REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

OFFICEMETRO PHILIPPINES, INC. (formerly REGUS CENTRES, INC.),
Respondent.

CTA EB NO. 1210
(CTA Case NO. 8382)

x---x

OFFICEMETRO PHILIPPINES, INC. (formerly REGUS CENTRES, INC.)
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1213
(CTA Case NO. 8382)

Present:

Del Rosario, P.J.,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, and
Ringpis-Liban, JJ.

Promulgated:

MAR 07 2016 1:58 p.m.

x--x

DECISION

CASTAÑEDA, JR., *J.*:

In this consolidated Petitions for Review filed by Officemetro Philippines, Inc. and Commissioner of Internal Revenue, the parties seek for the Court *En Banc* to partly reverse and set aside the Decision[1] promulgated on June 3, 2014 and the Resolution[2] promulgated on August 15, 2014, respectively, by the CTA 3rd Division.

The dispositive portion of the assailed Decision reads:

> "**WHEREFORE**, the instant Petition for Review is hereby **PARTIALLY GRANTED**.
>
> Accordingly, the assessment covering deficiency expanded withholding tax, deficiency final withholding of value added tax and deficiency final withholding tax for taxable year 2005 is **UPHELD** and petitioner is **ORDERED TO PAY** the modified amount of ₱18,770,754.40, inclusive of surcharges and interests imposed under Sections 248(A)(3), 249(B) and 249(C)(3) of the NIRC of 1997, computed as follows:
>
> xxx xxx xxx
>
> In addition, petitioner shall **PAY** respondent the following deficiency and delinquency interests on the remaining unpaid deficiency taxes:
>
> (a) deficiency interest at the rate of twenty percent (20%) *per annum* on the remaining basic deficiency EWT of ₱90,058.90, FWVAT of ₱1,039,038.60, and FWT of ₱2,609,546.51, or in the aggregate amount of ₱3,738,644.01, computed from March 2, 2013 until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended;
>
> (b) delinquency interest at the rate of 20% per *annum* on the total deficiency taxes of ₱5,376,655.34, representing the total unpaid basic deficiency EWT, FWVAT and FWT of ₱3,738,644.01 and twenty-five (25%) surcharge of ₱1,638,011.33, computed from March 2, 2013 until full payment thereof pursuant to Section 249(C)(3) of the NIRC of 1997, as amended; and ja

1 Decision dated June 3, 2014, penned by Associate Justice Esperanza R. Fabon-Victorino, Division Docket, Vol. 2, pp. 517-538.
2 Resolution promulgated on August 15, 2014, Division Docket, Vol. 2, pp. 615-624.

(c) delinquency interest at the rate of 20% per *annum* on the 20% deficiency interest which has accrued as afore-stated in (a), computed from March 2, 2013 until full payment thereof pursuant to Section 249(C)(3) of the NIRC of 1997, as amended.

SO ORDERED."

On the other hand, the dispositive portion of the assailed Resolution reads:

"**WHEREFORE**, the Motions for Partial Reconsideration separately filed by petitioner Officemetro Philippines, Inc. (formerly Regus Centres, Inc.) and respondent Commissioner of Internal Revenue are hereby **DENIED**, for lack of merit.

SO ORDERED."

THE FACTS

The factual antecedents of this case, as found by the Court in Division, are as follows:

"Petitioner Officemetro Philippines, Inc. is a duly organized domestic corporation with address at 28th Floor, Tower 2, the Enterprise Center, 6766 Ayala Avenue corner Paseo de Roxas, Makati City.

Respondent Commissioner of Internal Revenue is the chief of the Bureau of Internal Revenue (BIR), the government agency responsible for the assessment and collection of all national internal revenue taxes, fees and charges and the enforcement of all forfeitures, penalties and fines connected with such taxes. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On November 7, 2006, respondent issued Letter of Authority No. 00046120 authorizing the examination of petitioner's books of accounts and other accounting records for all internal revenue tax liabilities for taxable year 2005. *gr*

On July 13, 2009, petitioner received a Preliminary Assessment Notice (PAN), to which it filed a Letter of Protest dated July 28, 2009.

On September 23, 2009, petitioner received a Formal Assessment Notice (FAN) with attached Details of Discrepancies and Assessment Notices, which petitioner likewise protested on October 23, 2009.

On October 24, 2011, respondent issued the assailed FDDA for taxable year 2005, finding petitioner liable for deficiency EWT in the amount of ₱1,210,746.16, deficiency final withholding VAT in the amount of ₱4,201,938.52, deficiency FWT in the amount of ₱11,499,902.49, and a compromise penalty of ₱50,000.00.

This prompted petitioner to file the instant Petition for Review on November 23, 2011, praying to set aside the assessments of respondent in her FDDA dated October 24, 2011 and the attached Amended Assessment Notices.

In her *Answer*, respondent claims, among others, that petitioner failed to submit documents to substantiate the allegations in its Petition for Review. For her, petitioner's Service Agreement with Regus Centres Pty. Ltd. is insufficient to prove that the services covered by the said agreement were performed outside the Philippines. She maintains that the license fee for the year 2005 amounts to ₱11,382,358.41 while the management fee amounts to ₱5,934,951.59. She also points out that taxes are the lifeblood of the government, hence, should be calculated without unnecessary hindrance. Taxes are enforced proportional contribution from persons and property levied by the state, thus, no one is considered entitled to recover that which he must give up to another.

After the pre-trial conference, the parties filed their Joint Stipulation Facts and Issues on April 25, 2012.

On May 14, 2012, petitioner, through a *Manifestation* dated May 10, 2012, informed the Court that on March 13, 2012, the Securities and Exchange Commission (SEC) approved its application to change corporate name from Regus Centres, Inc. to Officemetro Philippines, Inc., as evidenced by its Certificate of Filing of Amended Articles of Incorporation and Certificate of Revision of the Title of the Amended By-Laws. ye

On August 16, 2012, the Court, at the instance of petitioner, issued an *Amended Pre-Trial Order.*

During the trial, petitioner presented two (2) witnesses, namely: 1) Gemma B. Perez, its Accountant; and 2) Maria Gracia L. Morfe, the Court-commissioned Independent Certified Public Accountant.

By way of a Judicial Affidavit, witness **Gemma B. Perez** testified that as petitioner's accountant, she handles its financial records. On July 13, 2009, petitioner received a PAN dated July 13, 2009 for taxable year 2005 from the BIR, which it protested on July 28, 2009. This was followed by a FAN received on September 23, 2009, to which petitioner again protested on October 23, 2009.

Acting on their protest, respondent issued a Letter dated March 28, 2011, indicating the revised deficiency tax assessments. On April 29, 2011, petitioner formally responded to this letter attaching thereto additional documents.

In a letter dated May 30, 2011, Revenue District Officer (RDO) Gerry O. Dumayas disallowed petitioner's letter dated April 29, 2011 and forwarded the docket to the Assessment Division for the issuance of the FDDA.

On October 24, 2011, respondent issued the assailed FDDA for taxable year 2005 against petitioner.

ICPA **Maria Garcia L. Morfe**, also by way of a Judicial Affidavit, declared that her audit of petitioner's accounting records and documents reveals the need to adjust the following: 1) respondent's deficiency EWT assessment to Two Hundred Seventy Seven Thousand Six Hundred Twenty Seven and 64/100 Pesos (₱277,627.64); 2) the Final Withholding of VAT to Four Million Five Hundred Eighty Four Thousand Two Hundred Seventy Six and 79/100 Pesos (₱4,584,276.79); and 3) the Deficiency FWT Assessment to Twelve Million Five Hundred Sixty Thousand Four Hundred Seventy One and 44/100 Pesos (₱12,560,471.44).

On December 12, 2012, petitioner moved to present additional witness and for time to file its Formal Offer of Evidence. To abbreviate the proceedings, respondent agreed to stipulate that petitioner's Exhibits "B", "C", "J", "H", "K", "N" and "O" could not be located despite diligent efforts.

In a *Manifestation* dated March 12, 2013, petitioner informed the Court that it had ceased operation. Further, it had entered into a Compromise Settlement with respondent and paid through Electronic Filing and Payment System (EFPS) forty percent (40%) of the basic tax assessed in the assailed FDDA, as well as the compromise penalty of ₱50,000.00.

In the Resolution dated March 19, 2013, petitioner was deemed to have rested its case.

For her defense, respondent presented Revenue Officers Roleo A. Legarda and Jose R. Magsambol III.

Roleo A. Legarda, also executed a Judicial Affidavit, through which he declared that by virtue of a Letter of Authority (LOA) No. 00046120 dated November 7, 2006, he investigated petitioner's internal revenue taxes for taxable year 2005. In relation thereto, he prepared a Memorandum Report dated October 28, 2008 recommending the issuance of a PAN which was served upon petitioner on July 13, 2009. This was followed by Assessment Notices dated September 23, 2009 together with the FAN of even date with corresponding Details of Discrepancies received by petitioner through its representative Cielo Tobias, on September 23, 2009.

Revenue Officer **Jose R. Magsambol III**, also by way of Judicial Affidavit, testified that he received a Memorandum with Ref. No. 047-0110-B-017 dated February 16, 2010, directing him to continue the audit and investigation of petitioner's request for reinvestigation of its internal revenue taxes for the taxable year 2005 pursuant to Tax Verification Notice No. 00166688 dated November 13, 2009. In his Memorandum dated April 11, 2011, he recommended the issuance of the FDDA. On October 24, 2011, an Amended Assessment Notices together with the FDDA and Details of Discrepancies, both dated October 24, 2011, were received by petitioner, based on their records.

On July 12, 2013, respondent was deemed to have rested her case."

On June 3, 2014, the Court *a quo* rendered the assailed Decision partially granting the Petition. Subsequently, both petitioner[3] and respondent[4] filed their respective Motions for Partial Reconsideration, which were denied for lack of merit in the assailed Resolution.

3 Division Docket, Vol. 2, pp. 545-553.
4 Division Docket, Vol. 2, pp. 568-575.

On September 15, 2014, Officemetro Philippines, Inc. (Officemetro) filed its Petition for Review[5] while on September 20, 2014, the Commissioner of Internal Revenue (CIR) filed her Petition for Review[6] through registered mail. In the Resolution[7] dated May 7, 2015, the consolidated cases were deemed submitted for decision.

Hence, this Decision.

THE ISSUES

The following are the issues to be resolved by the Court *En Banc*:

1. Whether or not the condominium dues should be excluded from Officemetro's rentals subject to EWT.

2. Whether or not Officemetro should be held liable for deficiency EWT on rental expense in the amount of ₱196,911.59.

3. Whether or not Officemetro should be held liable for deficiency FWT of VAT in the amount of ₱1,731,731.00 and for total deficiency FWT in the amount of ₱4,507,456.15.

THE RULING

Both Petitions must fail.

Officemetro's condominium dues are not subject to EWT

The CIR argues in her Petition that Officemetro's condominium dues are subject to EWT because the previous BIR Rulings exempting it from EWT was already repealed by Revenue Memorandum Circular No. 65-2012 (RMC 65-2012). Moreover, she asserts that she may revoke, repeal or abrogate the acts or previous rulings of her predecessor in office.

On this score, the Court *a quo* ruled in the assailed Decision, in this wise:

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[5] Court *En Banc* Docket, CTA EB No. 1213, pp. 1-15.
[6] Court *En Banc* Docket, CTA EB No. 1210, pp. 10-22.
[7] Court *En Banc* Docket, CTA EB No. 1210, pp. 143-144.

> "The BIR in its various rulings, held that association/condominium dues, membership fees and other assessment/charges collected from the members, which are merely held in trust and which are to be used solely for administrative expenses in implementing their purpose(s), viz., to protect and safeguard the welfare of the owners, lessees and occupants; provide utilities and amenities for their members, and from which the corporation could not realize any gain or profit as a result of their receipt thereof, must not be included in said corporation's gross income. This means that the same are not subject to income tax and to withholding tax."

In addition, the Court in Division held in the assailed Resolution that:

> "Undoubtedly, the application of RMC No. 65-2012 to petitioner's transactions for taxable year 2005 will work injustice upon petitioner. Granting for the sake of argument that RMC No. 65-2012 is the correct interpretation of the law, its retroactive application to cover past transactions will surely cost prejudice to petitioner, an injury precisely sought to be avoided by the enactment of provision on non-retroactivity of rulings."

We agree with the conclusions of the Court *a quo*.

It is noteworthy that the covered period subject of the instant case is taxable year 2005. At that time, RMC No. 65-2012 was still inexistent. The prevailing rule then, through the various BIR Rulings, is that condominium dues are not subject to income tax and to withholding tax. Likewise, RMC No. 65-2012 was still inexistent at the time when the FAN and FDDA was issued on September 23, 2009 and on October 24, 2011, respectively. In other words, at the time the subject assessments were issued, respondent was not armed with any legal basis to support the assessments. Thus, the reversal of the CIR's previous and consistent position that condominium dues are not subject to income tax and to withholding tax in RMC No. 65-2012, will cause undue prejudice to Officemetro in this case.

It is true under Section 7(B) of the NIRC of 1997, as amended, that the CIR has "the power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau". However, this power of the CIR should be read in conjunction with Section 246[8] of the same law,

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[8] **SEC. 246. Non- Retroactivity of Rulings.** - Any revocation, modification or reversal of any of the rules and regulations promulgated in accordance with the preceding Sections or any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers, except in the following cases:

(a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;

where it is provided for that any revocation, modification or reversal of any of the rules and regulations promulgated by the CIR shall not be given retroactive application if such will cause prejudice to taxpayers. This is consistent with the hornbook rule that "BIR Rulings have no retroactive effect where a grossly unfair deal would result to the prejudice of the taxpayer."[9]

Officemetro is liable for deficiency EWT on rental expense in the amount of ₱196,911.59

Officemetro argues that it should not be held liable for deficiency EWT in the amount of ₱196,911.59 because of the ruling of the Court in Division that condominium dues are not subject to EWT. Further, it avers that even if it failed to substantiate its claim by failure to present invoices and official receipts to prove payment of condominium dues, the Contracts of Lease providing the terms of payment of its tenant should be considered by this Court.

We are not persuaded.

While it is true that *We* declared in this particular case that condominium dues are not subject to EWT pursuant to Section 246 of the NIRC of 1997, as amended, it is incumbent upon Officemetro to prove that the assessment is invalid or incorrect. "In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. Even an assessment based on estimates is *prima facie* valid and lawful where it does not appear to have been arrived at arbitrarily or capriciously. The burden of proof is upon the complaining party to show clearly that the assessment is erroneous. Failure to present proof of error in the assessment will justify the judicial affirmance of said assessment".[10]

In the instant case, *We* find that the Contracts of Lease presented by Officemetro as evidence, merely prove the existence of the said contracts setting forth the rights and obligations of the parties therein. They do not, however, prove that the rights and obligations created by the subject contracts, *i.e.*, payment of condominium dues, were fulfilled. Consequently, *We* cannot ascertain from these bare contracts whether the condominium dues were in fact paid.

(b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or
(c) Where the taxpayer acted in bad faith.

[9] Consolidated cases of *Commissioner of Internal Revenue v. San Roque Power Corporation, Taganito Mining Corporation v. Commissioner of Internal Revenue and Philex Mining Corporation v. Commissioner of Internal Revenue*, G.R. Nos. 187485, 196113 and 197156, February 12, 2013, citing *Commissioner of Internal Revenue v. Philippine Health Care Providers, Inc.*, G.R. No. 168129, April 24, 2007, 522 SCRA 131, 142-143.

[10] *Commissioner of Internal Revenue v. Hon. Raul M. Gonzalez*, G.R. No. 177279, October 13, 2010, citing *Marcos II v. Court of Appeals*, G.R. No. 120880, June 5, 1997.

As such, for failure to rebut the *prima facie* correctness of the assessment in the amount of ₱196,911.59, *We* see no cogent reason to disturb the decision of the Court *a quo*.

Officemetro is liable for deficiency FWT of VAT in the amount of ₱1,731,731.00 or a total deficiency FWT in the amount of ₱4,507,456.15

Officemetro asserts that with respect to its management fees, it duly proved before the Court *a quo* that services were actually performed by a non-resident foreign corporation (NRFC) outside the Philippines through the certification of a certain William Willems. On the other hand, with respect to its license fees, it avers that the amount of ₱3,600,814.00 actually pertains to management fees paid to Regus Centre Pty Ltd. and should not form part of the license fees. Thus, its license fees for taxable year 2005 amount only to ₱11,171,801.00 and not ₱14,772,615.00.

With respect to Officemetro's management fees, the Court *En Banc* upholds the findings of the Court *a quo* that the certification issued by a certain William Willems should be given scant consideration. Therefore, Officemetro failed to prove that the services were actually performed by an NRFC. The assailed Resolution states:

> "As to the Certification executed by William Willems, a Director of RCPL, suffice it to say that RCPL is petitioner's **affiliated company** making such Certification self-serving which has very little or no weight under the Rules on Evidence."[11]

Moreover, the ICPA report states that the place where the said services were to be rendered were not specified in the Intercompany Service Agreements of Officemetro, thus:

> "We also verified the scanned copy of Intercompany Services Agreement. This agreement covers intercompany services such as information technology services, marketing and public relations, property services, finance, human resources and training, sales support and general management.

[11] See Note 2.

<u>However, the agreement does not specify whether the services are to be rendered inside or outside the Philippines</u>."[12]

In other words, considering the absence of any supporting evidence to indubitably show that services were actually performed by an NRFC outside the Philippines other than the certification of a director of Officemetro's affiliate company, the Court *En Banc* sustains the findings of the Court in Division.

With respect to the amount of ₱3,600,814.00 which was included as part of Officemetro's Intercompany License Agreement, records reveal that payments made to Regus Business Centre GmbH which Officemetro asserts to be Regus Centre Pty Ltd., forms part of its Intercompany Services Agreement and should therefore be included in its management fees.[13]

At any rate, whether the amount of ₱3,600,814.00 is included in Officemetro's management fees or license fees is insignificant. The net effect of Officemetro's deficiency FWT of VAT remains the same, thus:

Management Fees	
Management Fee - Australia	₱2,544,695.00
Regus Business Centre GmbH (Regus Centre Pty Ltd.)	3,600,814.00
License Fees	
Regus Management Ltd.	5,715,566.00
Regus Management Ltd.	5,456,335.00
Total	**₱17,317,410.00**
X 10% VAT	**₱1,731,741.00**

Considering the foregoing, Officemetro is liable to pay FWT of VAT in the amount of ₱1,731,741.00. Corollary thereto, Officemetro is liable to pay the total deficiency FWT in the amount of ₱4,507,456.15.

In sum, both parties failed to adduce grounds sufficient to warrant the partial reversal of the assailed Decision and Resolution.

WHEREFORE, in view thereof, the Petition for Review filed by Commissioner of Internal Revenue in CTA EB No. 1210 and the Petition for Review filed by Officemetro Philippines, Inc. in CTA EB No. 1213, are hereby **DISMISSED**, for lack of merit. Accordingly, the Decision dated June 3, 2014 is hereby **AFFIRMED.**

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[12] Exhibit "BB".
[13] Id.

SO ORDERED.

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

WE CONCUR:

(With Concurring and Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

(I join PJ Del Rosario's Concurring and Dissenting Opinion)
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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ROMAN G. DEL ROSARIO
Presiding Justice

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Ringpis-Liban, JJ.

Promulgated:
MAR 07 2016 1:58 p.m.

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CONCURRING AND DISSENTING OPINION

DEL ROSARIO, PJ:

I concur with the *ponencia* in dismissing both Petitions for Review for lack of merit.

With due respect, upon review of the case records, it appears that 20% deficiency interest was imposed on the assessed basic Expanded Withholding Tax (EWT), Final Withholding on VAT (FWVAT) and Final Withholding Tax (FWT). Although this particular issue was not raised, I deemed it appropriate to address the same if only to provide a just determination of the controversy.

In this regard, I quote below the position I have taken in *Avon Products Manufacturing, Inc. vs. Commissioner of Internal Revenue*[1] on the imposition of deficiency interest:

> "xxx I am not unaware of *Paper Industries Corporation of the Philippines vs. Court of Appeals, Commissioner of Internal Revenue, and Court of Tax Appeals (PICOP),*[2] which somehow made mention of deficiency interest under the **NIRC of 1977**. I must stress, however, that *PICOP* cannot be relied upon to justify the imposition of deficiency interest on petitioner's excise tax liability. *PICOP* did not state nor resolve the issue whether or not the deficiency interest provided for in Section 249 (B) of the **NIRC of 1997,** as amended, may be imposed on tax other than donor's, estate, and income taxes. Thus, not having been resolved therein, *PICOP* cannot be considered as a doctrine on the matter. The case of *Office of the Ombudsman vs. Honorable Court of Appeals and Former Deputy Ombudsman for the Visayas Arturo C. Mojica,*[3] is instructive:
>
>> "The legal maxim "*stare decisis et non quieta movere*" (follow past precedents and do not disturb what has been settled) states that where the same questions relating to the same event have been put forward by parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt relitigate the same issues.
>>
>> xxx xxx xxx
>>
>> **Thus, where the issue involved was not raised nor presented to the court and not passed upon by the court in the previous case, the decision in the previous case is not *stare decisis* of the question presented."** (Emphasis supplied)

[1] CTA EB No. 1062, January 15, 2016.
[2] G.R. Nos. 106949-50, December 1, 1995.
[3] G.R. No. 146486, March 4, 2005.

If *PICOP* has any relevance to the present controversy, it is the doctrinal precedent that **deficiency interest may be imposed only on tax specifically covered by the relevant provision of the NIRC of 1977**. Thus, the Court in *PICOP*, while recognizing that transaction tax is in the nature of income tax and that deficiency interest is imposable on income tax, nonetheless declined to impose such deficiency interest on transaction tax after noting the significant provisions of the NIRC of 1977: ***first*****, it is Section 51 (c)(1), (e)(1), and (3) which impose deficiency interest; *second*, Section 51 (c) (1) confines such deficiency interest on taxes covered by TITLE II; and, *third*, that transaction tax does not fall within TITLE II**. Thus:

> **"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." (Emphases supplied)

True, the Supreme Court in *PICOP* declared that the present provision of the NIRC mentions that **additions** on tax applies to all taxes. While such pronouncement may not be construed beyond the context in which it was made, *PICOP* simply confirmed that *in general*, certain penalties and charges are applicable to all types of tax or deficiency tax; PICOP, however, did not categorically construe the provision of Section 249 (B) that deals with "deficiency interest" on the type of tax "as defined in [the] Code". Note that the present NIRC is explicit with respect to the type of tax on which deficiency interest may be imposed, viz:

> 'Section 249.Interest-
>
> (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.' (Emphasis supplied)
>
> **Section 249 (B) cannot be any clearer: the deficiency interest must refer only to 'deficiency in the tax due, <u>as the term is defined in [the] Code</u>.'**
>
> Verily, as the law stands, only donor's, estate, and income taxes carry a provision on deficiency tax; they are the types of taxes on which such deficiency interest may be imposed.
>
> Finally, Sections 247 (a) and 249 (A) are **general provisions** that impose "additions" to the tax and "interest" thereon. Both sections may not be read in isolation from the relevant and **specific provision** of Section 249 (B) with respect to the imposition of "deficiency" interest, more so as all these provisions fall within the same Chapter I of Title X of the NIRC of 1997, as amended."

Otherwise stated, Sections 247 (a) and 249 (A) must reasonably be read and construed subject to the provision of Section 249 (B) - - all these provisions being covered by the same Chapter I of Title X of the NIRC of 1997, as amended.

In sum, deficiency interest may be imposed only on tax specifically covered by the relevant provisions of the NIRC, *i.e., income tax, donor's tax and estate tax*; conversely, deficiency interest may not properly be imposed on the basic EWT, FWVAT and FWT assessed against petitioner.

All told, I vote to deny both Petitions for Review and affirm the assailed Decision with modification relating to the imposition of 20% deficiency interest on the assessed basic EWT, FWVAT and FWT, which should appropriately be cancelled and set aside.

ROMAN G. DEL ROSARIO
Presiding Justice