REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION
****

TRIDHARMA MARKETING CORPORATION, INC., Petitioner,	**CTA CASE NO. 8833**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **CASANOVA,** *and* **MANAHAN,** ***JJ.***
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** JUL 06 2018 3:25 p.m.

x---x

AMENDED DECISION

CASANOVA, *J.*:

Submitted before this Court are the following, *viz.*:

1. Respondent's **Motion for Partial Reconsideration (Re: Decision promulgated on 15 February 2018)**, filed on March 6, 2018, with petitioner's **Comment/Opposition (To the Commissioner of Internal Revenue's Motion for Partial Reconsideration dated 6 March 2018)**, filed on April 10, 2018; and

2. Petitioner's **Motion for Partial Reconsideration (of the Decision dated 15 February 2018)**, filed on March 6, 2018, with respondent's **Opposition (Re: Petitioner's Motion for Partial Reconsideration dated 5 March 2018)**, filed on April 11, 2018.

On February 15, 2018, this Court promulgated a Decision partially granting petitioner's Petition for Review which reduced its deficiency income tax liability to ₱54,715,611.53, excluding interests. The dispositive portion of the said Decision reads as follows, *viz.*:

"**WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent's deficiency VAT assessment for taxable year 2010 in the amount of ₱1,298,134,526.24 is hereby **CANCELLED AND WITHDRAWN**. On the other hand, respondent's deficiency income tax assessment for taxable year 2010 is hereby **UPHELD IN PART**. Consequently, petitioner is **ORDERED TO PAY** respondent the amount of **FIFTY-FOUR MILLION SEVEN HUNDRED FIFTEEN THOUSAND SIX HUNDRED ELEVEN PESOS AND FIFTY-THREE CENTAVOS (₱54,715,611.53)** representing basic deficiency income tax and the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

Basic Deficiency Income Tax	₱ 43,772,489.22
Add: 25% Surcharge	10,943,122.31
Total	**₱54,715,611.53**

In addition, petitioner is also hereby **ORDERED TO PAY**:

a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income tax of ₱43,772,489.22 computed from April 15, 2011 until full payment thereof pursuant to Section 249(B) of the NIRC, as amended.

b) Delinquency interest at the rate of twenty percent (20%) per annum on the total amount of ₱54,715,611.53, and on the 20% deficiency interest which have accrued as aforestated in (a) computed from June 2, 2014 until full payment thereof pursuant to Section 249(C) of the 1997 NIRC, as amended.

Provided, further, the amount of ₱50,000,000.00 paid by petitioner as offer of compromise shall be deducted in the final settlement of the above deficiency income tax including surcharge, deficiency interest, and delinquency interest.

SO ORDERED."

Undaunted, both parties filed their respective Motions for Partial Reconsideration.

In his Motion, respondent raised the following grounds, *to wit:* that this Court has no jurisdiction over the present case since the disputed assessment had long become final, executory and demandable; that this Court erred in ruling that his right to assess petitioner's deficiency value-added tax (VAT) for the 1st and 2nd quarters of 2010 has already prescribed; that this Court erred in ruling that petitioner is not liable to pay the entire assessed amount of ₱4,467,391,881.76 representing deficiency income tax and value-added tax for taxable year 2010; and, that this Court erred in ruling that petitioner is not liable for 50% surcharge and in not ordering petitioner to post bond on his tax liabilities.

On the other hand, petitioner in its Motion, primarily moves for reconsideration of the Decision insofar as it upheld in part the deficiency income tax assessment for taxable year 2010, and imposed deficiency and delinquency interest each at 20% per annum. Petitioner also claims that the tax investigation was conducted under an expired Letter of Authority which was not revalidated thereby making the assessment void. More so, petitioner points out that the ₱50 Million it paid to the Bureau of Internal Revenue (BIR) on May 29, 2014 as partial payment should be removed from the amount of final deficiency tax liabilities but, instead, should be applied to the 2010 deficiency income tax assessment as of May 29, 2014. The difference being is the imposition of deficiency and delinquency interests which amounts in hundreds, if not, millions of pesos. Lastly, petitioner posits that considering the TRAIN Law has already taken effect at the time of the promulgation of the Decision, petitioner submits that the provisions of the said law regarding the imposition of interests be applied.

Accordingly, after thorough review of the parties' respective Motions for Partial Reconsideration, this Court finds no merit in respondent's Motion considering that the arguments raised therein were already raised and resolved in the assailed Decision. While, on the other hand, finding partial merit in petitioner's Motion but only, however, for the reasons stated hereafter.

The ₱50,000,000.00 payment should be deducted from the balance of the 2010 deficiency income tax assessment as of May 29, 2014.

Verily, Sec. 249(B) of the National Internal Revenue Code (NIRC) of 1997, as amended, imposes deficiency interest at a rate of 20% per annum (p.a.) on the basic deficiency tax due, to be assessed and collected from the date prescribed for its payment until the full payment thereof. The relevant portion of the said Section is quoted as follows, *viz.*:

> **"SEC. 249. Interest. -**
>
> x x x
>
> *(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.**
>
> x x x." *(Emphasis Ours)*

As correctly pointed out by petitioner, records reveal that it offered to compromise and, then, subsequently paid the amount of ₱50 Million on May 29, 2014. Applying therefore the said amount to the basic deficiency income tax due of ₱43,772,489.22 will result to an excess payment of ₱6,227,510.78. Thus, petitioner already paid in full its basic income tax due on May 29, 2014.

Moreover, Sec. 249(A)[1] of the NIRC of 1997, as amended, states that deficiency interest shall only run until the date of full payment which, in the present case, was on May 29, 2014. Consequently, the deficiency interest ceased to run as of the said date when petitioner already paid in full the basic deficiency income tax. More so, considering that the compromise payment was first applied to the basic deficiency income tax due, the excess payment of ₱6,227,510.78 shall then be applied to the surcharge and deficiency interest as of May 29, 2014.

Imposition of interests under the Tax Reform for Acceleration and Inclusion (TRAIN) Law.

---

[1] **"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. *x x x*"

In view of the advent of Republic Act (RA) No. 10963[2] or the *TAX REFORM FOR ACCELARATION AND INCLUSION (TRAIN)* law, which amended certain provisions of the NIRC of 1997, the interest rate of twenty percent (20%) per annum under Sec. 249 of the NIRC was amended to "double the legal interest rate for loans or forbearance of any money in the absence of an express stipulation as set by the Bangko Sentral ng Pilipinas."[3]

As such, this Court shall adjust the imposition of delinquency interest accordingly.

WHEREFORE, premises considered, respondent's Motion Partial Reconsideration (Re: Decision promulgated on 15 February 2018) is **DENIED** for lack of merit. On the other hand, petitioner's Motion for Partial Reconsideration (of the Decision dated 15 February 2018) is **PARTIALLY GRANTED**, and that the Decision dated February 15, 2018 is hereby **AMENDED** to read as follows, viz.:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent's assessment as to the deficiency VAT assessment for taxable year 2010 in the amount of ₱1,298,134,526.24 is hereby **CANCELLED AND WITHDRAWN**. On the other hand, respondent's deficiency income tax assessment for taxable year 2010 is hereby **UPHELD IN PART**. Consequently, petitioner is **ORDERED TO PAY** respondent the amount of **THIRTY-TWO MILLION FIFTY-EIGHT THOUSAND FOUR HUNDRED TWENTY-SIX PESOS AND SEVENTY-TWO CENTAVOS (₱32,058,426.72)** representing the amount still due after petitioner's partial payment of its income tax liability on May 29, 2014, including surcharges and interests imposed under Section 248(A)(3) and Section 249(B), respectively, of the NIRC of 1997, as amended, to be computed as follows:

---

[2] "AN ACT AMENDING SECTIONS 5, 6, 24, 25, 27, 31, 32, 33, 34, 51, 52, 56, 57, 58, 74, 79, 84, 86, 90, 91, 97, 99, 100, 101, 106, 107, 108, 109, 110, 112, 114, 116, 127, 128, 129, 145, 148, 149, 151, 155, 171, 174, 175, 177, 178, 179, 180, 181, 182, 183, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 232, 236, 237, 249, 254, 264, 269, AND 288; CREATING NEW SECTIONS 51-A, 148-A, 150-A, 150-B, 237-A, 264-A, 264-B, AND 265-A; AND REPEALING SECTIONS 35, 62, AND 89; ALL UNDER REPUBLIC ACT NO. 8424, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES", approved on December 19, 2017.
[3] *See* Section 75, *Ibid.*

Basic deficiency income tax	₱ 43,772,489.23
Add:	
25% Surcharge	10,943,122.31
20% p.a. Deficiency interest from April 15, 2011 to May 29, 2014	
(P43,772,489.23 x 20% x 1,140/365 days)	27,342,815.19
Total amount due	**₱82,058,426.73**
Less: Partial payment on May 29, 2014	50,000,000.00
Amount still due after the payment made on May 29, 2014	**₱32,058,426.73**

In addition, petitioner is further **ORDERED TO PAY**:

a) Delinquency interest on the unpaid amount of ₱32,058,426.73 at the rate of 20% per annum from June 2, 2014 ***until December 31, 2017***, pursuant to Section 249(C) of the NIRC of 1997; and

b) Delinquency interest at the rate of 12% per annum on the unpaid amount of ₱32,058,426.73 ***from January 1, 2018 until the amount is fully paid pursuant to Sec. 249(C) of the NIRC of 1997, in relation to Sec. 249(A) of the same Code, as amended by the TRAIN law***.

SO ORDERED."

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

We Concur:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice