REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

KERRY FOOD INGREDIENTS CEBU, INC., Petitioner,	CTA Case No. 8593
	Members:
- versus -	BAUTISTA, *Chairperson* FABON-VICTORINO, and RINGPIS-LIBAN, *JJ.*
	Promulgated:
COMMISSIONER OF INTERNAL REVENUE, Respondent.	MAY 16 2016 4:01 p.m.

x- x

RESOLUTION

Fabon-Victorino, J.:

This resolves the *Motion for Partial Reconsideration (Re: Decision dated February 9, 2016)* with *Motion for Leave to Present Supplemental Evidence*[1] filed by petitioner Kerry Food Ingredients Cebu, Inc. on February 29, 2016, without respondent's *comment/opposition,* despite notice.

Petitioner seeks reconsideration of the Court's Decision[2] promulgated on February 9, 2016, the dispositive portion of which reads:

> **WHEREFORE**, the instant Petition for Review is hereby **PARTIALLY GRANTED**. The assessments for deficiency Value-Added Tax, Expanded Withholding Tax and Documentary Stamp Tax are **CANCELLED** in view of petitioner's payment of the same during the pendency of this case; while, the deficiency Income Tax and Final

[1] Docket, pp. 982-1003.
[2] Docket, pp. 955-981.

Withholding Tax assessments for taxable year 2007 are **UPHELD**. Accordingly, petitioner is **ORDERED TO PAY** the modified amount of ₱3,242,855.16, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

	BASIC	SURCHARGE	TOTAL
Income Tax	₱ 2,153,151.42	₱ 538,287.86	₱ 2,691,439.28
Final Withholding Tax	441,132.70	110,283.18	551,415.88
Total	**₱2,594,284.12**	**₱ 648,571.04**	**₱3,242,855.16**

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

(a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income tax and FWT from the dates indicated below until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended:

	BASIC	DEFICIENCY INTEREST COMPUTED FROM
Income Tax	₱2,153,151.42	April 15, 2008
Final Withholding Tax	₱ 441,132.70	January 14, 2008

(b) Delinquency interest at the rate of 20% per annum on the total amount of ₱3,242,855.16 and on the 20% deficiency interests which have accrued as afore-mentioned in (a), computed from November 28, 2012 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED.

Petitioner states that it paid the amount of ₱2,691,439.28, representing the basic income tax and surcharge arising from the disallowance of the discrepancies in the salaries and wages expense. However, the said payment should not be construed as an admission of the validity of the income tax assessment but solely for the sole purpose of tolling the running of interest thereon. Moreover, it reserves the right to apply for refund of the amount paid in the event the Court nullifies the subject deficiency income tax assessment.

Petitioner maintains that it presented sufficient evidence explaining the discrepancies noted in the salaries and wages expense accounts appearing in its Audited Financial Statements and Alphalist. That being the case, the income tax assessment arising from such discrepancies should be cancelled and nullified.

Petitioner likewise believes that it is not liable for the deficiency Final Withholding Tax (FWT) assessment since the practice by lender-banks of withholding taxes on interest due them, also known as "self-withholding", is not necessarily prohibited by law. Allegedly, such practice is even sanctioned by respondent in BIR Ruling No. 016-09. Petitioner is also of the opinion that the certification issued by Citibank is a competent proof that the proper taxes on its interest payments to Citibank have been withheld and remitted to the BIR citing the case of *CityTrust Finance Corp. vs. Commissioner of Internal Revenue*[3], as authority therefor.

In any event, petitioner claims that it already paid the amount of ₱551,415.88, representing the basic Final Withholding Tax (FWT) and surcharge but at the same time states that such payment should not be deemed an acknowledgment of the validity of the FWT assessment but merely to suspend the accumulation of interest thereon. Accordingly, it reserves the right to seek refund of its payment of basic FWT and surcharge should the Court invalidates the deficiency FWT assessment.

In the event that the deficiency tax assessments are found to be valid, the deficiency and delinquency interests imposed thereon should be equitably reduced on the following grounds: (1) the partial payment of the basic deficiency income tax and FWT assessments, together with surcharges, amounting to ₱2,691,439.28 and ₱551,415.88,

---

[3] CTA Case No. 5518, July 18, 2000.

respectively, while not an admission of its liability, should warrant a reduction in the interests due on the alleged unpaid tax liabilities; (2) deficiency and delinquency interests cannot overlap; (3) deficiency interest should not be imposed on the deficiency FWT assessment; and (4) the basis of delinquency interest should not include any deficiency interest on the deficiency FWT assessment.

Anent its *Motion for Leave to Present Supplemental Evidence*, petitioner moves to re-open trial to present evidence of its payment of the basic income tax and applicable surcharge amounting to ₱2,691,439.28 and the basic FWT and applicable surcharge amounting to ₱551,415.88, attached as Annexes "A" and "B" to the present *motion*.

If reopening of the case is allowed, petitioner intends to present a witness to authenticate its supplemental evidence, including but not limited to the proofs of the above stated payment, allegedly to fully ventilate its case before the Court citing the case of *Ace/Saatchi Advertising, Inc. v. the Honorable Commissioner of Internal Revenue*[4], where the Court refused to accept the attached documents as sufficient proof of payment of taxes as they were not presented and offered in evidence.

After a careful examination of the record and meticulous evaluation of the arguments proffered by petitioner in the present incident unfold the fact that, except for the issue on the reduction of interest, the rest of the arguments raised have already been sufficiently discussed and passed upon by the Court in the assailed Decision of February 9, 2016. To restate the discussion is a waste of time and dwindling resources of the Court.

On the prayer to reduce the interests imposed by the Court, they shall be discussed as follows:

On the partial payment of the basic deficiency income tax and FWT assessments,

[4] CTA Case No. 8439, December 9, 2015.

together with surcharges, amounting to ₱2,691,439.28 and ₱551,415.88, respectively:

Necessarily, the partial payment made by petitioner should have the effect of reducing the interests to be imposed. In fact, petitioner admitted that it was the main reason for the said partial payment, i.e., to toll the running of the interest imposed thereon. However, there is no need to amend the dispositive portion of the assailed Decision as the computation of the imposable interests for both deficiency and delinquency is clearly provided therein, to wit:

> In addition, petitioner is **ORDERED TO PAY**:
>
> (a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income tax and FWT from the dates indicated below until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended:

	BASIC	DEFICIENCY INTEREST COMPUTED FROM
Income Tax	₱2,153,151.42	April 15, 2008
Final Withholding Tax	₱ 441,132.70	January 14, 2008

> (b) Delinquency interest at the rate of 20% per annum on the total amount of ₱3,242,855.16 and on the 20% deficiency interests which have accrued as afore-mentioned in (a), computed from November 28, 2012 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended. (*Underscoring supplied*)

On the ground that deficiency and delinquency interests cannot overlap:

This Court's *En Banc* has consistently held that the plain reading of Section 249 of the National Internal Revenue Code (NIRC) of 1997, as amended, justifies the simultaneous imposition of deficiency interest and delinquency interest. In fact, in the case of *Medicard Philippines, Inc. vs. CIR*[5], the Court *En Banc* held that there is no legal obstacle for the Court in Division to simultaneously impose the deficiency interest and the delinquency interest.

On the ground that deficiency interest should not be imposed on the deficiency FWT assessment:

Section 247(a) of the NIRC of 1997 is instructive, thus:

> "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."

Evidently, the additions under Chapter 1, Title X are applicable to all taxes imposed under the NIRC of 1997. Thus, contrary to petitioner's assertion, the deficiency interest imposed under Section 249(B) of the 1997 NIRC does not merely apply to deficiency income, deficiency estate and deficiency donor's taxes but extends to all taxes regardless of the title in which they are classified.

---

[5] CTA EB No. 1224, September 2, 2015.

On the ground that the basis of delinquency interest should not include any deficiency interest on the deficiency FWT assessment:

Again, deficiency interest imposed under Section 249(B) of the 1997 NIRC extends to all taxes regardless of the title in which they are classified. Hence, the deficiency interest on the deficiency FWT assessment should be included in the computation of the delinquency interest.

Finally, on petitioner's *Motion for Leave to Present Supplemental Evidence*, the same should be denied as the pieces of evidence proposed for presentation, *i.e.*, proofs of payment, have no bearing on the conflict or issues raised by the parties, hence, irrelevant as they already pertain to the satisfaction of the judgment rendered by the Court in the present case. In fine, petitioner's subsequent payment of its tax liabilities is but a satisfaction, albeit partial of the Court's judgment.

WHEREFORE, petitioner's *Motion for Partial Reconsideration (Re: Decision dated February 9, 2016)* with *Motion for Leave to Present Supplemental Evidence)* dated February 29, 2016, is hereby **DENIED**, for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice