermediate Appellate Court*, 320 SCRA 279, 289 (1999).
[35] *Id.*
[36] *En Banc* Docket, pp. 17-18.

We agree with petitioner.

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.*[37] The Supreme Court held that Section 247(a) of the NIRC of 1977, as amended [now Section 247(a) of the NIRC of 1997, as amended], "very clearly embraces failure *to pay all taxes imposed in the Tax Code*, without any regard to the Title of the Code where provisions imposing particular taxes are textually located."[38] The Supreme Court ratiocinated as follows:

> "It will be seen that Section 51 (c) (1) and (e) (1) and (3), of the 1977 Tax Code, authorize the imposition of surcharge and interest only in respect of a '*tax imposed by this Title*,' that is to say, *Title II on 'Income Tax*.' It will also be seen that Section 72 of the 1977 Tax Code imposes a surcharge only in case of failure to file a return or list '*required by this Title*,' that is, *Title II on 'Income Tax*.' The thirty-five percent (35%) transaction tax is, however, imposed in the 1977 Tax Code by *Section 210 (b) thereof which Section is embraced in Title V on 'Taxes on Business*' of that Code. Thus, while the thirty-five percent (35%) transaction tax is in truth a *tax imposed on* interest *income* earned by lenders or creditors purchasing commercial paper on the money market, the relevant provisions, *i.e.*, Section 210 (b), were *not* inserted in Title II of the 1977 Tax Code. The end result is that the thirty-five percent (35%) transaction tax is *not* one of the taxes in respect of which Section 51 (e) authorized the imposition of surcharge and interest and Section 72 the imposition of a fraud surcharge.
>
> xxx
>
> xxx The corresponding provision in the *current* Tax Code 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. Section 247 (a) of the NIRC, as amended, reads:
>
> Title X
> *Statutory Offenses and Penalties*

[37] G.R. Nos. 106949-50, December 1, 1995.
[38] *Id.*

Chapter I
Additions to the Tax

> Sec. 247. *General Provisions.* — (a) The additions to the tax or deficiency tax prescribed in this Chapter shall *apply to all taxes, fees and charges imposed in this Code*. The amount so added to the tax shall be collected at the same time, in the same manner and as part of the tax. . . .
> Sec. 248. *Civil Penalties.* — (a) There shall be imposed, *in addition to the tax required to be paid, penalty equivalent to twenty-five percent (25%) of the amount due*, in the following cases:
> xxx xxx xxx
> (3) failure to pay the tax within the time prescribed for its payment; or
> xxx xxx xxx
> (c) the penalties imposed hereunder shall form part of the tax and the entire amount shall be subject to the interest prescribed in Section 249.
> 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 regulations*, from the date prescribed for payment until the amount is fully paid. . . . (Emphases supplied)

In other words, **Section 247 (a) of the current NIRC supplies what did not exist back in 1977** when Picop's liability for the thirty-five percent (35%) transaction tax became fixed. We do not believe we can fill that legislative *lacuna* by judicial fiat. There is nothing to suggest that Section 247 (a) of the present Tax Code, which was inserted in 1985, was intended to be given retroactive application by the legislative authority."[39] [Emphasis supplied.]

Thus, contrary to the stance of the Court *a quo,* the inevitable conclusion from the afore-cited disquisition is that the imposition of deficiency interest under Section 249(B) of the NIRC of 1997, as amended, clearly applies to all internal revenue taxes imposed by the present Tax Code including petitioner's deficiency expanded withholding tax. Moreover, it must be emphasized that Section 249(B) should not be read in isolation but must be read in light of the provisions

[39] *Id.*

of Sections 247(a) and 249(a) of the same Code. Thus, in *Obosa v. Court of Appeals*,[40] the Supreme Court held that:

> "Truly, law must be understood not by 'the letter that killeth but by the spirit that giveth life.' Law should not be read and interpreted in isolated academic abstraction nor even for the sake of logical symmetry but always in [the] context of pulsating social realities and specific environmental facts."[41]

Finally, as to the computation of petitioner's deficiency expanded withholding tax still due and payable, this Court takes notice of petitioner's partial payment in the amount of ₱1,531,759.89 to the BIR on October 29, 2010.[42] Consequently, contrary to the Court *a quo's* computation, justice and equity dictates that only the unpaid amount of the tax deficiency shall be subject to deficiency and delinquency interests under Section 249(B) and (C) of the NIRC of 1997, as amended.

Accordingly, petitioner's deficiency expanded withholding tax that is still due and payable for the taxable year 2003 as of October 29, 2010 shall be computed as follows:

		Amount Due
Basic Expanded Withholding Tax (EWT)		□ 471,544.91
Add:	a) 25% Surcharge	117,886.23
	b) 20% Deficiency Interest	
	from Jan. 15, 2004 to February 12, 2007	

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[40] G.R. No. 114350, January 16, 1997.

[41] *Id.*

[42] Division Docket, pp. 719—725.

	(□471,544.91 x 20% x 1,125/365 days)	290,678.37
	from Feb. 13, 2007 to October 29, 2010)	
	(□471,544.91 x 20% x 1,355/365 days)	350,105.95
	c) 20% Delinquency Interest from February 12, 2007 to October 29, 2010	
	(□762,223.28[43] x 20% x 1356/365 days)	566,342.34
Total Deficiency EWT for taxable year 2003		
as of October 29, 2010		1,796,557.79
Less: Amount paid on October 29, 2010		1,531,759.89[44]
Amount due and payable as of October 29, 2010		□ 264,797.90

In view of petitioner's payment made on October 29, 2010 in the amount of ₱1,531,759.89 against the total tax due as of the same date in the amount of ₱1,796,557.79, petitioner shall be liable to pay the amount of ₱264,797.90, representing the deficiency expanded withholding tax that is still due and payable for the taxable year 2003 as of October 29, 2010. In addition thereto, petitioner shall likewise be liable to pay deficiency and delinquency interests on the aforesaid unpaid balance computed from October 30, 2010 until full payment thereof pursuant to Section 249(B) and (C) of the NIRC of 1997, as amended.

WHEREFORE premises considered, the petition is **PARTIALLY GRANTED**. The Decision of the former Second Division of this Court in CTA Case No. 7701 dated October 4, 2010 and its Resolution dated

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43 Basic EWT of □471,544.91 plus 20% deficiency interest of □290,678.37.

44 Per Payment Form 0605 and BTR-BIR Deposit/Payment Slip, attached as Annexes "A" and "B" to petitioner's Manifestation filed on November 3, 2010, Division Docket, pp. 721-722.

March 8, 2011 are hereby **AFFIRMED** with some **MODIFICATIONS**. Accordingly, petitioner is hereby **ORDERED TO PAY** respondent the amount of Two Hundred Sixty Four Thousand Seven Hundred Ninety Seven Pesos and Ninety Centavos (₱264,797.90), representing the unpaid balance of tax deficiency as of October 29, 2010.

In addition, petitioner is hereby **ORDERED TO PAY** (a) deficiency interest at the rate of twenty percent (20%) *per annum* on the unpaid balance of tax deficiency of ₱264,797.90 computed from October 30, 2010 until full payment thereof, pursuant to Section 249(B) of the NIRC of 1997; and (b) delinquency interest at the rate of twenty percent (20%) *per annum* on the unpaid balance of tax deficiency of ₱264,797.90 computed from October 30, 2010 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997.

SO ORDERED.

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

WE CONCUR:

(*with Dissenting Opinion*)
ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
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 of the opinion of the Court *En Banc*.

ERNESTO D. ACOSTA
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

TAKENAKA CORPORATION PHILIPPINE BRANCH,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 745
(C.T.A. CASE No. 7701)

Present:

Acosta, *P.J.*
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez,
Fabon-Victorino,
Mindaro-Grulla, and
Manalastas, *JJ.*

Promulgated:

SEP 04 2012 2:08 p.m.

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DISSENTING OPINION

ACOSTA, *PJ:*

With all due respect to the majority, I disagree with the view to impose both a *deficiency rate* of twenty percent (20%) per annum and a *delinquency interest*, also at the rate of twenty percent (20%) per annum, on the unpaid balance of tax deficiency.

The majority Decision affirmed with modifications the 04 October 2010 Decision and 08 March 2011 Resolution of the Second Division, thereby in effect confirming the imposition on petitioner of a 20% interest per annum from the period 16 January 2004 to 08 March 2011 (to run, however, until full payment of the total unpaid tax) and simultaneously, for the period of 13 February 2007 to 08 March 2011, another 20% interest per annum (on the deficiency tax, interest and surcharge, and again, to run until full payment of the total unpaid tax plus surcharge and interest). Hence, essentially, from 13 February 2007 up to the date the assessment shall have been fully paid, the Court in Division has imposed at least 40% interest per annum on the deficiency withholding tax due from petitioner, which burden was confirmed by the Court En Banc's majority.

The subject provision from the 1997 National Internal Revenue Code is Section 249 (A), (B) and (C), which 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 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

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> 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.

After a perusal of the aforequoted provision and the authorities on the matter, I am of the humble opinion that it is not the intent of the law to impose such undue interest on any unpaid tax due to the Government. Clearly, the imposition of at least 40% per annum interest on any unpaid tax is grossly excessive and unjust, considering further that the petitioner herein disputed the assessments in accordance with the prescribed procedure for protesting an assessment.

In the old case of **Jamora, et al. vs. Meer, etc., et al.** [74 Phil. 22 (1942)], the Supreme Court stressed that the imposition of penalties for unpaid taxes such as interest is mandatory and cannot be condoned lightly:

> xxx Tax laws imposing penalties for delinquencies are clearly intended to hasten tax payments or to punish evasions or neglect of duty in respect thereof. If delays in tax payments are to be condoned for light reasons, the law imposing penalties for delinquencies would be rendered nugatory, and the maintenance of the government and its multifarious activities would be as precarious as tax payers are willing or unwilling to pay their obligations to the state in time. The imperatives of public welfare will not approve of this result.

However, despite its mandatory imposition, the Supreme Court ruled that penalties for unpaid taxes due are not penal in character but are actually compensatory and laid down the rationale in imposing the same,[1] *viz:*

> As regards interest, the reason is —
>
> The imposition of 1% monthly is but a just compensation to the State <u>for the delay in paying the tax and for the concomitant use by the taxpayer of funds that rightfully should be in the government's hands</u>. (U.S. vs. Goldstein, 189 F (2d) 752; Ross vs. U.S. 148 Fed. Supp. 330; U.S. vs. Joffray 97 Fed. (2d) 488.) T<u>he fact that the interest charged is made proportionate to the period of delay constitutes the</u>

[1] Aguinaldo Industries Corporation vs. Commissioner of Internal Revenue, G.R. No. L-29790 February 25, 1982.

> best evidence that such interest is not penal but compensatory (Castro vs. Collector of Internal Revenue, G.R. L-12174, Dec. 28, 1662, Resolution on Motion for Reconsideration.) (Emphasis ours.)

The imposition of deficiency interest and delinquency interest simultaneously for a given period of time and which will translate to at least 40% per annum interest on any unpaid tax, being grossly excessive and unconscionable, may partake the nature of an imposition that is penal, rather than compensatory.

More importantly, jurisprudence is replete with decided cases that provide for only one imposition of the 20% interest per annum on the deficiency tax due. As pointed out by the petitioner, the Supreme Court in the case of **Philippine Refining Company vs. Court of Appeals**[2] held that:

> As correctly pointed out by the Solicitor General, the deficiency tax assessment in this case, which was the subject of the demand letter of respondent Commissioner dated April 11, 1989, should have been paid within thirty (30) days from receipt thereof. By reason of petitioner's default thereon, the delinquency penalties of 25% surcharge and interest of 20% accrued from April 11, 1989. The fact that petitioner appealed the assessment to the CTA and that the same was modified does not relieve petitioner of the penalties incident to delinquency. The reduced amount of P237,381.25 is but a part of the original assessment of P1,892,584.00.

Likewise, in the case of **Dr. Felisa L. Vda de San Agustin vs. Commissioner of Internal Revenue**[3], the Supreme Court also ruled in the following manner:

> The delay in the payment of the deficiency tax within the time prescribed for its payment in the notice of assessment justifies the imposition of a 25% surcharge in consonance with Section 248A(3) of the Tax Code. The basic deficiency tax in this case being P538,509.50, the twenty-five percent thereof comes to P134,627.37. Section 249 of the Tax Code states that any deficiency in the tax due would be subject to interest at the rate of twenty percent (20%) per annum, which interest shall be assessed and collected from the date prescribed for its payment until full payment is made. The computation of interest by the Court of Tax Appeals -

[2] G.R. No. 118794, May 8, 1996.
[3] G.R. No. 138485, September 10, 2001.

Deficiency estate tax	x	Interest Rate	x	Terms
P538,509.50		20% per annum		11/2 mo./12 mos (11/04/91 to 12/19/91)

= P13,462.74

conforms with the law, i.e., computed on the deficiency tax from the date prescribed for its payment until it is paid.

It may be insightful to note that in the old case of **Commissioner of Internal Revenue vs. Connel Bros. Company (Phil.) and Court of Tax Appeals**[4], the Supreme Court explained the application of Republic Act No. 2342, from which the practice of imposing interest for delinquency, on top of the interest for deficiency tax started, to wit:

> Herein petitioner, Commissioner of Internal Revenue, now claims that in the imposition of interests and surcharges on the delinquent taxes in these cases, the respondent Court of Tax Appeals should have observed the old or unamended provision of Section 51 (e) of the Internal Revenue Code which was enforcible when the assessments were made, and not that of Section 51(d) of the same Code, as amended by Republic Act 2343, which went into effect only on 20 June 1959. It may be pointed out that before its amendment, Section 51(e) prescribed—
>
> SEC. 51. *Assessment and payment of income tax.* —
>
> xxx xxx xxx
>
> (e) *Surcharge and interest in case of delinquency.* — To any sum or sums due and unpaid after the dates prescribed in subsections (b), (c) and (d) for the payment of the same, there shall be added the sum of five *per centum* on the amount of tax unpaid and interest at the rate of one *per centum* a month upon said tax from the time the same became due, except from the estates of insane, deceased, or insolvent persons.
>
> As amended by Republic Act 2343, effective 20 June 1959, the provision now reads:
>
> SEC. 51. —
>
> xxx xxx xxx
>
> (d) *Interest on deficiency.* — Interest upon the amount determined as a deficiency shall be assessed at the same time as the deficiency and shall be paid upon notice and demand from the Commissioner of Internal Revenue; and shall be collected as

[4] G.R. Nos. L-27752-53 August 30, 1971.

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part of the tax, at the rate of six *per centum per annum* from the date prescribed for the payment of the tax (or, if the tax is paid in installments, from the date prescribed for the payment of the first installment) to the date the deficiency is assessed: Provided, that the maximum amount that may be collected as interest on deficiency shall in no case exceed the amount corresponding to a period of three years, the present provisions regarding prescription to the contrary notwithstanding.

(e) *Additions to the tax in case of non-payment.* —

xxx xxx xxx

(2) *Deficiency.* — Where a deficiency, or any interest assessed in connection therewith under paragraph (d) of this section, or any addition to the taxes provided for in section seventy-two of this Code is not paid in full within thirty-two days from the date of notice and demand from the Commissioner of Internal Revenue, there shall be collected upon the unpaid amount, as part of the tax, interest at the rate of one per centum, a month from the date of such notice and demand until it is paid: *Provided*, That the maximum amount that may be collected as interest on deficiency shall in no case exceed the amount corresponding to a period of three years, the present provisions regarding prescription to the contrary notwithstanding.

(3) *Surcharge.* — If any amount included in the notice and demand from the Commissioner of Internal Revenue is not paid in full within thirty days after such notice and demand, there shall be collected in addition to the interest prescribed herein and in paragraph (d) above and as part of the tax a surcharge of five *per centum* of the amount of tax unpaid.

<u>In other words, under the old Section 51 (e), a delinquent taxpayer would have to pay, in addition to the unpaid tax, a 5% surcharge thereon computed from the time the tax became due, plus interest on the whole unpaid amount at the rate of 1% a month. Under the amendatory act (Republic Act 2343), the delinquent taxpayer shall pay, in addition to the tax, a deficiency interest thereon at the rate of 6% *per annum* computed from the date prescribed for payment of the income tax up to the assessment of the delinquency tax, but which shall not exceed the amount corresponding to a period of 3 years. The interest of 1% a month and surcharge of 5% on the whole unpaid amount shall be imposed only in case the delinquency tax and deficiency interest are not paid within 30 days from the date they become due. x</u>xx (Emphasis ours.)

Clearly then, even from inception, the imposition of deficiency interest was made from the date prescribed for payment until the assessment of the Commissioner of Internal Revenue for deficiency. Should the taxpayer fail to pay the assessed deficiency tax with corresponding deficiency interest, the imposition of delinquency interest is thereafter made.

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This application holds true as held in several cases decided by this Court En Banc; the 20% deficiency interest runs only from the date prescribed for the payment of the unpaid or deficiency tax until the date of payment prescribed by the Final Assessment Notice issued by the respondent Commissioner of Internal Revenue. After which, delinquency interest (on the deficiency tax, deficiency interest and surcharge) is imposed on petitioner in addition to the basic deficiency tax, deficiency interest and surcharge, until final payment of the total amount is made.

In the recent case of **Commissioner of Internal Revenue vs. St. Luke's Medical Center, Inc.** (CTA En Banc Case Nos. 538 and 542), the Court En Banc in a Resolution[5] denying the separate motions for reconsideration of the parties, and affirming the Decision of the Court in Division, ruled:

> With respect to the alleged double imposition of the 20% interest on the deficiency assessment, this Court finds against SLMCI.
>
> The P2,624,339.12 interest which was included in the total assessment of P6,275,370.38 refers to the deficiency interest pursuant to Section 249 (A) and (B) of the NIRC of 1997 and not the delinquency interest imposed under Section 249 (C) (3). The Court quotes the pertinent portion of the assailed decision, as follows:
>
>> "It is clear that the said interest of P2,624,339.12, contained in the dispositive portion of the Decision of the Court in Division was made pursuant to Section 249(A) and (B). Thus, SLMCI was correctly ordered to pay the 20% delinquency interest on the total amount of P6,275,370.38, counted from October 15, 2003 until full payment thereof pursuant to Section 249(C)(3) of the NIRC."
>
> To further differentiate, the 20% deficiency interest is imposed upon "any unpaid amount of tax . . ., from the date prescribed for payment . . .", on the other hand, the 20% delinquency interest is imposed "in case of failure to pay . . . a deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner . . . "

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[5] March 8, 2011.

> Thus, in the instant case, the 20% deficiency interest, corresponding to the P2,624,339.12, was imposed on the basic tax and computed from April 15, 1999 while the 20% delinquency interest was imposed on the basic tax, surcharge and deficiency interest starting from October 15, 2003.

The Court En Banc in ***St. Luke's Medical Center, Inc.***, albeit declaring that there is no double imposition of interest when deficiency interest as well as delinquency interest are imposed, affirmed the Decision of the Court in Division, which computed deficiency interest only up to the date prescribed for payment stated in the Final Assessment Notice. When the taxpayer still failed to pay the assessed deficiency tax, delinquency interest was imposed.

In conclusion, I humbly reiterate my position that I cannot subscribe to the view that there can be a simultaneous imposition of the deficiency and delinquency interests under Section 249 (B) and (C) of the Tax Code, and thus I vote to grant petitioner's Petition for Review.

ERNESTO D. ACOSTA
Presiding Justice