REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

MOOG CONTROLS CORPORATION- PHILIPPINE BRANCH,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9077

Members:

CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
MANAHAN, *JJ.*

Promulgated:

FEB 2 2 2018

2:50 p.m.

x- x

AMENDED DECISION

MANAHAN, *J.:*

For the Court's resolution are the following:

1. Petitioner's **Partial Motion for Reconsideration** filed on January 11, 2018 with respondent's **Opposition (Re: Petitioner's Partial Motion for Reconsideration)** filed on February 1, 2018 via registered mail; and

2. Respondent's **Motion for Reconsideration (Re: Decision dated 3 January 2018)** filed on January 16, 2018 with petitioner's **Comment to Respondent's Motion for Reconsideration (of the CTA's Decision dated 03 January 2018)** filed on February 1, 2018.

Both parties move for the reconsideration of the Decision promulgated on January 3, 2018, the dispositive portion of which reads as follows:

"**WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, the deficiency income tax assessment for fiscal year ended October 3, 2009 is **AFFIRMED WITH MODIFICATIONS.** Petitioner is **ORDERED TO PAY** the amount of **SEVEN MILLION NINE HUNDRED SEVENTY-FOUR THOUSAND EIGHT HUNDRED THIRTY SEVEN PESOS AND SEVENTY THREE CENTAVOS** (P7,974,837.73), inclusive of the twenty five percent (25%) surcharge imposed under Section 248 (A) (3) of the NIRC of 1997, as amended, computed as follows:

Tax Type	Basic Tax	25% Surcharge	Total
Gross Income Tax (5%)	₱6,379,870.18	₱1,594,967.55	₱7,974,837.73

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 February 15, 2010 until full payment thereof pursuant to Section 249 (B) of the NIRC of 1997, amended; and

(b) Delinquency interest at the rate of 20% per annum on the total amount of P7,974,837.73 and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from June 8, 2015 until full payment thereof pursuant to Section 249 (C) of the NIRC of 1997, as amended.

SO ORDERED.

<u>Petitioner's Motion for Partial Reconsideration</u>

Petitioner raised the following arguments in its Motion for Partial Reconsideration:

1. The issue/s to be resolved by this Honorable Court should be limited only to the issue/s raised by the parties;

2. The new TRAIN law which took effect on 01 January 2018 has already amended Sections 249 (B) and 249 (C) of the National Internal Revenue Code (NIRC) of 1997, as amended.

As regards Argument No. 1, petitioner submits that the issue of whether the deductions it claimed were direct costs has not been raised as an issue during trial nor was it even cited by respondent in the Preliminary Assessment Notice (PAN) and Final Decision on Disputed Assessment (FDDA). Petitioner pointed out the fact that in the Joint Stipulation of Facts and Issues executed by both parties, only the following issues were raised for resolution:

1. Whether or not the allowable deductions enumerated in Rule XX of the Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 7916 and Revenue Regulations (RR) No. 11-2005 are exclusive; and,

2. Whether or not petitioner is liable to pay the assessed amount of Php12,206,739.18 as deficiency taxes for fiscal year ending October 3, 2009.

Petitioner claims that the issue of the claimed deductions as direct costs were already settled by the BIR in the administrative level upon an examination of its books of accounts and other accounting records. The Court then erred in further deciding said issue in the assailed Decision.

Petitioner further asserts that the imposition of two types of interest, i.e., deficiency and delinquency, is no longer applicable under the new provisions of Republic Act (RA)10963 or more commonly known as the TRAIN law.

Petitioner argues that the simultaneous imposition of both deficiency and delinquency is already prohibited under the clear provisions of the TRAIN law. With the law's effectivity on January 1, 2018, petitioner prays for the amendment of this Court's decision to conform with its aforequoted provisions.

In Respondent's Opposition to petitioner's Motion for Partial Reconsideration, he contravenes the assertion of petitioner that the revenue examiners already acknowledged that the expenses/deductions claimed are considered direct costs. In fact, respondent avers that the assessment for income tax issued against the petitioner disallowed certain items of expense as deductions because they were not considered as direct costs hence petitioner cannot claim that this was already a "non-issue" in the judicial level.

As to the applicability of the TRAIN law to the imposition of the relevant interests on the final amounts adjudged to be payable by the petitioner, respondent submits that the TRAIN law should have no retroactive effect to the instant case, hence the imposition of the two types of interests, namely, deficiency and delinquency interests, shall still apply.

Respondent's Motion for Reconsideration

Respondent also moves for the reconsideration of the Court's Decision in so far as it concludes that the enumeration of the allowable deductions under RR 11-2005 and Rule XX of the IRR of the PEZA law is not exclusive. Corollary to this, respondent cites as erroneous, the ruling of the Court that the costs related to "Repairs and Maintenance" should form part of petitioner's cost of sales that is allowable as deduction.

Petitioner in its Comment to respondent's Motion for Reconsideration contravenes the contentions of respondent and maintains that the Court has already settled that the enumeration of the allowable deductions under RR No. 11-2005 and Rule XX of the IRR of the PEZA Law is not exclusive. Further, petitioner states that its costs related to repairs and maintenance should be properly allowed as deductions in the determination of its taxable income because such are directly related to its PEZA-registered business.

RULING OF THE COURT

Petitioner's contention that the question on direct costs was never an issue between the parties is misleading because it is in fact the central issue to the resolution of whether or not the assessment has factual and legal bases.

It is to be recalled that the exclusivity of the allowable deductions claimed enumerated under Rule XX of the IRR of RA 7916 also known as the "PEZA law" and RR No. 11-2005 was resolved by this Court in its Decision dated January 3, 2018. This issue is interrelated to the issue on direct costs which petitioner claims is a "non-issue" in the judicial level. The assailed decision therefore rightfully disposed of said issue and we find no reason to reverse our ruling therein.

As to the argument of respondent in his Motion for Reconsideration that the enumeration under the aforecited Rule XX of the IRR of RA 7916 and RR 11-2005 is exclusive, this is a mere rehash of what has been asserted in his Answer to the Petition for Review and which has been sufficiently passed upon by the Court already in the assailed Decision. The Court then finds no cogent reason to modify or reverse the decision of this Court as regards the issue on exclusivity.

We now resolve the issue on whether the provisions of the TRAIN law have any impact on the interests imposed by this Court on the amount payable by the petitioner.

Petitioner avers that the new TRAIN law which took effect on January 1, 2018 applies to the instant Decision of the Court promulgated on January 3, 2018, thus the deficiency and delinquency interest should no longer be imposed simultaneously pursuant to the clear wordings of said law.

On the other hand, respondent states that the TRAIN law should not have any retroactive effect on taxes assessed prior to the effectivity of the TRAIN Law.

We analyze.

Section 249 (A) and (B) of the NIRC of 1997 was amended by the TRAIN law as follows:

Section 249. *Interest.* –

(A) *In General.* There shall be assessed and collected on any unpaid amount of legal interest at the rate of **DOUBLE THE LEGAL INTEREST RATE FOR LOANS OR FORBEARANCE OF ANY MONEY IN THE ABSENCE OF ANY EXPRESS STIPULATION AS SET BY THE BANGKO SENTRAL NG PILIPINAS,** from the date prescribed for payment until the amount is fully paid, **PROVIDED THAT IN NO CASE SHALL THE DEFICIENCY AND DELINQUENCY INTEREST PRESCRIBED UNDER SUBSECTION (B) AND (C) HEREOF, BE IMPOSED SIMULTANEOUSLY**."

(B) *Deficiency Interest* – Any deficiency in the tax due as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof, or **OR UPON ISSUANCE OF A NOTICE AND DEMAND BY THE COMMMISSIONER OF INTERNAL REVENUE, WHICHEVER COMES EARLIER.** (with emphasis supplied on the amended portions).

The clear wordings of the aforequoted law is that the deficiency interest shall run from either of the following dates (whichever will come earlier):

1. The date prescribed for payment;
2. The issuance of a notice and demand by the Commissioner of Internal Revenue (CIR).

The end date of the charging of the interest would be until full payment thereof and since the full payment will only be possible after petitioner is apprised by this Court of its tax liabilities by reason of the latter's judgment on January 3, 2018, we are inclined to agree with the petitioner that the provisions of the TRAIN law should *partially* apply to the instant case. There is no question that the tax liabilities or deficiencies of petitioner became due before the amendment of Section 249 of the 1997 NIRC by virtue of the TRAIN law but it is also quite plain to see that the full payment of the taxes will only be accomplished after the decision of this Court on January 3, 2018 when the TRAIN law has already come into effect. Section 87 of the TRAIN law provides for the date of its effectivity as follows: *am*

Section 87. *Effectivity.* This Act shall take effect on **January 1, 2018** following its complete publication in the Official Gazette or in at least one (1) newspaper of general circulation." (Emphasis supplied)[1]

We agree with the petitioner that the provisions of the TRAIN law will apply on the imposition of interests but only in so far as that portion of interest that will run starting on January 1, 2018 onwards.

The imposition of interest on unpaid taxes is governed by Section 249 of the NIRC of 1997. We quote the following portions thereof prior to its amendment by the TRAIN law:

"Section 249. *Interest.*

(A) In General. - There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed by rules and regulations, from the date prescribed for payment until the amount is fully paid.

(B) Deficiency Interest. - Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.

(C) Delinquency Interest. - In case of failure to pay:

(1) The amount of the tax due on any return to be filed, or

(2) The amount of the tax due for which no return is required, or

(3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax."

From the above provisions, it is clear that while the deficiency interest is imposed on the unpaid amount of tax from the time prescribed for its payment by law until the amount is fully paid, the delinquency interest is imposed on the delay in payment of the unpaid amount

[1] Date of publication of RA 10993 in the Official Gazette is on December 27, 2017.

which consists of the basic tax, surcharge, and deficiency interest and runs from the time prescribed for their payment until full payment of the unpaid amount. Note that the running or charging of interest for both types of interest stops from full payment and as discussed, full payment in the instant case, will happen only after January 3, 2018 which is the date of the promulgation of the assailed decision.

The nature of an interest as described above is the reason why we cannot fully accede to the contention of petitioner that the non-imposition of two types of interest, i.e., deficiency and delinquency interests, must retroact to the tax assessments originating under the NIRC of 1997 as in the instant case. Such interpretation would negate the continuity of the running of the interest because a portion thereof will begin to run from the date prescribed for payment which in this case covers the period *prior* to the effectivity of the TRAIN law.

The retroactive application argued by petitioner finds support in Article 22 of the Revised Penal Code (RPC) and we quote:

> "Article 22. *Retroactive effect of penal laws.* – Penal laws shall have a retroactive effect insofar as they favor the persons guilty of a felony, who is not a habitual criminal, as this term is defined in Rule 5 of Article 62 of the Code, although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving the same."

We cannot however apply the same principle to the imposition of interest because the same is not penal in nature. The Supreme Court in one case[2] made it clear that interest is compensatory rather than penal in nature and we quote:

> "The imposition of 1% monthly is but a just compensation to the State for the delay in paying the tax and for the concomitant use by the taxpayer of funds that rightfully should be in the government's hands. xxx xxx **The fact that the interest is charged is made proportionate to the period of delay constitutes the** con

[2] Aguinaldo Industries Corporation vs. CIR and the CTA, G.R. No. L-29790 dated February 25, 1982.

> **best evidence that such interest is not penal but compensatory**. xxx xxx (emphasis supplied)

The peculiarity in the application of two laws, namely, the NIRC of 1997 and the TRAIN law, should not be seen in conflict with each other, one original and the other amendatory, but should be interpreted to produce a harmonious result. The Supreme Court in the case of *Philippine Industrial Trading Corporation vs. COA*[3], stated thus:

> "In reconciling Section 6 of Executive Order No. 756 with Section 28, Subsection (b) of Commonwealth Act No. 186, as amended, uppermost in the mind of the Court is the fact that the best method of interpretation is that which makes laws consistent with other laws which are to be harmonized rather than having one considered repealed in favor of the other. Time and again, it has been held that every statute must be so interpreted and brought in accord with other laws as to form a uniform system of jurisprudence *interpretere et concordare legibus est optimus interpretendi*. Thus, if diverse statutes relate to the same thing, they ought to be taken into consideration in construing any one of them, as it is an established rule of law that all acts in *pari materia* are to be taken together, as if they were one law."

The harmony is achieved by applying the provisions of Section 249 under the NIRC of 1997 on the interest charged from the date of payment up to the time prior to the effectivity of the TRAIN law, i.e., January 1,2018, and apply the provisions of the TRAIN law on the interest charged from its effectivity on January 1, 2018 up to the full or complete payment of the unpaid amount. The double imposition of interest (deficiency and delinquency) under the NIRC of 1997 will still apply in so far as the period between the date prescribed for tax payment until the last day prior to its amendment.

The foreseen dispute or controversy on the application of interest rates using both the original and amendatory rates for the same unpaid tax may be resolved in the light of the Supreme Court decision in the case of *Spouses Eduardo and Lydia Silos vs. PNB*[4] where the High Court recognized the change in the interest rates

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[3] G.R. No. 183517 dated June 22, 2010.
[4] G.R. No. 181045 dated July 2, 2014.

on a single loan based on the applicable prevailing rates, and we quote:

> "Thus, the parties' original agreement stipulated the payment of 19.5% interest; however, this rate was intended to apply only to the first promissory note which expired on November 21, 1989 and was paid by the petitioners; it was not intended to apply to the whole duration of the loan. Subsequent higher interest rates have been declared illegal; but because only the rates are found to be improper, the obligation to pay interest subsists, the same to be fixed at the legal rate of 12% per annum. However, the 12% interest shall apply only until June 30, 2013. **Starting July 1, 2013, the prevailing rate of interest** shall be 6% per annum pursuant to our ruling in Nacar vs. Gallery Frames xxx xxx" (emphasis supplied)

The respondent's argument that the TRAIN law should have no retroactive effect misses the point because there will be no retroactive application in our conclusion but only an application of current laws which are effective during certain periods where interest should run.

WHEREFORE, premises considered, petitioner's Motion for Partial Reconsideration is partially granted and respondent's Motion for Reconsideration (Re: Decision dated 03 January 2018) is **DENIED** for lack of merit.

Accordingly, the dispositive portion of the assailed decision dated January 3, 2018 is hereby **AMENDED** to read as follows:

"**WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, the deficiency income tax assessment for fiscal year ended October 3, 2009 is **AFFIRMED WITH MODIFICATIONS.** Petitioner is **ORDERED TO PAY** the amount of **SEVEN MILLION NINE HUNDRED SEVENTY-FOUR THOUSAND EIGHT HUNDRED THIRTY SEVEN PESOS AND SEVENTY THREE CENTAVOS** (P7,974,837.73), inclusive of the twenty five percent (25%) surcharge imposed under Section 248 (A) (3) of the NIRC of 1997, as amended, computed as follows: cen

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(b) Delinquency interest at the rate of 20% per annum on the total amount of P7,974,837.73 and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from June 8, 2015 until December 31, 2017 pursuant to Section 249 (C) of the NIRC of 1997 ; and

(c) Delinquency interest at the rate of 12% on the unpaid amount (basic tax plus surcharge plus interests computed in (a) and (b) above) from January 1, 2018 until the amount is fully paid pursuant to the relevant provisions of the TRAIN law.

SO ORDERED.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

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

CAESAR A. CASANOVA
Associate Justice