REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

FIRST PHILIPPINE HOLDINGS CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8991

Members:

CASTAÑEDA, JR., *Chairperson,*
MINDARO-GRULLA, *and*
BACORRO-VILLENA, *JJ.*

Promulgated:
MAR 11 2020 10:45 am

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RESOLUTION

MINDARO-GRULLA, J.:

Submitted before this Court are the following:

1. petitioner's **Motion for Partial Reconsideration (of the Decision dated December 17, 2019)**, filed on January 3, 2020, with respondent's **Opposition (Re: Motion for Partial Reconsideration)**, filed on February 17, 2020; and,

2. respondent's **Motion for Partial Reconsideration**, filed on January 20, 2020, with petitioner's **Comment (to Respondent's Motion for Partial Reconsideration)**, filed on February 28, 2020.

On December 17, 2019, a Decision was promulgated by this Court wherein respondent's deficiency assessments against petitioner for taxable year 2009 were affirmed with modifications, the dispositive portion of which reads as follows:

> **WHEREFORE**, in light of the foregoing considerations, the *Petition for Review* is **PARTIALLY GRANTED.** Accordingly,

the assessments issued by respondent against petitioner for TY 2009 covering deficiency VAT and FBT are **CANCELLED** and **SET ASIDE**.

On the other hand, the deficiency IT, EWT, WTC, and DST assessments for TY 2009 are **AFFIRMED but with modifications**. Accordingly, petitioner should be **ORDERED TO PAY** respondent the aggregate amount of **₱1,214,705,419.96**, inclusive of the 25% surcharge, 20% deficiency interest, and 20% delinquency interest imposed under Sections 248(A)(3), 249(B) and (C) of the NIRC of 1997, as amended, computed until December 31, 2017, as follows:

	IT	EWT	WTC	DST	Total
Basic Tax	₱76,409,022.22	₱11,634,558.97	₱19,948,611.70	₱173,645,205.78	₱281,637,398.67
Add: 25% Surcharge	19,102,255.56	2,908,639.74	4,987,152.93	43,411,301.45	70,409,349.68
Add: 20% Deficiency Interest					
IT: from Apr. 16, 2010 to July 15, 2014 (₱76,409,022.22 x 20% x 1,552/365 days)	64,979,069.85				64,979,069.85
EWT: from Jan. 12, 2010 to July 15, 2014 (₱11,634,558.97 x 20% x 1,646/365 days)		10,493,415.93			10,493,415.93
WTC: from Jan. 12, 2010 to July 15, 2014 (₱19,948,611.70 x 20% x 1,646/365 days)			17,992,008.14		17,992,008.14
DST: from Jan. 12, 2010 to July 15, 2014 (₱173,645,205.78 x 20% x 1,646/365 days)				156,613,703.40	156,613,703.40
Total Amount Due as of July 15, 2014	**₱160,490,347.63**	**₱25,036,614.64**	**₱42,927,772.77**	**₱373,670,210.63**	**₱602,124,945.67**
Add: 20% Deficiency Interest from July 16, 2014 to Dec. 31, 2017 (₱281,637,398.67 x 20% x 1,265/365 days)					195,217,155.79

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	IT	EWT	WTC	DST	Total
Add: 20% Delinquency Interest from July 16, 2014 to Dec. 31 2017 (₱602,124,945.67 x 20% x 1,265/365 days)					417,363,318.50
Total Amount Due as of Dec. 31, 2017					**₱1,214,705,419.96**

In addition, petitioner should be **ORDERED TO PAY** respondent delinquency interest at the rate of twelve percent (12%) on the total unpaid deficiency taxes due of **₱602,124,945.67** as of **July 15, 2014**, as determined above, computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN), as implemented by RR No. 21-2018.

SO ORDERED.

Undaunted, both parties seek partial reconsideration of the above Decision.

Petitioner's Motion for Partial Reconsideration

In its Motion, petitioner raises the following grounds in support of its arguments, *viz.*:

i. The Court did not take into account the amounts of alleged deficiency taxes which pertain to prescribed periods to assess;

ii. The Court erred when it imposed interest and surcharge which was not included in the Formal Letter of Demand (FLD) in violation of petitioner's constitutional right to due process;

iii. The National Internal Revenue Code (NIRC) and Republic Act No. 10963 (TRAIN law) provisions on delinquency interest and deficiency interest and surcharges are inapplicable in this case; and,

iv. Multiple imposition of interest and surcharge is unjust and confiscatory, especially considering the delay was due to the respondent.

On the other hand, in his Opposition, respondent primarily claims that petitioner failed to provide any valid justification or evidence to refute the findings of the Bureau of Internal Revenue (BIR) that would tend to justify the reversal/modification of the Decision dated December 17, 2019. Specifically, any sort of evidence that would properly ascertain with great accuracy the amounts pertaining to expanded withholding tax (EWT) and withholding tax on compensation (WTC) for the third and fourth quarters of taxable year (TY) 2009. Respondent also explains that cases within the jurisdiction of this Court are tried *de novo*, as such, the Court may entertain the introduction of new evidence and grant relief not originally sought by the parties. Therefore, the imposition of surcharge and interest is but a consequence of the case being tried *de novo*.

Respondent further asserts that petitioner's failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessments is a ground for the imposition of 25% surcharge under Section 248(A)(3) of the NIRC of 1997, as amended. He argues that the law does not distinguish between delay due to the taxpayer's inaction or delay due to BIR's inaction. As long as there is delay in the payment of tax, deficiency interest is imposed under Section 249(B) of the same tax code. Lastly, respondent also points out that there was no simultaneous imposition of deficiency and delinquency interest under RA No. 10963 in the assailed Decision.

After due consideration, petitioner's Motion lacks merit.

At the outset, it must be noted that the arguments raised in petitioner's Motion are rehashes which were already passed upon and resolved by the Court in the Decision assailed.

Again, petitioner claims that the Decision dated December 17, 2019 did not seem to take into account the amounts which pertained to the prescribed period in the computation of the remaining deficiency taxes, particularly the EWT and WTC. It argues that as per the Independent Certified Public Accountant (ICPA) Report, it is clear that the amounts of ₱6,786,826.07 and ₱11,521,782.70 of the deficiency EWT and WTC, respectively, should not be included as these amounts pertain to the periods which have already been declared as prescribed.

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With emphasis, this Court already explained that while the assessments for EWT and WTC covering the months of January to July of TY 2009 have already prescribed, petitioner was unable to point out which portion of the assessment that the same pertains thereto. Thus, the entire assessments shall be considered as pertaining to the months of August to December 2009.

This Court also found that the imposition of interest and surcharge is mandatory in this case.

A cursory reading of Section 249(B) and (C) of NIRC of 1997, as amended, reveals that: 1) deficiency interest attaches when a taxpayer fails to pay a deficiency tax, starting from the date prescribed for its payment until full payment thereof; and 2) delinquency interest attaches for failure to pay deficiency tax, surcharge and interest, commencing from the date stated in respondent's notice and demand until the same is fully paid. The delay in the payment of the deficiency tax within the time prescribed for its payment in the notice of assessment justifies the imposition of a 25% surcharge, pursuant to Section 248(A)(3) of the 1997 NIRC, as amended.[1]

As held by the Supreme Court in the case of *Bank of the Philippine Islands vs. Commissioner of Internal Revenue*[2], based on established doctrine, these charges incident to delinquency are compensatory in nature and are imposed for the taxpayer's use of the funds at the time when the State should have control of said funds. Collecting such charges is mandatory.

Evidently, the imposition of deficiency interest, delinquency interest and surcharge is proper and mandatory under the circumstances regardless of whether it was included in the assessment or whether the same was due to the alleged delay and inaction of the BIR.

The law is clear on the matter. It is well-settled that where the language of the law is clear and unequivocal, it must be given its literal application and applied without interpretation. The general rule of requiring adherence to the letter in construing statutes applies with

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[1] *Dr. Felisa L. Vda. de San Agustin vs. Commissioner of Internal Revenue*, G.R. No. 138485, September 10, 2001.
[2] G.R. No. 137002, July 27, 2006.

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particular strictness to tax laws and provisions of a taxing act are not to be extended by implication.[3]

Petitioner also argues that NIRC provisions on delinquency interest and deficiency interest do not apply to EWT, WTC or Documentary Stamp Tax (DST) since Section 249 of the NIRC refers to donor, estate and income taxes only. It further claims that even RA No. 10963 does not apply any deficiency interest to EWT, WTC or DST. In fact, no amendment as to the inclusion and application to EWT, WTC or DST of the deficiency interest was included precisely because the law never intended that such deficiency interest be made applicable to the said taxes.

Unfortunately, this Court does not agree.

A law must not be read in truncated parts; its provisions must be read in relation to the whole law. It is the cardinal rule in statutory construction that a statute's clauses and phrases must not be taken as detached and isolated expressions, but the whole and every part thereof must be considered in fixing the meaning of any of its parts in order to produce a harmonious whole. Every part of the statute must be interpreted with reference to the context, i.e., that every part of the statute must be considered together with other parts of the statute and kept subservient to the general intent of the whole enactment. In construing a statute, courts have to take the thought conveyed by the statute as a whole; construe the constituent parts together; ascertain the legislative intent from the whole act; consider each and every provision thereof in the light of the general purpose of the statute; and endeavor to make every part effective, harmonious and sensible.[4]

Petitioner mainly focuses on Section 249(a) of NIRC of 1997, as amended, without considering Section 247(a) of the same Code, which authorizes the imposition of deficiency interest on all taxes, which provides as follows:

> 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

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[3] *Commissioner of Internal Revenue vs. Julieta Ariete*, G.R. No. 164152, January 21, 2010.

[4] *Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue, et al.*, G.R. Nos. 158885 and G.R. No. 170680, October 2, 2009.

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tax shall be collected at the same time, in the same manner and as part of the tax.

Based above, 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 NIRC of 1997 as amended. 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 NIRC of 1997, as amended such as the value-added tax (Title IV), other percentage taxes (Title V), excise tax (Title VI) and DST (Title VII).

The Supreme Court categorically declared *in Paper Industries Corporation of the Philippines (PICOP) vs. Court of Appeals, et al and Commissioner of Internal Revenue vs. Paper Industries Corporation of the Philippines, et al.*[5] that imposition of interest and surcharge under Section 247(a) of the NIRC of 1977, as amended, covers failure to pay all taxes, fees and charges imposed under the Tax Code and not just to a particular type of tax, *viz.*:

> "*x x x* [t]he 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."

Accordingly, the additions mentioned in the NIRC of 1997, such as civil penalties or surcharges, under Section 248; deficiency interest under Section 249(B); and, delinquency interest under Section 249(C); are likewise applicable to petitioner's deficiency EWT, WTC or DST.

On the final note, there was no simultaneous imposition of deficiency interest and delinquency interest under Section 249(B) and (C) of the NIRC of 1997, as amended, and that of delinquency interest under RA No. 10963 (TRAIN law). To recall, the Court ordered petitioner to pay respondent deficiency and delinquency interest pursuant to Section 249(B) and (C) of the NIRC until December 31,

[5] G.R. Nos. 106949-50 and G.R. Nos. 106984-85, December 1, 1995.

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2017 while imposing delinquency interest, pursuant to Section 249(C) of the NIRC of 1997, as amended by RA No. 10963 only from January 1, 2018 until full payment. Hence, there were no overlapping of deficiency penalties.

Respondent's Motion for Partial Reconsideration

In his Motion, respondent maintains that the deficiency income tax and value added tax (VAT) assessments of petitioner's undeclared sales and undeclared income, were not based on unverified information from the Reconciliation of Listing for Enforcement (RELIEF) System. He claims that the RELIEF System was purposely made to detect tax leaks by matching the data available under the BIR's Integrated Tax System (ITS) with data gathered from third party sources. Through the consolidation and cross-referencing of third-party information, discrepancy reports on sales and purchases can be generated to uncover under declared income and over claimed purchases (goods and services). Timely recognition and accurate reporting of unregistered taxpayers and non-filers can be made possible.

Respondent also claims that the audit investigation for deficiency taxes is not confined to the examination of the documents provided or obtained from petitioner. The Commissioner has the power to promulgate rules to ensure the accuracy and truthfulness of the taxes declared and paid by taxpayers under Section 5 of the NIRC of 1997, as amended. Hence, he argues that the information gathered from the RELIEF System is based on actual facts and data gathered from the petitioner and compared to third-party sources.

Finally, respondent further insists that petitioner is liable for compromise penalties in the amount of ₱175,000.00 pursuant to Revenue Memorandum Order (RMO) No. 19-2007.

After due consideration, respondent's Motion lacks merit.

To stress, respondent found that petitioner have undeclared sales/receipts not subject to income tax as per matching of the petitioner's SLS vis-à-vis the data from the BIR's RELIEF System. However, respondent failed to prove that the information provided by the BIR was verified with externally sourced data. This externally-sourced data could have taken the form of certification or

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confirmations from the alleged third-party sources to support the veracity of the amounts per RELIEF. This method employed by respondent in securing the data from the RELIEF violates RMO No. 04-03, which requires the BIR to verify the amounts reflected in the quarterly report with other externally sourced data in ascertain the taxpayer's under-declaration of revenues or overstatement of costs and expenses, if any.

Without confirmation from third parties, the assessment becomes unreliable. Hence, it is only proper for this Court to cancel the income tax assessment pertaining to petitioner's alleged undeclared sales and undeclared income for lack of factual basis.

It is worthy to reiterate that although the BIR is authorized to assess proper tax on the best evidence obtainable, the assessment, however, must be based on actual facts.

While it is true that tax assessments have the presumption of correctness and regularity in its favor, it is also equally true that assessments should not be based on mere presumptions no matter how reasonable or logical the presumption might be.[6] In order to withstand the test of judicial scrutiny, the assessment must be based on actual facts. The presumption of correctness of assessment being a mere presumption cannot be made to rest on another presumption.[7]

With regard to the imposition of compromise penalty, the Supreme Court in the case of *Commissioner of Internal Revenue vs. Lianga Bay Logging Co. Inc., et al.*[8] had the opportunity to rule that the imposition of compromise penalty without the conformity of the taxpayer is illegal and unauthorized. It therefore follows that a compromise penalty may be imposed if the taxpayer has agreed to it, and there is nothing in the records which would show that petitioner consented to the compromise penalty.

Henceforth, based on the foregoing discussions, this Court finds no compelling reasons that will justify the reversal of or modify the Decision assailed by the parties.

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[6] *Commissioner of Internal Revenue vs. Fax N Parcel, Incorporated,* CTA EB No. 883 (CTA Case No. 7415), February 14, 2013.
[7] *Collector of Internal Revenue vs. Benipayo,* G.R. No. L-13656, January 31, 1962.
[8] G.R. No. L-35266, January 21, 1991.

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WHEREFORE, premises considered, petitioner's Motion for Partial Reconsideration (of the Decision dated December 17, 2019) and respondent's Motion for Partial Reconsideration are both **DENIED** for lack of merit.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

We Concur:

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

JEAN MARIE A. BACORRO-VILLENA
Associate Justice