REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner, -versus- **ASIAN TRANSMISSION CORPORATION,** Respondent.	**CTA EB NO. 1519** **(CTA Case No. 8366)** **Present:** **Del Rosario,** *P.J.,* **Castañeda, Jr.,** **Uy,** **Fabon-Victorino,** **Mindaro-Grulla,** **Ringpis-Liban,** ***and*** **Manahan,** *JJ.* **Promulgated:** SEP 24 2018

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3:24 p.m.

AMENDED DECISION

RINGPIS-LIBAN, J.:

Before the Court are the following:

1) Petitioner Commissioner of Internal Revenue's "Motion for Partial Reconsideration Re: Decision dated December 15, 2017";
2) Respondent Asian Transmission Corporation's "Partial Motion for Reconsideration (of the Decision dated 15 December 2017)"; and
3) Respondent's "Comment/Opposition [To Petitioner's Motion for Partial Reconsideration dated 19 January 2018]."

The petitioner's motion is based on the following grounds:

1) The Court erred in ruling that the unaccounted compensation in the amount of P6,096,409.13 be subjected to withholding tax compensation based on the graduated rates of 5% to 32%; and
2) The Court erred in cancelling compromise penalty for deficiency withholding tax on compensation in the amount of P50,000.00

Petitioner argues that there was a discrepancy in respondent's salaries in the Financial Statements and in the alphalist which must be subjected to withholding tax; that the assessment issued by the BIR on the deficiency withholding tax is proper; that respondent was given the opportunity to present the list of its employees in order that the correct tax rate will be computed; that since the employees to whom the compensation pertained to were not individually identified, the maximum tax rate of 32% must be used; and that the cancellation of compromise penalty in the amount of P50,000.00 is erroneous because its imposition is warranted under Section 250 of the NIRC.

The respondent's "Partial Motion for Reconsideration," is based on the ground that it cannot be held liable for deficiency interest on the alleged deficiency Withholding Tax on Compensation. Respondent claims that the deficiency Withholding Tax on Compensation is not covered by Section 249 (B) of the NIRC, as amended, which imposes deficiency interest.

After consideration, the Court *En Banc* resolves to deny both motions for reconsideration.

The Court *En Banc* reviewed the grounds relied upon by petitioner in support of his Motion for Reconsideration but finds no cogent reason to grant the same. Petitioner merely reiterated the issues and grounds relied upon in his Petition for Review. The arguments presented in his motion were already passed upon, discussed and judiciously resolved in the assailed Decision dated December 15, 2017.

To reiterate, the unaccounted compensation in the amount of P16,096,409.13 should be subjected to withholding tax on compensation based on the graduated tax rates of 5% to 32%. Since the employees to who the compensation pertained to were not individually identified, the appropriate tax rate to be used should be the effective rate computed based on the total withholding tax on compensation paid divided by the total amount of taxable gross compensation reported during the taxable year 2001.

The effective tax rate is computed as follows:

Total Withholding Tax on Compensation		₱34,803,195.66
Total Taxable Gross Compensation	÷	₱175,094,802.20
Effective Tax Rate		**19.88%**

Accordingly, petitioner is liable to pay basic deficiency withholding on compensation for taxable year 2001 in the amount of P3,199,966.14, computed in this manner:

Amount subject to withholding tax on compensation	₱ 16,096,409.13
Multiply by effective tax rate	19.88 %
Basic deficiency withholding tax on compensation	**₱ 3,199,966.14**

With regard to the cancellation of compromise penalty, the Court *En Banc* reiterates its ruling that the imposition of compromise penalty applies in the settlement of criminal liability. It should not be imposed on the taxpayer in the event that the taxpayer refuses to pay.

As regards respondent's motion, the Court *En Banc* finds respondent's argument without merit. If deficiency interest is applicable only for deficiencies that were defined in the NIRC, then it would appear that "deficiency" exists only for these taxes, i.e. income tax, estate tax and donor's tax. If that's the case, then the BIR cannot assess a taxpayer for "deficiency" on taxes other than income, estate and donor's tax. This is not the intention of the law.

Section 247 of the 1997 NIRC provides:

> *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.

A perusal of the above-quoted provision show that the law does not limit the additions to tax to only three types of internal revenue taxes, i.e. income tax (Title II), estate tax (Title III) and donor's tax (Title III). Hence, the additions to tax extend to all taxes regardless of the title under which they are classified. The imposition of additional taxes also applies to value-added tax (Title IV), other percentage taxes (Title V), excise tax (Title VI) and documentary stamp tax (Title VII).

In view hereof, the Court *En Banc* finds no reason to reverse its ruling in the assailed Decision. However, the Court finds the necessity of modifying the dispositive portion of the assailed Decision, with regard to the imposition of the relevant interest on the final amount adjudged to be payable in this case in order to conform to the new provisions of Republic Act No. 10963, or more commonly known as the TRAIN Law, which took effect on January 1, 2018. The amended provision of Section 249 reads as follows:

> "Section 249. Interest. –
>
> (A) In General. There shall be assessed and collected on any

> **LEGAL INTEREST RATE FOR LOANS OR FORBEARANCE OF ANY MONEY IN THE ABSENCE OF ANY EXPRESS STIPULATION AS SET BY THE BANGKO SENTRAL NG PILIPINAS,** from the date prescribed for payment until the amount is fully paid, **PROVIDED THAT IN NO CASE SHALL THE DEFICIENCY AND DELINQUENCY INTEREST PRESCRIBED UNDER SUBSECTION (b) AND (c) HEREOF, BE IMPOSED SIMULTANEOUSLY.**'
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> (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, **OR UPON ISSUANCE OF A NOTICE AND DEMAND BY THE COMMISSIONER OF INTERNAL REVENUE, WHICHEVER COMES EARLIER.**" *(With emphasis on the amended provisions)*

The foregoing provision will be applied only on the portion of interest that will run starting January 1, 2018 onwards, as discussed in our recently decided case of *Moog Controls Corporation- Philippine Branch vs. Commissioner of Internal Revenue*,[1] which provides:

> "The clear wordings of the aforequoted law is that the deficiency interest shall run from either of the following dates (whichever will come earlier):
>
> 1. The date prescribed for payment;
> 2. The issuance of a notice and demand by the Commissioner of Internal Revenue (CIR).
>
> The end date of the charging of the interest would be until full payment thereof and since the full payment will only be possible after petitioner is apprised by this Court of its tax liabilities by reason of the latter's judgment on January 3, 2018, we are inclined to agree with the petitioners that that provisions of the TRAIN law should *partially* apply to the instant case. There is no question that the tax liabilities or deficiencies of petitioner became due before the amendment of Section 249 of the 1997 NIRC by virtue of the TRAIN LAW but it is also quite plain to see that the full payment of the taxes will only be accomplished after the decision of this Court on January 3, 2018 when the TRAIN law has already come into effect. Section 87 of the

> TRAIN law provides for the date of its effectivity as follows:
>
> Section 87. Effectivity. This Act shall take effect on January 1, 2018 following its complete publication in the Official Gazette or in at least one (1) newspaper of general circulation.' (Emphasis supplied)"

WHEREFORE, in view of the foregoing considerations, the petitioner's "Motion for Partial Reconsideration Re: Decision dated December 15, 2017" and the respondent's "Partial Motion for Reconsideration (of the Decision dated 15 December 2017)" are **DENIED** for lack of merit. The assailed Decision dated December 15, 2017 is **AFFIRMED with MODIFICATION.**

Accordingly, respondent Asian Transmission Corporation is **ORDERED TO PAY** petitioner Commissioner of Internal Revenue the amount of P3,999,957.67 representing basic deficiency Withholding Tax on Compensation and the 25% surcharge under Section 248(3) of the NIRC of 1997, broken down as follows:

Basic Deficiency Withholding Tax on Compensation	P 3,199,966.14
25% Surcharge	799,991.53
Total	**P 3,999,957.67**

In addition, respondent is ordered to pay:

a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency Withholding Tax on Compensation of P3,199,966.14, computed from January 15, 2002 **until December 31, 2017** pursuant to Section 249(B) of the NIRC of 1997, as amended.

b) Delinquency interest at the rate of 20% per annum in the total amount of P3,999,957.67, and on the 20% deficiency interest which have accrued as aforestated in (a), computed from July 31, 2011 **until December 31, 2017** pursuant to Section 249 (C) of the NIRC of 1997, as amended; and

c) Delinquency interest at the rate of 12% on the unpaid amount (basic tax plus surcharge from January 1, 2018 until the amount is fully paid pursuant to the relevant provisions of the TRAIN LAW.[2]

[2] Moog Controls Corporation Philippine Branch vs. Commissioner of Internal Revenue, CTA ...

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

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

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

(On Official Business)
CIELITO N. MINDARO-GRULLA
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

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COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 1519** (CTA Case No. 8366)
	Present:
- versus -	DEL ROSARIO, *PJ,* CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, *and* MANAHAN, *JJ.*
ASIAN TRANSMISSION CORPORATION, Respondent.	Promulgated: SEP 24 2018 3:24 p.m.

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CONCURRING AND DISSENTING OPINION

***DEL ROSARIO, P.J.*:**

I concur with the *ponencia* in denying petitioner's **Motion for Partial Reconsideration Re: Decision dated December 15, 2017** and respondent's **Partial Motion for Reconsideration (of the Decision dated 15 December 2017)**.

With due respect, I submit that the imposable deficiency interest and delinquency interest on respondent's deficiency withholding tax on compensation (WTC) liability should be recomputed in view of the effectivity of Republic Act No. 10963 (TRAIN Law) on January 1, 2018 vis-à-vis Revenue Regulations (RR) No. 21-2018[1] dated September 14, 2018, implementing Section 249 (Interest) of the National Internal Revenue Code (NIRC) of 1997, as amended under Section 75 of the TRAIN Law.

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[1] Subject: 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

All told, I **VOTE** to:

(i) **DENY** petitioner's Motion for Partial Reconsideration Re: Decision dated December 15, 2017 and respondent's Partial Motion for Reconsideration (of the Decision dated 15 December 2017);

(ii) **AFFIRM** with **MODIFICATION** the Decision of the Court in Division and **ORDER** respondent Asian Transmission Corporation to **PAY** the **Bureau of Internal Revenue** the following amount:

Basic Deficiency - WTC	₱	3,199,966.14
Add: 25% Surcharge		799,991.54
Deficiency Interest from 1/15/02 to 12/31/02 (₱3,199,966.14 x 20% x 351/365 days)		615,445.54
Deficiency Interest from 1/1/03 to 12/31/06 (₱3,199,966.14 x 20% x 4 years)		2,559,972.91
Deficiency Interest from 1/1/07 to 3/15/07 (₱3,199,966.14 x 20% x 74/365 days)		129,752.05
Total Amount Due, March 15, 2007 (Due Date of Payment per Assessment Notice for WTC dated April 25, 2007)	₱	7,305,128.18
Add: Deficiency Interest		
From 3/16/07 to 12/31/07 (₱3,199,966.14.00 x 20% x 291/365 days)	₱	510,241.18
From 1/1/08 to 12/31/17 (₱3,199,966.14 x 20% x 10 years)		6,399,932.28
Subtotal, until December 31, 2017	₱	6,910,173.46
Add: Delinquency Interest		
From 3/16/07 to 12/31/07 (**₱7,305,128.18** x 20% x 291/365 days)	₱	1,164,817.70
From 1/1/08 to 12/31/17 (₱7,305,128.18 x 20% x 10 years)		14,610,256.36
Subtotal, December 31, 2017	₱	15,775,074.06
Total Amount Due, December 31, 2017	₱	29,990,375.70
Add: Deliquency Interest (**₱7,305,128.18** x 12%) until full date of payment or ₱2,401.69 per day until full date of payment		

ROMAN G. DEL ROSARIO
Presiding Justice