REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

ICONIC BEVERAGES, INC. *Petitioner,*	**CTA EB No. 1563** (CTA Case No. 8813)
- versus-	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	

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COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB No. 1564** (CTA Case No. 8813)
- versus-	Present: **DEL ROSARIO**, *PJ*, **CASTAÑEDA, JR.**, **UY**, **FABON-VICTORINO**, **MINDARO-GRULLA**, **RINGPIS-LIBAN**, and **MANAHAN**, *JJ.*
ICONIC BEVERAGES, INC. *Respondent.*	Promulgated: SEP 18 2018 4:05 p.m.

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DECISION

MANAHAN, J.:

Before the Court *En Banc* are consolidated Petitions for Review seeking the reversal and setting aside of the Decision dated August 9, 2016 and Resolution dated November 9, 2016 issued by the Court in Division. The assailed Decision and Resolution partially upheld the assessment for deficiency income tax, value-added tax (VAT), and administrative penalties for taxable year ended 2010, amounting to Php138,051,146.82, inclusive of the 25% surcharge.

The Facts

Iconic Beverages, Inc. (Iconic) is a corporation organized and existing under the laws of the Philippines, with principal place of business at the 40 San Miguel Ave., Mandaluyong City, Philippines.[1]

The duly appointed Commissioner of Internal Revenue (CIR) is tasked to assess and collect all national internal revenue taxes, fees and charges, and enforce all forfeitures, penalties, and fines connected therewith. He holds office at the Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.[2]

Iconic received from the BIR Letter of Authority No. 116-2011-00000013 dated July 5, 2011, authorizing the examination of its books of accounts and other financial records for VAT for the taxable year 2010.[3]

Thereafter, Iconic received a Notice for Informal Conference (NIC) dated August 2, 2013 issued by the Large Taxpayers Service of the BIR. The NIC proposed to assess Iconic for deficiency income tax, VAT and administrative penalties in the aggregate amount of Php162,202,504.03.[4]

On September 19, 2011, Letter of Authority No. 116-2011-00000043 was issued by the BIR covering all internal revenue taxes, except for VAT, for taxable year 2010.[5]

Iconic received a Preliminary Assessment Notice (PAN) dated October 19, 2011. The PAN informed Iconic "that there has been found deficiency income tax and VAT, inclusive of legal increments, for calendar year 2010" in the aggregate amount of Php165,018,629.73, inclusive of interest and compromise penalty.[6]

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[1] *Rollo*, Decision dated August 9, 2016, p. 37.
[2] *Rollo*, Decision dated August 9, 2016, p. 37.
[3] *Rollo*, Decision dated August 9, 2016, p. 37.
[4] *Rollo*, Decision dated August 9, 2016, p. 38.
[5] *Rollo*, Decision dated August 9, 2016, p. 38.
[6] *Rollo*, Decision dated August 9, 2016, p. 38.

In a letter dated September 30, 2013, which the BIR received on even date, Iconic replied to the PAN.[7]

Thereafter, Iconic received a Formal Letter of Demand (FLD) dated November 7, 2013, with attached Final Assessment Notices (FAN), assessing Iconic for purported deficiency income tax and VAT in the aggregate amount of Php168,712,193.64, inclusive of interest, compromise and other administrative penalties.[8]

On December 2, 2013, Iconic filed its protest to the FLD and FAN, arguing that it properly declared its royalties as passive income subject to the final withholding tax rate of twenty percent (20%) on the gross amount, and that the FLD and FAN are without factual and legal basis.[9]

However, the CIR issued a Final Decision on Disputed Assessment (FDDA) on April 3, 2014, and received by Iconic on April 4, 2014. The FDDA denied Iconic's protest.[10]

Iconic filed its petition for review with the Court in Division on May 5, 2014. After trial, the Court in Division partially granted Iconic's petition, ordering it to pay the deficiency assessments in a reduced amount. The dispositive portion states:

> **WHEREFORE**, in view of the foregoing, the present Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, petitioner is hereby **ORDERED TO PAY** deficiency Income Tax, Value-Added Tax and administrative penalties for the taxable year ended 2010, in the reduced amount of **One Hundred Thirty-Eight Million Fifty-One Thousand One Hundred Forty-Six and 82/100 Pesos (Php138,051,146.82)**, inclusive of the twenty-five percent (25%) surcharge imposed under *Section 248(A)(3) of the 1997 NIRC*, computed as follows:

Tax Type	Basic Tax	25% Surcharge	Total
Income Tax	Php110,434,456.63	Php27,608,614.16	Php138,043,070.78
Value-Added Tax	3,260.83	815.21	4,076.04
Administrative Penalties	-	-	4,000.00
Total	Php110,437,717.46	Php27,609,429.36	Php138,051,146.82

[7] *Rollo*, Decision dated August 9, 2016, p. 38.
[8] *Rollo*, Decision dated August 9, 2016, pp. 38-39.
[9] *Rollo*, Decision dated August 9, 2016, p. 40.
[10] *Rollo*, Decision dated August 9, p. 40.

In addition, petitioner is liable to pay:

1. Deficiency interest at the rate of twenty percent (20%) *per annum* pursuant to *Section 249(B) of the 1997 NIRC* on the basic deficiency Income Tax of Php110,434,456.63 and Value-Added Tax of Php3,260.83 computed from April 16, 2011 and January 26, 2011, respectively, until full payment thereof; and

2. Delinquency interest at the rate of twenty percent (20%) *per annum* on the amount of Php138,047,146.82 (Net of administrative penalties of Php4,000.00 but inclusive of 25% surcharge); and on the twenty percent (20%) deficiency interest which have accrued as aforestated in Item 1, computed from April 3, 2014 until full payment thereof pursuant to *Section 249(C) of the 1997 NIRC*, as amended.

SO ORDERED.[11]

Both parties sought reconsideration of the said Decision, which were denied in the Court in Division's Resolution[12] dated November 9, 2016, *to wit*:

WHEREFORE, there being no compelling reason to disturb the August 9, 2016 Decision of the Court, petitioner's Motion for Reconsideration [of the Decision dated August 9, 2016] and respondent's Motion for Partial Reconsideration (Re: Decision dated 10(*sic*) August 2016) are hereby **DENIED** for lack of merit.

SO ORDERED.[13]

Iconic filed its Petition for Review with the Court *En Banc* on December 6, 2016, docketed as CTA EB No. 1563. On the other hand, the CIR filed his Petition for Review on December 21, 2016, docketed as CTA EB No. 1564. On December 27, 2016, the cases were consolidated.[14]

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[11] *Rollo*, Decision dated August 9, 2016, pp. 62-63.
[12] *Rollo*, Resolution dated November 9, 2016, pp. 92-100.
[13] *Rollo*, Resolution dated November 9, 2016, p. 100.
[14] *Rollo*, Vol. 2, Minute Resolution dated December 27, 2016, p. 528.

After notice,[15] Iconic filed its Comment (Re: Petition for Review dated December 19, 2016)[16] on February 27, 2017, while the CIR's Comment (Re: Petition for Review dated 06 December 2016)[17] was admitted on June 5, 2017.[18]

The CIR filed his Memorandum[19] on July 31, 2017, while Iconic filed its Memorandum[20] on August 10, 2017. Thus, on October 30, 2017, the case was deemed submitted for decision.[21]

On December 7, 2017, Iconic filed its Manifestation[22] that it has filed an Application for Abatement/Cancellation of Surcharge, Interest and Administrative Penalties with the BIR-Large Taxpayers Service, and paid the amount of Php110,437,717.46, or equivalent to the basic tax due pursuant to the FDDA dated April 3, 2014.

Issues

In CTA EB No. 1563, Iconic submits the sole issue of:

> Whether Iconic is liable for alleged deficiency income tax and VAT in the aggregate amount of Php138,051,146.82, inclusive of surcharge and administrative penalties but exclusive of interest, for taxable year 2010.[23]

In CTA EB No. 1564, the CIR submits the following sole issue:

> Whether the Honorable Court Third Division erred in ruling that the CIR's right to assess Iconic for deficiency VAT for the first to third quarters of CY 2010 has already prescribed.[24]

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[15] *Rollo*, Vol. 2, Resolution dated January 30, 2017, pp. 530-531.
[16] *Rollo*, Vol. 2, pp. 546-559.
[17] *Rollo*, Vol. 2, pp. 565-571.
[18] *Rollo*, Vol. 2, Resolution dated June 5, 2017, pp. 594-597.
[19] *Rollo*, Vol. 2, pp. 617-625.
[20] *Rollo*, Vol. 2, pp. 629-665.
[21] *Rollo*, Vol. 2, Resolution dated October 30, 2017, pp. 668-670.
[22] *Rollo*, Vol. 2, pp. 674-677.
[23] *Rollo*, p. 10.
[24] *Rollo*, CTA EB No. 1564, p. 12. an

Iconic's Arguments

Iconic argues that the Court in Division misappreciated the evidence submitted which shows that the royalty income subject of the assessment is merely passive income; that passive income is income arising from mere ownership of an asset and does not require any action or active or material participation from the owner; and, that Iconic did not actively pursue San Miguel Brewery Inc. (SMB) to enter into a License Agreement with the same. Iconic further argues that the income earned from the act of licensing out certain intellectual property rights (IP rights) is merely incidental to Iconic's primary purpose, which is to manufacture, buy, sell, and deal in alcoholic and non-alcoholic beverages; that the word "license" under Iconic's Amended Articles of Incorporation (AAOI) simply means Iconic's acquisition of licenses, for the use of IP rights not owned by Iconic, in aid of its primary business of manufacturing, buying, selling and dealing in alcoholic and non-alcoholic beverages; and, that there is nothing in Iconic's primary purpose which indicates that it will engage in and carry on the business of distributing, marketing and promoting its trademarks and other intellectual property rights by licensing them out.

Assuming that Iconic's royalty income is ordinary income, Iconic argues that its gross income should be adjusted by applying the optional standard deduction of 40% pursuant to Section 34(L) of the 1997 National Internal Revenue Code, as amended (NIRC); and that such adjustment would result to no income tax liability for Iconic.

Iconic also argues that the item on unreported income amounting to Php82,544.20 does not pertain to royalty expense adjustment for the year 2008, but instead the documents establish the amount of additional royalty income of Php75,940.63; and, that Iconic was not involved in the transaction between SMB and San Miguel Corporation (SMC) relative to this 2008 royalty adjustment. As such, Iconic further argues that this variance should not be considered in the alleged VAT deficiency.

With respect to the alleged unsupported expenses, specifically the disallowed "Taxes and Licenses", Iconic argues that the CIR failed to state the factual bases for the disallowance thereby depriving Iconic of its right to due process.

Finally, Iconic argues that the Court in Division incorrectly computed the deficiency and delinquency interest when it simultaneously imposed the same.

With respect to the CIR's petition, Iconic argues that the Court in Division correctly ruled that the CIR's right to assess for alleged deficiency VAT has prescribed for the 1^{st} to 3^{rd} quarters of taxable year 2010.

CIR's Arguments

The CIR states that his right to assess for deficiency VAT has not yet prescribed; that it was incumbent upon Iconic to prove that it had submitted its returns and that having failed to do so, the conclusion must be that no such returns had been filed and that the Government had ten (10) years within which to make the corresponding assessments; and, that Iconic protested only the assessment for income tax, thus the assessments for deficiency VAT and administrative penalties have become final and executory. Finally, petitioner argues that all presumptions are in favor of the correctness of tax assessments.

With respect to Iconic's petition, the CIR argues that the payments received by Iconic from the active conduct of trade of business is considered business income subject to the 30% regular income tax; and, that Iconic has licensed out its trademarks and intellectual property rights in furtherance of its business.

Ruling of the Court

The petitions lack merit.

The Court *En Banc* has jurisdiction over the present petitions.

The Court in Division issued the assailed Resolution[25] dated November 9, 2016 denying the parties' respective Motions for Reconsideration.

Iconic received said Resolution on November 21, 2016, while the CIR received his copy on November 22, 2016. Pursuant to Rule 4, Section 2(a)(1),[26] in relation to Rule 8, Section 3(b)[27] of the Revised Rules of the Court of Tax Appeals (RRCTA), Iconic and the CIR had fifteen (15) days from date of receipt of the Resolution or until December 6, 2016 for Iconic, and December 7, 2016 for the CIR, within which to file their respective petitions for review.

On December 6, 2016, Iconic timely filed its Petition for Review docketed as CTA EB No. 1563.

On the same date, the CIR filed his Motion for Extension of Time to File Petition for Review[28] praying for an extension of fifteen (15) days from December 7, 2016, or until December 22, 2016 within which to file his petition for review. Said motion was granted.[29]

On December 21, 2016, the CIR timely filed his Petition for Review docketed as CTA EB No. 1564. Hence, the Court *En Banc* acquires jurisdiction.

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[25] *Rollo*, pp.92-100.

[26] Rule 4 Jurisdiction of the Court

Sec. 2. Cases within the jurisdiction of the Court *en banc*. – The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:

(1) Cases arising from administrative agencies – Bureau of Internal Revenue, xxx

[27] Rule 8. Procedure in Civil Cases

Section 3. Who may appeal; period to file petition.

xxx xxx xxx

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

[28] *Rollo*, CTA EB No. 1564, pp. 1-5.

[29] *Rollo*, CTA EB No. 1564, p. 6.

There is no compelling reason to reverse or modify the Court in Division's Decision and Resolution.

A perusal of the arguments raised by both Iconic and the CIR show that these are the same arguments already resolved by the Court in Division.

The CIR once again argues that his right to assess Iconic for deficiency VAT has not prescribed, and that the ten-year prescriptive period from the date of discovery of non-filing of VAT returns or discovery of filing of false returns applies. However, the CIR's arguments have no merit as concisely discussed by the Court in Division:

> [The CIR] cannot use the argument of non-filing of VAT returns because [Iconic] was able to provide its quarterly VAT returns for the CY 2010 which were stamped "Received" by the [CIR], as follows:

TAX RETURN	DATE OF FILING	EXHIBIT
VAT 1st Quarter	April 20, 2010	P-12
VAT 2nd Quarter	July 20, 2010	P-12.1
VAT 3rd Quarter	October 20, 2010	P-12.2
VAT 4th Quarter	January 20, 2011	P-12.3

> On the argument of filing of a false return, [the CIR] did not indicate the basis of its claim that the information embodied in the VAT returns were falsely presented.

> As stated in the Court's Decision, [the CIR]'s right to assess [Iconic] for deficiency VAT for the first to third quarters of CY 2010 has already prescribed.[30]

As to Iconic's arguments, we affirm that Iconic is liable for deficiency income taxes on its royalty income, as discussed by the Court in Division, *to wit*:

> In the case of *Chamber of Real Estate and Builders Associations, Inc. v. The Hon. Executive Secretary Alberto Romulo, et al.,*, the Supreme Court had the occasion to explain that the BIR defines passive income by stating what it is not:

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[30] *Rollo*, Resolution dated November 9, 2016, p. 100.

> Section 57(A) expressly states that final tax can be imposed on certain kinds of income and enumerates these as passive income. The BIR defines passive income by stating what it is not:
>
> > "...if the income is generated in the active pursuit and performance of the corporation's primary purposes, the same is not passive income..."
>
> It is income generated by the taxpayer's assets. These assets can be in the form of real properties that return rental income, shares of stock in a corporation that earn dividends or interest income received from savings.

It is apparent from the Supreme Court's pronouncement that before the tax rates provided in *Section 24(B)(1) of the 1997 NIRC* may apply to royalty income, it is necessary to determine whether the royalty income is indeed passive income. Furthermore, the determination of whether or not the royalty income is passive income is directly related to whether the income is generated in the active pursuit and performance of the corporation's primary purpose.

An examination of the evidence presented shows that [Iconic]'s income subject of the assessment arose from a License Agreement with SMBI for the latter's use of certain Domestic IP Rights of [Iconic], as contained in a License Agreement. Said IP Rights are likewise included in [Iconic]'s AFS as part of its assets in the amount of Php10,000,000,000.00. The AFS of [Iconic] for the taxable years ended December 31, 2010 and December 31, 2009 likewise indicate that the said income from royalties in the amounts of Php1,112,710,572.00 and Php856,063,257.00, respectively, is the main source of income of petitioner for both taxable years 2010 and 2009.

Clearly, [Iconic]'s AFS for taxable years 2010 and 2009 is in consonance with [Iconic]'s primary purpose in its Amended Articles of Incorporation, part of which is "**to** own, purchase, **license** and/or acquire such trademarks and other **intellectual property rights necessary for the furtherance of its business.**"

Accordingly, there is factual basis to conclude that [Iconic] generated its royalty income in active pursuit and performance of its primary purpose.

While it is true that [Iconic]'s tax manager, Atty. Andrei Kasilag and the Manager of SMBI's Accounting and Financial Services Department, Ms. Noemi L. Ronquillo testified by way of Judicial Affidavits that [Iconic]'s main line of business is "the manufacturing, buying, selling, and otherwise dealing in alcoholic and non-alcoholic beverages" and that the acquisition of trademarks and other intellectual property rights is merely incidental thereto; [Iconic]'s financial statements reveal otherwise since it has no operating expenses for its alleged main trade or business of manufacturing, buying, selling (on wholesale) and dealing in alcoholic and non-alcoholic beverages. In fact, the financial statements indicate no source of income for both 2009 and 2010 other than [Iconic]'s royalty income and a minimal amount of interest income.

The Court further observes that the amount of cash flows from [Iconic]'s operating activities consists only of income from its royalty and interest income as presented in its Statement of Cash Flows for both taxable years 2010 and 2009. Likewise, the ITR of [Iconic] for the taxable year 2010 showed no cost of sales/services for such taxable year, thus, giving the Court sufficient reason to doubt whether [Iconic]'s main line of business actually involves the manufacturing, buying, selling, and otherwise dealing in alcoholic and non-alcoholic beverages, as what [Iconic] claims it to be.

In view of the foregoing, the Court concludes that [Iconic]'s income from licensing out its intellectual property rights is income generated in the active pursuit and performance of its primary purpose, thus, is not passive income. Clearly, [Iconic]'s evidence failed to support its claim that the royalties in taxable year 2010 were not earned in active pursuit or performance of its primary purpose. Thus, the Court upholds the basic deficiency Income Tax assessment as to royalty income in the amount of Php1,112,710,571.00.[31] (*Emphasis supplied*)

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[31] *Rollo*, Decision dated August 9, 2016, pp. 49-51.

Recently, in a case involving the same parties,[32] the Court *En Banc* affirmed that Iconic's royalty income was earned in the active pursuit of its main trade or business, as follows:

> ...No reason nor rhyme exists for the Court *En Banc* to alter, modify, much more reverse the observation and conclusion of the Court in Division that (1) [Iconic] generated its royalty income in the active pursuit and performance of its primary purpose, thus, the subject royalty income is not passive but active income; and (2) that the simultaneous imposition of deficiency and delinquency interests is not prohibited.
>
> As ruled by the Court in Division, [Iconic] failed to establish that the assessment for deficiency IT issued against it by the CIR was incorrect. A reevaluation of the evidence presented by [Iconic], particularly its Audited Financial Statements for TY ended December 31, 2009 showed that royalties earned under the License Agreements it executed with SMBI and MPLI were its main source of income for TY 2009. The said business transactions were certainly in line, if not in accord, with [Iconic]'s primary purpose as stated in its Articles of Incorporation which included owning, purchasing, licensing and/or acquiring such trademarks and other intellectual property rights in furtherance of its business.
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> [Iconic] therefore cannot insist without transgression that the royalties it earned from its trademarks or intellectual property rights are passive income as they were not derived from the active pursuit of its main trade or business of manufacturing, buying, selling and dealing in alcoholic and non-alcoholic beverages, hence, the royalties it received from SMBI and MPLI should be subject to the general rate of 20% Final Withholding Tax and not to the 30% regular corporate tax.
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> [Iconic] cannot also claim that the act of licensing out of its trademarks and intellectual property rights which yielded in its favor royalties were incidental and one-time transactions, therefor the revenues derived therefrom were passive income subject to final tax of 20%. But [Iconic]'s Audited Financial Statements for the

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[32] *Commissioner of Internal Revenue v. Iconic Beverages, Inc.*, CTA EB Nos. 1412 and 1417, January 30, 2018.

> year ended December 31, 2009 belied this contention for it showed that the licensing out of its trademarks and intellectual property rights were the only business activities of [Iconic] and its lone lifeblood for the TY 2009. [Iconic] did not engage in any business activity beyond licensing out of its trademarks and intellectual property rights, precisely because such was its primary purpose.[33]

Clearly, the assessment for deficiency income tax on the royalty income earned in the active pursuit of its trade or business for taxable year 2010 must be upheld.

Iconic also claims that the 40% Optional Standard Deduction (OSD)[34] should be applied in computing its tax liability, and that under such computation, Iconic would have no liability for deficiency income. This argument is without merit considering that Iconic did not elect to use the OSD in its ITR. As found by the Court in Division:

> ...a taxpayer should signify in its return the intention to elect the optional standard deduction. Otherwise, the taxpayer shall be considered to have availed of the other deductions allowed in *Section 34 of the 1997 NIRC.*
>
> A perusal of [Iconic]'s 2010 ITR shows that it declared itemized deductions in the total amount of Php2,858,986.00, which resulted to a net loss in the same amount. There was nothing in [Iconic]'s ITR which would show that it opted to avail of the optional standard deduction. Thus, the optional standard deduction under *Section 34(L) of the 1997 NIRC* should not be applied in the computation of [Iconic]'s tax liability.[35]

With respect to the items on unreported income and unsubstantiated expenses, the Court *En Banc* finds no reason to reverse the Court in Division's findings that the royalty variance of Php82,544.20 and variance in Taxes and Licenses

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[33] *Commissioner of Internal Revenue v. Iconic Beverages, Inc.*, CTA EB Nos. 1412 and 1417, January 30, 2018.
[34] 1997 National Internal Revenue Code, as amended, Section 34(L).
[35] *Rollo*, Decision dated August 9, 2016, pp. 56-57.

amounting to Php72,264.02 should remain. Iconic failed to sufficiently explain and support the said discrepancies.[36]

Finally, Iconic questions the Court in Division's imposition of both deficiency and delinquency interest on its tax liability. The simultaneous imposition of both deficiency and delinquency interest can be gleaned from the provisions of Section 249(B) and 249(C)(3) of the 1997 NIRC, which provides for the periods of imposition of the interests. The deficiency interest on deficiency tax is assessed "from the date prescribed for its payment until full payment thereof;" while the delinquency interest, which is imposed for failure to pay a deficiency tax or any surcharge or interest thereon, is assessed starting "on the due date appearing in the notice of demand of the Commissioner...until the amount is fully paid."[37]

However, under Republic Act (RA) No. 10963[38] or the Tax Reform for Acceleration and Inclusion (TRAIN) law, which amended certain provisions of the 1997 NIRC, the interest rate of 20 percent (20%) per annum under Section 249 of the 1997 NIRC was amended to "double the legal interest rate for loans or forbearance of any money in the absence of an express stipulation as set by the Bangko Sentral ng Pilipinas (BSP)."

Thus, the interests imposed upon Iconic's deficiency tax liability must be adjusted beginning January 1, 2018 to conform with the TRAIN law provisions.

Iconic's Manifestation of payment of the basic deficiency tax of Php110,437,717.46.

On December 7, 2017, Iconic manifested that it has filed its Application for Abatement/Cancellation of Surcharge, Interest and Administrative Penalties with the BIR-Large Taxpayers Service. In relation thereto, Iconic paid the basic deficiency tax of Php110,437,717.46 on August 31, 2017.

However, Iconic failed to attach the original or certified true copies of the Letter-Application for abatement dated August 31, 2017, BIR Form No. 2110, BIR Form No. 0605,

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[36] *Rollo*, Decision dated August 9, 2016, pp. 51-55.
[37] *Rollo*, Resolution dated November 9, 2016, p. 99.
[38] Approved December 19, 2017.

proof of payment, and, proof of the CIR's action on said application.

Thus, said payment of basic deficiency tax cannot be considered in the computation of Iconic's remaining tax liability.

WHEREFORE, the instant Petitions for Review are **DISMISSED** for lack of merit. However, in light of the TRAIN law amendments on the imposition of interests, the Decision dated August 9, 2016 is hereby **AFFIRMED WITH MODIFICATIONS**, as follows:

> **WHEREFORE**, in view of the foregoing, the present Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, petitioner is hereby **ORDERED TO PAY** the aggregate amount of **FIVE HUNDRED MILLION NINE HUNDRED TWENTY-TWO THOUSAND NINETY PESOS AND 75/100 (Php500,922,090.75)**, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, and deficiency and delinquency interests imposed under Sections 249(B) and (C) of the NIRC of 1997, as amended, until December 31, 2017, computed as follows:

	Income Tax	**Value-Added Tax**	**Administrative Penalties**	**Total**
Basic Tax	Php110,434,456.63	Php3,260.83	Php4,000.00	Php110,441,717.46
25% Surcharge	27,608,614.16	815.21	-	27,609,429.37
Subtotal	Php138,043,070.79	Php4,076.04	Php4,000.00	Php138,051,146.83
Deficiency Interest				
April 16, 2011 to Dec. 31, 2017 (Php110,434,456.63 x 20% x 6.712328767 years)	148,254,476.02			148,254,476.02
Jan. 26, 2011 to Dec. 31, 2017 (Php3,260.83 x 20% x 6.931506849 years)		4,520.49		4,520.49
Subtotal	Php286,297,546.81	Php8,596.53	Php4,000.00	Php286,310,143.34
Delinquency Interest April 3, 2014 to Dec. 31, 2017				
(Php286,297,546.81 x 20% x 3.747945205 years)	214,605,503.55			214,605,503.55
(Php8,596.53 x 20% x 3.747945205 years)		6,443.86		6,443.86
TOTAL	**Php500,903,050.36**	**Php15,0540.39**	**Php4,000.00**	**Php500,922,090.75**

In addition, petitioner is hereby **ORDERED TO PAY** delinquency interest at the rate of twelve percent (12%) on the unpaid amount of Php138,047,146.83, representing basic deficiency income tax and VAT and corresponding 25% surcharge, as determined above, computed from January 1, 2018 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN).

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

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

Juanito C. Castañeda, Jr.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla

CIELITO N. MINDARO-GRULLA
Associate Justice

Ma. Belen M. Ringpis-Liban

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

ICONIC BEVERAGES, INC.,
Petitioner,

CTA EB No. 1563
(CTA Case No. 8813)

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x- x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB No. 1564
(CTA Case No. 8813)

Present:

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

- versus -

Promulgated:

SEP 18 2018
4:05 p.m.

ICONIC BEVERAGES, INC.,
Respondent.

x- x

CONCURRING AND DISSENTING OPINION

***DEL ROSARIO, P.J.*:**

With due respect, I am constrained to withhold my conformity to the *ponencia's* denial of Iconic Beverages, Inc.'s ("Iconic") Petition for Review for the reason that the Final Assessment Notice ("FAN") issued against Iconic is void for failure of the Commissioner of Internal Revenue ("CIR") to indicate a specific period within which to pay the deficiency taxes. On the other hand, I concur with the *ponencia* in dismissing the CIR's Petition for Review filed with the Court *En Banc.*

Section 228 of the NIRC of 1997, as amended, provides the procedure in issuing and protesting an assessment:

> "**SEC. 228.** *Protesting of Assessment.* —
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> xxx xxx xxx
>
> The taxpayers shall be informed in writing **of the law and the facts on which the assessment is made**; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, **the Commissioner or his duly authorized representative shall issue an assessment based on his findings.**" *(Boldfacing and underscoring supplied)*

To implement the provisions of Section 228, *supra*, Section 3.1.3 of RR No. 12-99, as amended by RR No. 18-2013, states:

> "*3.1.3 Formal Letter of Demand and Final Assessment Notice (FLD/FAN).* — The Formal Letter of Demand **and** Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. The FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based; otherwise, the assessment shall be void (see illustration in ANNEX "B" hereof)."

Clearly, a formal letter of demand **AND** an assessment notice are indispensable in the assessment of a taxpayer. **The use of the word "shall" in Section 3.1.3 of RR No. 12-99, as amended by RR No. 18-2013, indicates the mandatory nature of the requirement.**[1]

[1] *Commissioner of Internal Revenue vs. Enron Subic Power Corporation*, G.R. No. 166387, January 19, 2009.

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A close perusal of the FLD and FAN reveals that both documents failed to demand payment of the basic deficiency Income Tax, Value-Added Tax, including interest and compromise penalty, and the assessed administrative penalties mentioned therein within a specific period. While the FLD specifically states that petitioner is requested to pay its aforesaid deficiency tax liabilities through the duly authorized agent bank within the time shown in the enclosed assessment notice, **the due date in the left-hand portion of the enclosed FAN[2] was conspicuously left blank**, *viz.*:

BIR FORM NO. 0401
REVISED June, 1996

REPUBLIKA NG PILIPINAS
KAGAWARANNG PANALAPI
KAWANIHAN NG RENTAS INTERNAS

OCN

RETURN PERIOD
Calendar Year 2010

[redacted]

ASSESSMENT NUMBER
[illegible]

TIN 007-198-606-000
NAME ICONIC BEVERAGES, INC.
ADDRESS 40 SMC Bldg., San Miguel Ave. Mandaluyong City

PLEASE BE INFORMED THAT YOUR INTERNAL TAX LIABILITY (for deficiency) HAS BEEN COMPUTED AS FOLLOWS:

TAX TYPE	PARTICULARS		AMOUNT
INCOME TAX			
Pursuant Sections 25(A), 32(A)(6), 34 and 34 (A)(b) of 1997 NIRC, as amended	Basic Tax	Php	110,485,702.32
	add 25% surcharge		
	interest -20% P.A.		58,118,506.43
	compromise penalty		50,000.00
DUE DATE:	Total tax due & payable	Php	168,654,208.75

IMPORTANT
PLEASE REFER AT THE BACK OF THIS NOTICE FOR FURTHER INSTRUCTIONS

KIM S. JACINTO - HENARES
COMMISSIONER OF INTERNAL REVENUE

By:

ALFREDO V. MISAJON
OIC ASSISTANT COMMISSIONER

MACHINE VALIDATION/REVENUE OFFICIAL RECEIPT DETAILS (IF NOT FILED WITH BANK)

PLEASE CUT HERE

BIR FORM NO. 0401
REVISED: June, 1996

REPUBLIKA NG PILIPINAS
KAGAWARAN NG PANALAPI
KAWANIHAN NG RENTAS INTERNAS

OCN

RETURN PERIOD
Calendar Year 2010

[redacted]

RCB NUMBER (TO BE FILLED UP BY BIR)

TIN 007-198-606-000
NAME ICONIC BEVERAGES, INC.
40 SMC Bldg., San Miguel Ave., Mandaluyong City
TAX TYPE INCOME TAX
AMOUNT PAYABLE Php 168,654,208.75
DUE DATE

FOR FILING OF PROTEST
☐ I/WE DISAGREE TO THE ABOVE FINDING (SUBMIT LETTER OF PROTEST)
TAXPAYER'S SIGNATURE OVER PRINTED NAME
POSITION/TITLE

DETAILS OF PAYMENT (Applicable only for deficiency assessment)

PARTICULARS	DRAWEE BANK/AGENCY	NUMBER	DATE	AMOUNT	TO BE FILLED UP BY BIR
CASH					AUDITED BY
CHECK					
TAX DEBIT MEMO					DATE
OTHERS					

MACHINE VALIDATION/REVENUE OFFICIAL RECEIPT DETAILS (IF NOT FILED WITH BANK)

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[2] Assessment Notices attached to Exhibit P-6, "Formal Letter of Demand" dated November 7, 2013, CTA Docket, pp. 765-772.

BIR FORM NO 0401
REVISED June, 1996

REPUBLIKA NG PILIPINAS
KAGAWARANNG PANALAPI
KAWANIHAN NG RENTAS INTERNAS

OCN

RETURN PERIOD: Calendar Year 2010

[redacted]

ASSESSMENT NUMBER: VT-116-LOA-000013-10 [illegible]

TIN: 007-198-606-000
NAME: ICONIC BEVERAGES, INC.
ADDRESS: 40 SMC Bldg., San Miguel Ave. Mandaluyong City

PLEASE BE INFORMED THAT YOUR INTERNAL TAX LIABILITY (for deficiency) HAS BEEN COMPUTED AS FOLLOWS:

TAX TYPE	PARTICULARS		AMOUNT
VALUE-ADDED TAX			
Pursuant Sec. 108 of 1997 NIRC, as amended	Basic Tax	Php	18,463.32
	add: 25% surcharge		
	interest -20% P.A.		10,521.56
	compromise penalty		4,000.00
DUE DATE:	Total tax due & payable	Php	32,984.88

IMPORTANT
PLEASE REFER AT THE BACK OF THIS NOTICE FOR FURTHER INSTRUCTIONS

KIM S. JACINTO - HENARES
COMMISSIONER OF INTERNAL REVENUE

By:

ALFREDO V. MISAJON
OIC, ASSISTANT COMMISSIONER

MACHINE VALIDATION/REVENUE OFFICIAL RECEIPT DETAILS (IF NOT FILED WITH BANK)

PLEASE CUT HERE

BIR FORM NO. 0401
REVISED: June, 1996

REPUBLIKA NG PILIPINAS
KAGAWARAN NG PANALAPI
KAWANIHAN NG RENTAS INTERNAS

OCN

RETURN PERIOD: Calendar Year 2010

[redacted]

BCS NUMBER (TO BE FILLED UP BY BIR)

TIN: 007-198-606-000
NAME: ICONIC BEVERAGES, INC.
40 SMC Bldg., San Miguel Ave., Mandaluyong City
TAX TYPE: VALUE-ADDED TAX
AMOUNT PAYABLE: Php 32,984.88
DUE DATE:

FOR FILING OF PROTEST
☐ I/WE DISAGREE TO THE ABOVE FINDING (SUBMIT LETTER OF PROTEST)
TAXPAYER'S SIGNATURE OVER PRINTED NAME
POSITION/TITLE

DETAILS OF PAYMENT (Applicable only for deficiency assessment)

PARTICULARS	DRAWEE BANK/AGENCY	NUMBER	DATE	AMOUNT	TO BE FILLED UP BY BIR
CASH					AUDITED BY
CHECK					
TAX DEBIT MEMO					DATE
OTHERS					

MACHINE VALIDATION/REVENUE OFFICIAL RECEIPT DETAILS(IF NOT FILED WITH BANK)

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BIR FORM NO. 0401
REVISED: June, 1996

REPUBLIKA NG PILIPINAS
KAGAWARANNG PANALAPI
KAWANIHAN NG RENTAS INTERNAS

OCN

RETURN PERIOD

Calendar Year 2010

[redacted]

[illegible]

TIN	007-198-606-000
NAME	ICONIC BEVERAGES, INC.
ADDRESS	40 SMC Bldg., San Miguel Ave Mandaluyong City

PLEASE BE INFORMED THAT YOUR INTERNAL TAX LIABILITY (for deficiency) HAS BEEN COMPUTED AS FOLLOWS:

TAX TYPE	PARTICULARS		AMOUNT
ADMINISTRATIVE PENALTIES Pursuant Sec. 250 of 1997 NIRC, as amended	ADMINISTRATIVE PENALTIES 1. Non filing of BIR Form No. 1702Q (1st and 2nd Qtr. 2010) 2. Non filing of BIR Form No. 1601-E (May, July and August 2010) 3. Non Filing of Summary List of Sales	Php	25,000.00
DUE DATE:	Total due & payable	Php	25,000.00

IMPORTANT
PLEASE REFER AT THE BACK OF THIS NOTICE FOR FURTHER INSTRUCTIONS

KIM S. JACINTO - HENARES
COMMISSIONER OF INTERNAL REVENUE

By:

ALFREDO V. MISAJON
OIC, ASSISTANT COMMISSIONER

MACHINE VALIDATION/REVENUE OFFICIAL RECEIPT DETAILS (IF NOT FILED WITH BANK)

PLEASE CUT HERE

BIR FORM NO. 0401
REVISED: June, 1996

REPUBLIKA NG PILIPINAS
KAGAWARAN NG PANALAPI
KAWANIHAN NG RENTAS INTERNAS

OCN

RETURN PERIOD

Calendar Year 2010

[redacted]

[illegible]

TIN: 007-198-606-000

NAME: ICONIC BEVERAGES, INC.
40 SMC Bldg., San Miguel Ave., Mandaluyong City

TAX TYPE: ADMINISTRATIVE PENALTIES

AMOUNT PAYABLE Php 25,000.00

DUE DATE:

FOR FILING OF PROTEST

☐ I/WE DISAGREE TO THE ABOVE FINDING
(SUBMIT LETTER OF PROTEST)

TAXPAYER'S SIGNATURE OVER PRINTED NAME

POSITION/TITLE

DETAILS OF PAYMENT (Applicable only for deficiency assessment)

PARTICULARS	DRAWEE BANK/AGENCY	NUMBER	DATE	AMOUNT	[illegible]
CASH					AUDITED BY
CHECK					
TAX DEBIT MEMO					DATE
OTHERS					

MACHINE VALIDATION/REVENUE OFFICIAL RECEIPT DETAILS (IF NOT FILED WITH BANK)

Since no due date was indicated in the assessment notice as to when the deficiency Income Tax, and Value-Added Tax (including interest, compromise penalty and administrative penalties) must be paid, no proper demand was deemed made. This omission is fatal.

Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation,[3] emphasizes the requirement for an assessment to contain a specific demand for payment within a prescribed period in this wise:

> "An assessment contains not only a computation of tax liabilities, **but also a demand for payment within a prescribed period.** It also signals the time when penalties and interests begin to accrue against the taxpayer. To enable the taxpayer to determine his remedies thereon, due process requires that it must be served on and received by the taxpayer. xxx
>
> xxx
>
> To start with, an assessment must be sent to and received by a taxpayer, **and must demand payment of the taxes described therein within a specific period**. Thus, the NIRC imposes a 25 percent penalty, in addition to the tax due, in case the taxpayer fails to pay the deficiency tax within the time prescribed for its payment in the notice of assessment. Likewise, an interest of 20 percent per annum, or such higher rate as may be prescribed by rules and regulations, is to be collected from the date prescribed for its payment until the full payment.
>
> Xxx. **Necessarily, the taxpayer must be certain that a specific document constitutes an assessment. Otherwise, confusion would arise regarding the <u>period</u> within which to make an assessment or to protest the same, or whether interest and penalty may accrue thereon.**
>
> In the present case, the revenue officers' Affidavit merely contained a computation of respondents' tax liability. **It did not state a demand or a period for payment.** Xxx." *(Boldfacing and underscoring supplied)*

In ***Commissioner of Internal Revenue vs. Fitness by Design, Inc.***,[4] the Supreme Court **invalidated** an assessment after noting its failure to state the due date for the payment of the tax liabilities:

xxx xxx xxx

[3] G.R. No. 128315, June 29, 1999.
[4] G.R. No. 215957, November 9, 2016.

"The disputed Final Assessment Notice is not a valid assessment.

xxx xxx xxx

Second, **there are no due dates in the Final Assessment Notice. This negates petitioner's demand for payment. Petitioner's contention that April 15, 2004 should be regarded as the actual due date cannot be accepted. The last paragraph of the Final Assessment Notice states that the due dates for payment were supposedly reflected in the attached assessment:**

> In view thereof, you are *requested to pay* your aforesaid deficiency internal revenue tax liabilities through the duly authorized agent bank in which you are enrolled *within the time shown in the enclosed assessment notice.* (Emphasis in the original)

However, based on the findings of the Court of Tax Appeals First Division, **the enclosed assessment pertained to remained unaccomplished**.

Contrary to petitioner's view, **April 15, 2004 was the reckoning date of accrual of penalties and surcharges and not the due date for payment of tax liabilities. The total amount depended upon when respondent decides to pay. The notice, therefore, did not contain a definite and actual demand to pay**.

Compliance with Section 228 of the National Internal Revenue Code is a substantative requirement. It is not a mere formality. Providing the taxpayer with the factual and legal bases for the assessment is crucial before proceeding with tax collection. Tax collection should be premised on a valid assessment, which would allow the taxpayer to present his or her case and produce evidence for substantiation." *(Boldfacing and underscoring supplied)*

The requirement to indicate a fixed and definite period or a date certain within which a taxpayer must pay the assessed deficiency tax liabilities is indispensable to the validity of the assessment. Otherwise stated, an assessment *sans* a specific date or period within which the alleged tax liabilities must be settled is, in legal contemplation, void.

In sum, the assessment in this case, being void, bears no fruit[5] and may be slain at sight.

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[5] *Metro Star Superama, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 185371, December 8, 2010.

From the foregoing, I submit that the Formal Letter of Demand dated November 7, 2013 and Assessment Notice Nos. IT-116-LOA-000013-10-13-175, VT-116-LOA-000013-10-13-176, MC-116-LOA-000013-10-13-177, assessing petitioner Iconic Beverages, Inc. of deficiency Income Tax, Value-Added Tax, and certain administrative penalties in the amounts of ₱168,654,208.75, ₱32,984.88, and ₱25,000.00, respectively, for calendar year 2010 should be **CANCELLED** and **SET ASIDE.**

ROMAN G. DEL ROSARIO
Presiding Justice