REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

C.T.A. EB No. 1169
(C.T.A. CASE NO. 7958)

- versus -

ESS MANUFACTURING COMPANY, INC.,
Respondent.

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ESS MANUFACTURING COMPANY, INC.,
Petitioner,

C.T.A. EB No. 1175
(C.T.A. CASE NO. 7958)

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Present:
DEL ROSARIO, *PJ*
CASTAÑEDA, JR.
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS,
and
RINGPIS-LIBAN, *JJ.*

Promulgated:

MAR 30 2016 1:45 p.m.

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DECISION

***Fabon-Victorino, J.*:**

For adjudication are the Petition for Review dated May 29, 2014 filed by the Commissioner of Internal Revenue

(CIR), and the Petition For Review dated June 4, 2014 filed by ESS Manufacturing Company, Inc. (ESS) both assailing the Decision dated February 14, 2014 as well as the Resolution dated May 2, 2014 which denied their respective motions for reconsideration.

In the assailed Decision, the Court in Division ruled in favor of ESS, albeit partially, by cancelling the assessment for deficiency Final Withholding Tax (FWT) and Final Withholding of VAT (FWTV) for the year 2005 in the amounts of P1,029,051.27 and P317,173.89, respectively, but ordered ESS to pay deficiency Expanded Withholding Tax (EWT), Withholding Tax on Compensation (WTC), and Fringe Benefits Tax (FBT) for the year 2005 in the amount of P1,921,503.60, plus surcharge, deficiency interest, and delinquency interest.

The following facts remain undisputed:

On September 5, 2006, Letter of Authority (LOA) No. 00039017 was issued by the BIR for the examination of the books of accounts and other accounting records of ESS, a domestic corporation[1], for all its internal revenue taxes for the period of January 1, 2005 to December 31, 2005.[2]

On September 23, 2008, or more than two (2) years from issuance of LOA No. 00039017 and corresponding audit, the BIR issued a Preliminary Assessment Notice (PAN) against ESS for alleged deficiency EWT, WTC, FBT, FWT and FWTV for the taxable year 2005 in the total amount of P34,028,524.51.[3]

In a letter dated October 10, 2008, ESS moved for the reconsideration of the assessment as contained in the PAN contending that it was bereft of any basis and contrary to existing laws and regulations. Moreover, the BIR's reliance on the gross balances of ledgers or financial statements was misplaced for it failed to consider the details of the accounts,

[1] Par. 1, Stipulation of Facts, Joint Stipulation of Facts and Simplification of Issues dated December 1, 2009, Division docket p. 147
[2] Par. 3, Stipulation of Facts, Joint Stipulation of Facts and Simplification of Issues dated December 1, 2009, Division docket p. 148
[3] Par. 4, Stipulation of Facts, Joint Stipulation of Facts and Simplification of Issues dated December 1, 2009, Division docket p. 148

alphalist, schedules, tax returns and other related documents it submitted during the audit.[4]

On December 15, 2008, ESS received a Final Assessment Notice (FAN) dated December 10, 2008, with assessment Nos. WE-39017-05-08-0565, WC-39017-05-08-0565, WR-39017-05-08-0565, WF-39017-05-08-0565, and WG-39017-05-08-0565, finding it liable for deficiency taxes with interest amounting to P35,101,455.74 for taxable year 2005, broken down as follows:[5]

Expanded Withholding Tax	P 1,856,417.35
Withholding Tax on Compensation	12,253,448.68
Fringe Benefits Tax	19,645,364.55
Final Withholding Tax	1,029,051.27
Final Withholding of Value-added Tax	317,173.89
Total	**P 35,101,455.74**

On January 13, 2009, ESS protested the FAN which to date remains unresolved,[6] despite Follow-up letter dated March 13, 2009 and Clarificatory Letter supplemental to the administrative protest dated June 26, 2009.[7]

On August 10, 2009, ESS, through a Petition for Review, petitioned the Court in Division to cancel and declare the assessment amounting to P35,101,455.74 as null and void.

On February 14, 2014, the Court in Division promulgated the assailed Decision, the dispositive portion of which reads:

> "WHEREFORE, premises considered, the Petition for Review filed by petitioner ESS Manufacturing Company, Inc. is hereby PARTIALLY GRANTED. The deficiency Final Withholding Tax and Final Withholding of VAT assessment issued

[4] Par. 5, Stipulation of Facts, Joint Stipulation of Facts and Simplification of Issues dated December 1, 2009, Division docket p. 149
[5] Par. 6, Stipulation of Facts, Joint Stipulation of Facts and Simplification of Issues dated December 1, 2009, Division docket p. 149
[6] Par. 7, Stipulation of Facts, Joint Stipulation of Facts and Simplification of Issues dated December 1, 2009, Division docket pp. 149-150
[7] Par. 8, Stipulation of Facts, Joint Stipulation of Facts and Simplification of Issues dated December 1, 2009, Division docket p. 150

by respondent against petitioner covering taxable year 2005 in the amount of P1,029,051.27 and P317,173.89, which include interests, are hereby CANCELLED, for having no basis.

On the other hand, petitioner (ESS) is hereby ORDERED TO PAY the deficiency Expanded Withholding Tax, Withholding Tax on Compensation and Fringe Benefits Tax for the taxable year 2005, in the modified amount of P1,921,503.60, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, computed as follows:

Tax Type	Basic Tax	25% Surcharge	Total
EWT	P 806,904.14	P201,726.04	P1,008,630.18
WTC	566,609.22	141,652.31	708,261.53
FBT	163,689.52	40,922.38	204,611.90
Total	P1,537,202.88	P384,300.72	P1,921,503.60

In addition, petitioner (ESS) is liable to pay:

(a) Deficiency interest at the rate of twenty percent (20%) per annum pursuant to Section 249(C) of the NIRC of 1997:

i. On the basic deficiency EWT of P806,904.14 computed from January 11, 2006 until full payment thereof;

ii. On the basic deficiency WTC of P566,609.22 computed from January 11, 2006 until full payment thereof; and

iii. On the basic deficiency FBT of P163,689.52 computed from January 16, 2006 until full payment thereof.

(b) Delinquency interest at the rate of twenty percent (20%) per annum on the total amount due of P1,921,503.60

> representing deficiency Expanded Withholding Tax, Withholding Tax on Compensation and Fringe Benefits Tax and on the 20% deficiency interest which have accrued as aforestated in (a), computed from January 12, 2009 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997, as amended.
>
> SO ORDERED."

Both aggrieved, the CIR (for the BIR) and ESS filed their respective motions for reconsideration which were both denied for lack of merit in the Resolution dated May 2, 2014.

Hence, the present cases before the Court *En Banc*.

In her Petition, the CIR maintains her position that the ten-year prescriptive period to assess under Section 222 of the NIRC, as amended, should apply in the present case as the tax returns filed by ESS for the year 2005 were false as they indicated that ESS did not earn any income in 2005 when there were several income subject to withholding tax. In view thereof, the subject assessment for deficiency EWT, WTC, and FBT for the year 2005 has not prescribed and should be upheld.

Granting that the 3-year prescriptive period to assess under Section 203 of the NIRC was correctly applied, still the subject assessment was timely issued since the period to assess was suspended or interrupted with ESS's filing of a request for reinvestigation. Under Section 6 of Revenue Regulations (RR) No. 12-85, a request for reinvestigation presupposes submission of additional documents by the taxpayer for the re-evaluation of the assessment. The grant of the said request through a Tax Verification Notice (TVN) No. 00086862 dated March 5, 2009, suspended the 3-year prescriptive period to assess. In other words, the FAN was timely issued.

Likewise erroneous was the cancellation of the assessed deficiency EWT on rental on the ground that ESS actually made an overpayment of P192,713.04, even as the

Court in Division observed that ESS failed to present additional supporting documents to account for the remaining rental expense of P27,727,620.85 which should be subjected to 5% EWT. Based on jurisprudence, the overpayment made by ESS was an unaccounted expense that should be treated as unreflected source of fund, rendering the cancellation of the deficiency EWT on rental invalid, the CIR concluded.

CIR also perceives the exclusion of the expense for Training and Conference from Salaries and Wages subject to withholding tax on compensation incorrect on the ground that ESS failed to provide any detailed schedule and supporting documents showing that it actually withheld the 2% rate on income payments to certain contractors as required under 2.57.2 of RR No. 2-98.

Likewise wrongful was exclusion from salaries and wages subject to withholding tax on compensation the amount of P18,503,636.00 pertaining to the accrual of Share Based Payment Transactions on the ground that such share option granted to employees for services rendered was merely accrual and had not been exercised by its employees. The CIR however believes that ESS failed to substantiate its justification, thus, the assessment on this item should be upheld.

Finally, the CIR claims in its favor the presumption that the assessments issued by the BIR are correct and made in good faith.

By way of comment, ESS insists that the ten (10) year-period to assess under Section 222 of the Tax Code should not apply on the pretext that the tax returns it filed for the year 2005 were false. First, the CIR failed to present any evidence to prove this allegation. Second, her own witness admitted that the said conclusion was based only on tax returns filed by ESS. Even the cited case[8] in support of this position was unable to take the subject assessment out of the coverage of the 3-year prescriptive period to assess deficiency tax.

[8] Aznar vs. Court of Appeals, 58 SCRA 519, August 23, 1974

Contrary to the CIR's contention, ESS submitted supporting documents listed in the BIR's checklist. This was admitted by the CIR's own witness, who also confirmed that no subpoena *duces tecum* was issued requiring ESS to submit additional documents to justify assertion that ESS failed to submit documents to substantiate its protest.

On the presumption of the existence of *prima facie* evidence of false or fraudulent return when there is substantial under-declaration of sales or income, or substantial overstatement of deductions in the income tax return to arrive at a smaller amount of tax liability under Section 248(B) of the Tax Code, ESS claims that this is simply not applicable under the obtaining circumstances. ESS explains that its case involves taxes withheld from income payments made to its different payees and not income tax. Besides, it would not benefit from the alleged substantial under-declaration of sales or income, or substantial overstatement of deductions in the income tax return since it was still enjoying income tax holiday (ITH) in 2005. Further, the said *prima facie* presumption has been overturned by evidence showing that ESS remitted the correct amount of withholding tax for 2005 shifting the burden of proof upon the CIR to establish the existence of fraud or falsity. In this regard, the CIR allegedly failed.

ESS is not convinced as well that the filing of its Protest Letter dated January 7, 2009 suspended or interrupted the running of the 3-year prescriptive period to assess under Section 203 of the Tax Code. As ruled by the Court in Division, the Protest Letter dated January 7, 2009 was a request for reconsideration and not for a reinvestigation of the assessment, which would tend to interrupt the running of the 3-year prescriptive period to assess.

As to the CIR's conclusion that part of ESS's income was not reported since the unreflected source of funds was not accounted for in its withholding tax returns, ESS counters that the jurisprudence cited in support of the said position was not on all fours with the present case.

In defense of the cancellation of assessment on deficiency withholding tax for Training and Conference and Share-Based Transactions, ESS argues that the Training and Conference were in pursuit of its business and were not compensation income of its employees subject to withholding tax on compensation. In addition, Section 2.57.2 (E)(4) cited by the CIR applies to income payments to certain contractors subject to the 2% EWT but not to deficiency withholding tax on employee's compensation.

Insofar as the accrual of expenses related to ESS's stock option plan for employees in the amount of P18,503,635.94, ESS invokes the ICPA Report confirming that ESS's employees did not exercise such option during the year 2005 to merit the imposition of deficiency withholding tax.

Lastly, the CIR cannot rely on the presumption of correctness in favor of the assessment as factual basis is wanting in this case.

In its own Petition for Review, ESS claims that it is erroneous on the part of the Court in Division to hold it liable for deficiency EWT for sub-con works in the light of its ruling that the assessment for the months of January to November 2005 had already prescribed. It also defies logic to assume that the entire income payments amounting to P34,181,041.47 were for the month of December 2005 only especially considering that its monthly EWT returns show its payments of EWT for the months of January to November 2005. In the eyes of ESS, the ruling is not only inconsistent with the intent of the statute of limitations on tax assessments as provided in Section 203 of the Tax Code but also contrary to the spirit of the said provision.

It is the same monthly withholding tax returns that show which portions of the salaries and wages subject to the deficiency WTC for the year 2005 pertain to the prescribed months of January to November 2005 thereby negating the finding that all the income payments in the amounts of P34,181,041.47 were for the month of December 2005 only.

ESS also underscores the CIR's failure to present evidence to discredit the finding in its favor that it actually made overpayment of EWT for the year 2005 justifying the cancellation of the assessment for deficiency EWT in its entirety.

ESS also takes refuge behind the ruling of the Court in Division that the period to assess deficiency EWT for the months of January to November 2005 had already prescribed which merit the cancellation of the assessment on deficiency withholding tax on professional fees. In connection thereto, ESS cites the ICPA report that ESS correctly withheld 10/15% tax on all professional fees and remitted the same to the BIR.

As regards the Trainee pay expenses, ESS asserts that the Memorandum of Agreements and Training Contracts it presented in Court sufficiently proved that the service providers were engaged merely to provide clerical work, such as indexing and editing of reading materials. For this reason, their pay should be deemed only as service fees subject to 2% and not 10%. The ICPA reported that the Trainee pay expenses are not professional fees subject to 10% EWT rate but service fees subject to only 2% EWT. Moreover, Section 2.57.2 of Revenue Regulations (RR) No. 2-98 applies only to professionals who practice their profession and not to service providers engaged only to provide clerical work, hence, subject to only 2% withholding tax. In any event, the CIR could no longer collect deficiency EWT on this item since the period to assess for the months of January to November 2005 had already prescribed as ruled by the Court in Division.

ESS also endeavors to cancel the assessment for deficiency WTC on rice subsidies and gift checks given to ESS employees on the ground that The Rice Subsidy Policy and Payroll Register of the company indicate that the P1,000.00 monthly rice allowance given to its employees was within the limit prescribed under RR No. 3-98. The same is true with the gift checks per express provision of RR No. 3-98, as amended by RR No. 8-2000. As *de minimis* benefits, the two should not be subject to income tax. Besides, the Court in Division has ruled that ESS over-withheld and remitted the total amount of P190,303.68, representing WTC for taxable year 2005. Again, it is illogical to assume that all rice subsidies and the gift checks given to its employees were issued in December of 2005 only. The remittances of taxes for fringe benefits during the entire year rebut the CIR's erroneous assumption that the fringe benefits were paid all at the same time in December of 2005.

Anent the imposition of 20% delinquency interest, over and above the 20% deficiency interest, ESS finds the same excessive and unjust. ESS describes the total interest of 40% per annum until full payment unconscionable given that the imposition of interest for delay in payment of taxes is compensatory and not penal in nature.

Finally, ESS claims that the circumstances justifying the imposition of delinquency interest under Section 249(C) of the Tax Code - e.g., tax evasion or filing of fraudulent return, or willful neglect to pay deficiency taxes - are not obtaining in the present case as to merit the burden.

On the Petition for Review of the Commissioner of Internal Revenue (CIR)

Perusal of the issues raised by the CIR undoubtedly shows that all are but a repeat of her former arguments which have already been passed upon and determined by the Court in Division. The CIR offers no new or substantial issue to warrant a modification much more deviation from the ruling in the assailed Decision of February 14, 2014.

Be that as it may, the Court shall bring to light anew some of the salient points in the assailed Decision to end once and for all the CIR's concerns.

On the CIR's application of the ten (10) year period to assess on the ground that the tax returns filed by ESS were false since the amount reflected therein were deficient and did not disclose the correct amount subject to tax, suffice it to say that the allegation without substantiation or supporting evidence remains to be just that. As found by the Court in Division, the record is bereft of evidence showing that the CIR was able to substantiate this contention. Note that fraud is never presumed.[9] Precisely, the law requires that fraud be established, not just by preponderance of evidence, but by clear and convincing evidence,[10] for it is easy to allege it but difficult to prove.

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[9] Francisco Alonso (Deceased), Substituted By Mercedes V. Alonso, Tomas V. Alonso And Asuncion V. Alonso vs. Cebu Country Club, Inc., G.R. No. 130876, December 05, 2003
[10] Republic of the Philippines vs. Benjamin Guerrero, G.R. NO. 133168, March 28, 2006

Even her own witness admitted that the finding of falsity in the subject tax returns was merely based on the tax returns, financial statements and trial balance of ESS an examination of which failed to sustain the contention about fraudulent tax returns as to justify the application of the 10-year prescriptive period to assess under Section 222 of the NIRC, as amended. In fine, the three-year prescriptive period to assess must apply, making the assessment for January to November 2005 for deficiency EWT, WTC, and for the first three quarters for FBT, all received on December 15, 2008 or beyond the three-year period, already prescribed. Only the assessment covering the month of December 2005 for deficiency EWT, WTC and for the 4th Quarter of 2005 for deficiency FBT has not prescribed.

Time and again, the Supreme Court explained that the statute of limitations on the collection of taxes primarily benefits the taxpayer. x x x the prescriptive period for the filing of actions for collection of taxes is justified by the need to protect law-abiding citizens from possible harassment. x x x it was held that the statute of limitations on the assessment and collection of taxes is principally intended to afford protection to the taxpayer against unreasonable investigations as the indefinite extension of the period for assessment deprives the taxpayer of the assurance that he will no longer be subjected to further investigation for taxes after the expiration of a reasonable period of time. Thus, x x x the Supreme Court ruled that the legal provisions on prescription should be liberally construed to protect taxpayers and that, as a corollary, the exceptions to the rule on prescription should be strictly construed.[11]

On the CIR's insistence that the protest filed by ESS was a request for reinvestigation thereby suspending the 3-year prescriptive period, Section 228[12] of the NIRC of 1997

[11] Commissioner of Internal Revenue vs. BASF Coating + Inks Phils., Inc., G.R. No. 198677, November 26, 2014

[12] SEC. 228. Protesting of Assessment.

x x x x x x x x x

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations.

provides the manner by which an assessment may be protested, namely, (1) by filing a request for reconsideration, or (2) by filing a request for reinvestigation.

The difference between a request for reconsideration and request for reinvestigation is found in Section 6 of Revenue Regulations No. 12-85. It states that a request for reconsideration refers to a plea for a re-evaluation of an assessment on the basis of existing records without need of additional evidence. A request for reinvestigation refers to a plea for re-evaluation of an assessment on the basis of newly-discovered evidence or additional evidence that a taxpayer intends to present in the reinvestigation. These two kinds of protests may involve a question of fact or law or both. The main difference between these two types of protests lies in the records or evidence to be examined by internal revenue officers, whether these are existing records or newly discovered or additional evidence.[13]

The record shows that ESS did not submit any additional documents when it filed a Motion for Reconsideration of FAN on January 13, 2009. Neither was there any subpoena *duces tecum* issued by the CIR for ESS to submit additional documents for purposes of reinvestigation. Thus, ESS only asked the CIR to take a second hard look at the very same documents it submitted in support of its stance without need for additional exhibits. Pursuant to Section 6 of Revenue Regulations No. 12-85, the said protest was a request for reconsideration and not for reinvestigation.

This particular intention of ESS is evident in its letter dated March 13, 2009 expressly indicating its desire to have the assessment reconsidered based on the evidence it already submitted. A similar request was made in its subsequent letter sent to the CIR on June 26, 2009. Therefore, the filing of such protest did not suspend or

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> Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180) day period; otherwise, the decision shall become final, executory and demandable.

[13] Commissioner of Internal Revenue v. Philippine Global Communication, G.R. No. 167146, October 31, 2006

interrupt the running of the three-year prescriptive period to assess under Section 203 of the NIRC, as amended.

On the propriety of the imposition of EWT on rental, in the amount of P36,936,196.00, the following were established based on the GL Listings of ESS on the Rental account.

Out of the assessed total rent expense of P36,936,196.00, the amount of P13,629,177.78, booked as Facility-HVAC:FAC (Heat, Ventilation and Air-conditioning), pertains to reimbursements to the lessor for utilities and other maintenance expenses of the leased areas.

Of the amount of P13,629,177.78, the amount of P7,253,085.77 should not be considered as part of gross receipts for purposes of the EWT, since the supporting statements of account and official receipts clearly indicate that such transactions pertain to reimbursements without any mark-up or profit element to the lessor.

The CIR's deficiency EWT assessment corresponding to the income payment of P7,628.89 should be cancelled since it is a portion of Staffhouse HVAC pertaining to PLDT payments for telephone line charges which are not subject to withholding tax pursuant to Revenue Regulations (RR) No. 2-98, as amended.

Likewise not subject to EWT is the item Lodging accounts which pertain to room and hotel accommodations and other incidental expenses, e.g. telephone charges and taxi fares, of ESS's guests. In this item however, only the amount of P1,947,860.49 was duly supported with official receipts, invoices, statements of account and e-mail correspondences, hence, not subject to EWT.

The remaining Rental expense of P27,727,620.85, should be subject to 5% EWT for lack of supporting documents to account for this amount. But since evidence shows that ESS actually made an overpayment in the amount of P192,713.04, the assessment on deficiency EWT on rental should be cancelled.

On CIR's persistence that the amounts for Training and Conference should not have been excluded from Salaries and Wages subject to withholding tax on compensation since ESS failed to provide schedules and supporting documents showing that it has withheld the 2% rate on income payments to certain contractors pursuant to 2.57.2 of RR No. 2-98. But Training and Conference are not among those enumerated in RR No. 2-98. In fine, there is no need to present proof of withholding since Training and Conference are not subject to withholding tax.

Finally, contrary to CIR's claim, ESS was able to establish that the Share-Based Payment Transactions amounting P18,503,636.00 pertained to Share-Based Payment Transactions, an option to employees in consideration for services rendered - which has not been exercised by the employees. On this account, it should be excluded from salaries and wages account subject to withholding tax on compensation.

On the Petition for Review of ESS Manufacturing Company, Inc.

ESS finds it incorrect to ascribe the entire assessment for Sub-con Works to the unprescribed month of December 2005 considering that it was able to present evidence showing its payment of EWT on the item for the prescribed months of January to November of 2005.

It must be stressed, however, that the reason for upholding the assessment for deficiency EWT on Sub-con Works in the amount of P455,613.45 was the failure of ESS to present documents to substantiate the total amount of P22,780,672.65, derived from the "Monthly Breakdown of P & L & BS Account" upon which the assessment was based.

On the assessment for basic deficiency EWT for Professional fees and Trainee pay, for which ESS invokes the ICPA's finding that it correctly withheld 10/15% tax on all professional fees and remitted the same to the BIR rendering the assessment devoid of any basis, again it has been held that tax assessments by tax examiners are presumed correct and made in good faith, and all presumptions are in favor of the correctness of a tax assessment, unless proven otherwise.[14]

Thus, the CIR is not legally obliged to prove that her assessment is correct. The burden to prove that the assessment is incorrect or invalid lies on ESS. Therefore, the fact that the CIR did not present evidence to controvert the conclusion of the ICPA is of no moment.

Moreover, the finding and recommendation of the ICPA failed to convince the Court in Division which found the evidence of ESS lacking to sustain its prayer to cancel the assessment on the item. Elementary is the rule that factual findings of the trial court are entitled to respect and are not to be disturbed on appeal, unless some facts and circumstances of weight and substance, having been overlooked or misinterpreted, might materially affect the disposition of the case,[15] which is not obtaining in the present case.

It is also worth to note that a general assignment of errors is unacceptable under the rules. x x x The appellant has to specify in what aspect of the law or the facts that the trial court erred. The conclusion, therefore, is that the appellant must carefully formulate his assignment of errors. Its importance cannot be underestimated, as Section 8, Rule 51 of the Rules of Court will attest.[16] In this regard, ESS utterly failed.

Further, the assessment was sustained not because ESS failed to remit 10/15% withholding tax on professional fees but because no sufficient supporting documents were presented by ESS to support the other professional fees amounting to P3,393,502.75.

Consequently, ESS is liable for deficiency EWT on professional fees in the amount of P88,036.90, as computed below:

[14] RCBC vs. Commissioner of Internal Revenue, G.R. No. 168498, April 24, 2007
[15] Diamante vs. People, G.R. No. 180992, September 04, 2009
[16] Francisco A.G. De Liano, Alberto O. Villa-Abrille, Jr., and San Miguel Corporation vs. Hon. Court of Appeals and Benjamin A. Tango, G.R. No. 142316, November 22, 2001

	Amount of Income	Payment	EWT
Professional Fees (10%)		P1,780,928.00	P178,092.80
Professional Fees (15%)		1,585,085.00	237,762.75
General Professional Partnership	P510,705.00		
Less: Substantiated payments made to GPP	(483,215.25)	27,489.75	4,123.46
Total		**P3,393,502.75**	**P419,979.01**
Less: EWT remitted			331,942.11
Basic EWT Due			**P88,036.90**

Pertaining to Trainee pay, ESS asserts that the same are only service fees subject to the EWT rate of 2% and not 10%, again, the presumption that tax assessments by tax examiners are correct and made in good faith unless proven otherwise, [17] must apply.

For this particular item, ESS presented only the Memorandum of Agreements and Training Contracts, which by themselves are not enough to prove that the subject trainee pay should only be subjected to 2%, instead of the 10% rate. In the absence of the details of its actual payments, the deficiency EWT should be sustained.

Thus, ESS is liable to pay the basic deficiency EWT of P806,904.14, summarized below:

Income Payments	**EWT Due**
Security and Janitorial	P2,598.11
Sub-con works	455,613.45
Professional Fees	88,036.90
Trainee Pay	260,655.68
Total Basic EWT Due	**P806,904.14**

On the other benefits to employees such as rice subsidy and gift checks, again, ESS failed to establish that the amount for each *de minimis* benefit falls within the limit prescribed under Section 2 of RR No. 10-2000, as amended. The Rice Subsidy Policy and Payroll Register submitted in evidence failed to prove that the said benefits enjoyed by ESS employees were in the category of *de minimis* benefits. No detailed schedules showing the breakdown of the claimed *de minimis* benefits given to ESS employees were presented to justify cancellation of the assessment on the item.

[17] RCBC vs. Commissioner of Internal Revenue, G.R. No. 168498, April 24, 2007

Insofar as the assessment for deficiency FBT, it is evident that of the total fringe benefits of P26,975,521.00, the amount of P25,355,405.00 was not subjected to FBT as it had already been included as employees' accommodation expense and gross compensation under the respective accounts "Rental" and "Salaries and Wages," and were already subjected to EWT and WTC, respectively.

Out of the remaining amount P1,620,116.00 pertaining to cell phone allowances, the amount of P1,272,275.77, which redounds to the benefit and convenience of ESS, was not included as part of compensation income of the employee subject to withholding, and was not subjected to FBT tax pursuant to Section 33 of the NIRC of 1997 as implemented by Revenue Regulations No. 3-98, as amended.

Consequently, only the remaining amount of P347,840.23 was subjected to deficiency fringe benefits tax as computed below:

Cell-Home Phone per FAN	P	1,620,116.00
Cell-Home Phone per verification		1,272,275.77
Unsupported claim	P	347,840.23
Divided by Gross Up Divisor		68%
Grossed Up Monetary Value	P	511,529.75
FBT Rate		32%
Basic Fringe Benefits Tax Due	**P**	**163,689.52**

The amount of P347,840.23 was subject to FBT because ESS was unable to substantiate its alleged exemption pursuant to Section 33 of the NIRC. ESS alleged payment of FBT for the prescribed months of January to November 2005 is insignificant as even with this information, the amount subjected to FBT remains unsubstantiated.

Finally, on the imposition of deficiency and delinquency interests, Section 249(C) of the NIRC of 1997 is clear on the matter and must be applied. The law may be harsh but that is the law.[18]

[18] Olympio Revaldo vs. People of the Philippines, G.R. No. 170589, April 16, 2009

WHEREFORE, the Petition For Review dated May 29, 2014 filed by the Commissioner of Internal Revenue (CIR), and the Petition For Review dated June 4, 2014 filed by ESS Manufacturing Company, Inc. (ESS), are hereby **DENIED**, for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

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

(With Separate & Concurring Opinion)
JUANITO C. CASTANEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

(On Leave)
ERLINDA P. UY
Associate Justice

(I join J. Castañeda's stand)
CAESAR A. CASANOVA
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

(I join JCC's opinion)
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 among the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court *En Banc*.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB N0. 1169** (CTA Case No. 7958)
-versus-	
ESS MANUFACTURING COMPANY, INC., *Respondent.*	

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ESS MANUFACTURING COMPANY, INC., *Petitioner,*	**CTA EB NO. 1175** (CTA Case No. 7958)
	Present:
-versus-	**DEL ROSARIO**, *PJ*, **CASTAÑEDA, JR.,** **BAUTISTA**, **UY**, **CASANOVA**, **FABON-VICTORINO**, **MINDARO-GRULLA**, **COTANGCO-MANALASTAS**, *and* **RINGPIS-LIBAN**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAR 3 0 2016 1:45 p.m.

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CONCURRING AND DISSENTING OPINION

DEL ROSARIO, PJ:

I concur with the *ponencia* in denying the Petition for Review filed by the Commissioner of Internal Revenue in CTA EB No. 1169.

With due respect, the point of my dissent relates to the *ponencia's* ruling that deficiency interest can be imposed in this case insofar as it relates to Expanded Withholding Tax (EWT), Withholding Tax on Compensation (WTC), and Fringe Benefit Tax (FBT).

I submit that deficiency interests cannot be imposed on all types of taxes or deficiency taxes, particularly on EWT, WTC and FBT. In this regard, I quote below the position I have taken in *Philippine Aerospace Development Corporation 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)
>
> 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

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[1] CTA EB No. 1035, February 9, 2016.
[2] G.R. Nos. 106949-50, December 1, 1995.
[3] G.R. No. 146486, March 4, 2005.

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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>.'

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> 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 EWT, WTC and FBT assessed against ESS Manufacturing Company, Inc.

Also apt is my discussion in my Concurring and Dissenting Opinion in *Philippine Aerospace Development Corporation vs. Commission of Internal Revenue* which I quote below:

> Settled is the rule that laws imposing tax is construed strictly against the government and liberally in favor of the taxpayer. **Unless clearly imposed by pertinent provision of law, deficiency interest as an additional tax burden should not simply be presumed. Thus, the obligation to pay deficiency interest may not be applied to taxes other than income tax, donor's tax and estate tax, irrespective of whether an assessment is issued or not. After all, the deficiency tax assessed is still subject to the delinquency interest rate of 20% per annum until fully paid. Truth be told, the delinquency interest rate of 20% is way more than the legal interest of 12% per annum.**

All told, I vote to partially grant ESS Manufacturing Company, Inc.'s Petition for Review relating to the imposition of 20% deficiency interest on the assessed EWT, WTC and FBT, which should appropriately be cancelled and set aside.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- *versus* –

ESS MANUFACTURING COMPANY, INC.,
Respondent.

CTA EB No. 1169
(CTA Case No. 7958)

x---x

ESS MANUFACTURING COMPANY, INC.,
Petitioner,

- *versus* –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1175
(CTA Case No. 7958)

Present:

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

Promulgated:

MAR 3 0 2016 1:45 p.m.

x--x

SEPARATE CONCURRING OPINION

CASTAÑEDA, JR., *J.:*

I concur with the *ponencia* of my esteemed colleague, Associate Justice Esperanza R. Fabon-Victorino which denied the instant Petitions for Review filed by the Commissioner of Internal Revenue and ESS Manufacturing Company, Inc., respectively.

Nevertheless, I would like to elaborate on some points concerning the imposition of deficiency and delinquency interests by the Court in Division in the assailed Decision.

The dispositive portion of the assailed Decision states:

> "In addition, petitioner is liable to pay:
>
> a) Deficiency interest at the rate of twenty percent (20%) per annum pursuant to Section 249 (C) of the NIRC of 1997:
>
> i. On the basic deficiency EWT of Php806,904.14 computed from January 11, 2006 until full payment thereof;
>
> ii. On the basic deficiency WTC of Php566,609.22 computed from January 11, 2006 until full payment thereof;
>
> iii. On the basic deficiency FBT of Php163,689.52 computed from January 16, 2006 until full payment thereof.
>
> b) Delinquency interest at the rate of twenty percent (20%) per annum on the total amount due of Php1,921,503.60 representing deficiency Expanded Withholding Tax, Withholding Tax on Compensation and Fringe Benefits Tax and on the 20% deficiency interest which have accrued as aforestated in (a), computed from January 12, 2009 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997, as amended.
>
> **SO ORDERED.**"

In connection with the above judgment, it bears reiterating that:

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

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

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

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

The law is clear. There is no room left for interpretation.

Section 247(a) of the 1997 NIRC provides:

"TITLE X
STATUTORY OFFENSES AND PENALTIES

CHAPTER I
ADDITIONS TO THE TAX

SECTION 247. General Provisions. —

(a) The additions to the tax or deficiency tax prescribed in this Chapter shall apply to **all taxes**, fees and charges **imposed in this Code**. The amount so added to the tax shall be collected at the same time, in the same manner and as part of the tax." *(Emphasis and underscoring supplied)*

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

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

Accordingly, the additions to the tax or deficiency tax such as, among others, *Civil Penalties or Surcharges* under Section 248, *Deficiency Interest* under Section 249(B), *Delinquency Interest* under Section 249(C), and *Interest on Extended Payment* under Section 249(D) are applicable to the deficiency expanded withholding Tax (EWT), deficiency withholding tax on compensation (WTC) and deficiency fringe benefits tax (FBT) of ESS Manufacturing Company, Inc.

It may be argued that because there are no definitions for *deficiency* withholding tax, value-added tax, percentage tax, excise tax or documentary stamp tax unlike those provided for *income tax* in Section 56(B), for *estate tax* in Section 93 and for *donor's tax* in Section 104 then no deficiency interest can be imposed on other kinds of taxes provided under the 1997 NIRC. The *lacuna* or the missing definition was precisely addressed by Section 247(a) when this provision was first legislated as a revision[1] to the *1977 NIRC* and then subsequently reenacted in the 1997 NIRC.

The Supreme Court discussed the history of this provision in *Paper Industries Corporation of the Philippines (PICOP) v. Court of Appeals, et al.*[2]

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

[1] Presidential Decree No. 1994. Please refer to the subsequent discussions in the opinion.

[2] G.R. No. 106949-50, December 1, 1995 consolidated with *Commissioner of Internal Revenue v. Paper Industries Corporation of the Philippines (PICOP), et al.*, G.R. No. 106984-85, December 1, 1995.

"The CIR, both in its petition before the Court of Appeals and its Petition in the instant case, points to Section 51(e) of the 1977 Tax Code as its source of authority for assessing a surcharge and penalty interest in respect of the thirty-five percent (35%) transaction tax due from Picop.

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It will be seen that Section 51(c)(1) and (e)(1) and (3), of the 1977 Tax Code, authorize the imposition of surcharge and interest only in respect of a '*tax imposed by this Title*,' that is to say, *Title II on 'Income Tax.'* It will also be seen that Section 72 of the 1977 Tax Code imposes a surcharge only in case of failure to file a return or list '*required by this Title*,' that is, *Title II on 'Income Tax.'* The thirty-five percent (35%) transaction tax is, however, imposed in the 1977 Tax Code by *Section 210 (b) thereof which Section is embraced in Title V on 'Taxes on Business'* of that Code. Thus, while the thirty-five percent (35%) transaction tax is in truth a *tax imposed on* interest *income* earned by lenders or creditors purchasing commercial paper on the money market, the relevant provisions, *i.e.*, Section 210(b), were *not* inserted in Title II of the 1977 Tax Code. The end result is that the thirty-five percent (35%) transaction tax is *not* one of the taxes in respect of which Section 51(e) authorized the imposition of surcharge and interest and Section 72 the imposition of a fraud surcharge.

It is not without reluctance that we reach the above conclusion on the basis of what may well have been an inadvertent error in legislative draftsmanship, a type of error common enough during the period of Martial Law in our country. Nevertheless, we are compelled to adopt this conclusion. We consider that the authority to impose what the present Tax Code calls (in Section 248) *civil penalties* consisting of additions to the tax due, must be expressly given in the enabling statute, in language too clear to be mistaken. The grant of that authority is not lightly to be assumed to have been made to administrative officials, even to one as highly placed as the Secretary of Finance.

The state of the present law tends to reinforce our conclusion that Section 51 (c) and (e) of the 1977 Tax Code did not authorize the imposition of a surcharge and penalty interest for failure to pay the thirty-five percent (35%) transaction tax imposed under Section 210 (b) of the same Code. The corresponding provision in the *current* Tax Code very clearly embraces failure *to pay all taxes imposed in the Tax Code*, without any regard to the Title of the Code where provisions imposing particular taxes are textually located. Section 247 (a) of the NIRC, as amended, reads:

Title X
Statutory Offenses and Penalties

Chapter I
Additions to the Tax

> SECTION 247. *General Provisions.* — (a) The additions to the tax or deficiency tax prescribed in this Chapter shall *apply to all taxes, fees and charges imposed in this Code*. The amount so added to the tax shall be collected at the same time, in the same manner and as part of the tax. . . .
>
> SECTION 248. *Civil Penalties.* — (a) There shall be imposed, *in addition to the tax required to be paid, penalty equivalent to twenty-five percent (25%) of the amount due*, in the following cases:
>
> xxx xxx xxx
>
> (3) failure to pay the tax within the time prescribed for its payment; or
>
> xxx xxx xxx
>
> (c) the penalties imposed hereunder shall form part of the tax and the entire amount shall be subject to the interest prescribed in Section 249.
>
> SECTION 249. *Interest.* — (a) *In General.* — There shall be assessed and collected *on any unpaid amount of tax, interest* at the rate of *twenty percent (20%) per annum* or *such higher rate as may be prescribed by regulations*, from the date prescribed for payment until the amount is fully paid. . . ..' (Emphases supplied)

In other words, Section 247 (a) of the current NIRC supplies what did not exist back in 1977 when Picop's liability for the thirty-five percent (35%) transaction tax became fixed. **We do**

> **not believe we can fill that legislative *lacuna* by judicial fiat. There is nothing to suggest that Section 247(a) of the present Tax Code, which was inserted in 1985, was intended to be given retroactive application by the legislative authority**." *(Underscoring and emphases supplied; citations omitted)*

In fact, this Court *En Banc*, through the *ponencia* of J. Mindaro-Grulla in *Takenaka Corporation Philippine Branch v. CIR*,[3] relied upon the same *PICOP* holding. To stress its point, the Court cited *PICOP* and stated that the deficiency interest imposed under Section 249(B) of the 1997 NIRC does *not* apply merely to deficiency income, deficiency estate and deficiency donor's tax *by virtue* of Section 247(a) of the same law. It reads:

> "Anent the issue on the applicability of deficiency interest under Section 249(B) of the NIRC of 1997, as amended, only to deficiency income tax, deficiency estate tax, and deficiency donor's tax, as held by the Court a quo, petitioner asseverates that such an interpretation would result to absurd conclusions as it would mean triple imposition of 20% interest under Sections 249(A), 249(B), and 249(C) of the NIRC of 1997, simultaneously, effectively giving rise to at least 60% interest *per annum.*
>
> We agree with petitioner.
>
> The issue is no longer novel as the same was sufficiently discussed by the Supreme Court in *Paper Industries Corporation of the Philippines (PICOP) v. Court of Appeals, et al.* The Supreme Court held that Section 247(a) of the NIRC of 1977, as amended [**now Section 247(a) of the NIRC of 1997, as amended**], very clearly embraces failure to pay **all taxes imposed in the Tax Code**, without any regard to the Title of the Code where provisions imposing particular taxes are textually located." (emphases and underscoring supplied; citations omitted)

In sum, ESS Manufacturing Company, Inc.'s deficiency EWT, WTC and FBT taxes were properly subjected to deficiency interest pursuant to Section 249 of the 1997 NIRC.

Section 249 of the 1997 NIRC authorizes the simultaneous

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

imposition of deficiency interest and delinquency interest.

This Court *En Banc* has consistently held that the plain reading of Section 249 of the 1997 NIRC justifies the simultaneous imposition of deficiency interest and delinquency interest. Section 249, paragraphs (A), (B) and (C) are clear that the imposition of both the deficiency interest and delinquency interest are to be reckoned from the date prescribed for their payment and until the full payment thereof. Section 249, paragraphs (A), (B) and (C) of the 1997 NIRC, read as follows:

> "SECTION 249. *Interest.* —
>
> (A) In General. — There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed by rules and regulations, **from the date prescribed for payment until the amount is fully paid.**
>
> (B) Deficiency Interest. — Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected **from the date prescribed for its payment until the full payment thereof.**
>
> (C) Delinquency Interest. — In case of failure to pay:
>
> (1) The amount of the tax due on any return required to be filed, or
>
> (2) The amount of the tax due for which no return is required, or
>
> (3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, **interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax.**" *(Emphasis and underscoring supplied)*

The Supreme Court recently upheld this interpretation in a Resolution dated November 10, 2014 in *Republic Cement [as surviving corporation in a* *merger involving FR Cement Corporation] v. Commissioner of Internal Revenue:*[4]

> "After a careful perusal of the records, the Court resolves to **DENY** the instant petition and **AFFIRM** the July 18, 2012 Decision and November 21, 2012 Resolution of the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 821 for failure of Republic Cement Corporation (petitioner) to show that the CTA *En Banc* committed any reversible error in assessing it for deficiency *creditable withholding value-added tax* (CWVAT) for taxable year 1999 in the amount of ₱10,044,824.64, inclusive of 25% surcharge, and in imposing *deficiency interest* of 20% *per annum* on the basic deficiency CWVAT of ₱8,035,859.71 from January 25, 2000 until full payment thereof, as well as *delinquency interest* of 20% *per annum* on the total deficiency taxes of ₱10,044,824.64 and on the 20% *deficiency interest* that have accrued from January 31, 2005 until full payment thereof.
>
> **As correctly ruled by the CTA *En Banc*, the simultaneous imposition of *deficiency* and *delinquency interests* are sanctioned under Section 249 of the National Internal Revenue Code (NIRC),** which explicitly provides that *deficiency interest* shall be reckoned from the date prescribed for payment of the deficiency tax until full payment thereof while *delinquency interest* shall also be collected computed from the due date prescribed under the Assessment Notice until full payment thereof.
>
> **SO ORDERED.**" *(Underscoring and emphases supplied)*

In *Medicard Philippines, Inc. v. CIR,*[5] we also held that there is no legal obstacle for the Court in Division to simultaneously impose the deficiency interest and the delinquency interest:

> "In the case of *Philippine Aerospace Development Corporation v. Commissioner of Internal Revenue*, this Court exhaustively discussed the propriety of the simultaneous imposition of deficiency and delinquency interest, in this wise:

[4] G.R. No. 204715.
[5] CTA EB No. 1224, September 2, 2015.

'The propriety of the simultaneous imposition of deficiency and delinquency interests was more definitively resolved in April 2013. This was in *First Lepanto Taisho Insurance Corporation v. Commissioner of Internal Revenue*, where the Supreme Court upheld a 2011 decision of this Court affirming the imposition of delinquency interest under Section 249(c)(3) of the 1997 NIRC. The Supreme Court ruled this imposition 'to be proper, because failure to pay the deficiency tax assessed within the time prescribed for its payment justifies the imposition of interest at the rate of twenty percent (20%) per annum, which interest shall be assessed and collected from the date prescribed for its payment until full payment is made.'

Earlier in 2011, the Supreme Court sustained the 2005 rulings of this Court imposing 20% delinquency tax on deficiency taxes, inclusive of deficiency interest, in *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*.

In 2006, the Supreme Court also upheld a 2004 Court of Appeals decision where the latter imposed delinquency interest at 20% per annum in addition to the interest on deficiency VAT and deficiency documentary stamp tax, in *Michel J. Lhuiller Pawnshop, Inc. v. Commissioner of Internal Revenue*, although without discussion of the propriety of multiple simultaneous interests.

And even earlier, in 2000, the Supreme Court likewise upheld the imposition of 20% annual delinquency interest on deficiency amusement tax, inclusive of 20% deficiency interest, in *Philippine Basketball Association v. Court of Appeals, Court of Tax Appeals, and Commissioner of Internal Revenue*.

Actually, double interests have been sustained by the Supreme Court at least as early as 1971, in *Commissioner of Internal Revenue v. Connel Bros. (Phil.) and Court of Tax Appeals*. Under the tax law at the time, R.A. No. 2343 of 1959, these were the 'interest on deficiency' and what may be

> referred to as 'additional interest' (in case of non-payment within the prescribed period), at the rates of 6% per annum and 1% per month, respectively.
>
> It is abundantly clear, from the foregoing discussion of the law and jurisprudence, that under the circumstance laid down by Section 249(c)(3) of the Tax Reform Act of 1997 — *i.e.*, in case of failure to pay a deficiency tax, or any surcharge or interest on such deficiency tax — delinquency interest of 20% per annum shall be assessed and collected.
>
> The petitioner asked whether or not simultaneous deficiency and delinquency interests 'are allowed by law and equity.' The answer is in the law itself, which does not merely allow but prescribes simultaneous imposition under the aforecited circumstance. As this is undoubtedly proper under the law — and petitioner has not assailed the validity of the law itself — there is neither need nor duty for this Court to expand the discussion to the realm of equity, for 'equity is applied only in the absence of, and never against, statutory law, and the rule is that 'equity follows the law.''

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

In the same vein, *Avon Products Manufacturing, Inc. v. CIR*[6] discussed the legal bases for the Court's position on this point, thus:

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

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

We do not agree with petitioner.

Section 249 of the NIRC of 1997 provides:

'SEC. 249. *Interest.* —

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

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

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

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

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

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

xxx xxx xxx.'

Interest is imposed to *compensate* the State for the delay in paying the tax and for the concomitant use by the taxpayer of funds that rightfully should be in the government's hands. It is imposable upon failure of the taxpayer to pay the tax on the date fixed in the law for its payment.

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

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

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

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

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

The legislative intent to impose deficiency interest *concurrently* with delinquency interest is underscored especially when viewed in the light of the revisions of the germane provisions of the 1977 NIRC[7] and the enactment of substantially the same revisions in the 1997 NIRC. The relevant provisions are quoted in the table below to facilitate reference:

1977 NIRC as amended by Presidential Decree No. (P.D.) 1705, Section 14.	**1977 NIRC** as amended/revised by P.D. 1994, Section 40	**1997 NIRC**
	TITLE XI - Additions to the Tax and General Penal Provisions **CHAPTER I - Additions to the Tax**	**TITLE X - Statutory Offenses and Penalties** **CHAPTER I - Additions to the Tax**
	Sec. 281. General provisions. - (a) The additions to the tax or deficiency tax prescribed in this Chapter shall apply to all taxes, fees and charges imposed in this Code. The amount so added to the tax shall be collected at the time, in the same manner and as part of the tax. XXXX	**Sec. 247.** *General Provisions.* - (a) The additions to the tax or deficiency tax prescribed in this Chapter shall apply to all taxes, fees and charges imposed in this Code. The amount so added to the tax shall be collected at the same time, in the same manner and as part of the tax. XXXX
Sec. 88. Civil penalties. —	**Sec. 282. Civil Penalties.** – XXXX.	**Sec. 248.** *Civil Penalties.* – XXXX.
(a) Individuals. XXXX.	**Sec. 283. Interest.** –	**Sec. 249.** *Interest.* –
(b) Corporations. – **(1) Deficiency, defined.** — XXXX. **(2) (i) Interest.** — Interest upon the amount determined as a deficiency shall be assessed at the same time as the deficiency; and shall be paid upon notice and demand from the Commissioner of Internal Revenue; and shall be collected as part of the tax at the rate of twenty per centum per annum from the date prescribed for the payment of the tax to the date the deficiency is assessed: **Provided, That the maximum amount that may be collected as interest on deficiency shall in no case exceed the amount corresponding to a period not later than the fifteenth day of April or the fifteenth day of fourth month following the close of the taxable year**: Provided, further, That no interest on deficiency quarterly income tax shall be assessed at any time after assessment of the actual income tax due for the taxable year.	(a) *In general.* -There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed by regulations, from the date prescribed for payment until the amount is fully paid. (b) *Deficiency interest.* - Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in paragraph (a) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.	(A) In General. — There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed by rules and regulations, from the date prescribed for payment until the amount is fully paid. (B) *Deficiency Interest.* - Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.

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

1977 NIRC as amended by Presidential Decree No. (P.D.) 1705, Section 14.	**1977 NIRC** as amended/revised by P.D. 1994, Section 40	**1997 NIRC**
(ii) Addition to estimated tax in case of nonpayment. – (1) Tax shown on the quarterly return. — Where the amount shown by the taxpayer as tax on its quarterly return or part of such amount, is not paid on or before the date prescribed for its payment, there shall be collected, as part of the tax interest upon such unpaid amount at the rate of twenty per centum per annum from the date prescribed for its payment until it is paid but not later than the fifteenth day of April or the fifteenth day of the fourth month following the close of the taxable year.		
(2) Deficiency. — <u>Where the deficiency, or interest on deficiency, assessed under subsection (a) of this Section, or part thereof, is not paid in full</u> within thirty days from the date of receipt by the taxpayer of the notice and demand from the Commissioner of Internal Revenue, <u>**there shall be collected upon such unpaid amount, as part of the tax, interest at the rate of twenty per centum per annum from the date of receipt by the taxpayer of such notice and demand until it is paid not later than the fifteenth day of April or the fifteenth day of the fourth month following the close of the taxable year**</u>. (emphases and underscoring supplied)	(c) *Delinquency interest.* - In case of failure to pay: (1) The amount of the tax due on any return required to be filed, or (2) The amount of the tax due for which no return is required, or (3) A deficiency tax, or any surcharge or interest thereon, on the due date appearing in the notice and demand of the Commissioner, <u>**there shall be assessed and collected, on the unpaid amount, interest at the rate prescribed in paragraph (a) hereof until the amount is fully paid**</u>, which interest shall form part of the tax. (emphases and underscoring supplied)	(C) *Delinquency Interest.* - In case of failure to pay: (1) The amount of the tax due on any return required to be filed, or (2) The amount of the tax due for which no return is required, or (3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, <u>**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**</u>, which interest shall form part of the tax. (emphases and underscoring supplied)

By comparing the above-cited codal provisions, it can be seen from their texts that:

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

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

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

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

    a. *Even before the revision under P.D. 1994*, Section 88(b)(2)(ii)(2) of the 1977 NIRC *already* imposed 20% interest[8] on "*interest on deficiency*."

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

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

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

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

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

I vote to **DENY** the instant Petitions for Review.

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