REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

HOYA GLASS DISK PHILIPPINES, INC.
Respondent.

CTA *EB* NO. 1473
(CTA Case No. 8115)

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HOYA GLASS DISK PHILIPPINES, INC.
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA *EB* NO. 1474
(CTA Case No. 8115)

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

Promulgated:

NOV 15 2018 3:57 p.m.

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RESOLUTION

MANAHAN, *J.*:

This resolves Commissioner of Internal Revenue's (CIR) Motion for Partial Reconsideration,[1] filed on June 22, 2018. The CIR assails the Amended Decision of the Court *En Banc* dated June 4, 2018, which disposed of the case, as follows:

> **WHEREFORE**, the Motion for Reconsideration filed by Hoya Glass Disk Philippines, Inc. and the Motion for Partial Reconsideration filed by the

[1] *Rollo*, pp. 234-245.

Commissioner of Internal Revenue are **DENIED** for lack of merit.

The Decision dated March 8, 2016 in CTA Case No. 8115 is **AFFIRMED** with modifications on the computation of deficiency and delinquency interests pursuant to the TRAIN amendments. Accordingly, the dispositive portion of the March 8, 2016 Decision is modified to read as follows:

> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent's deficiency VAT assessment against petitioner for FY 2005 in the amount of ₱529,797.79 is hereby **CANCELLED AND WITHDRAWN**. However, respondent's deficiency IT and FWT assessments against petitioner for FY 2005 are hereby **AFFIRMED WITH MODIFICATIONS**. Petitioner is hereby **ORDERED TO PAY** respondent the amount of **THIRTY MILLION SIX HUNDRED NINETY-EIGHT THOUSAND EIGHT HUNDRED FORTY-SIX PESOS AND 29/100 (₱30,698,846.29)** representing basic deficiency IT and FWT and the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended.
>
> In addition, petitioner is hereby **ORDERED TO PAY** deficiency interest in the amount of **₱62,435,716.88** and delinquency interest in the amount of **₱140,901,417.92** imposed under Section 249(B) and (C) of the NIRC of 1997, as amended, computed until December 31, 2017, as follows:

	Income Tax	FWT	Total
Basic	₱ 903,148.69	₱ 23,655,928.34	₱ 24,559,077.03
25% Surcharge	225,787.17	5,913,982.09	6,139,769.26
TOTAL	**₱1,128,935.86**	**₱ 29,569,910.43**	**₱ 30,698,846.29**
Deficiency Interest			
Income Tax - 7/15/2005[2] to 12/31/2017 (₱903,148.69 x 20% x 12.4712 yrs.)	2,252,669.59		
Final Withholding Tax - 4/15/2005[3] to 12/31/2017 (₱23,655,928.34 x 20% x 12.7205 yrs.)		60,183,047.29	**62,435,716.88**
Subtotal	₱ 3,381,605.45	₱ 89,752,957.72	**₱ 93,134,563.17**

[2] Section 77(B) of the NIRC of 1997, as amended.
[3] Sec. 2.58 of Revenue Regulations No. 2-98, as amended by Sec. 5 of Revenue Regulations No. 17-03.

Delinquency Interest			
Income Tax - 6/10/2010[4] to 12/31/2017 (₱3,381,605.45 x 20% x 7.5644 yrs.)	5,115,963.25		
Final Withholding Tax - 6/10/2010[5] to 12/31/2017 (₱89,752,957.71 x 20% x 7.5644 yrs.)		135,785,454.67	**140,901,417.92**
TOTAL	**₱8,497,568.70**	**₱225,538,412.39**	**₱234,035,981.09**

Furthermore, petitioner should be held liable to pay delinquency interest at the rate of 12%, which is double the legal interest rate for loans or forbearance of any money, on the total unpaid amount including basic deficiency income tax and final withholding tax, surcharge and deficiency interest as computed above in the aggregate amount of ₱93,134,563.17, computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN).

SO ORDERED.[6]

The CIR states that the Court erred in ruling that his right to assess for deficiency Final Withholding Tax (FWT) covering the period April to August 2014 has prescribed. The CIR argues that the assessment is not for deficiency FWT as a taxpayer, but as a penalty on an agent of the government for non-withholding and non-remittance, or for failure to comply with the withholding tax provision. Being collected as a penalty, the assessment for the failure to withhold the FWT is not within the ambit of the prescriptive period under Section 203 of the National Internal Revenue Code of 1997, as amended (NIRC).

The CIR further states that the provisions of the TRAIN[7] Law cannot be applied retroactively as there is no declaration in its provisions that gives retroactive effect. Thus, the provisions of the NIRC on interest shall prevail and be imposed on the unpaid assessment until the same is fully paid.

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[4] Date of Receipt of the Letter from BIR Regional Director Rodita B. Galanto dated April 29, 2010, Exhibit "K", CTA Case No. 8115, Docket, Vol. 4, pp. 1764-1766.
[5] *Id.*
[6] *Rollo*, pp. 218-220.
[7] Republic Act No. 10963, or Tax Reform for Acceleration and Inclusion, effective January 1, 2018.

Hoya Glass Disk Philippines, Inc. (Hoya Glass) filed its *Comment on the Motion for Partial Reconsideration dated June 22, 2018,*[8] on September 10, 2018. In its Comment, Hoya Glass argues that the subject Motion is a prohibited second motion for reconsideration and should be a ground for its outright denial.

Hoya Glass further argues that the Court correctly affirmed that the CIR's right to assess Hoya Glass for final withholding tax for the months of April to August 2004 has prescribed by the time that the first waiver was executed on September 26, 2007.

Finally, Hoya Glass states that the revisions introduced by the TRAIN Law to Section 249 of the NIRC should be applied to the instant case.

The motion is denied.

There is no merit to the CIR's argument that the right to assess deficiency FWT has not prescribed considering that Hoya Glass is not being assessed for deficiency FWT as a taxpayer, but rather, is being penalized as an agent of the government who failed to comply with its legally mandated duty to withhold and remit taxes. The CIR states that withholding tax assessments are not internal revenue taxes due from the respondent as a statutory taxpayer but rather such assessments were issued for failure of respondent to withhold the correct taxes it is duty bound to collect as a withholding agent. This obligation of respondent to withhold and remit the correct tax is its duty as an agent of the government in the collection of taxes and not as a statutory taxpayer.

This issue has been resolved by the CTA *En Banc*, as follows:

> On the theory that assessment for WTC, EWT, FBT, and FWT are not internal revenue taxes, *a fortiori* not covered by the 3-year period to assess under Section 203 of the NIRC, as amended, hence, may be issued at any time, suffice it to say that the NIRC, as amended, the law administered by the BIR says otherwise.

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[8] *Rollo*, pp. 256-268.

Several provisions of the NIRC, as amended, indicate that WTC, EWT, FBT and FWT are internal revenue taxes imposed and collected by the BIR. Foremost of these provisions is Section 21 of the NIRC of 1997, as amended, which enumerates the taxes deemed as national internal revenue taxes, thus:

> SEC. 21. Sources of Revenue. – The following taxes, fees and charges are deemed to be national internal revenue taxes:
>
> (a) Income tax;
>
> (b) Estate and donor's tax;
>
> (c) Value-Added Tax;
>
> (d) Other percentage taxes;
>
> (e) Excise taxes;
>
> (f) Documentary stamp taxes; and
>
> (g) Such other taxes as are or hereafter may be imposed and collected by the Bureau of Internal Revenue.

The other provisions indicating that WTC, EWT, FBT and FWT are internal revenue taxes are Sections 33, 57 to 59, 79 to 83 of the same Tax Code.

xxx xxx xxx

By insisting that the assessed amounts are not internal revenue taxes, petitioner conveniently ignores his own directive to the revenue officers named in the LOA he issued against respondent. The Letter of Authority xxx specifically states, thus: "The bearer(s), hereof, x x x is/are authorized to examine your books of accounts and other accounting records for <u>All Internal Revenue Taxes</u> x x x.

xxx xxx xxx

There is also no merit to petitioner's allegation that the assessment against respondent is deemed an imposition of penalties for the latter's failure to withhold. The computation in the PAN, FLD/FAN, and FDDA issued by petitioner against respondent clearly shows the contrary. There is likewise nothing in the notices saying that the amount assessed represents the

> penalties for failure of respondent to withhold portions of its payments as taxes for remittance to the BIR. To insist on this theory is to exact taxes from respondent without informing it of the nature of the imposition in violation of its right to due process. Elementary is the rule that taxpayers must be informed in writing of the law and the facts upon which a tax assessment is based; otherwise, the assessment is void. This is enshrined in Section 228 of the NIRC, as amended.[9]

Based on the foregoing, the three-year prescriptive period also applies to assessments for deficiency FWT.

As to the CIR's argument regarding the application of the TRAIN law amendments on interest, suffice it to say that the BIR has already issued Revenue Regulations (RR) No. 21-2018[10] which implements the provisions on interest.

WHEREFORE, the Motion for Partial Reconsideration filed by the Commissioner of Internal Revenue is **DENIED** for lack of merit.

In view of the implementation of the provision on interest under Section 249 by RR No. 21-2018, the computation of deficiency and delinquency interest is clarified, as follows:

		Income Tax	**FWT**	**Total**
Basic Tax Due		₱ 903,148.69	₱ 23,655,928.34	₱ 24,559,077.03
Add:	25% Surcharge	225,787.17	5,913,982.09	6,139,769.26
	20% Deficiency Interest from 07/15/2005 to 05/04/09 *[₱903,148.69 x 20% x 1,390/365 days]*	687,877.63		687,877.63
	20% Deficiency Interest from 04/20/2005 to 05/4/09 *[₱23,655,928.34 x 20% x 1,476/365 days]*		19,132,137.11	19,132,137.11
Total Amount Due as of May 4, 2009		**₱1,816,813.49**	**₱ 48,702,047.54**	**₱ 50,518,861.03**
Add:	20% Deficiency Interest from 05/5/2009 to 12/31/17 *[₱903,148.69 x 20% x 3,163/365 days]*	1,565,292.77		1,366,352.62
	20% Deficiency Interest from 05/04/09 to 12/31/17 *[₱23,655,928.34 x 20% x 3163/365 days]*		40,999,288.41	40,999,288.41

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[9] *Commissioner of Internal Revenue v. AB Capital and Investment Corp.*, CTA EB Case No. 1336, May 12, 2017.

[10] Regulations implementing Section 249 (Interest) of the National Internal Revenue Code (NIRC) of 1997, as amended under Section 75 of the Republic Act (RA) No. 10963 or the "Tax Reform for Acceleration and Inclusion (TRAIN Law)", September 14, 2018.

	20% Delinquency Interest from 05/5/2009 to 12/31/17			
	[₱1,816,813.49 x 20% x 3,163/365 days]	3,148,811.55		3,048,838.06
	[₱48,702,047.54 x 20% x 3,163/365 days]		84,407,987.05	84,407,987.05
Total Amount Due as of December 31, 2017		**₱6,530,917.82**	**₱174,109,322.99**	**₱180,640,240.81**

In addition, Hoya Glass Disk Philippines, Inc. is ordered to pay delinquency interest at the rate of twelve percent (12%), which is double the legal interest rate for loans or forbearance of any money, on the total amount due of Php50,518,861.03 as of May 4, 2009, as determined above, computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act (RA) No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN), as implemented by RR No. 21-2018.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

(On Leave)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

(Inhibited)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice