REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- **versus** -

TOTAL (PHILIPPINES) CORPORATION,
Respondent.

CTA EB NO. 1616
(CTA Case No. 8479)

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TOTAL (PHILIPPINES) CORPORATION,
Petitioner,

- **versus** -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1621
(CTA Case No. 8479)

Present:

DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, JJ.

Promulgated:

MAY 10 2019
3:18 p.m.

x--x

AMENDED DECISION

UY, J.:

For resolution are the following:

1) **"MOTION FOR PARTIAL RECONSIDERATION (Re: Decision dated 06 November 2018"** filed by the Commissioner of Internal Revenue (CIR) on November 27,

2018,[1] with the **"COMMENT (To Motion for Partial Reconsideration filed by Commissioner of Internal Revenue on Decision dated 06 November 2018)"** filed by Total (Philippines) Corporation (TPC) on January 25, 2019;[2] and

2) **"MOTION FOR RECONSIDERATION"** filed by TPC on December 3, 2018,[3] without the CIR's comment despite due notice.[4]

Both *Motions* pray for the reconsideration of the Court *En Banc's* Decision dated November 6, 2018,[5] the dispositive portion of which reads:

> "**WHEREFORE**, in light of the foregoing considerations, the consolidated *Petitions for Review* are **PARTIALLY GRANTED**. The Decision dated December 22, 2016 and the Resolution dated March 6, 2017, both rendered by the Court in Division in CTA Case No. 8479, are **AFFIRMED with MODIFICATION**.
>
> Accordingly, TPC is **ORDERED TO PAY EIGHTY NINE MILLION THIRTEEN THOUSAND FOUR HUNDRED NINETY-NINE AND 58/100 PESOS (₱89,013,499.58)** representing deficiency EWT and FBT for taxable year 2005, inclusive of the twenty-five percent (25%) surcharge, and twenty percent (20%) deficiency interest and delinquency interest imposed under Sections 248(A) and 249(B) and (C), of the NIRC of 1997, as amended, respectively, computed until December 31, 2017, as follows:

	EWT		FBT	TOTAL
	Supplier at 1%	*Contractor at 2%*		
Basic Tax Due	₱11,589,526.30	₱451,048.99	₱821,540.84	₱12,862,116.13
Add: 25% Surcharge	2,897,381.58	112,762.25	205,385.21	3,215,529.03
20% Deficiency Interest from January				

[1] EB Docket (CTA EB No. 1616), pp. 186 to 190.
[2] EB Docket (CTA EB No. 1616), pp. 225 to 235.
[3] EB Docket (CTA EB No. 1616), pp. 197 to 219.
[4] As per Records Verification dated February 20, 2019 issued by the Judicial Records Division of this Court, EB Docket (CTA EB No. 1616), p. 236.
[5] EB Docket (CTA EB No. 1616), pp. 156 to 185.

16, 2006 to November 30, 2009[6]				
[₱11,589,526.30 x 20% x 1,415/365 days]	8,985,851.90			8,985,851.90
[₱451,048.99 x 20% x 1,415/365 days]		349,717.44		349,717.44
[₱821,540.84 x 20% x 1,415/365 days]			636,975.50	636,975.50
Total Amount Due, November 30, 2009	**₱23,472,759.77**	**₱913,528.67**	**₱1,663,901.55**	**₱26,050,190.00**
Add: 20% Deficiency Interest from December 1, 2009 to December 31, 2017				
[₱11,589,526.30 x 20% x 2,953/365 days]	18,752,806.12			18,752,806.12
[₱451,048.99 x 20% x 2,953/365 days]		729,834.34		729,834.34
[₱821,540.84 x 20% x 2,953/365 days]			1,329,320.60	1,329,320.60
20% Delinquency Interest from December 1, 2009 to December 31, 2017				
[₱23,472,759.77 x 20% x 2,953/365 days]	37,980,854.58			37,980,854.58
[₱913,528.67 x 20% x 2,953/365 days]		1,478,164.48		1,478,164.48
[₱1,663,901.55 x 20% x 2,953/365 days]			2,692,329.47	2,692,329.47
Total Amount Due, Dec. 31, 2017	**₱80,206,420.47**	**₱3,121,527.49**	**₱5,685,551.62**	**₱89,013,499.58**

In addition, TPC is **ORDERED TO PAY** delinquency interest at the rate of twelve percent (12%), on the total unpaid amount as of November 30, 2009 in the amount of **₱26,050,190.00**, as determined above, computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the Tax Code, as amended by RA No. 10963 and implemented by RR No. 21-2018.

SO ORDERED."

The CIR's arguments:

In his *Motion for Partial Reconsideration*, the CIR reiterates that TPC failed to prove that its purchases were valid importations, hence,

[6] Exhibit "I", Division Docket – Vol. 2 (CTA Case No. 8479), pp. 896 to 897.

the same should be subject to deficiency assessment for expanded withholding tax (EWT). Allegedly, the testimony of the Independent Certified Public Accountant (ICPA), Mr. Pizarro, is limited to the alleged physical examination of the said documents and that TPC did not present witnesses to prove the probative value and due execution of the said documents.

The CIR likewise reaffirms his claim that the assessment issued against TPC is valid and lawful, and that all presumptions are in favor of the correctness of tax assessments.

TPC's arguments:

In its *Motion for Reconsideration*, TPC maintains its position that the assessment is a nullity in view of the failure of the revenue officer to submit a report within the 120-day validity period of the LOA, and that no evidence was shown that the LOA was revalidated.

TPC further contends that the assessment for the deficiency EWT and fringe benefit tax (FBT) liabilities for taxable year 2005 had already prescribed. TPC submits that the principle of *in pari delicto* as enunciated in the case of *Commissioner of Internal Revenue vs. Next Mobile, Inc.* is not applicable to the present case; and that the waivers executed in this case are defective as the requisites for the validity of the waivers under Section 222(b) of the 1997 Tax Code and RMO No. 20-90 were not complied with.

TPC likewise argues that the subject assessment is invalid for having arisen from an LOA which was not furnished to petitioner.

Finally, TPC reiterates that it is not liable for the alleged deficiency EWT and deficiency fringe benefits tax (FBT) since the Final Letter of Demand (FLD) issued to the petitioner lacked factual and legal bases.

THE COURT *EN BANC'S* RULING

We find no merit in both *Motions*.

A careful perusal of the CIR's *Motion for Partial Reconsideration* and TPC's *Motion for Reconsideration*, show that the arguments raised therein are mere reiterations of matters which have already been considered, weighed and resolved in the assailed Decision.

Finding no compelling reason to reconsider or reverse Our Decision, We shall no longer belabor in this Resolution, to repeat the disquisitions made therein.

This Court *En Banc*, however, finds it necessary to amend its Decision dated November 6, 2018, particularly with respect to the imposition of deficiency and delinquency interest, beginning January 1, 2018.

Section 249 of the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act (RA) No. 10963 or otherwise known as the *"Tax Reform for Acceleration and Inclusion"* (TRAIN), which took effect on January 1, 2018, governs the imposition of deficiency and delinquency interest, to wit:

> "SEC. 249. *Interest*. –
>
> (A) *In General*. – There shall be assessed and collected on any unpaid amount of tax, interest at the rate of double the legal interest rate for loans or forbearance of any money in the absence of an express stipulation as set by the Bangko Sentral ng Pilipinas from the date prescribed for payment until the amount is fully paid: *Provided*, **That in no case shall the deficiency and delinquency interest prescribed under Subsections (B) and (C) hereof be imposed simultaneously.**
>
> (B) *Deficiency Interest*. – Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected **from the date prescribed for its payment until the full payment thereof, or upon issuance of a notice and demand by the Commissioner of Internal Revenue, whichever comes earlier.**
>
> (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.

xxx xxx xxx" *(Emphases supplied)*

Based on the foregoing provisions, deficiency interest is computed from the date prescribed for its payment until the full payment thereof, or upon issuance of a notice and demand by the CIR, whichever comes earlier. Delinquency interest, on the other hand, is imposed upon, among others, on the failure to pay the deficiency tax, or any surcharge or interest thereon, on the due date appearing in the notice and demand of the CIR. In no case, however, shall the deficiency interest and delinquency interest be imposed simultaneously. The foregoing rules are to be observed beginning January 1, 2018.

Moreover, the Secretary of Finance issued RR No. 21-2018 on September 21, 2018, implementing Section 249 of the NIRC of 1997, as amended by RA No. 10963. Section 6 of the said RR provides as follows:

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

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

The double imposition of both deficiency and delinquency interest under Section 249 prior to its amendment will still apply in so far as the period between the date prescribed for payment until December 31, 2017.

Illustration 2: A Company has been assessed deficiency income tax of ₱1,000,000.00, exclusive of

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interest and surcharge, for taxable year 2015. The tax liability has remained unpaid despite the lapse of June 30, 2017, the deadline for payment stated in the notice and demand issued by the Commissioner. Payment was made by the taxpayer only on February 10, 2018. The civil penalties for late payment shall be computed as follows:

Basic Tax Due - Income Tax			₱1,000,000.00
Add:	25% Surcharge for late payment	₱250,000.00	
	20% Deficiency Interest from April 16, 2016 to June 30, 2017 (441 days)	241,643.84	491,643.84
Total Amount Due, June 30, 2017			**₱1,491,643.84**
Add:	20% Deficiency Interest from July 1, 2017 to December 31, 2017 (184 days; based on basic tax of P1,000.000.00)	₱100,821.92	
	20% Delinquency interest from July 1, 2017 December 31 , 2017 (184 days; based on total amount due of P1,491,643. 84 as of June 30, 2017)	150,390.39	
	12% Delinquency Interest from January 1, 2018 to February 10. 2018 (41 days; based on total amount due of P1,491,643.84 as of June 30, 2017)	20,106.54	271,318.85
Total Amount Due, February 10, 2018			**₱1,762,962.69"**

(Underscoring supplied)

The foregoing provision and illustration clarify and illustrate the computation of delinquency and deficiency interests in case where the tax liability became due before the effectivity of the TRAIN Law on January 1, 2018, and where the full payment thereof will only be accomplished after the said effectivity date. Specifically, the said provision is clear that the imposition of the deficiency interest is until *"the deadline for payment stated in the notice and demand issued by the Commissioner"*, and the imposition of delinquency interest would come only after such *"deadline"*.

In the assailed Decision, the Court *En Banc* treated the FLD as the "notice and demand by the CIR". As such, the deficiency interest and delinquency interests were computed as follows:

1) 20% deficiency interest computed from January 16, 2006, the date following the last day prescribed for the payment of the subject deficiency EWT and FBT until November 30,

2009, **the due date indicated in the Assessment Notices attached to the FLD dated November 12, 2009**[7];

2) 20% deficiency interest from December 1, 2009, the day following **the due date indicated in the Assessment Notices attached to the FLD dated November 12, 2009**,[8] until December 31, 2017; and

3) delinquency interest on the unpaid amount as of November 30, 2009, **the due date indicated in the Assessment Notices attached to the dated November 12, 2009.**

The Court *En Banc*, however, finds that it is the **Final Decision on Disputed Assessment (FDDA)**, and not the FLD, which should be considered as the "notice and demand by the CIR" for purposes of computing the deficiency and delinquency interest.

The FDDA contains the final decision of the CIR in the subject assessment and resolves the tax liability of the taxpayer with finality in the administrative level. Its issuance, in effect, modifies, abandons or supplants, in whole or in part, the findings of deficiency taxes contained in the FLD. Moreover, the FDDA fixes a **new due date** for the payment of the tax liabilities and surcharge of the taxpayer, which in itself suggests that the due date indicated in the FLD had already become irrelevant.

It bears noting further, that a perusal of the FDDA dated March 26, 2012,[9] shows that the CIR likewise computed the **deficiency interest** from the date prescribed for the payment of the subject deficiency EWT and FBT until the due date indicated in the Assessment Notices attached to the FDDA, and **not** on the due date indicated in the Assessment Notices attached to the FLD.

In view thereof, it is evident that the issuance of the FDDA and not the FLD, should be considered as the "notice and demand of the CIR", for purposes of computing the deficiency and delinquency interests.

Moreover, it must be emphasized that tax statues are construed strictly against the government and liberally in favor of the taxpayer.

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[7] Exhibit "I", Division Docket – Vol. 2 (CTA Case No. 8479), pp. 895 to 897
[8] Supra.
[9] Exhibit "K", Division Docket – Vol. 2 (CTA Case No. 8479), pp. 922 to 925.

In *Philacor Credit Corp. vs. Commissioner of Internal Revenue*[10], the Supreme Court held as follows:

> "The settled rule is that in case of doubt, **tax laws must be construed strictly against the State and liberally in favor of the taxpayer**. The reason for this ruling is not hard to grasp: taxes, as burdens which must be endured by the taxpayer, should not be presumed to go beyond what the law expressly and clearly declares. xxx."

Based on the foregoing, in case of doubt or ambiguity in tax laws, the same must be construed liberally in favor of the taxpayer and strictly against the taxing authority. Applying the foregoing principle in this case, considering that the total amount of tax liability computed using the due date indicated in the FDDA as point of reference, will result to a lower amount of tax due than the amount computed using the due date indicated in FLD, it becomes all the more reasonable to treat the FDDA as the "notice and demand by the CIR", for purposes of computing the deficiency and delinquency interests.

In view of the foregoing, this Court *En Banc* resolves to modify the imposition of deficiency and delinquency interests in this case as follows:

a. Deficiency interest:

   1. Deficiency interest shall be computed from January 16, 2006—the date following the last day prescribed for the payment of the subject deficiency EWT and FBT until March 31, 2012, which is **the due date indicated in the Assessment Notices attached to the FDDA dated March 26, 2012**; and

   2. Deficiency interest shall continue to be imposed from April 1, 2012, the day following **the due date indicated in the Assessment Notices attached to the FDDA dated March 26, 2012,** until December 31, 2017.

b. Delinquency interest:

   1. The 20% delinquency interest shall be imposed on the unpaid amount computed from April 1, 2012 the day

[10] G.R. No. 169899, February 6, 2013.

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following **<u>the due date indicated in the Assessment Notices attached to the FDDA dated March 26, 2012</u>**, until December 31, 2017; and

2. The 12% delinquency interest shall then be imposed on the unpaid amount as of March 31, 2012, **<u>the due date indicated in the Assessment Notices attached to the FDDA dated March 26, 2012</u>**, computed from December 31, 2017 until full payment.

On the basis of the foregoing revised computations of deficiency interest and delinquency interest, it becomes necessary to render the instant Amended Decision.

WHEREFORE, in light of the foregoing considerations, the CIR's *Motion for Partial Reconsideration* and TPC's *Motion for Reconsideration* are both **DENIED** for lack of merit. However, the dispositive portion of the Decision dated November 6, 2018 is hereby **MODIFIED** to read as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the consolidated *Petitions for Review* are **PARTIALLY GRANTED**. The Decision dated December 22, 2016 and the Resolution dated March 6, 2017, both rendered by the Court in Division in CTA Case No. 8479, are **AFFIRMED with MODIFICATION**.
>
> Accordingly, TPC is **ORDERED TO PAY EIGHTY THREE MILLION SEVEN HUNDRED SIXTY FOUR THOUSAND SEVEN HUNDRED FIFTY-NINE AND 88/100 PESOS (₱83,764,759.88)** representing deficiency EWT and FBT for taxable year 2005, inclusive of the twenty-five percent (25%) surcharge, and twenty percent (20%) deficiency interest and delinquency interest imposed under Sections 248(A) and 249(B) and (C), of the NIRC of 1997, as amended, respectively, computed until December 31, 2017, as follows:

	EWT		FBT	TOTAL
	Supplier at 1%	*Contractor at 2%*		
Basic Tax Due	₱11,589,526.30	₱451,048.99	₱821,540.84	₱12,862,116.13
Add: 25% Surcharge	2,897,381.58	112,762.25	205,385.21	3,215,529.04
Add: 20% Deficiency Interest from				

January 16, 2006 March 31, 2012[11]				
[₱11,589,526.30 x 20% x 2,267/365 days]	14,396,414.31			14,396,414.31
[₱451,048.99 x 20% x 2,267/365 days]		560,289.35		560,289.35
[₱821,540.84 x 20% x 2,267/365 days]			1,020,511.28	1,020,511.28
Total Amount Due, March 31, 2012	**₱28,883,322.19**	**₱1,124,100.59**	**₱2,047,437.33**	**₱32,054,860.11**
Add: 20% Deficiency Interest from April 1, 2012 to December 31, 2017				
[₱11,589,526.30 x 20% x 2,101/365 days]	13,342,243.70			13,342,243.70
[₱451,048.99 x 20% x 2,101/365 days]		519,262.43		519,262.43
[₱821,540.84 x 20% x 2,101/365 days]			945,784.82	945,784.82
20% Delinquency Interest from April 1, 2012 to December 31, 2017				
[₱28,883,322.19 x 20% x 2101/365 days]	33,251,430.09			33,251,430.09
[₱1,124,100.59 x 20% x 2,101/365 days]		1,294,101.56		1,294,101.56
[₱2,047,437.33x 20% x 2,101/365 days]			2,357,077.17	2,357,077.17
Total Amount Due, Dec. 31, 2017	**₱75,476,995.98**	**₱2,937,464.58**	**₱5,350,299.32**	**₱83,764,759.88**

In addition, TPC is **ORDERED TO PAY** delinquency interest at the rate of twelve percent (12%), on the total unpaid amount as of March 31, 2012 in the amount of **₱32,054,860.11**, as determined above, computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by RA No. 10963 and implemented by RR No. 21-2018.

SO ORDERED."

SO ORDERED.

ERLINDA P. UY
Associate Justice

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[11] Exhibit "K", Division Docket – Vol. 2 (CTA Case No. 8479), pp. 922 to 925.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(On Leave)

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Amended Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice