REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

TOYOTA MANILA BAY CORPORATION, Petitioner, -versus- **COMMISSIONER OF INTERNAL REVENUE,** Respondent.	**CTA EB NO. 1280** **(CTA CASE NO. 8227)**

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COMMISSIONER OF INTERNAL REVENUE, Petitioner, -versus- **TOYOTA MANILA BAY CORPORATION,** Respondent.	**CTA EB NO. 1287** **(CTA CASE NO. 8227)** Present: Del Rosario, P.J., Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, and Manahan, J.J. Promulgated: AUG 22 2017 4:05 p.m.

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AMENDED DECISION

CASTAÑEDA, JR., J.:

For resolution are the Motion for Reconsideration of the Commissioner of Internal Revenue (CIR) filed by registered mail on November 2, 2016 and the March 29, 2017 Comment and the March 29, 2017 Compliance of Toyota Manila Bay Corporation (Toyota).

The CIR seeks reconsideration of the Court's October 3, 2016 Decision, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the Petitions for Review filed by Toyota in CTA EB Case No. 1280 and by the CIR in CTA EB Case No. 1287 are **DENIED** for lack of merit. Accordingly, the September 3, 2014 Decision and the February 17, 2015 Resolution are **AFFIRMED.**
>
> **SO ORDERED.**"

A. The CIR's Motion for Reconsideration lacks merit

The CIR avers, on the one hand, that there was no valid protest to the Formal Assessment Notice (FAN) from Toyota and, as such, the re-opening or reinvestigation produced no legal effect, being contrary to law and jurisprudence. The CIR also questioned admission and the probative value given to the Letters dated November 27, 2007 (Exhibits I-4) and December 6, 2007 (Exhibit I-5) for being mere facsimiles.[1]

Toyota, on the other hand, opposes the motion and counters that estoppel bars the CIR from questioning the validity of the protest letter.[2]

After a careful consideration of the foregoing arguments, the Court finds no merit in the instant Motion for Reconsideration.

First, in *Ferdinand Marcos et al. v. Hon. Raul Manglapus et al.*,[3] the Supreme Court *En Banc* emphasized that in all motions for reconsideration, the burden is upon the movant, the CIR in this case, to show that there are compelling reasons to reconsider the decision of the court. The CIR failed to satisfy this burden.

Second, the issues on the Toyota's protest of the FAN sounded by the CIR are not at all novel as they have already been discussed early on in the Petition for Review[4] and addressed squarely by the Court's discussion on estoppel in the October 3, 2016 Decision:[5]

> "As applied in this case, the Court in Division found that several of the CIR's acts and declarations led Toyota to rely on the belief that it was granted the time necessary to file its protest and, having filed a "letter of protest"[6] dated February 1, 2008 was granted the reinvestigation it

[1] Motion for Reconsideration, Rollo (EB1280), p. 230.
[2] Comment, Rollo (EB 1280), p. 258.
[3] G.R. No. 88211, October 27, 1989.
[4] Rollo (EB 1287), pp. 13-16.
[5] Rollo (EB 1280), pp. 183-188.
[6] Final Decision on Disputed Assessment, Exhibit K, Formal Offer of Evidence, Division Docket, pp. 376-377.

requested with the issuance of a TVN. Specifically, the Court *a quo*, noted that:

> "The foregoing circumstances are sufficient justification to hold respondent in estoppel to raise the defense that petitioner failed to file a protest within thirty (30) days from its receipt of the subject FAN. It must be pointed out that while the BIR initially required petitioner to file a "valid protest", it subsequently recognized petitioner's letter dated February 1, 2008 as petitioner's "letter of protest" in its FDDA. Furthermore, if the BIR truly believes, at the administrative level, that petitioner did not file a valid protest letter, it could not have proceeded with the petitioner's "request for reinvestigation", prepared the above-stated ATCAs, and made the following statements in the said FDDA, to wit:
>
> > 'This has reference to our Formal Letter of Demand and Assessment Notice dated October 27, 2004 wherein you have submitted a letter of protest dated February 1, 2008 and have consequently requested for the reinvestigation of your 2004 deficiency income tax, value added tax, documentary stamp tax and compromise penalty in the aggregate amount of P139,718,896.20 respectively.'(Underscoring supplied)
>
> On the part of petitioner, the latter was lead to believe that the failure to file a "valid protest" within the thirty-day period was not an issue. In fact, it believed that the subject assessments will already be cancelled.
>
> In light of the foregoing, estoppel has set in against respondent."[7] (Underscoring supplied)

A careful review of the foregoing factual findings clearly shows that they are well-supported by evidence on record. The chain of letters, internal memoranda and other documents issued by the CIR unequivocally and consistently point to her intention to accept the February 1, 2008 "letter of protest"[8] and to grant reinvestigation upon which Toyota had justifiably relied.

1. The November 27, 2007 letter signed by the OIC-Regional Director which granted Toyota's request to submit a letter of protest.[9]

2. The December 6, 2007 letter signed by the OIC-Regional Director which extended the time for Toyota to submit the requested data.[10] ℱ

[7] September 3, 2014 Decision, Division Docket, p. 629.
[8] Final Decision on Disputed Assessment, Exhibit K, Formal Offer of Evidence, Division Docket, pp. 376-377.
[9] Exhibit I-4, Formal Offer of Evidence, Division Docket, p. 372.
[10] Exhibit I-5, Formal Offer of Evidence, Division Docket, p. 373; September 3, 2014 Decision, p. 29; The December 6, 2007 letter granted Toyota until January 4, 2007 to submit the data which should have been January 4, 2008, Division Docket, p. 623.

3. The March 7, 2008 letter where the CIR informed Toyota that the entire docket of the case together with the letter protest will be forwarded to the RDO No. 51 – Pasay City for further evaluation and necessary action.[11]

4. The March 18, 2008 Tax Verification Notice with serial number 00051489 and Checklist of Requirements dated May 22, 2008 was issued by Revenue Region No. 8, Revenue District Office No. 51 – Pasay City and signed by Revenue District Officer Ricardo B. Espiritu, stating that a *reinvestigation* for the year 2004 will be conducted by Revenue Officer Cecilia S. Tan:[12]

"SIR/MADAM/GENTLEMEN:

This is to inform you that Revenue Officer Ma. Cecilia S. Tan of this Office is authorized to verify the supporting documents and/or pertinent records relative to your:

	Capital gains tax return
	Withholding tax return on property transactions
	Estate tax return
	Donor's tax return
	Claim for __________tax credit/refund
XX	**Request for reinvestigation**

covering the taxable year/period 2004.

In this connection, please furnish him/her with the following documents on __________ between ____________ to ____________.

____
____
____

Your preferential attention on this matter will be highly appreciated.

Very truly yours,

(signed)
RICARDO B. ESPIRITU

____

Authorized Revenue Officer

Revenue District Officer

____

Please contact the above Revenue Officer or
Group Supervisor Mario H. Elada
through telephone number 5517019
45339 / 8.3.05 LN# 051-AS-04-00-00050"[13] (Emphasis supplied)

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[11] Par. 4, JSFI, Division Docket, p. 166.
Aside from this stipulation, there is a 1st Endorsement dated February 4, 2008 signed by OIC-Regional Director which has a tenor similar to the March 7, 2008 letter. It states: "Forwarded to the Revenue District Officer, RDO No. 51-Pasay City the herein tax docket of TOYOTA MANILA BAY CORPORATION xxxx inviting attention to the herein letter of Ms. Elisa D. Julian, for and in behalf of the subject taxpayer, for further evaluation and necessary action." BIR Records, p. 220.

[12] Par. 5, JSFI, Division Docket, p. 166; Exhibit J, Formal Offer of Evidence, Division Docket, p. 375; Exhibit 11, Formal Offer of Evidence, Division Docket, p. 502, BIR Records, p. 225.

[13] Exhibits 11 and 12, Formal Offer of Evidence, BIR Records, pp. 224-225; Exhibit J, Formal Offer of Evidence, Division Docket, p. 375.

5. In the Second Request for Presentation of Books of Account[s] dated June 3, 2008, the CIR requested for the presentation of accounting records listed in the May 22, 2008 Checklist:[14]

6. In the 3rd and Final Notice dated June 11, 2008, the CIR again reiterated her request for the documents.[15]

7. In a Memorandum dated June 20, 2008, addressed to the Regional Director, the Revenue Officers from RDO No. 51 recommended that the case be *returned* to the Assessment Division of the Revenue Region for appropriate action and to effect collection.[16]

8. On July 16, 2008, the CIR issued an FDDA with Details of Discrepancies.[17] Toyota asserted that it did ***not*** receive a copy of the FDDA and the Details of Discrepancies.[18] Significantly, Toyota's denial of the receipt of the FDDA remain uncontested by the CIR as her counsels manifested before the Court in Division that they will no longer present any witness.[19] Neither did the CIR present a copy of the FDDA which would have helped clarify the circumstances surrounding the service of the FDDA to Toyota.[20]

As correctly observed by the Court in Division, the foregoing acts have clearly communicated to Toyota that the reinvestigation was still pending at that time. These acts and representations could not have been interpreted by Toyota otherwise. In fact, the subsequent acts of the CIR only confirmed and further cemented Toyota's belief that it filed a valid protest on which reinvestigation was granted, thus:

1. On March 11, 2009, "as a result of the reinvestigation," Toyota paid the amount of ₱240,914.23, "representing payment for deficiency VAT, including interest and compromise penalties, for taxable year 2004."[21]

2. In a Memorandum dated March 11, 2009 addressed to the Regional Director, it was stated that:

> "This refers to the 2004 Income, Value-Added and Documentary Stamp Tax liabilities of the above taxpayer under Final Assessment Notice No. 45339-04-07-0431 dated October 24, 2007.
>
> Please be informed that the taxpayer repeatedly filed a protest letter against the issued assessment on the following grounds which were found meritorious by the undersigned, xxxx.

[14] Exhibit 13, Formal Offer of Evidence, BIR Records, p. 226.
[15] Exhibit 14, Formal Offer of Evidence, Division Docket, p. 502; BIR Records, p. 228.
[16] Exhibit 15, Formal Offer of Evidence, Division Docket, p. 503; BIR Records, p. 230.
[17] Exhibits K and K-1, Formal Offer of Evidence, Division Docket, pp. 376-379.
[18] Exhibit Z, Question 78, Judicial Affidavit of Elisa Julian, Senior Finance and Administration Manager, Formal Offer of Evidence, Division Docket, pp. 419-436.
[19] November 22, 2012 Resolution, Division Docket, p. 497; Minutes of November 22, 2012 Hearing, Division Docket, p. 495.
[20] The CIR's Formal Offer of Evidence, which covered several pieces of evidence relevant to the assessment, significantly, did not include the FDDA which would have aided her cause, Division Docket, pp. 501-504.
[21] Par. 13, JSFI, Division Docket, p. 172; Par. 3, Supplemental JSF dated October 4, 2012, Division Docket, p. 477; BIR Records, pp. 264-265.

xxx xxx xxx

> In view of the foregoing, it is respectfully recommended that the Authority to Cancel Assessment together with this report be approved and the case filed for future reference."[22]

3. An ATCA dated March 13, 2009 was finally issued and signed by Revenue District Officer Espiritu.[23]" (*Citations retained but renumbered to facilitate reference*)

Specifically, the CIR once again questions the Court's ruling of these essentially factual issues on the validity of Toyota's protest and on the validity of the CIR's subsequent reinvestigation that culminated in the issuance of the Authority to Cancel Assessment (ATCA).[24]

From the issuance of the March 13, 2009 ATCA[25] up to the issuance of the January 6, 2011 Warrant of Distraint and Levy,[26] *a period of almost two years*, the CIR had all the opportunity to disavow, abrogate or recall all acts or processes which were deemed inconsistent with intent of the agency. There was failure or omission to do so.

It is worth noting that, contrary to the CIR's alleged revocation or repeal of all acts and processes which followed the reinvestigation,[27] the ATCA and all the other issuances which were allegedly found inconsistent with the position of the CIR were not invalidated. The July 13, 2009 Memorandum, which was addressed to the Regional Director, discussed the March 13, 2009 ATCA and the March 11, 2009 payment of ₱240,914.23 and yet fell short of recommending its recall or invalidation.[28] The January 11, 2010 BIR letter to Toyota, also did not nullify the ATCA and the prior inconsistent proceedings. The letter merely reiterated that (1) the tax case remained open because of insufficient tax payment and, (2) the case was referred to a new set of examiners due to the transfer of the ones previously assigned.[29]

Even assuming there was a subsequent recall, by then the reinvestigation and all the processes following the reinvestigation upon which Toyota relied had already been *fait accompli*. Clearly, the CIR cannot now deny the tenor of these acts and the subsequent omission. Taken collectively, they unjustly led Toyota to believe that the reinvestigation was granted and that the same was already concluded with the issuance of the ATCA.

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[22] BIR Records, pp. 284-287.
[23] Par. 14, JSFI, Division Docket, pp. 172-173; Par. 8, AJSF dated November 20, 2012, Division Docket, p. 491; Authority to Cancel Assessment, Exhibit L, Formal Offer of Evidence, Division Docket, p. 380.
[24] Pars. 14 and 15, Joint Stipulation of Facts and Issues (JSFI), Division Docket, p. 172-173; Exhibit L, Formal Offer of Evidence, Division Docket, p. 380.
[25] Par. 14, JSFI, Division Docket, pp. 172-173; Par. 8, AJSF dated November 20, 2012, Division Docket, p. 491; Authority to Cancel Assessment, Exhibit L, Formal Offer of Evidence, Division Docket, p. 380.
[26] Exhibit M, Formal Offer of Evidence, Division Docket, pp. 329 and 381.
[27] Motion for Reconsideration, Rollo (EB 1280), p. 239.
[28] Exhibit 17, Formal Offer of Evidence, Division Docket, p. 503, BIR Records, pp. 311-316.
[29] Exhibit 18, Formal Offer of Evidence, Division Docket, p. 503, BIR Records, p. 321.

Third, the CIR objects admission of and the weight given to the following documents issued by the agency he heads:

- Exhibit I-4, the BIR letter dated November 27, 2007 signed by OIC-Regional Director, Nieva A. Guerrero; and,

- Exhibit I-5, the BIR letter dated December 6, 2007 signed by OIC-Regional Director, Nieva A. Guerrero.

Specifically, the CIR states that since these documents are mere facsimiles or scanned copies, without the original, as such, there is no way to determine their genuineness and due execution.

Rule 130, Sections 1(a) and (d) and 5 apply squarely to the CIR's argument:

"RULE 130

Rules of Admissibility

x x x x x x x x x

B. DOCUMENTARY EVIDENCE

x x x x x x x x x

1. Best Evidence Rule

Section 3. *Original document must be produced*; *exceptions*. — When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:

(a) <u>When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror</u>;

(b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;

(c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and

(d) <u>When the original is a public record in the custody of a public officer or is recorded in a public office</u>. (2a)

x x x x x x x x x

2. Secondary Evidence

> **Section 5.** *When original document is unavailable.* — When the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated. (4a)

To begin with, these documents were issued by the BIR and were in its custody, which fact the CIR failed to refute. The CIR also chose not object to their admission when they were formally offered as the counsels failed to comment at all on the offer.[30]

Furthermore, Toyota was forthright when it manifested that Exhibit I-5 was a "faxed copy signed by Ma. Nieva Guerrero, OIC Regional Director of the Bureau of Internal Revenue. During the hearing on January 19, 2012, Elisa Julian testified that the original copy of Exhibit I-5 is with the BIR but the same cannot be found in the BIR records. It is clear on the upper left hand corner of the said document that it (Exhibit I-5) was sent through fax by the Assessment Division of the BIR on December 6, 2007. Elisa Julian testified that what is in her possession is the faxed copy of Exhibit I-5." Thus, Toyota cited Rule 130 Section for the presentation of secondary evidence in the place of the original.[31]

The CIR did not present any evidence to disprove the existence of these documents much less cast doubt on their genuineness and due execution.

The Court in Division was, therefore, correct in admitting[32] these documents and considering them in arriving at its decision.[33]

B. Toyota's Payment of ₱7,588,871.38 based on its Manifestation and its Compliance is insufficient.

In Toyota's Manifestation and Compliance, it stated that, on November 3, 2016, it paid through Electronic Filing and Payment System (eFPS) the total amount ₱7,588,871.38 computed as follows:

[30] Resolution dated September 13, 2012, Division Docket, p. 474.
[31] Toyota's Formal Offer of Evidence, Division Docket, p. 331.
[32] Resolution dated September 13, 2012, Division Docket, p. 474.
[33] Decision, Division Docket, pp. 622-623.

TOYOTA'S COMPUTATION						
Tax Type	**Basic Tax**	**25% Surcharge**	**20% Deficiency Interest as of Nov. 3, 2016**	**20% Delinquency Interest as of Nov. 3, 2016**	**Total Payment by Toyota**	**EFPS Transaction Reference and Filing Reference**
VAT	₱ 666,685.90	₱ 166,671.48	₱ 1,571,186.88	₱ 1,201,130.54	₱ 3,605,674.80	269-715-161103-50905 291600017296279[34]
DST	735,000.00	183,750.00	1,740,238.36	1,324,208.22	3,983,196.58	269-715-161103-50873 291600017296676[35]
Total	**₱ 1,401,685.90**	**₱ 350,421.48**	**₱ 3,311,425.24**	**₱ 2,525,338.76**	**₱ 7,588,871.38**	

We note, however, that in computing the 20% *delinquency interest*, Toyota failed to include in the base amount, the 25% surcharge and the 20% deficiency interest. As such, the Court notes an underpayment of ₱6,536,935.65.

COURT'S COMPUTATION						
Tax Type	**Basic Tax**	**25% Surcharge**	**20% Deficiency Interest**	**20% Delinquency Interest**	**Amount Due**	
VAT	₱ 666,685.90	₱ 166,671.48	₱ 1,570,818.65	₱ 4,303,811.67	₱ 6,707,987.69	
DST	735,000.00	183,750.00	1,739,833.20	4,759,236.13	7,417,819.33	
Total	**₱ 1,401,685.90**	**₱ 350,421.48**	**₱ 3,310,651.85**	**₱ 9,063,047.80**	**₱ 14,125,807.02**	
Toyota's Payment	**₱ 1,401,685.90**	**₱ 350,421.48**	**₱ 3,311,425.24**	**₱ 2,525,338.76**	**₱ 7,588,871.38**	
Variance	-	-	₱ 773.39	(₱ 6,537,709.04)	**(₱ 6,536,935.65)**	

Under Section 249 of the 1997 NIRC, the 20% delinquency interest should be imposed on the deficiency tax, the 25% surcharge and the 20% deficiency interest which have accrued.

Accordingly, Toyota should have settled the delinquency interest in the total amount of ₱9,063,047.80 computed as follows:

20% DEFICIENCY INTEREST				
Tax Type	**Basic Tax**	**Rate**	**Time**	**Deficiency Interest**
VAT *(01-25-2005 to 11-03-2016)*	₱ 666,685.90	20%	11.7808[36]	₱ 1,570,818.65
DST *(01-05-2005 to 11-03-2016)*	735,000.00	20%	11.8356[37]	1,739,833.20
Total	**₱ 1,401,685.90**			**₱ 3,310,651.85**

20% DELINQUENCY INTEREST		
1. VAT		**Delinquency Interest**
Basic Tax	₱ 666,685.90	
25% Surcharge	166,671.48	
20% Deficiency Interest	1,570,818.65	
Base Amount	**₱ 2,404,176.03**	
Multiplied by:		
Interest Rate	20%	
Time	8.9507[38]	₱ 4,303,811.67

[34] Annex A, Compliance, Rollo (1280), p. 269.
[35] Annex B, Compliance, Rollo (1280), p. 270.
[36] The period from January 25, 2005 to November 3, 2016 has 4,300 days. 4,300 days divided by 365 days/year = 11.7808
[37] The period from January 5, 2005 to November 3, 2016 has equivalent to 4,320 days. 4,320 days divided by 365 days/year = 11.8356
[38] The period from November 24, 2007 (Assessment Notice) to November 3, 2016 has 3,267 days. 3,267 days divided by 365 days/year = 8.95

2. DST		
Basic Tax	₱ 735,000.00	
25% Surcharge	183,750.00	
20% Deficiency Interest	1,739,833.20	
Base Amount	**₱ 2,658,583.20**	
Multiplied by:		
Interest Rate	20%	
Time	8.9507[39]	₱ 4,759,236.13
Total Delinquency Interest		**₱ 9,063,047.80**

In connection with the foregoing, therefore, it bears reiterating that:

1. Section 247(a) in relation to Section 249(B) of the 1997 NIRC sanctions the imposition of deficiency interest on *all* deficiency taxes;

2. Section 249 of the 1997 NIRC authorizes the simultaneous imposition of deficiency interest and delinquency interest; and

3. The legislative history of the relevant provisions of the 1997 NIRC supports the simultaneous imposition of deficiency interest and delinquency interest.

1. Section 247(a) in relation to Section 249(B) of the 1997 NIRC authorizes the imposition of deficiency interest on all taxes under the NIRC.

The law is clear. Section 247(a) of the 1997 NIRC provides:

"TITLE X
STATUTORY OFFENSES AND PENALTIES

CHAPTER I
ADDITIONS TO THE TAX

SECTION 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." *(Emphasis and underscoring supplied)* gr

[39] *Id.*

The text of Section 247(a) states, without doubt, that the additions under Chapter I, Title X are applicable to *all taxes* imposed under the code, *i.e.*, the 1997 NIRC. The authority to impose additions under that provision clearly extends to *all taxes* regardless of the title under which they are classified.

Therefore, the law does *not* limit these additions *only* to the three (3) types of internal revenue taxes, namely, income (Title II), estate (Title III) and donor's tax (Title III). Their imposition applies with equal force and effect to the other taxes under the 1997 NIRC such as the VAT (Title IV), other percentage taxes (Title V), excise tax (Title VI) and DST (Title VII).

Accordingly, the additions to the tax or deficiency tax such as, among others, *Civil Penalties or Surcharges* under Section 248, *Deficiency Interest* under Section 249(B), *Delinquency Interest* under Section 249(C), and *Interest on Extended Payment* under Section 249(D) are applicable to the deficiency taxes of Toyota.

It may be argued that because there are no definitions for *deficiency* withholding tax, value-added tax, percentage tax, excise tax or documentary stamp tax unlike those provided for *income tax* in Section 56(B), for *estate tax* in Section 93 and for *donor's tax* in Section 104 then no deficiency interest can be imposed on other kinds of taxes provided under the 1997 NIRC. The *lacuna* or the missing definition was precisely addressed by Section 247(a) when this provision was first legislated as a revision[40] to the *1977 NIRC* and then subsequently reenacted in the 1997 NIRC.

The Supreme Court discussed the history of this provision in *Paper Industries Corporation of the Philippines (PICOP) v. Court of Appeals, et al.*[41]

In that case, the Supreme Court held that PICOP was *not* liable for interest and surcharge on the unpaid transaction tax because the 1977 Tax Code applicable at that time authorized the imposition of interest and surcharge *only* on taxes within Title II of the Code (Income Tax). Therefore, since transaction tax was embraced under a *different* title, Title V (Taxes on Business), the Court concluded that said transaction tax was not one of the taxes on which interest and surcharge could be imposed. *Nonetheless, it further expounded that this*

[40] Presidential Decree No. 1994. Please refer to the subsequent discussions in the opinion.
[41] G.R. No. 106949-50, December 1, 1995 consolidated with *Commissioner of Internal Revenue v. Paper Industries Corporation of the Philippines (PICOP), et al.*, G.R. No. 106984-85, December 1, 1995.

inadvertence in the 1977 NIRC was cured subsequently by legislative fiat. Thus:

> "The CIR, both in its petition before the Court of Appeals and its Petition in the instant case, points to Section 51(e) of the 1977 Tax Code as its source of authority for assessing a surcharge and penalty interest in respect of the thirty-five percent (35%) transaction tax due from Picop.
>
> x x x x x x x x x
>
> 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.
>
> **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. We consider that the authority to impose what the present Tax Code calls (in Section 248) *civil penalties* consisting of additions to the tax due, must be expressly given in the enabling statute, in language too clear to be mistaken. The grant of that authority is not lightly to be assumed to have been made to administrative officials, even to one as highly placed as the Secretary of Finance.
>
> The state of the present law tends to reinforce our conclusion that Section 51 (c) and (e) of the 1977 Tax Code did not authorize the imposition of a surcharge and penalty interest for failure to pay the thirty-five percent (35%) transaction tax imposed under Section 210 (b) of the same Code. 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

Chapter I
Additions to the Tax

SECTION 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. . . .

SECTION 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.

SECTION 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**." *(Underscoring and emphases supplied; citations omitted)*

In fact, this Court *En Banc*, through the *ponencia* of J. Mindaro-Grulla in *Takenaka Corporation Philippine Branch v. CIR*,[42] relied upon the same *PICOP* holding. To stress its point, the Court cited *PICOP* and stated that the deficiency interest imposed under Section 249(B) of the 1997 NIRC does *not* apply merely to deficiency income, *Je*

[42] CTA EB Case No. 745, September 4, 2012.

deficiency estate and deficiency donor's tax *by virtue* of Section 247(a) of the same law. It reads:

> "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.*
>
> 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.* 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." (emphases and underscoring supplied; citations omitted)

In sum, Toyota's deficiency VAT and DST were properly subjected to deficiency interest pursuant to Section 249 of the 1997 NIRC.

2. Section 249 of the 1997 NIRC authorizes the simultaneous imposition of deficiency interest and delinquency interest.

This Court *En Banc* has consistently held that the plain reading of Section 249 of the 1997 NIRC justifies the simultaneous imposition of deficiency interest and delinquency interest.

Section 249, paragraphs (A), (B) and (C) clearly provide that the imposition of both the *deficiency* interest and *delinquency* interest are to be reckoned from the date prescribed for their payment and until the full payment thereof. Section 249, paragraphs (A), (B) and (C) of the 1997 NIRC, read as follows: 𝒻

"SECTION 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 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 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.**" *(Emphasis and underscoring supplied)*

The Supreme Court recently upheld this interpretation in a Resolution dated November 10, 2014 in *Republic Cement [as surviving corporation in a merger involving FR Cement Corporation] v. Commissioner of Internal Revenue*:[43]

"After a careful perusal of the records, the Court resolves to **DENY** the instant petition and **AFFIRM** the July 18, 2012 Decision and November 21, 2012 Resolution of the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 821 for failure of Republic Cement Corporation (petitioner) to show that the CTA *En Banc* committed any reversible error in assessing it for deficiency *creditable withholding value-added tax* (CWVAT) for taxable year 1999 in the amount of ₱10,044,824.64, inclusive of 25% surcharge, and in

[43] G.R. No. 204715, November 10, 2014.

> imposing *deficiency interest* of 20% *per annum* on the basic deficiency CWVAT of ₱8,035,859.71 from January 25, 2000 until full payment thereof, as well as *delinquency interest* of 20% *per annum* on the total deficiency taxes of ₱10,044,824.64 and on the 20% *deficiency interest* that have accrued from January 31, 2005 until full payment thereof.
>
> **As correctly ruled by the CTA *En Banc*, the simultaneous imposition of *deficiency* and *delinquency interests* are sanctioned under Section 249 of the National Internal Revenue Code (NIRC),** which explicitly provides that *deficiency interest* shall be reckoned from the date prescribed for payment of the deficiency tax until full payment thereof while *delinquency interest* shall also be collected computed from the due date prescribed under the Assessment Notice until full payment thereof.
>
> **SO ORDERED.**" *(Underscoring and emphases supplied)*

In *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*,[44] We also held that there is no legal obstacle for the Court in Division to simultaneously impose the deficiency interest and the delinquency interest:

> "In the case of *Philippine Aerospace Development Corporation v. Commissioner of Internal Revenue*, this Court exhaustively discussed the propriety of the simultaneous imposition of deficiency and delinquency interest, in this wise:
>
> > 'The propriety of the simultaneous imposition of deficiency and delinquency interests was more definitively resolved in April 2013. This was in *First Lepanto Taisho Insurance Corporation v. Commissioner of Internal Revenue*, where the Supreme Court upheld a 2011 decision of this Court affirming the imposition of delinquency interest under Section 249(c)(3) of the 1997 NIRC. The Supreme Court ruled this imposition 'to be proper, because failure to pay the deficiency tax assessed within the time prescribed for its payment justifies the imposition of 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.'
> >
> > Earlier in 2011, the Supreme Court sustained the 2005 rulings of this Court imposing 20% delinquency tax on deficiency taxes, inclusive of deficiency interest, in *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*.

[44] CTA EB No. 1224, September 2, 2015.

> In 2006, the Supreme Court also upheld a 2004 Court of Appeals decision where the latter imposed delinquency interest at 20% per annum in addition to the interest on deficiency VAT and deficiency documentary stamp tax, in *Michel J. Lhuiller Pawnshop, Inc. v. Commissioner of Internal Revenue*, although without discussion of the propriety of multiple simultaneous interests.
>
> And even earlier, in 2000, the Supreme Court likewise upheld the imposition of 20% annual delinquency interest on deficiency amusement tax, inclusive of 20% deficiency interest, in *Philippine Basketball Association v. Court of Appeals, Court of Tax Appeals, and Commissioner of Internal Revenue*.
>
> Actually, double interests have been sustained by the Supreme Court at least as early as 1971, in *Commissioner of Internal Revenue v. Connel Bros. (Phil.) and Court of Tax Appeals*. Under the tax law at the time, R.A. No. 2343 of 1959, these were the 'interest on deficiency' and what may be referred to as 'additional interest' (in case of non-payment within the prescribed period), at the rates of 6% per annum and 1% per month, respectively.
>
> It is abundantly clear, from the foregoing discussion of the law and jurisprudence, that under the circumstance laid down by Section 249(c)(3) of the Tax Reform Act of 1997 — *i.e.*, in case of failure to pay a deficiency tax, or any surcharge or interest on such deficiency tax — delinquency interest of 20% per annum shall be assessed and collected.
>
> The petitioner asked whether or not simultaneous deficiency and delinquency interests 'are allowed by law and equity.' The answer is in the law itself, which does not merely allow but prescribes simultaneous imposition under the aforecited circumstance. As this is undoubtedly proper under the law — and petitioner has not assailed the validity of the law itself — there is neither need nor duty for this Court to expand the discussion to the realm of equity, for 'equity is applied only in the absence of, and never against, statutory law, and the rule is that 'equity follows the law.''

Verily, We explained in the *Philippine Aerospace* case that, following the various and consistent rulings of the Supreme Court, there is nothing repugnant with the simultaneous imposition of deficiency and delinquency interests. Thus, the Court in Division is correct in imposing the aforesaid civil penalties in the instant case."

In the same vein, *Avon Products Manufacturing, Inc. v. The Commissioner of Internal Revenue*[45] discussed the legal bases for the Court's position on this point, thus:

"Petitioner submits that the Court in Division seriously erred in its simultaneous imposition of the deficiency interest and the delinquency interest upon the amounts payable by petitioner. The latter argues that deficiency interest and delinquency interest provided under Section 249 (B) and 249 (C) of the NIRC are not intended to be imposed simultaneously. Otherwise, it will amount to an interest that is excessive, iniquitous, unconscionable and exorbitant.

We do not agree with petitioner.

Section 249 of the NIRC of 1997 provides:

xxx xxx xxx

Interest is imposed to *compensate* the State 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. It is imposable upon failure of the taxpayer to pay the tax on the date fixed in the law for its payment.

In this case, by its own argumentation, petitioner stresses that the deficiency interest under subsection (B) of Section 249 is applicable where the taxpayer is found to have a tax deficiency. Since We find in this Decision that petitioner is liable to the deficiency excise tax assessed by respondent, there can be no doubt that petitioner is likewise liable to the deficiency interest imposed by the Court in Division.

Furthermore, We see no legal obstacle for the Court in Division to simultaneously impose the deficiency interest and the delinquency interest.

Nowhere in Section 249 does it state that if subsection (B) is applicable, subsection (C) would be rendered inapplicable, or *vice versa*. Furthermore, there is no indication in the same Section 249 that the beginning of the imposition of delinquency interest under subsection (C) would end upon the imposition of deficiency interest under subsection (B). Especially so that both subsection (B) and subsection (C) provide that the interests shall respectively accrue until full payment thereof.

[45] CTA EB No. 1062, March 16, 2015.

It is a cardinal rule in statutory construction that no word, clause, sentence, provision or part of a statute shall be considered surplusage or superfluous, meaningless, void and insignificant. To this end, a construction which renders every word operative is preferred over that which makes some words idle and nugatory. This principle is expressed in the maxim *Ut magis valeat quam pereat*, that is, we choose the interpretation which gives effect to the whole of the statute — its every word. Thus, every word of Section 249 should be given effect." *(Underscoring supplied; citations omitted)*

3. *The legislative history of the relevant provisions of the 1997 NIRC supports the simultaneous imposition of deficiency interest and delinquency interest.*

The legislative purpose to impose deficiency interest *concurrently* with delinquency interest is underscored especially when viewed in the light of the revisions of the germane provisions of the 1977 NIRC[46] and the enactment of substantially the same revisions in the 1997 NIRC. The relevant provisions are quoted in the table below to facilitate reference:

1977 NIRC as amended by Presidential Decree No. (P.D.) 1705, Section 14	**1977 NIRC** as amended/revised by P.D. 1994, Section 40	**1997 NIRC**
	TITLE XI - Additions to the Tax and General Penal Provisions **CHAPTER I - Additions to the Tax** **Sec. 281. 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 time, in the same manner and as part of the tax. XXX	**TITLE X - Statutory Offenses and Penalties** **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. XXX
Sec. 88. Civil penalties. — **(a) Individuals.** XXXX. **(b) Corporations. –**	**Sec. 282. Civil Penalties.** – XXXX. **Sec. 283. Interest. –**	**Sec. 248.** *Civil Penalties.* – XXXX. **Sec. 249**. *Interest.* –

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[46] Presidential Decree No. 1994 which took effect on January 1, 1986 made substantial revisions to the 1977 NIRC.

1977 NIRC as amended by Presidential Decree No. (P.D.) 1705, Section 14	**1977 NIRC** as amended/revised by P.D. 1994, Section 40	**1997 NIRC**
(1) ***Deficiency, defined.*** — XXXX. **(2) (i)** ***Interest.*** — 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 part of the tax at the rate of twenty per centum per annum from the date prescribed for the payment of the tax 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 not later than the fifteenth day of April or the fifteenth day of fourth month following the close of the taxable year**: Provided, further, That no interest on deficiency quarterly income tax shall be assessed at any time after assessment of the actual income tax due for the taxable year. **(ii)** ***Addition to estimated tax in case of nonpayment.*** – (1) *Tax shown on the quarterly return.* — Where the amount shown by the taxpayer as tax on its quarterly return or part of such amount, is not paid on or before the date prescribed for its payment, there shall be collected, as part of the tax interest upon such unpaid amount at the rate of twenty per centum per annum from the date prescribed for its payment until it is paid but not later than the fifteenth day of April or the fifteenth day of the fourth month following the close of the taxable year. (2) *Deficiency.* — Where the deficiency, or interest on deficiency, assessed under subsection (a) of this Section, or part thereof, is not paid in full within thirty days from the date of receipt by the taxpayer of the notice and demand from the Commissioner of Internal Revenue, **there shall be collected upon such unpaid amount, as part of the tax, interest at the rate of twenty per centum per annum from the date of receipt by the taxpayer of such notice and demand until it is paid not later than the fifteenth day of**	(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.	(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.

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1977 NIRC as amended by Presidential Decree No. (P.D.) 1705, Section 14	**1977 NIRC** as amended/revised by P.D. 1994, Section 40	**1997 NIRC**
April or the fifteenth day of the fourth month following the close of the taxable year. (emphases and underscoring supplied)		
	(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 and 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. (*Emphases and underscoring supplied*)	(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 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. (*Emphases and underscoring supplied*)

By comparing the codal provisions cited in the table, it can be understood that:

1. With respect to *deficiency* interest, when P.D. 1994 deleted the limiting clause "*Provided, That the maximum amount that may be collected as interest on deficiency shall in no case exceed the amount corresponding to a period not later than the fifteenth day of April or the fifteenth day of fourth month following the close of the taxable year:*" the legislature clearly intended to let the interest period run without a ceiling. Therefore:

   a. *Before the revisions under P.D. 1994*, deficiency interest was computed at 20% *per annum* from the date prescribed for the payment of tax to the date the deficiency tax is assessed. But the amount of deficiency interest cannot exceed the limit imposed by the clause which, it is submitted, can be difficult to calculate due to the construction of the text.

   b. *After the revisions under P.D. 1994 and even subsequently under the 1997 NIRC*, deficiency interest is still computed at 20% *per annum* but the interest period is now allowed to run without the cap. Thus, interest is computed at 20% *per annum* Jz from the date prescribed for the payment of tax, to the date the deficiency tax is assessed and, *even extending beyond*, until the date of full payment.

2. With respect to *delinquency* interest, it must be noted that:

    a. *Even before the revision under P.D. 1994*, Section 88(b)(2)(ii)(2) of the 1977 NIRC *already* imposed 20% interest[47] <u>on</u> "*interest on deficiency*."

    However, the *delinquency* interest period was computed from the taxpayer's receipt of notice and demand until paid *but again, with the limiting clause*, "there shall be collected upon such unpaid amount, as part of the tax, interest at the rate of twenty per centum per annum from the date of receipt by the taxpayer of such notice and demand until it is paid not later than the fifteenth day of April or the fifteenth day of the fourth month following the close of the taxable year."

    b. *After the revisions under P.D. 1994 and even subsequently under the 1997 NIRC*, delinquency interest is still computed at 20% *per annum* but the interest period is now allowed to run without the ceiling. Thus, interest is computed at 20% *per annum* from the due date appearing in the notice and demand of the Commissioner until the date of full payment.

3. There is a *legislated overlap* in the imposition of the deficiency and of the delinquency interest. Specifically, this *overlap* occurs when both deficiency and delinquency interests toll concurrently *from* the due date appearing in the notice and demand of the Commissioner *until* the full payment.

We have no compelling reason to deviate from the consistent holdings of this Court.

WHEREFORE, premises considered, the CIR's Motion for Reconsideration is **DENIED** for lack of merit.

Furthermore, the dispositive portion of the Court's October 3, 2016 Decision is **AMENDED**, to read as follows:

> "**WHEREFORE**, premises considered, the Petitions for Review filed by Toyota in CTA EB Case No. 1280 and by the CIR in CTA EB Case No. 1287 are **DENIED** for lack of merit.

[47] The term used by the 1977 NIRC, as amended by P.D. 1705, is "deficiency."

Accordingly, the September 3, 2014 Decision and the February 17, 2015 Resolution are **AFFIRMED** with **MODIFICATIONS.**

Toyota is ordered to pay the CIR deficiency VAT and deficiency DST in the amount of ₱1,752,107.38, inclusive of 25% surcharge imposed under Section 248(A)(3) of the 1997 NIRC, computed as follows:

Tax Type	Basic Tax	25% Surcharge	Total
Value Added Tax (VAT)	₱ 666,685.90	₱ 166,671.48	₱ 833,357.38
Documentary Stamp Tax (DST)	735,000.00	183,750.00	918,750.00
Total	**₱1,401,685.90**	**₱ 350,421.48**	**₱1,752,107.38**

In addition, Toyota is **ORDERED** to **PAY**:

(a) Pursuant to Section 249(B) of the 1997 NIRC, deficiency interest at the rate of 20% per annum on:

i. The deficiency VAT of ₱666,685.90, computed from January 25, 2005 until full payment thereof; and,

ii. The deficiency DST of ₱735,000.00, computed from January 5, 2005 until full payment thereof.

(b) Pursuant to Section 249(C) of the 1997 NIRC, delinquency interest at the rate of 20% per annum on:

i. The total amount due of ₱1,752,107.38 representing basic deficiency VAT and deficiency DST, inclusive of 25% surcharge, computed from November 24, 2007[48] until full payment thereof; and,

ii. The deficiency interest which has accrued as stated above in (a), computed from November 24, 2007[49] until full payment thereof.

SO ORDERED."

Finally, Toyota's previous payment of ₱7,588,871.38, shall be **DEDUCTED** from its entire tax liability upon full payment thereof.

SO ORDERED.

[48] Assessment Notice dated October 24, 2007, BIR Records, pp. 202-203
[49] *Id.*

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

WE CONCUR:

(I maintain my Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
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 case was assigned to the writer of the opinion of the Court *En Banc*.

ROMAN G. DEL ROSARIO
Presiding Justice