REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- *versus* –

BPI-PHILAM LIFE ASSURANCE CORPORATION (formerly AYALA LIFE ASSURANCE, INC.),
Respondent.

CTA EB No. 1240
(CTA Case No. 8240)

Present:

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

Promulgated:

FEB 11 2016 2:30 p.m.

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RESOLUTION

CASTAÑEDA, JR., *J.:*

For resolution of the Court *En Banc* is petitioner's **Motion for Reconsideration (Re: Decision promulgated on 24 August 2015)** posted on September 18, 2015 and received by the Court on October 6, 2015, with respondent's **Comment to the Motion for Reconsideration** filed on December 15, 2015.

The aforementioned Motion seeks reconsideration of the Decision of the Court *En Banc* promulgated on August 24, 2015,[1] affirming the judgment of the Third Division ("Court in Division") of this Court in CTA Case No. 8240. The dispositive portion of the assailed Decision reads:

> "**WHEREFORE**, premises considered, petitioner Commissioner of Internal Revenue's Petition for Review filed on November 12, 2014 is hereby **DENIED**. Accordingly, the Decision and Resolution dated May 14, 2014 and October 9, 2014, respectively, are hereby **AFFIRMED**.
>
> **SO ORDERED.**"

Petitioner raises the following grounds in support of her Motion, to wit:

1) The rule that no issue may be raised for the first time on appeal is not a hard and fast rule;

2) Respondent is estopped from assailing the timeliness of the deficiency value-added tax (VAT) assessment when respondent partially paid a portion thereof;

3) Petitioner has the power to assess premium tax on respondent; and

4) Respondent was not denied due process.

On the other hand, respondent, in its Comment, avers that "the alleged filing of false returns was never raised in the Answer nor was (sic) there any evidence adduced by petitioner" to support such allegation.[2] It also argues that the principle of estoppel should not apply in the present case.[3] Respondent likewise maintains that interest income from loans is not subject to premium tax[4] and that its due process right was violated when petitioner changed the nature of the assessment on interest income from deficiency VAT assessment to deficiency premium tax.[5]

After careful scrutiny of petitioner's arguments, the Court *En Banc* finds the instant Motion unmeritorious.

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[1] Court *En Banc*'s Docket, pp. 132-152.
[2] *Ibid.*, p. 169.
[3] *Id.*, p. 171.
[4] *Id.*, p. 172.
[5] *Id.*

Petitioner posits that although she did not raise in her Answer the issues raised in her Motion for Partial Reconsideration, the resolution of the said issues is still necessary to serve the interest of justice as one of the issues subject of the present case is whether respondent is liable for deficiency VAT in the amount of ₱3,491,801.03 and deficiency premium tax amounting to ₱13,201,179.71. Petitioner again alleges that the failure of respondent to declare income which was supposed to be subjected to VAT in the amount of ₱69,837,708.82, rendered respondent's VAT returns false hence, the 10-year prescriptive period under Section 222 of the National Internal Revenue Code of 1997, as amended, (1997 NIRC) applies.[6]

Petitioner's position is untenable.

As already stressed in the assailed Decision, petitioner raised the issue on the alleged falsity of respondent's VAT returns only in her Motion for Partial Reconsideration before the Court in Division. The same was never brought up in any of its prior pleadings filed before the Court in Division. Issues or arguments not raised during trial cannot be raised for the first time on appeal, more especially in a motion for reconsideration.[7] To consider the alleged facts and arguments belatedly raised would amount to trampling on the basic principles of fair play, justice, and due process.[8]

Moreover, petitioner did not present any evidence to prove such affirmative allegation. It is a basic rule in evidence that burden of proof lies on the party who makes the allegations.[9] Mere allegation is not evidence, and is not equivalent to proof.[10] Bare allegations, unsubstantiated by sufficient evidence, cannot be given credence. Indeed, petitioner's allegation as to the falsity of respondent's VAT returns involves a question of fact, and the burden rests upon petitioner to prove that respondent intentionally filed false VAT returns.

Petitioner also contends that respondent is estopped from assailing the timeliness of the deficiency VAT assessment by making full payment of its deficiency income tax and also by paying the amount of ₱11,304,371.62 as partial settlement of its deficiency VAT assessment.[11]

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[6] *Id.*, pp. 157-158.
[7] *Danilo O. Garcia et. al. v. Sandiganbayan*, G.R. No. 197204, March 26, 2014, 720 SCRA 155, 171; *Evangeline D. Imani v. Metropolitan Bank & Trust Company*, G.R. No. 187023, November 17, 2010, 635 SCRA 357, 371; *Jesus Cuenco v. Talisay Tourist Sports Complex, Incorporated and Matias B. Aznar III*, G.R. No. 174154, July 30, 2009, 594 SCRA 396, 399-400; *Commissioner of Internal Revenue v. Wander Philippines, Inc.*, G.R. No. 68375, April 15, 1988, 160 SCRA 573, 576-577.
[8] *Ayala Land, Inc. and Capitol Citifarms, Inc. v. Simeona Castillo et. al.*, G.R. No. 178110, June 15, 2011, 652 SCRA 143, 158 citing *Madrid v. Mapoy*, G.R. No. 150887, August 14, 2009, 596 SCRA 14, 28.
[9] *Acabal vs. Acabal et. al.*, G.R. No. 148376, March 31, 2005, 454 SCRA 555, 569.
[10] *Hector C. Villanueva vs. Philippine Daily Inquirer, Inc. et. al.*, G.R. No. 164437, May 15, 2009, 588 SCRA 1, 11; *Social Security Commission and Social Security System vs. Teresa G. Favila*, G.R. No. 170195, March 28, 2011, 646 SCRA 462, 477; *ECE Realty and Development, Inc. vs. Rachel G. Mandap*, G.R. No. 196182, September 1, 2014, 734 SCRA 76, 84.
[11] Court *En Banc*'s Docket, p. 158.

Such contention is unavailing.

Respondent's partial payment of the deficiency VAT assessment, by itself, cannot be taken as an implied admission on its part of the timeliness of the issuance of such assessment. As discussed in the assailed Decision, petitioner cannot rely on the ruling of the Supreme Court in *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue ("RCBC")*[12] to support her above-stated position considering the difference between the factual milieu of the said case and of the present case.

At any rate, the public policy behind the law on prescription of assessment and collection of taxes, *i.e.*, to protect taxpayers against unreasonable investigations, should prevail over the invocation of estoppel since, as held by the Supreme Court in *Commissioner of Internal Revenue v. Kudos Metal Corporation*,[13] the doctrine of estoppel cannot give validity to an act that is prohibited by law or one that is against public policy.

Petitioner likewise asserts that the premium tax assessment was the result of the examination of the documents submitted by respondent to buttress its protest.[14] According to petitioner, she should not be faulted for coming up with a decision containing such findings when that is precisely the necessary conclusion to be derived from respondent's evidence.[15] She added that she is empowered under Section 6 of the 1997 NIRC to assess and determine the correct tax due.[16]

The Court *En Banc* is not persuaded.

Interest income on policy loans is not subject to deficiency premium tax because interest income is not the "premium collected" under Section 123 of the 1997 NIRC. Furthermore, interest income on policy loans cannot be considered as "akin to premiums" because it is not an administrative charge related to the issuance of policy contracts but income earned from debt claims of any kind.

Finally, petitioner claims that respondent was not denied due process since the assessment made was sufficiently informative to apprise respondent [of] the factual and legal bases of its tax liability.[17] Petitioner also argues that respondent was given opportunity to challenge the

[12] G.R. No. 170257, September 7, 2011, 657 SCRA 70.
[13] G.R. No. 178087, May 5, 2010, 620 SCRA 232, 246-247.
[14] Court *En Banc*'s Docket, p. 159.
[15] *Ibid.*
[16] *Id.*
[17] *Id.*

assessment, be heard in the proper forum, and present evidence to controvert petitioner's findings.[18]

Petitioner's argument must fail.

The change of the nature of the assessment from deficiency VAT to deficiency premium tax only upon the issuance by petitioner of the Final Decision on Disputed Assessment ("FDDA") violated respondent's due process rights as the latter was unduly deprived of an opportunity to be heard and to dispute the new assessment at the administrative level. The issuance of the FDDA signifies the final stage of the administrative procedure for the issuance of the deficiency tax assessment. It constitutes petitioner's final decision on respondent's administrative protest. Thus, it strains credulity to state that respondent was given an opportunity to challenge the assessment when it was belatedly informed of the nature of such assessment.

As can be clearly seen above, the arguments interposed by petitioner in the instant Motion are essentially the same as her previous arguments which have been duly considered and amply discussed by the Court *En Banc* in the assailed Decision. Petitioner failed to present any new matter or compelling reason to justify the modification, much less a reversal, of the assailed Decision.

In *Ferdinand Marcos et al. vs. Hon. Raul Manglapus et al.,*[19] the Supreme Court instructively declared that "in all motions for reconsideration, the burden is upon the movants, petitioner herein, to show that there are compelling reasons to reconsider the decision of the Court." In this case, however, petitioner did not satisfy this burden.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

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

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[18] *Id.*
[19] G.R. No. 88211, October 27, 1989, 178 SCRA 760, 763.

WE CONCUR:

see concurring & dissenting opinion

ROMAN G. DEL ROSARIO
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

I JOIN CONCURRING AND DISSENTING OPINION OF PJ DEL ROSARIO

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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CONCURRING AND DISSENTING OPINION

DEL ROSARIO, PJ:

I concur with the *ponencia* in denying the Motion for Reconsideration of petitioner for lack of merit.

Nonetheless, upon review of the case records, it appears that deficiency interest was imposed against respondent. Although this particular issue was not raised, I deemed it appropriate to address the same if only to provide a just determination of the controversy. By virtue of the Court's inherent authority to amend its processes and orders to make them conformable to law and justice,[1] I wish at this opportune time to register my dissent anent the imposition of 20% deficiency interest on deficiency VAT, which was affirmed by the Court *En Banc*.

[1] Sec. 5(g), Rule 135 of the Rules of Court *vis-à-vis* Sec. 1, Rule 14 of the Revised Rules of the CTA, as amended.

In this regard, I quote below the position I have taken in *Avon Products Manufacturing, Inc. vs. Commissioner of Internal Revenue*[2] 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),*[3] 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,*[4] 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 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:

[2] CTA EB No. 1062, January 15, 2016.
[3] G.R. Nos. 106949-50, December 1, 1995.
[4] G.R. No. 146486, March 4, 2005.

> **"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>.'

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 the deficiency VAT assessed against respondent.

All told, I vote to deny the Motion for Reconsideration of petitioner for lack of merit and to affirm the judgment of the Court in Division with modification relating to the imposition of 20% deficiency interest on deficiency VAT, which should appropriately be cancelled and set aside.

ROMAN G. DEL ROSARIO
Presiding Justice