REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	CTA EB No. 1169 (CTA CASE No. 7958)
- versus -	
ESS MANUFACTURING COMPANY, INC., Respondent.	CTA EB No. 1175 (CTA CASE No. 7958)
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ESS MANUFACTURING COMPANY, INC., Petitioner,	Present:
- versus -	DEL ROSARIO, *PJ* CASTAÑEDA, JR. BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, and RINGPIS-LIBAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUL 28 2016 4:25 p.m.

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RESOLUTION

FABON-VICTORINO, J.:

Submitted for Court action are the following incidents:

(1) Motion For Reconsideration (Of Decision Dated 30 May 2016) dated April 22, 2016 filed by ESS Manufacturing Company, Inc. (ESS);
(2) Motion For Reconsideration dated April 25, 2016 filed by the Commissioner of Internal Revenue (CIR); and
(3) Manifestation dated June 24, 2016 filed by ESS.

Both motions for reconsideration assail the Decision dated March 30, 2016 which denied both the Petition for Review dated May 29, 2014 of the CIR, as well as the Petition for Review dated June 4, 2014 of ESS, for lack of merit. In effect, the Court *En Banc* sustained the ruling of the Court in Division cancelling the assessment for deficiency Final Withholding Tax (FWT) and Final Withholding of VAT (FWTV) for the year 2005 but directing ESS to pay deficiency Expanded Withholding Tax (EWT), Withholding Tax on Compensation (WTC), and Fringe Benefits Tax (FBT) for the year 2005.

In asking for the reversal of the assailed Decision, ESS claims that (a) it was able to prove that it is not liable for deficiency EWT on Sub-con Works and Professional Fees; (b) nor is it liable for deficiency EWT on Trainee Pay as it correctly withheld 2% EWT on the same since the service providers were not rendering services as professionals subject to 10% EWT; (c) nor is it liable for deficiency FBT for the first three quarters of the year 2005 since the assessment had already prescribed; (d) the rice subsidy and gift checks given to its employees were *de minimis* benefits not subject to withholding tax; (e) it was error to impose deficiency interest on the deficiency taxes assessed because per Section 249(B) of the National Internal Revenue Code (NIRC), as amended, deficiency taxes may only be imposed on income tax, estate tax, and donor's tax which were not the taxes subject of this case; and, (f) delinquency interest cannot be imposed simultaneously with deficiency interest and should commence only from the time the taxpayer failed to pay the tax assessed until the time allowed for payment as indicated in the formal letter of demand.

Despite notice, the CIR failed to file comment or opposition to the Motion for Reconsideration of ESS.[1]

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[1] Records Verification dated June 22, 2016 of the Judicial Records Division of the Court

In her own motion, the CIR likewise seeks the reversal of the assailed Decision on the following grounds: (a) that prescription has not set in since ESS filed a false/fraudulent return thus, the 10-year prescriptive period under Section 222 of the NIRC applies; (b) that the period to assess was extended since ESS requested for reinvestigation and not for a mere reconsideration; (c) that the overpayment on rental made by ESS was an unaccounted expense deemed as an unreflected source of fund subject to EWT; (d) that ESS failed to substantiate the claim that it withheld 2% rate on income payments to certain contractors making the exclusion of the expense for Training and Conference from Salaries and Wages subject to withholding tax; (e) that the assessment for withholding tax on compensation on the accrual of Share Based Payment Transactions should be upheld since ESS failed to prove that this option granted to its employees for services rendered was merely accrual and had not been exercised by its employees; and (f) that the subject assessment enjoys the presumption of regularity.

By way of comment, ESS points out that the arguments raised by the CIR are mere reiteration squarely and extensively considered and resolved by the Court *En Banc* in the assailed Decision of May 30, 2016. There being no new issues or matters raised, the motion should be denied.

ESS also disputes the contention that it filed false withholding tax returns saying that it correctly withheld and remitted taxes due on its income payments to suppliers of goods and services in accordance with Section 34(k) of the NIRC. It correctly reflected the income tax due in its Income Tax and VAT Returns both filed at the proper time. ESS even claims that the CIR never raised issue on the correctness of the income taxes it declared in its returns.

Finally, the Court was correct in holding that its administrative protest was in the nature of a request for reconsideration and not for reinvestigation as there was no reception of additional evidence.

Except for the matter of deficiency and delinquency interest, it is evident that the arguments of the parties are but mere reiteration of their arguments which have been amply addressed in the Decision dated March 30, 2016. The

CIR merely lifted her arguments and refashioned them to appear fresh.

In other words, there is no compelling reason for the Court to modify, much less reverse its ruling in the Decision dated March 30, 2016.

Finally, as to the imposition of deficiency interest, Section 247(a) from Title X Statutory Offenses And Penalties, Chapter I Additions To The Tax, of the NIRC, as amended, is instructive, thus:

> Section 247. General Provisions. –
>
> (a) **<u>The additions to the tax or deficiency tax</u>** prescribed in this Chapter **<u>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. (emphasis ours)
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> x x x x x x x x x

On the other hand, Section 249, in the same Title and Chapter of the NIRC as with Section 247, imposes deficiency interest, and provides, as follows:

> 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 rules and regulations, from the date prescribed for payment until the amount is fully paid.
>
> (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.
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> x x x x x x x x x

The provisions on the matter are clear. It has been ruled that if the language of the law is clear, explicit and unequivocal, it admits no room for interpretation but merely application.[2]

The same applies to the argument that Section 249(B) imposes deficiency taxes only on income, estate, and donor's tax since these are the only taxes defined in the NIRC. ESS's construction is misplaced if not unwarranted given the clear and categorical declaration in Section 247 of the NIRC that the additions "in this Chapter" applies "to all taxes, fees and charges imposed in this Code."

Significantly, the Final Arbiter had spoken ruling that through Section 247(a) of the 1997 Tax Code, the imposition of deficiency interest encompasses failure to pay all taxes imposed in the Tax Code, thus:

> 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.
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> x x x x x x x x x
>
> 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. 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

[2] Miramar Fish Company, Inc., vs. Commissioner of Internal Revenue, G.R. No. 185432, June 04, 2014

> retroactive application by the legislative authority.[3]

It must be emphasized that the Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is; it is the final arbiter of any justifiable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.[4] In this case, the Supreme Court has spoken and this Court is bound to rule likewise.

Anent the simultaneous imposition of deficiency and delinquency interest, Section 249 of the NIRC provides, as follows:

> 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 rules and regulations, **from the date prescribed for payment until the amount is fully paid**.
>
> (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**.
>
> (C) Delinquency Interest. - In case of failure to pay:
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> (1) The amount of the tax due on any return required to be filed, or
> (2) The amount of the tax due for which no return is required, or

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[3] Paper Industries Corporation of the Philippines (PICOP) vs. Court of Appeals, Commissioner of Internal Revenue and Court of Tax Appeals, G.R. Nos. 106949-50 December 1, 1995; Commissioner of Internal Revenue vs. Paper Industries Corporation of the Philippines, The Court of Appeals and the Court of Tax Appeals, G.R. Nos. 106984-85, December 1, 1995

[4] Commissioner of Internal Revenue vs. Michel J. Lhuillier Pawnshop, Inc., G.R. No. 150947, July 15, 2003

> (3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, **<u>interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax.</u>**

The foregoing provides the legal basis in the simultaneous imposition of deficiency and delinquency interests reckoned from the date prescribed for their payment until full payment thereof.

WHEREFORE, the Motion for Reconsideration (Of Decision Dated 30 May 2016) dated April 22, 2016 filed by ESS Manufacturing Company, Inc., and the Motion for Reconsideration dated April 25, 2016 filed by the Commissioner of Internal Revenue are hereby DENIED, for lack of merit.

Further, the Manifestation dated June 24, 2016 filed by ESS, stating that on April 29, 2016, it paid through the Bureau of Internal Revenue Electronic Filing and Payment System the total amount of P5,088,956.54 constituting the deficiency taxes for the year 2005 subject of this case, including deficiency interest and surcharge, is hereby NOTED.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

(With Concurring and Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

(I join PJ's Concurring and Dissenting Opinion)
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 1169** (CTA CASE NO. 7958)
-versus-	
ESS MANUFACTURING COMPANY, INC., *Respondent.*	

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ESS MANUFACTURING COMPANY, INC., *Petitioner,*	**CTA EB NO. 1175** (CTA CASE NO. 7958)
	Present:
-versus-	**DEL ROSARIO**, *PJ,* **CASTAÑEDA, JR.**, **BAUTISTA**, **UY**, **CASANOVA**, **FABON-VICTORINO**, **MINDARO-GRULLA**, **COTANGCO-MANALASTAS**, *and* **RINGPIS-LIBAN**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUL 28 2016 4:25 p.m.

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CONCURRING & DISSENTING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* in denying the Motion for Reconsideration of the Commissioner of Internal Revenue ("CIR") considering that his arguments therein are mere reiterations of his previous contentions which have been sufficiently addressed in the March 30, 2016 Decision. With due respect, however, I maintain my Concurring and Dissenting Opinion on the March 30, 2016 Decision and further reiterate the admonition I made relative to the exercise of the power of taxation vis-à-vis the proprietary rights of taxpayers in *Commissioner of Internal Revenue v. Officemetro Philippines, Inc. (formerly REGUS CENTRES, INC.)*[1], which reads:

> **The power of taxation is sometimes called also the power to destroy. Therefore, it should be exercised with caution to minimize injury to the proprietary rights of a taxpayer. It must be exercised fairly, equally and uniformly, lest the tax collector kills the "hen that lays the golden egg."[2] Indeed, the imposition of 20% deficiency interest per annum on a tax not clearly within the context of the law, in addition to 20% delinquency interest per annum and a surcharge of 25% on the amount due under Section 248 of the NIRC of 1997, as amended, is too burdensome for a taxpayer to survive and continue its business affairs.**

In fine, I vote to DENY the Motion for Reconsideration filed by the Commissioner of Internal Revenue for lack of merit and PARTIALLY GRANT the Motion for Reconsideration (Of the Decision Dated 30 May 2016) filed by ESS Manufacturing Company, Inc. by deleting the imposition of 20% deficiency interest on the assessed Expanded Withholding Tax, Withholding Tax on Compensation and Fringe Benefit Tax.

ROMAN G. DEL ROSARIO
Presiding Justice

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[1] CTA EB Nos. 1210 & 1213, dated July 1, 2016.
[2] *Commissioner of Internal Revenue v. SM Prime Holdings, Inc.*, G.R. No. 183505, February 26, 2010, *citing Roxas v. Court of Tax Appeals*, G.R. No. L-25043, April 26, 1968.