REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

SR METALS, INC., *Petitioner,*	**CTA Case No. 9256**
-versus-	Members: **CASTAÑEDA, JR.**, *Chairperson* **CASANOVA**, *and* **MANAHAN**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAY 15 2018 4:30 p.m.

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DECISION

MANAHAN, *J.*:

This involves a Petition for Review[1] filed on February 12, 2016 by petitioner SR Metals, Inc. on the Final Decision on Disputed Assessment (FDDA) dated January 11, 2016 issued by respondent's duly authorized representative, praying for the cancellation and withdrawal of the deficiency assessment for income tax (IT) for the taxable year 2011 amounting to **EIGHTY THREE MILLION ONE HUNDRED THIRTY FIVE THOUSAND TWENTY EIGHT PESOS and 1/100 (Php83,135,028.01)**, inclusive of surcharges and interest.

THE PARTIES

Petitioner SRMI is a domestic corporation duly organized and existing under Philippine laws, with principal office address

[1] Docket, CTA Case No. 9256, pp. 10-35.

at C2 Building, Room 501-505, 28th Street corner 7th Ave. Bonifacio Global City, Taguig City[2]

Respondent CIR is the duly appointed Commissioner of Internal Revenue vested under the law with the authority to carry out the functions, duties, and responsibilities of said Office, including *inter alia*, the power to act decide disputed assessments, cancel and abate tax liabilities pursuant to the provisions of the National Internal Revenue Code of 1997 and other tax laws, rules and regulations.[3]

THE FACTS

On May 2, 2013, petitioner SRMI received Letter of Authority (LOA) No. LOA-121-2013-00000031 dated April 11, 2013 from the BIR Excise Large Taxpayers Audit Division I, authorizing Revenue Officers Denver Gomez, Edalyn Naty Dayacap, Evangeline Casipe, Roque Jr. Doloiras, and group Supervisor Lanie Luna to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the calendar year ending December 31, 2011.[4]

On July 30, 2015, petitioner received a Preliminary Assessment Notice (PAN) dated July 30, 2015 from the BIR Large Taxpayers Service, assessing it for deficiency IT in the amount of Php80,682,824.55, deficiency withholding tax on compensation (WTC) in the amount of Php578,707.40, final withholding tax (FWT) in the amount of Php1,713,681.51 and administrative penalties in the amount of Php150,000.00, inclusive of surcharges and interest, for the calendar year ending December 21, 2011.[5]

On September 18, 2015, petitioner opted to pay the corresponding deficiency WTC and FWT assessments, as well as the administrative penalties provided in the PAN through the Bureau of Internal Revenue (BIR) Electronic Filing and Payment system (eFPS).[6]

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[2] Docket, Exhibit P-14, pp. 354-363.
[3] *Id.* Joint Stipulation of Facts and Issues, p. 301.
[4] *Id.*
[5] *Id.* at 301-302.
[6] *Id.* at 302.

On October 8, 2015, petitioner received a Formal Letter of Demand (FLD) with attached Details of Discrepancies and a Final Assessment Notice (FAN), both issued on October 7, 2015 on the alleged deficiency IT for CY 2011 in the total amount of Php83,135,028.01, inclusive of surcharges and interest, computed as follows:[7]

Taxable Income per Return	Php162,130,433.20
Adjustment: Interest Expense Limitation/Tax Arbitrage	17,077.88
Taxable Income per Audit	162,147,511.08
Regular Income Tax Rate (Note: ITH withdrawn by BOI)	30%
Tax Due per Audit	48,644,253.32
Less: Tax Payments/Credits	0.00
Basic Income Tax Deficiency	48,644,253.32
Interest (4/14/12 to 10/31/15)	34,490,774.69
Deficiency Income Tax Due	Php83,135,028.01

The above computation was made on the basis of the Board of Investment's (BOI) decision to withdraw or revoke petitioner's income tax holiday (ITH) incentive.[8]

On October 13, 2015, petitioner filed its protest and requested for a reconsideration of the said assessment.[9]

On January 13, 2016, petitioner received a copy of the FDDA sustaining the assessment for alleged deficiency income taxes amounting Php83,135,028.01 on substantially the same premise that petitioner's ITH incentive has already been revoked by the BOI.[10] Hence, on February 12, 2016, petitioner SRMI filed the instant petition.

On May 11, 2016, after this Court granted[11] the two motions[12] for extension of time to file Answer, respondent filed the latter pleading[13] and asked for the dismissal of the instant petition, upholding the findings contained in the FLD as well

[7] Docket, Joint Stipulations of Facts and Issues, p. 302.
[8] *Id.* at 302.
[9] *Id.* at 303.
[10] *Id.*
[11] Docket, Order dated March 15, 2016, p. 134; and Order dated April 12, 2016, p. 140.
[12] Docket, Motions for Extension of Time to File Answer dated March 11, 2016 and April 11, 2016, pp. 129-133 and 135-139, respectively.
[13] Docket, Answer, pp. 141-150.

as the FDDA, and ordering the petitioner to pay said assessment.

On May 13, 2016, this Court ordered the parties to submit their respective trial briefs.[14] Respondent filed his pre-trial brief[15] on June 16, 2016 while petitioner filed its pre-trial brief[16] on June 20, 2016.

After the pre-trial conference held on June 23, 2016, this Court ordered[17] the parties to submit a Joint Stipulation of Facts and Issues[18] (JSFI) which they submitted on July 18, 2016. Said JSFI was approved by this Court on July 27, 2016, hence, petitioner was ordered to present its evidence.[19]

After petitioner presented its evidence, it formally offered the same on August 15, 2016[20] and were admitted by this Court on September 15, 2016.[21] On the other hand, respondent after presenting its case, formally offered his evidence on December 5, 2016[22] and were partially admitted by this Court.[23] Hence, both parties were ordered to file their respective memoranda.[24]

Petitioner filed its Memorandum[25] on August 24, 2017, through registered mail, while respondent filed his Memorandum[26] on August 25, 2017. Thus, the instant case is considered submitted for decision.[27]

ISSUE

Whether petitioner should be held liable for deficiency IT for CY 2011 in the total amount of Php83,135,028.01. *am*

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[14] Docket, Notice of Pre-Trial Conference, pp.152-153.
[15] *Id.* at 176-183.
[16] *Id.* at 265-285.
[17] *Id.*, Order dated June 28, 2016, p. 288.
[18] *Id.* at 301-317.
[19] *Id.*, Pre-Trial Order dated July 27, 2016, pp. 324-329.
[20] *Id.*, Formal Offer of Evidence, pp. 332-343.
[21] *Id.*, Resolution dated September 15, 2016.
[22] *Id.*, Respondent's Formal Offer of Evidence, pp. 382-391.
[23] *Id.*, Resolution dated March 24, 2017, pp. 410-411.
[24] *Id.*, Resolution dated June 29, 2017, pp.452-453.
[25] *Id.* at 476-505.
[26] *Id.* at 469-475.
[27] *Id.*, Resolution dated September 8, 2017, p. 507.

Petitioner's Arguments[28]

Petitioner argues that the BOI's decision issued on September 28, 2012 withdrawing petitioner's ITH incentive, which was the basis for the assessment of deficiency IT for CY 2011, should not have been given a retroactive effect. Petitioner further argues that at the time of the issuance of PAN, FLD, FAN and FDDA, respondent had knowledge already of the decision of the Court of Appeals (CA) setting aside the BOI resolution which withdrew petitioner's ITH incentive.

Petitioner also argues that even if the decision of the CA is not yet final and executory, respondent had no basis for the said assessment because the issue on whether BOI erred in withdrawing petitioner's ITH incentive is considered a prejudicial question. Thus, in view of the abovementioned arguments, petitioner should not be liable for the said assessment as well as the surcharge and interest included in the said assessment.

Respondent's Counter-Arguments[29]

Respondent, on the other hand, argues that the assessment had bases in fact and in law, and that the LOA, PAN, and FLD were issued in accordance with law, rules, and jurisprudence.

RULING OF THE COURT

In order for this court to rule on its merit, it is important to determine first whether this Court has jurisdiction on the instant case.

Section 7(a)(1) of Republic Act No. 1125, as amended by Republic Act No. 9282 and Republic Act No. 9503,[30] provides that:

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[28] *Supra.*, Note 25.
[29] *Supra.*, Note 26.
[30] Otherwise known as "An Act Expanding the Jurisdiction of the Court of Tax appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended, Otherwise known as the Law Creating the Court of Tax Appeals, and for Other Purposes".

> Sec. 7. Jurisdiction. - The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue... (*Emphasis supplied*)

In the instant case, petitioner immediately filed a protest on October 13, 2015 by requesting the respondent to reconsider its issuance of FLD/FAN on October 7, 2015. Hence, petitioner's exercise of such administrative remedy renders such assessment a disputed assessment.

In *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation*[31], the Supreme Court described a disputed assessment, to wit:

> **An assessment becomes a disputed assessment after a taxpayer has filed its protest to the assessment in the administrative level.** Thereafter, the CIR either issues a decision on the disputed assessment or fails to act on it and is, therefore, considered denied. The taxpayer may then appeal the decision on the disputed assessment or the inaction of the CIR. As such, the FDDA is not the only means that the final tax liability of a taxpayer is fixed, which may then be appealed by the taxpayer. Under the law, inaction on the part of the CIR may likewise result in the finality of a taxpayer's tax liability as it is deemed a denial of the protest filed by the latter, which may also be appealed before the CTA. (*Emphasis supplied*)

Under Section 228 of the 1997 National Internal Revenue Code (NIRC), as amended, if the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period.

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[31] G.R. Nos. 215534 and 215557, April 18, 2016.

On the instant case, petitioner, after receiving the FDDA on January 13, 2016, filed its appeal before this Court on February 12, 2016, which is the 30th day from the time of the receipt of said FDDA. Hence, it was filed within the prescriptive period under Section 228 of the 1997 NIRC, as amended, thus, this Court has jurisdiction over the case.

Entitlement of ITH incentive is not automatic

Petitioner argues that the BOI's decision issued on September 28, 2012, which withdrew petitioner's entitlement to ITH incentive and became the basis for the assessment of deficiency IT for CY 2011, should not have been given a retroactive effect, hence, its income for taxable year 2011 should be exempted from income tax payment.

However, the entitlement or enjoyment of such incentive is not automatic. Revenue Memorandum Circular (RMC) No. 014-12 dated April 4, 2012 entitled "Revocation of Memoranda of Agreement dated March 1, 1997 between BIR and Board of Investments (BOI) and BOI-Autonomous Region of Muslim Mindanao (BOI-ARMM); and BIR and PEZA, circularized under RMC Nos. 15-2007 and 17-2007 respectively" requires *inter alia* that BOI-registered enterprises are required to submit their Certificate of Entitlement (COE) to ITH or preferential tax treatment within thirty (30) days from the filing of their ITRs.

The purpose of such requirement is for the said enterprises to prove their entitlement to said incentive. On the other hand, the failure of said enterprises to secure a COE shall amount to forfeiture of said incentive for a particular taxable period.

The evidence will show that petitioner failed to secure the necessary COE for taxable year 2011. In letter dated June 5, 2012 of Mr. Guillermo Laquindanum, Director, Supervision and Monitoring Department of the BOI to the petitioner,[32] it informed the latter that BOI cannot issue the required COE for the said taxable year in view of the withdrawal of petitioner's ITH incentive.

[32] BIR Records, Exhibit "R-14," p. 205.

Thus, the failure of the petitioner to secure the required COE from BOI for its income covering the taxable year 2011 will result in its non-enjoyment of such ITH incentive and will, instead, render such income taxable under the regular tax rate for a domestic corporation under the 1997 NIRC, as amended.

Petitioner should be aware that ITH incentive is a form of a tax exemption which is construed in *strictissimi juris* against the taxpayer. Hence, the right of the state to tax the petitioner prevails in the absence of a clear and convincing evidence in support of said tax exemption.

The strictness of such doctrine against tax exemptions, was thoroughly explained in the case of *Commissioner of Internal Revenue v. A.D. Guerrero, Special Administrator, in substitution of Nathaniel I. Gunn, as Administrator of the Estate of the late Paul I. Gunn,*[33] to wit:

> From 1906, in *Catholic Church vs. Hastings*[3] to 1966, in *Esso Standard Eastern, Inc. vs. Acting Commissioner of Customs*, it has been the constant and uniform holding that **exemption from taxation is not favored and is never presumed, so that if granted it must be strictly construed against the taxpayer.** Affirmatively put, the law frowns on exemption from taxation, hence, an exempting provision should be construed *strictissimi juris*. The state of the law on the subject was aptly summarized in the *Esso Standard Eastern, Inc.* case by Justice Sanchez thus: "The drive of petitioner's argument is that marketing of its gasoline product 'is corollary to or incidental to its industrial operations.' But this contention runs smack against the familiar rules that exemption from taxation is not favored, and that exemptions in tax statutes are never presumed. Which are but statements in adherence to the ancient rule that exemptions from taxation are construed *in strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. Tested by this precept, we cannot indulge in expansive construction and write into the law an exemption not therein set forth. Rather, we go by the reasonable assumption that where the State has granted in express terms certain exemptions, those are the exemptions to be considered, and no more . . . ."
>
> In addition to Justice Tracey, who first spoke for this Court in the *Hastings* case in announcing "the cardinal rule of American jurisprudence that exemption from taxation not being favored," and therefore "must be strictly construed" against the taxpayer, two other noted American jurists, am

[33] G.R. No. L-20942 dated September 22, 1967.

> Moreland and Street, who likewise served this Court with distinction, reiterated the doctrine in terms even more emphatic. According to Justice Moreland: "Even though the complaint in this regard were well founded, it would have little bearing on the result of the litigation when we take into consideration the universal rule that he who claims an exemption from his share of the common burden of taxation must justify his claim by showing that the Legislature intended to exempt him by words too plain to be mistaken." From Justice Street: "Exemptions from taxation are highly disfavored, so much so that they may almost be said to be odious to the law. He who claims an exemption must be able to point to some positive provision of law creating the right. It cannot be allowed to exist upon a vague implication such as is supposed to arise in this case from the omission from Act No. 1654 of any reference to liability for tax. The books are full of very strong expressions on this point."
> (*Emphasis supplied*)

Petitioner has the duty and responsibility to prove its allegations through the submission of clear and convincing evidence, or evidence which produces in the mind of the trier of fact a firm belief or conviction, or indicates high probability or reasonable certainty,[34] thus, petitioner must prove that it has fully complied with the requisites for the entitlement to the said ITH by its submission of the COE from the BOI. However, petitioner failed to do so.

Under Section 39(a)(1) of Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, as amended by Republic Act No. 7918, the enjoyment of such ITH is subject to the guidelines prescribed by the BOI, to wit;

> Art. 39. Incentives to Registered Enterprises. — All registered enterprises shall be granted the following incentives to the extent engaged in a preferred area of investment:
>
> (a) Income Tax Holiday. —
>
> (1) For six (6) years from commercial operation for pioneer firms and four (4) years for non-pioneer firms, new registered firms shall be fully exempt from income taxes levied by the national government. **Subject to such guidelines as may be prescribed by the Board**... (*Emphasis supplied*)

[34] Evidence, Willard B. Riano, 2009, p. 421; Black's Law Dictionary, Eight Edition, p. 596.

However, as stated in its letters dated May 24, 2012 and August 12, 2013,[35] the BOI found several violations of petitioner's undertaking or terms and conditions under its Certificate of Registration No. 2008-113, to wit:

(a) failure to comply with the requirements on New Projects under the 2007 Investment Priorities Plan such as (i) establishment of another line (beneficiation plant) and (ii) infusion of new investments in fixed assets; and

(b) failure to comply with the Specific Terms and Conditions such as (i) commitment to submit a progress report on the implementation of the registered project and (ii) adherence to project timetable, specifically on acquisition of machinery/equipment.

Thus, the BOI withdrew its ITH incentive.

Prejudicial Question is not applicable when resolution of a pending civil case does not affect an administrative proceeding

Petitioner also raised the issue of prejudicial question considering that the issue of the validity of the withdrawal of said ITH incentive is pending in the Supreme Court. It also cited the case of *Antonio Abacan Jr. et al. v. Northwestern University, Inc.*[36] where the Supreme Court applied said doctrine involving a civil case and an administrative case, to wit:

> Technically, there would be no prejudicial question to speak of in this case, if we are to consider the general rule that a prejudicial question comes into play in a situation where a civil action and a criminal action are both pending and there exists in the former an issue which must be preemptively resolved before the criminal action may proceed, because howsoever the issue in the civil action is resolved would be determinative *juris et de jure* of the guilt or innocence of the accused in the criminal case. However, considering the rationale behind the principle of prejudicial question, **being to avoid two conflicting decisions**, prudence dictates that we apply the principle underlying the doctrine to the case at bar.

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[35] Docket, Exhibit "P-8," p. 223; Exhibit "P-9," p. 224.
[36] G.R. No. 140777 dated April 8, 2005.

> A prejudicial question is that which arises in a case, the resolution of which is a logical antecedent of the issue involved therein and the cognizance of which pertains to another tribunal. The prejudicial question must be determinative of the case before the court but the jurisdiction to try and resolve it must be lodged in another court or tribunal. (*Emphasis supplied*)

As shown above, the rationale of the high court in the application of said doctrine is to avoid two conflicting decisions in that particular case.

However, in the instant case, there will be no conflicting decision between the high court's probable decision and the respondent's assessment.

Petitioner should be aware that the ground for the said tax assessment was the failure of the petitioner to submit the required COE, as proof and/or evidence of tax exemption, within the prescribed period pursuant to RMC No. 014-12. Hence, even if petitioner will be successful in securing a favorable decision from the high court, still it can not submit the required COE within the prescribed taxable period as mandated under the said RMC.

It is true that the causal effect of the withdrawal of such ITH incentive is the non-issuance of the required COE but petitioner cannot fault the respondent in performing its main duty which is to assess and collect the rightful internal revenue taxes.

It is only proper for the respondent to issue the necessary assessment upon failure of the petitioner to comply with the required submission of the COE under RMC No. 014-12.

Petitioner is liable for deficiency IT for CY 2011

The remaining issue is the correctness of respondent's assessment in the the aggregate amount of ₱83,135,028.01 as deficiency income tax for taxable year 2011, plus surcharge and interest.

In respondent's FLD[37], the deficiency income tax assessment is presented as follows:

Taxable Income per Return	₱ 162,130,433.20
Adjustment: Interest Expense Limitation/Tax Arbitrage	17,077.88
Taxable Income per Audit	₱ 162,147,511.08
Regular Income Tax Rate (note: ITH withdraw by BOI)	30%
Tax Due per Audit	₱ 48,644,253.32
Less: Tax Payments/Credits	-
Basic Income Tax Deficiency	₱ 48,644,253.32
*Interest (4/15/12 to 10/31/15)	34,490,774.69
Deficiency Income Tax Due	**₱ 83,135,028.01**

The assessment arose from respondent's imposition of 30% income tax on petitioner's declared exempt net income per return in the amount of ₱162,130,433.20 and disallowance of petitioner's interest expense in the amount of ₱17,077.88.

As shown in the Details of Discrepancies (Annex A of the FLD[38]), respondent's imposition of 30% regular income tax rate on petitioner's declared exempt net income of ₱162,130,433.20 was based on the following finding:

> b.) Revocation of ITH Incentive – The income tax holiday incentive entitlement as a BOI registered enterprise provided under Article 39(a) of Executive Order No. 226 as amended by R.A. 7918 was withdrawn/revoked on the taxable year under audit and is still currently subject to court proceedings on the question of its legality, therefore, the regular income tax rate of 30% should be imposed in order to compute the tax due pursuant to Section 27(A) of the Tax Code.

Considering that petitioner failed to prove its entitlement to ITH incentive for taxable year 2011, respondent's deficiency income tax assessment on the net income of ₱162,130,433.20 is upheld.

With regard to the interest expense disallowance of ₱17,077.88, respondent applied the limitation of deductibility of interest provided under Section 34(B) of the 1997 NIRC, as amended, which states:

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[37] Exhibit R-10, BIR Records. p. 300.
[38] Exhibit R-10, BIR Records, p. 298.

> SEC. 34. *Deductions from Gross Income.* — xxx
> (B) *Interest.* —
> (1) *In General.* — The amount of interest paid or incurred within a taxable year on indebtedness in connection with the taxpayer's profession, trade or business shall be allowed as deduction from gross income: *Provided, however,* That the taxpayer's otherwise allowable deduction for interest expense shall be reduced by forty-two percent (42%) of the interest income subjected to final tax: *Provided,* That effective January 1, 2009, the percentage shall be thirty-three percent (33%).

Clearly, from the foregoing provision, the amount of petitioner's allowable interest expense for the year 2011 is to be reduced by 33% of its interest income subjected to final tax.

A non-deductible interest expense supposedly lowers the amount which can be claimed as deduction from petitioner's taxable income. As such, it is expected that the amount of interest expense per ITR must be lower than that declared in the Audited Financial Statements (AFS), due to the non-deductible component.

However, a comparison of petitioner's Net Income per Income Tax Return[39] (ITR) with that reflected as Profit Before Tax per Statement of Comprehensive Income of the AFS[40], disclosed the same amount of ₱162,130,433.20. Hence, it can be concluded that the amount claimed as interest expense of ₱23,442,247.57[41] per ITR is gross of the non-deductible interest expense amounting to ₱17,077.88, computed as follows:

Interest income, net of 20% final tax per AFS	₱ 41,400.92
Divided by: Rate, net of 20% final tax	80%
Grossed up interest income subjected to final tax	₱ 51,751.15
Multiplied by: Rate of reduction	33%
Amount to reduce interest expense	₱ 17,077.88
Less: Limit already considered as non-deductible by petitioner	-
Non-deductible Interest Expense	**₱ 17,077.88**

[39] BIR Records, pp. 169-175.
[40] BIR Records, p. 161.
[41] BIR Records, p. 161.

In sum, petitioner is liable to pay basic deficiency income tax for taxable year 2011 in the amount of ₱48,644,253.32, computed as follows:

Net Income per Return	₱ 162,130,433.20
Add: Non-deductible Interest Expense	17,077.88
Taxable Net Income	₱ 162,147,511.08
Multiply by: Regular Income Tax Rate	30%
Income Tax Due	₱ 48,644,253.32
Less: Tax Payments/Credits	-
Basic Deficiency Income Tax	**₱ 48,644,253.32**

WHEREFORE, premises considered, the Petition for Review of SR Metals, Inc. is hereby **DENIED** for lack of merit. Consequently, the Final Assessment Notice for deficiency income tax issued by respondent against petitioner for taxable year 2011 is hereby **AFFIRMED**.

Accordingly, petitioner SR Metals, Inc. is **ORDERED TO PAY ONE HUNDRED SIXTY-TWO MILLION TWO HUNDRED THREE THOUSAND FOUR HUNDRED NINETY-EIGHT PESOS AND SIXTY-SIX CENTAVOS (₱162,203,498.66)**, for deficiency income tax for taxable year 2011, inclusive of the 25% surcharge imposed under Sections 248(A)(3) of the 1997 NIRC, as amended, computed as follows:

Basic Deficiency Income Tax		₱ 48,644,253.32
Add:	25% Surcharge	12,161,063.33
Total		**₱ 60,805,316.65**

In addition, petitioner is **ORDERED TO PAY**:

(a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency Income Tax computed from April 15, 2012 to Dec. 31, 2017 pursuant to Section 249(B) of the 1997 NIRC, as amended, in the amount of Php55,601,047.90;[42]

(b) Delinquency interest at the rate of 20% per annum on the total amount of Php60,805,316.65 and on the 20% deficiency interest which have accrued as afore-stated in (a) computed from January 13, 2016 to December 31,2017, an

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[42] ₱48,644,253.32 x 20% x 2086/365 days

pursuant to Section 249(C) of the 1997 NIRC, as amended, in the amount of Php45,797,134.11;[43]

(c) Delinquency interest at the rate of twelve percent (12%) per annum on the total amount of ₱116,406,364.55 representing the sum of the basic deficiency income tax of ₱48,644,253.32, 25% surcharge ₱12,161,063.33 and deficiency interest of ₱55,601,047.90 computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the 1997 NIRC, as amended by RA No. 10963.[44]

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

[43] [₱48,644,253.32 + ₱12,161,063.33 + ₱55,601,047.90] x 20% x 718/365 days
[44] Based on the Amended Decision dated February 22, 2018 penned by Associate Justice Catherine T. Manahan in the case of *Moog Controls Corporation - Philippine Branch vs. Commissioner of Internal Revenue*, CTA Case No. 9077.

ATTESTATION

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

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

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice