REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

TELSTAR MANUFACTURING CORPORATION,
Petitioner,

- versus –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8900

Members:

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

Promulgated:

FEB 0 8 2018 2:00 pm

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RESOLUTION

CASTAÑEDA, JR., *J.:*

For resolution are:

1. Petitioner's *Motion for Partial Reconsideration*[1] filed on September 7, 2017 with respondent's *Opposition (Re: Motion for Partial Reconsideration)*[2] filed on October 18, 2017 as well as petitioner's *Reply (To Respondent's Opposition dated October 18, 2017)*[3] filed on November 10, 2017; and

2. Petitioner's *Manifestation with Motion for Correction of Dispositive Portion of Decision*[4] filed on September 7, 2017.

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[1] Division Docket Vol. VI, pp. 2245-2274.
[2] *Id.*, pp. 2286-2295.
[3] *Id.*, pp. 2297-2301.
[4] *Id.*, pp. 2275-2278.

Petitioner assails the Decision dated August 18, 2017,[5] (the "Assailed Decision") of this Court denying petitioner's Petition for Review. The dispositive portion of the Assailed Decision reads:

> "**WHEREFORE**, the present Petition for Review is **DENIED**. Petitioner is **ORDERED** to pay basic deficiency income tax, value-added tax and expanded withholding tax for the year 2009 in the aggregate amount of ₱18,061,826.06, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, detailed as follows:

Tax Type	Basic Deficiency	Surcharge	Total
Income tax	₱ 2,891,062.57	₱ 722,765.64	₱ 3,613,828.21
Value-added tax	11,525,666.27	2,881,416.57	14,407,082.84
WT-Expanded	32,732.01	8,183.00	40,915.01
TOTAL	**₱14,449,460.85**	**₱ 3,612,365.21**	**₱ 18,061,826.06**

> In addition, Petitioner is **ORDERED** to pay:
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> (a) Deficiency interest at the rate of 20% per annum on the basic deficiency income tax, value-added tax and expanded withholding tax, computed from April 15, 2010, January 25, 2010 and January 15, 2010, respectively, until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended; and
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> (b) Delinquency interest at the rate of 20% per annum on the total amount of ₱18,061,826.06, representing the sum of the basic deficiency income tax, value-added tax and expanded withholding tax in the aggregate amount of ₱14,449,460.85 and 25% surcharge of ₱3,612,365.21, and on the deficiency interest which have accrued as aforestated in (a), computed from August 29, 2014 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.
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> **SO ORDERED.**"

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[5] *Id.*, pp. 2186-2244.

Petitioner moves for partial reconsideration of the Assailed Decision based on the following grounds, to wit:

a. Neither the principle of *in pari delicto* nor estoppel can operate to sustain the validity of the Waivers subject of this case. The subject Waivers were executed at the instance of and solely for the benefit of Respondent BIR; [6]

b. Petitioner is not liable for deficiency income tax and deficiency value-added tax on Discrepancy on Sales of PhP230,574.03;[7]

c. Petitioner is not liable for deficiency income tax on Overclaimed Salaries of PhP9,266,846.88;[8]

d. Petitioner is not liable for deficiency withholding tax – expanded of PhP32,732.01 and deficiency income tax on related disallowed expense of PhP2,326,691.88;[9]

e. Petitioner is not liable for deficiency income tax on disallowed 2008 CWT of PhP17,777.44;[10]

f. Petitioner is not liable for deficiency value-added tax on [sale of] Property per Cash Flow of PhP5,610.71;[11]

g. Petitioner is not liable for value-added tax on Unsupported input taxes on importation of PhP10,640,518.00;[12] and

h. Petitioner is not liable for deficiency interest on the assessment for deficiency value-added taX and withholding tax – expanded.[13]

In its *Opposition (Re: Motion for Partial Reconsideration)*, respondent prayed of this Court to deny petitioner's *Motion for Partial Reconsideration* based on the following: *fr*

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[6] *Id.*, p. 2246.
[7] *Id.*, p. 2258.
[8] *Id.*, p. 2261.
[9] *Id.*, p. 2262.
[10] *Id.*, p. 2263.
[11] *Id.*, p. 2264.
[12] *Id.*, p. 2265.
[13] *Id.*, p. 2268.

GROUNDS[14]

I

THE HONORABLE COURT CORRECTLY RULED THAT THE WAIVERS VALIDLY EXTENDED THE PERIOD WITHIN WHICH THE GOVERNMENT MAY ASSESS PETITIONER OF ITS DEFICIENCY TAX LIABILITIES FOR TAXABLE YEAR 2009;

II

THE HONORABLE COURT CORRECTLY RULED THAT PETITIONER IS LIABLE FOR DEFICIENCY INCOME TAX, VAT, [EXPANDED] WITHHOLDING TAX AND DEFICIENCY INTEREST ON THE ASSESSMENT FOR VAT AND WITHHOLDING TAX – EXPANDED.

In its *Reply* dated November 9, 2017, petitioner asserts that respondent failed to file any Motion for Reconsideration of the Assailed Decision.[15] Thus, the portions of the deficiency tax assessments for taxable year 2009 cancelled under the Assailed Decision has become final and executory.[16] Petitioner also claims that respondent failed to respond to its argument that the BIR had incurred inordinate delay in conducting the tax audit investigation.[17] Petitioner likewise avers that respondent has not raised any comment to the points it raised in its *Motion for Partial Reconsideration* because the latter merely quoted verbatim the text of the Assailed Decision.[18]

The Court shall discuss petitioner's grounds *in seriatim*.

A. Validity of the Waivers

In its *Motion for Partial Reconsideration*, petitioner argues that neither the principle of *in pari delicto* nor estoppel can operate to

[14] *Id.*, pp. 2286-2287.
[15] *Id.*, p. 2297.
[16] *Id.*
[17] *Id.*, p. 2298.
[18] *Id.*

sustain the validity of the subject waivers.[19] Petitioner also added that these waivers were executed at the instance of and solely for the benefit of respondent.[20] Petitioner claims that it was prompt and complete in submitting the documents requested from the beginning and at every turn, and that it was respondent who had incurred inordinate delay in conducting the tax audit investigation.[21] It avers that it was never benefitted by the execution of the waivers and it was respondent alone who was at fault, and thus, must alone bear the burden of the waivers' defects.[22] Petitioner likewise contends that this Court erred in relying heavily on the Supreme Court's decision in the case of *Commissioner of Internal Revenue v. Next Mobile, Inc. (formerly Nextel Communications Phils., Inc.)*[23] and in applying the same as precedent in the present case.

Contrary to petitioner's assertions, this Court stands by its decision that the Supreme Court's ruling in the *Next Mobile* case squarely applies in the present case. The applicability of the said ruling has already been sufficiently discussed in the Assailed Decision and the Court sees no compelling reason to modify much less to reverse the same. At any rate, the Court shall state below a few points if only to reinforce its discussion in the Assailed Decision on this particular matter.

One of the alleged defects of the subject waivers in the present case is that the person who signed them, *i.e.*, petitioner's President and General Manager, was not specifically authorized by petitioner's Board of Directors to execute and sign the waivers on petitioner's behalf.

As pointed out in the Assailed Decision, such defect is the same as that found by the Supreme Court in the *Next Mobile* case, among others.[24]

In *Next Mobile*, the Supreme Court found that respondent-taxpayer had executed, through its employee-signatory, several waivers in favor of the BIR and yet failed to present to the BIR the written authority of such signatory upon submission of the waivers. Later on, respondent-taxpayer impugned the validity of the waivers it

[19] *Id.*, p. 2246.
[20] *Id.*
[21] *Id.*, p. 2251.
[22] *Id.*, p. 2252.
[23] G.R. No. 212825, December 7, 2015, 776 SCRA 343 ("*Next Mobile*").
[24] Division Docket Vol. VI, p. 2219.

executed by raising issue, among others, as to the authority of its own signatory.[25] Unconvinced, the Supreme Court ruled that respondent-taxpayer had violated Revenue Memorandum Order (RMO) No. 20-90 which states that in case of a corporate taxpayer, the waiver must be signed by its responsible officials, as well as Revenue Delegation Authority Order (RDAO) No. [05-01] which requires the presentation of a written and notarized authority to the BIR. Notably, the Supreme Court expressed its disapproval of respondent-taxpayer's action when "after deliberately executing defective waivers, [it] raised the very same deficiencies it caused to avoid the tax liability determined by the BIR during the extended assessment period."[26]

Following the Supreme Court's logic in *Next Mobile*, this Court holds that even assuming that petitioner was merely constrained to accede to BIR's request for the execution of the subject waivers to allow the latter to complete its tax audit investigation, it still behooves petitioner to strictly comply with its own obligations under applicable rules and regulations as regards the execution of waivers. The same is true notwithstanding petitioner's allegation that it was never required by the BIR to present any written authority of its signatory as duly issued by its Board of Directors. Failing in such regard, petitioner cannot later on be allowed to deny fault on its part. Indeed, it strains credulity to suppose that petitioner, at the time of the execution of the subject waivers, was not aware of the lack of authority of its employee-signatory to sign the waivers on its behalf. It certainly cannot be permitted to keep silent on the waiver's defect, the very defect which it caused, then later use the very same defect as a ground to challenge the validity of the waivers it executed when the results of the tax investigation were not in its favor. Such a situation cannot be tolerated because, in the words of the Supreme Court, it is "dangerous and open to abuse by unscrupulous taxpayers who intend to escape their responsibility to pay taxes by mere expedient of hiding behind technicalities."[27]

B. Deficiency income tax and deficiency value-added tax on Discrepancy on Sales of PhP230,574.03

Petitioner, citing the statement by the ICPA, asserts that there was no discrepancy in sales between its ledger and Summary List of

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[25] *Supra*, Note 23.
[26] *Id.*
[27] *Id.*

Sales (SLS).[28] Petitioner further emphasizes that assessments must be based on facts, not on mere presumptions.

As previously found by this Court, the amounts used in the computation of the discrepancy of ₱230,574.03 were lifted from petitioner's own books of accounts, specifically its sales ledger, and its Summary List of Sales. Petitioner attributed the difference to the credit memoranda issued to Philusa, thus:

Exhibit	**CM No.**	**Date**	**Issued to**	**Amount**
P-17-A	0409	7/29/2009	Philusa Corporation	₱ 188,181.19
P-17-B	0414	7/31/2009	Philusa Corporation	43,464.29
TOTAL				**₱231,645.48**

The Court was not convinced because the amount ₱1,071.45 (₱231,645.48 less ₱230,574.03) is still unaccounted for.

In its *Motion for Partial Reconsideration*, petitioner alleged that it has declared all of its sales indicated in the ledger for income tax purposes. Upon examination of petitioner's annual Income Tax Return (ITR) for the taxable year 2009, gross sales declared amounted to ₱731,143,681.00,[29] which corresponds to the gross sales reported in its audited financial statements for the same year.[30]

However, the notes to the financial statements disclose that net sales for the year 2009 amounted to ₱702,247,009.00.[31] When this amount is compared to the amount recorded in petitioner's sales ledger, the resulting difference is ₱231,645.74. The same can be attributed to the credit memoranda issued to Philusa, as shown hereafter:

Sales per ledger	₱ 702,478,654.74
Net sales per audited financial statements, Note 17	702,247,009.00
Difference	₱ 231,645.74
Less: Credit Memo issued to Philusa	231,645.48
Discrepancy	**₱ 0.26***

** rounding difference*

Jz

[28] Q&A 25 and 26, Exhibit "P-76".
[29] Exhibit "P-65".
[30] Exhibit "P-31".
[31] *Id.*, Note 17.

Consequently, the deficiency income tax and value-added tax (VAT) assessments arising from the said discrepancy should be cancelled.

C. Deficiency income tax on Overclaimed Salaries of PhP9,266,846.88

Respondent disallowed petitioner's several expenses including salaries of ₱9,266,846.88 for allegedly being overclaimed. Upon examination of the documents submitted, the Court reduced the disallowed amount to ₱7,020,352.18 but upheld the disallowance because petitioner failed to explain the actual nature and recipient of the payment.

The amount of ₱7,020,352.18 pertains to petitioner's payment to Mercury Group of Companies, Inc.[32] The ICPA found in the related check voucher that the payment was actually made to Cash-Vivian Que-Azcona for the year 2008 profit sharing.[33] In its *Motion for Partial Reconsideration*, petitioner admitted that an incorrect name and TIN (of Mercury Group of Companies, Inc.) were reported in the alphalist.

Aside from the admission of error in reporting the correct name and TIN in the alphalist, petitioner did not submit additional documents to clarify the nature of the claimed expense. Whether or not Vivian Que-Azcona indeed received the purported profit share is likewise not clear. Hence, the Court must uphold respondent's findings.

D. Deficiency withholding tax – expanded of PhP32,732.01 and deficiency income tax on related disallowed expense of PhP2,326,691.88

Petitioner avers that the Court erred in ruling that notwithstanding the assessment of deficiency EWT, it cannot claim the related expenses as deduction from gross income pursuant to Section 2.58.5 of Revenue Regulations (RR) No. 2-98, as amended by RR No. 12-2013, because statutes including administrative rules and regulations operate prospectively.

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[32] Exhibit "P-47-a-1".

[33] Exhibit "P-12-A-ICPA".

It should be noted that Section 2.58.5 of RR No. 2-98 was likewise amended by RR No. 14-2002 dated September 9, 2002, thus:

> SECTION 2.58.5. *Requirement for Deductibility.* –
> xxx xxx xxx
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> **A deduction will also be allowed in the following cases where no withholding of tax was made**:
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> (A) The payee reported the income <u>and pays the tax due thereon</u> and the **withholding agent/taxpayer pays** the tax, including the interest incident to the failure to withhold the tax, and surcharges, if applicable, **at the time of the audit investigation <u>or</u> <u>reinvestigation/reconsideration</u>**.
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> (B) The recipient/payee failed to report the income on the due date thereof, but the **withholding agent/taxpayer pays** the tax, including the interest incident to the failure to withhold the tax and surcharges, if applicable, **at the time of the audit/investigation or <u>reinvestigation/reconsideration</u>**;
>
> (C) The **withholding agent erroneously underwithheld the tax but pays the difference** between the correct amount and the amount of the tax withheld, including the interest, incident to such error, and surcharges, if applicable, **at the time of the audit/investigation or <u>reinvestigation/reconsideration</u>**.

Pursuant to the foregoing, it is clear that petitioner cannot claim the disallowed expenses due to non-withholding as deduction from its gross income since the corresponding deficiency withholding taxes were not paid at the time of the audit investigation or reinvestigation/reconsideration.

Without payment of the subject withholding taxes at the time of the investigation or reinvestigation/reconsideration and even until the present, the Court finds no reason to cancel the disallowance of the corresponding expenses.

E. Petitioner is not liable for deficiency income tax on disallowed 2008 CWT of PhP17,777.44.

Petitioner avers that the disallowance of creditable withholding tax amounting to ₱17,777.44 only came out in respondent's FDDA. Further, the FDDA did not provide a breakdown of the disallowed CWT, thus said item of assessment must be declared void.

The Court finds petitioner's argument tenable.

In the case of *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation and Liquigaz Philippines Corporation v. Commissioner of Internal Revenue*,[34] the Supreme Court ruled that "an FDDA that does not inform the taxpayer in writing of the facts and law on which it is based renders the decision void. Therefore, it is as if there was no decision rendered by the CIR. It is tantamount to a denial by inaction by the CIR, which may still be appealed before the CTA and the assessment evaluated on the basis of the available evidence and documents." It clearly explains:[35]

> "The importance of providing the taxpayer of adequate written notice of his tax liability is undeniable. Section 228 of the NIRC declares that an assessment is void if the taxpayer is not notified in writing of the facts and law on which it is made. Again, Section 3.1.4 of RR No. 12-99 requires that the FLD must state the facts and law on which it is based, otherwise, the FLD/FAN itself shall be void. Meanwhile, Section 3.1.6 of RR No. 12-99 specifically requires that the decision of the CIR or his duly authorized representative on a disputed assessment shall state the facts, law and rules and regulations, or jurisprudence on which the decision is based. Failure to do so would invalidate the FDDA.
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> "The use of the word "shall" in Section 228 of the NIRC and in RR No. 12-99 indicates that the requirement of informing the taxpayer of the legal and factual bases of

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[34] G.R. Nos. 215534 & 215557, April 18, 2016, 790 SCRA 79, 93-97.
[35] *Id.*

the assessment and the decision made against him is mandatory. The requirement of providing the taxpayer with written notice of the factual and legal bases applies both to the FLD/FAN and the FDDA.

"Section 228 of the NIRC should not be read restrictively as to limit the written notice only to the assessment itself. As implemented by RR No. 12-99, the written notice requirement for both the FLD and the FAN is in observance of due process—to afford the taxpayer adequate opportunity to file a protest on the assessment and thereafter file an appeal in case of an adverse decision.

"To rule otherwise would tolerate abuse and prejudice. Taxpayers will be unable to file an intelligent appeal before the CTA as they would be unaware on how the CIR or his authorized representative appreciated the defense raised in connection with the assessment. On the other hand, it raises the possibility that the amounts reflected in the FDDA were arbitrarily made if the factual and legal bases thereof are not shown.

xxx xxx xxx

"Section 228 of the NIRC provides that an assessment shall be void if the taxpayer is not informed in writing of the law and the facts on which it is based. It is, however, silent with regards to a decision on a disputed assessment by the CIR which fails to state the law and facts on which it is based. This void is filled by RR No. 12-99 where it is stated that failure of the FDDA to reflect the facts and law on which it is based will make the decision void. It, however, does not extend to the nullification of the entire assessment." *(Emphasis supplied and citations omitted)*

Thus, the disallowance of the CWT in the amount of ₱17,777.44 should be cancelled. *gr*

Based on the foregoing, petitioner's deficiency income tax liability is adjusted accordingly to ₱2,804,113.22, computed as follows:

Taxable Income per ITR		₱ 84,383,759.00
Add (Deduct): Audit adjustments per Investigation		
Overclaimed/underdeclared expenses	₱ 7,020,352.18	
Disallowed expenses for non-withholding	2,326,691.88	9,347,044.06
Taxable income per audit		₱ 93,730,803.06
Income tax due thereon		₱28,1193,240.92
Less: Creditable Withholding Tax/Tax paid per audit		
Tax Paid	₱ 17,722,778.85	
Add: Creditable Tax	7,592,348.85	25,315,127.70
Basic income tax deficiency		**₱2,804,113.22**

F. Petitioner is not liable for deficiency value-added tax on [sale of] Property per Cash Flow of PhP5,610.71.

Petitioner argues that the sale of property and equipment is not considered as part of its ordinary course of trade or business, hence not subject to VAT.

Pertinent to this issue is Section 105 of the National Internal Revenue Code of 1997, as amended, (1997 NIRC) quoted below for easy reference:

> "SEC. 105. *Persons Liable.* — Any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.
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> xxx xxx xxx
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> "The phrase ***'in the course of trade or business'* means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto**, by any person regardless of whether or not the person engaged therein is a nonstock, nonprofit private organization (irrespective

of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.

"The rule of regularity, to the contrary notwithstanding, services as defined in this Code rendered in the Philippines by nonresident foreign persons shall be considered as being rendered in the course of trade or business." *(Emphasis supplied)*

Petitioner did not submit any evidence to prove or even allege that the subject property and equipment was not used in the ordinary course of its trade or business and consequently that the sale is not incidental thereto.

In the absence of contrary evidence, the sale of property and equipment is considered to have been made by petitioner in its ordinary course of trade or business and should be subject to VAT.

G. Petitioner is not liable for value-added tax on unsupported input taxes on importation of PhP10,640,518.00.

As discussed in the Assailed Decision, respondent disallowed input taxes amounting to ₱2,918,401.80 for being unsupported, thus:

Payments to Suppliers of Local Goods	₱ 6,392,281.33
Payments to Service Contractors	29,993,303.40
Payments of Professional Fees	6,500,468.90
Total Discrepancy per FLD	₱ 42,886,053.63
Less: Reimbursable Expense from Contractors	18,566,038.67
Balance to be retained in assessment	₱ 24,320,014.96
Multiply by VAT rate	12%
Disallowed input tax	**₱2,918,401.80**

Upon examination of the invoices and official receipts offered as evidence, the ICPA found that input taxes of ₱20,855.82 are without proper supporting documents. Further, the Court found that input taxes of ₱10,640,518.00 from purchase of capital goods are unsupported and ₱627,816.97 from purchases of goods and services do not comply with the invoicing requirements.

However, when these amounts are put together, they exceed the disallowance made by respondent of ₱2,918,401.80. Hence, the Court is compelled to uphold the amount as computed by respondent.

In fine, petitioner's deficiency VAT liability is likewise adjusted to ₱3,127,208.39, thus:

Net sales per VAT returns			₱733,791,481.66
Add (Deduct): Audit adjustments per investigation			
Proceeds from sale of property per cash flow			5,610.71
Taxable sales per audit			₱733,797,092.37
Tax rate			12%
Output tax per audit			₱ 88,055,651.08
Less: Creditable input tax			
Carried from previous period	₱ 3,465,303.49		
Input tax on purchases	65,038,027.67	₱ 68,503,331.16	
Add (Deduct): Audit adjustments per investigation			
Disallowed IT on unsupported expenses		(2,918,401.80)	
Total		₱ 65,584,929.36	
Less: Carried over to succeeding period		(973,603.37)	
Total allowable input tax			64,611,325.99
VAT Payable			₱ 23,444,325.09
Less: VAT paid per returns			20,317,116.70
Basic VAT deficiency			**₱3,127,208.39**

To summarize, petitioner's total basic deficiency tax liability amounts to ₱5,964,053.62, broken down as follows:

Tax Type	Basic Deficiency
Income tax	₱ 2,804,113.22
Value-added tax	3,127,208.39
WT-Expanded	32,732.01
TOTAL	**₱ 5,964,053.62**

H. Deficiency Interest on VAT and EWT

Section 247(a) in relation to Section 249(B) of the 1997 NIRC authorizes the imposition of deficiency interest on **all taxes** under the 1997 NIRC. The law is clear. There is no room left for interpretation.

Section 247(a) of the 1997 NIRC provides: *gr*

"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 Tax 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 petitioner's deficiency VAT and EWT.

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[36] 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.*[37]

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:

> "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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> <u>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*.'</u> 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*

[36] Presidential Decree (PD) No. 1994 dated November 5, 1985.

[37] 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, 250 SCRA 434, 452-455. ("*PICOP*"). On Footnote No. 16 of the majority opinion of the said Decision, it was stated that:

> "Section 247(a) was inserted by P.D. No. 1994 dated 5 November 1985. (Originally appearing as Section 281 (a), it assumed its present position pursuant to E.O. No. 273 dated 25 July 1987 which rearranged the Tax Code.) x x x".

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 NLRC, (sic) as amended, reads:

Title X
Statutory Offenses and Penalties

Chapter I

Additions to the Tax

Section 247. *General Provisions.* — (a) <u>The additions to the tax or deficiency tax prescribed in this Chapter shall *apply to all taxes, fees and charges imposed in this Code*</u>. The amount so added to the tax shall be collected at the same time, in the same manner and as part of the tax. x x x

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)

<u>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.</u> <u>**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**</u>." *(Underscoring and emphases supplied; citations omitted)* *gr*

It may not be amiss to point out that, this Court *En Banc*, through the *ponencia* of J. Mindaro-Grulla in *Takenaka Corporation Philippine Branch v. CIR*,[38] relied upon the same *PICOP* holding. To stress its point, the CTA *En Banc* 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:

> "<u>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</u>, 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.* <u>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</u>." (Emphases and underscoring supplied; citations omitted)

In sum, petitioner's deficiency VAT and EWT were properly subjected to deficiency interest pursuant to Section 249 of the 1997 NIRC.

WHEREFORE, petitioner's *Motion for Partial Reconsideration* is **PARTLY GRANTED**. Accordingly, the dispositive portion of the

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

assailed Decision of this Court dated August 18, 2017 is **MODIFIED** as follows:

"**WHEREFORE**, the present Petition for Review is **PARTLY GRANTED**. Petitioner is **ORDERED** to pay basic deficiency income tax, value-added tax and expanded withholding tax for the year 2009 in the aggregate amount of ₱7,455,067.03, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the 1997 NIRC, detailed as follows:

Tax Type	Basic Deficiency	Surcharge	Total
Income tax	₱ 2,804,113.22	₱ 701,028.30	₱ 3,505,141.52
Value-added tax	3,127,208.39	781,802.10	3,909,010.49
WT-Expanded	32,732.01	8,183.00	40,915.01
TOTAL	**₱ 5,964,053.62**	**₱1,491,013.41**	**₱ 7,455,067.03**

In addition, Petitioner is **ORDERED** to pay:

(a) Deficiency interest at the rate of 20% per annum on the basic deficiency income tax, value-added tax and expanded withholding tax in the amounts of ₱2,804,113.22, ₱3,127,208.39 and ₱32,732.01, respectively, computed from April 15, 2010, January 25, 2010 and January 15, 2010, respectively, until full payment thereof pursuant to Section 249(B) of the 1997 NIRC; and

(b) Delinquency interest at the rate of 20% per annum on the total amount of ₱7,455,067.03, representing the sum of the basic deficiency income tax, value-added tax and expanded withholding tax in the aggregate amount of ₱5,964,053.62 and 25% surcharges of ₱1,491,013.41, and on the deficiency interest which have accrued as aforestated in (a), computed from August 29, 2014[39] until full payment thereof pursuant to Section 249(C) of the 1997 NIRC."

Petitioner's *Manifestation with Motion for Correction of Dispositive Portion of Decision* is **NOTED**. *ge*

[39] Exhibit "P-3", Docket Vol. I, pp. 29-30.

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice