REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

RITEGROUP INCORPORATED,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8651

Members:

BAUTISTA, *Chairperson,*
FABON-VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

JUN 29 2017 2:00 p.m.

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AMENDED DECISION

RINGPIS-LIBAN, *J.*:

Before this Court are:

1. petitioner's **Motion for Reconsideration (Re: Decision dated 25 January 2017)**, filed on February 13, 2017, without respondent's comment despite due notice as per Records Verification dated March 14, 2017; and

2. respondent's **Motion for Reconsideration (On the Decision of the Honorable Court dated 25 January 2017)**, filed on February 10, 2017, with petitioner's **Comment/Opposition (To: Respondent's Motion for Reconsideration)**, filed on March 16, 2017.

Both petitioner and respondent seek reconsideration of the Court's Decision dated January 25, 2017, which upheld the assessments for deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), and fringe benefits tax (FBT) but with modifications in the amount totaling ₱2,850,792.73 for taxable year (TY) 2008.

Respondent's Motion for Reconsideration

Respondent assails the aforesaid Decision on the following grounds:

1. The Assessment Notices issued to petitioner had already become final, executory and demandable;
2. Petitioner's purchases were not fully supported by documentary evidence;
3. Petitioner's unaccounted expense is to be considered as an unaccounted source of cash; and
4. The Petitioner is liable for deficiency value-added tax by reason of the disallowance of input tax on account of disallowed purchases.

The first issue raised by respondent is a mere reiteration of the argument already presented during trial which had been amply discussed in the assailed Decision. Thus, the Court need not address the matter.

As to the second issue, respondent avers that the purchases claimed by petitioner were not supported by sufficient evidence. Allegedly, petitioner failed to prove that the expenses it claimed are ordinary and necessary expenses incurred in the course of its business. Respondent likewise claims that the entire amount of ₱4,955,880.78 classified by the Independent Certified Public Accountant (ICPA) as purchases with supporting documents as per Exhibit "P-67" are mere photocopies of Import Entry Declarations (IEDs).

To recall, the basis of respondent's assessment on the disallowed purchases is the issue of substantiation. Although respondent has never raised the issue of whether said purchases were ordinary and necessary in the course of petitioner's business, Section 34(A)(1)(b) of the National Internal Revenue Code (NIRC) of 1997, as amended, provides the substantiation requirements, to wit:

> "SEC. 34. **Deductions from Gross Income.** – x x x
>
> (A) *Expenses.* -
>
> (1) *Ordinary and Necessary Trade, Business or Professional Expenses.* -
>
> xxx xxx xxx
>
> (b) *Substantiation Requirements.* – No deduction from gross income shall be allowed under Subsection (A) hereof unless the taxpayer shall substantiate with sufficient evidence, such as official receipts or other adequate records: (i) the amount of the expense being deducted, and (ii) the

> direct connection or relation of the expense being deducted to the development, management, operation and/or conduct of the trade, business or profession of the taxpayer."

Records show that petitioner submitted various sales invoices, official receipts (ORs), Bureau of Customs (BOC) Import Entry and Internal Revenue Declarations (IEIRDs), IEDs and other documents[1] in support of its purchases. These documents reflect petitioner's purchases of medical instruments, equipments and supplies which were incurred in carrying out petitioner's business of supplying various medical and laboratory products[2].

With regard to the amount of ₱4,955,880.78 which was identified as 'importation with IED-photocopy only' and classified under allowed purchases with supporting documents by the ICPA as per Exhibit "P-67", the Court did not disallow the entire amount since some of the amounts included therein were found to be supported by other documents, such as original Land Bank of the Philippines (LBP) OR or Bureau of Customs (BOC) OR as proof of payment thereof. Accordingly, the Court verified the amounts included therein and properly disallowed only those which were not corroborated by other documentary evidence.

Anent the third issue, respondent argues that a comparison of the alphalist and the financial statement of petitioner shows a discrepancy in the Legal and Notarial Expense Account and the Rent Expense Account such that the amounts appearing in the Alphalist are much greater than that declared by petitioner in its Financial Statement. Respondent posits that such discrepancies are considered undeclared expenses of petitioner which must be substantiated by documentary evidence pursuant to the provisions of Section 34 of the NIRC of 1997, as amended. Respondent maintains that in the absence of the required supporting documents, the said expenses should be disallowed as items of deduction from gross income.

Respondent's assertion is misplaced.

As correctly found by respondent, the subject expenses were undeclared by petitioner. Neverthelsess, since these were not claimed as deductions from the reported taxable gross income in petitioner's 2008 Annual Income Tax Return, the same is not required to comply with the substantiation requirements under Section 34 of the NIRC of 1997, as amended. Thus, the deficiency income tax assessment on the undeclared expenses has no leg to stand on.

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1 Exhibits "P-32" to "P-32.267", "P-35" to "P-35.14", "P-36" to "P-36.23", "P-37" to "P-37.9", and "P-39" to "P-39.131B".

2 Decision, The Facts, docket, vol. 6, p. 3622.

Moreover, it must be noted that the three (3) elements on the imposition of income tax are: (1) there must be gain or profit, (2) that the gain or profit is realized or received, actually or constructively, and (3) it is not exempted by law or treaty from income tax.[3] Income tax is assessed on income received from any property, activity or service.[4]

Thus, in the imposition or assessment of income tax, there is income, and such income is realized or received by the taxpayer. In this case, the said elements are not present. Respondent merely imposed income tax on petitioner simply because there was allegedly an undeclared or unaccounted expenses.

It must be emphasized that for income tax purposes, a taxpayer is free to deduct from its gross income a lesser amount of expenses, or not claim any deduction at all. What is prohibited by the income tax law is to claim a deduction beyond the amount authorized therein.[5] As such, even granting that there is an undeclared expense, the same is not prohibited by law.

The last issue pertains to the input VAT corresponding to the ₱4,955,880.78 purchases supported by photocopies of IEDs. Respondent avers that the disallowance of said purchases would reduce the input taxes claimed by petitioner as credits from its output tax which would consequently result to a deficiency VAT.

Since respondent's assessed disallowance of ₱4,955,880.78 was reduced by the Court in the assailed Decision, the latter properly considered the input VAT corresponding only to the remaining disallowed purchases as reduction to petitioner's credits against its output tax.

In fine, there is no cogent reason for the Court to reverse its ruling on the matters raised by respondent.

Petitioner's Motion for Reconsideration

I. Petitioner seeks this Court's exercise of equity in reconsidering the disallowance of certain purchases.

Petitioner seeks reconsideration on the following disallowances, among others, sustained by the Court in the assailed Decision:

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3 *Commissioner of Internal Revenue vs. Court of Appeals,* G.R. No. 108576, January 20, 1999.
4 *Supra.*
5 *Commissioner of Internal Revenue vs. Phoenix Assurance Co. Ltd.,* G.R. No. L-19727, May 20, 1965.

a. Importations with photocopied IEDs	Annex "D",Exhibit "P-67" (Docket,Vol.5, p. 3032)	
Supported by Land Bank of the Philippines (LBP) OR but VAT amount was not separately shown; amount of purchase cannot be determined therefrom	"P-36.A"	₱ 333,321.43
Supported by LBP OR but VAT amount was not separately shown; amount of purchase cannot be determined therefrom	"P-36.2.D"	425,956.39
Supported by LBP OR but VAT amount was not separately shown; amount of purchase cannot be determined therefrom	"P-36.3.B"	113,907.69
Supported by LBP OR but VAT amount was not separately shown; amount of purchase cannot be determined therefrom	"P-36.4.B"	50,026.10
Supported by photocopies of IEDs only	"P-36.8" to "P-36.8.D"	621,436.54
Supported by LBPOR but VAT amount was not separately shown; amount of purchase cannot be determined therefrom	"P-36.20.B"	162,813.40
Supported by LBP OR but VAT amount was not separately shown; amount of purchase cannot be determined therefrom	"P-36.21-B"	165,768.14
Supported by photocopies of IEDs and copy of computation only	"P-36.23" to "P-26.23.A"	50,957.86
b. Importation with original copies of BOC Form (Official Receipt)	Annex "E" of Exhibit "P-67" (Brown Envelope)	
Unreadable BOC OR but with LBP OR; amount of purchase based on LBP OR (₱154,133.33) is lower the amount indicated per schedule (₱221,533.33) /overclaim	"P-37" to "P-37.A"	₱ 67,400.00
c. Other importation charges	Annex "G" of Exhibit "P-67" (Brown Envelope)	
Supported by unreadable invoice	"P-39.10"	3,649.56
Supported by OR issued not in the name of petitioner	"P-39.75"	2,634.45
Supported by documents dated outside the taxable year 2008	"P-39.106" to "P-39.106.B"	12,995.37
d. Local purchases for resale	Annex "F" of Exhibit "P-67" (Brown Envelope)	
Supported by document with unreadable details	"P-32.20"	₱ 24,720.00
Supported by document with unreadable details	"P-32.53"	32,208.00
Supported by document with unreadable details	"P-32.75"	43,323.25
Supported by VAT invoice not dated and without TIN of petitioner	"P-32.101"	4,944.00
Supported by VAT invoice with unreadable date and without TIN of petitioner	"P-32.165"	19,776.00
Supported by document with unreadable details	"P-32.232"	4,187.31
Supported by document with unreadable details	"P-32.240"	28,800.00

a. Importations with photocopied IEDs

Petitioner contends that the "importations supported by LBP OR but VAT amount was not separately shown" were corroborated by the copies of IEDs that reveal the breakdown of the relevant amounts, particularly, the landed costs of importation representing the amounts of purchases.

As to the "importations disallowed for being supported only by photocopies of IEDs", petitioner alleges that the original IEDs were originally in the possession of petitioner's brokers who directly dealt with the Bureau of Customs (BOC) for the importation of these purchases; and despite diligent efforts, petitioner nor the brokers could no longer locate the originals. Petitioner invokes Section 3, Rule 130 of the Rules of Court, stating that one recognized exception to the admissibility of evidence other than original document is when the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror.

Petitioner further argues that these documents (photocopied IEDs) were uncontroverted throughout the trial. Petitioner states that Section 36 Rule 132 of the Rules of Court provides three (3) days after notice of the offer within which to object an offer of evidence in writing. When a party fails to interpose a timely objection to evidence at the time they were offered in evidence, such objection shall be considered as waived. Petitioner also cites the case of *Asian Construction and Development Corporation vs. COMFAC Corporation*[6], wherein the Supreme Court said that failure to object to the offered evidence renders it admissible, and the court cannot, on its own, disregard such evidence.

Petitioner's allegations are untenable.

The supporting photocopies IEDs cannot be admitted in evidence for failure to comply with the provision of Section 5[7], Rule 130 of the Rules of Court.

Section 3, Rule 129 of the Revised Rules on Evidence specifically provides that when the subject of inquiry is the contents of the document, no evidence shall be admissible other than the original thereof. The purpose of the rule requiring the production by the offeror of the best evidence is the prevention of fraud, because if a party is in possession of such evidence and withholds it and presents inferior or secondary evidence in its place, the presumption is that the latter evidence is withheld from the court and the adverse party for a fraudulent or devious purpose which its production would expose and defeat. As long as the original evidence can be had, the court should not receive in evidence that which is substitutionary in nature, such as photocopies, in the absence of any clear showing that the original writing has been lost or destroyed or cannot be produced in court. Such photocopies must be disregarded, being inadmissible evidence and barren of probative weight.[8]

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6 G.R. No. 163915, October 12, 2006.

7 **SEC. 5.** *When original document is unavailable.* – When the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated.

8 *Magdayao vs. People*, G.R. No. 152881, August 17, 2004.

Further, a secondary evidence is admissible only upon compliance with Rule 130, Section 5, which states that: when the original has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated. Accordingly, the offeror of the secondary evidence is burdened to satisfactorily prove the predicates thereof, namely: (1) the execution or existence of the original; (2) the loss and destruction of the original or its non-production in court; and (3) the unavailability of the original is not due to bad faith on the part of the proponent/offeror. Proof of the due execution of the document and its subsequent loss would constitute the basis for the introduction of secondary evidence.[9]

The Court emphasizes that petitioner did not present any evidence to satisfactorily prove the due execution of the IEDs and their subsequent loss.

Notably, the documents that allegedly corroborate the LBP ORs were also photocopies of IEDs. Since the LBP ORs do not separately indicate the amount of VAT and no other document was presented from which the amount of purchase can be determined, the Court's disallowance of the subject importations was proper.

As to the ₱621,436.54 purchases supported only by photocopies of IEDs, petitioner has attached to its motion new evidence such as computation sheet, debit advice and letter authority to debit to corroborate the said purchases. However, such evidence cannot be admitted for being forgotten evidence.

Forgotten evidence, not presented during the trial nor formally offered, is not newly found evidence that merits a new trial. It goes against the orderly administration of justice to allow a party to submit forgotten evidence which it could have offered with the exercise of ordinary diligence, more so when a decision has already been rendered.[10]

Thus, there would be no justifying reason to disturb the Court's ruling on this particular assessment.

Anent the ₱50,957.86 purchases supported only by photocopies of IEDs and copy of computation under Exhibits "P-36.23" to "P-26.23.A", petitioner asserts that these are also supported by original LBP OR covering the VAT and duties payment, earlier marked as Exhibit "P-36.22D". After a second look on

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[9] *Dantis vs. Maghinang, Jr.*, G.R. No. 191696, April 10, 2013.

[10] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008.

these exhibits, the Court reconsiders the said amount, being supported by original LBP OR[11] and computation of duties and taxes[12].

Hence, out of the total disallowed purchases under importations with photocopied IEDs in the assailed Decision, only the amount of ₱50,957.86 shall be reconsidered and stricken down.

b. Importation with original copies of BOC Form (Official Receipt)

Petitioner pleads for the Court to disregard the LBP OR (Exh. "P-37.A") as it is actually dated September 5, 2007, which is outside the taxable year in question, and to consider instead the original BOC OR (Exh. "P-37") substantiating the importation in the amount of ₱221,533.33.

Verily, the original BOC OR[13] attached to petitioner's motion is the readable copy of the same document[14] previously submitted and marked as Exhibit "P-37". Said document shall be given consideration being the same document earlier marked and offered as evidence.

The original BOC OR is neither a new evidence nor forgotten evidence. This evidence has already been submitted to this Court only that the same is not readable; thus, petitioner has attached the original copy of the said evidence.

Moreover, the LBP OR (Exhibit "P-37.A") which allegedly supports the subject importation of ₱221,533.33, indeed does not pertain to the same and is even dated prior to the subject taxable year.

Considering that petitioner's purchases amounting to ₱221,533.33 were substantiated by the original BOC OR, the said entire amount shall be allowed as deduction from its gross income.

Consequently, the disallowance in the amount of ₱67,400.00[15] relating to the overclaimed importation with original BOC Form shall be reconsidered and stricken down.

c. Other importation charges

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[11] Exhibit "P-36.22D", docket, vol.6, p. 3726.
[12] Exhibit "P-26.23.A", Exhibit "P-67", brown envelope.
[13] Docket, vol.6, p. 3727.
[14] Annex E of Exhibit "P-67", brown envelope.
[15] Difference between the amount of ₱221,533.33 purchases reflected per LBP OR marked as Exhibit "P-37" and the amount of ₱154,133.33 purchases reflected per LBP OR marked as Exhibit "P-37.A".

Petitioner submitted the readable original copy of invoice to substantiate its purchase in the amount of ₱3,649.56, since the same was disallowed for being supported by unreadable invoice. Petitioner avers that it is just unfortunate that this was rendered unreadable by the subsequent photocopying of exhibits.

A comparison of the document[16] attached to the petitioner's motion and the document earlier marked and offered as Exhibit "P-39.10"[17] shows that they are one and the same document, although the document previously submitted and offered only appeared to be unreadable. Since the original copy is presented and the amounts therein are clearly verifiable, the disallowed purchase of ₱3,649.56 shall be reconsidered and stricken down.

As regards the ₱2,634.45 purchases disallowed for being supported by OR not issued in the name of petitioner, the same asserts that the reason for this is that the transaction involved a letter of credit (LC) whereby it contracted Metrobank to issue said LC for the importation of the purchases, thus, the OR was first issued under the name of Metrobank.

However, petitioner has failed to prove the aforesaid allegation. Merely stating a reason without giving any proof to that effect does not hold water.

With respect to the purchases of ₱12,995.37, petitioner argues that the estimated time of arrival as per Exhibit "P-39.106" was a mere estimate and that the actual date of arrival was December 24, 2008, which could be verified from a Bill of Lading with no. X08-11164-MNL-004[18]. Since the purchase and receipt of the items took place in 2008, petitioner pleads that the Court considers and allows the same as purchases in 2008.

In accord with the earlier discussion, since the Bill of Lading attached to petitioner's motion is a newly introduced document and is submitted only after the assailed Decision was rendered, the same cannot be admitted by the Court. Also considering that the documents[19] supporting the purchases of ₱12,995.37 are dated outside the TY 2008, the disallowance on the same shall remain.

Thus, of the disallowed importation charges in the assailed Decision, only the amount of ₱3,649.56 shall be reconsidered and stricken down.

d. Local purchases for resale

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[16] Docket, vol.6, p.3729.
[17] Annex G of Exhibit "P-67", brown envelope.
[18] Docket, vol.6, p. 3730.
[19] Exhibits "P-39.106" to "P-39.106.B", Annex G of Exhibit "P-67", brown envelope.

Most of the amounts in local purchases for resale have been disallowed for being supported by document with unreadable details. As such, petitioner has submitted the originals of the said documents where the details are clearer and readable. Petitioner likewise states that the copies with the Court's records have been rendered unreadable by subsequent photocopying.

Moreover, petitioner seeks for reconsideration the invoice (without petitioner's TIN) sufficient and acceptable for the purposes of qualifying the purchase as deduction from gross income. It posits that an omission of certain information on the invoice, i.e. petitioner's TIN, may disqualify the transaction from being a source of input VAT, but it is nevertheless a valid deduction for income tax purposes.

Petitioner's position deserves consideration.

A verification of the records shows that the original documents recently submitted pertain to the same documents previously marked and offered, thus, shall be given credence. Presented below are the disallowed amounts of local purchases to be reconsidered, being supported by the original documents indicating clearer details:

Reference	Amount of Purchase	VAT Amount	Remarks
Docket, vol.6, p.3731; "P-32.20"	₱ 24,720.00	₱ 2,966.40	Invoice without TIN of petitioner
Docket, vol.6, p.3732; "P-32.53"	32,208.00	3,864.96	Invoice without TIN of petitioner
Docket, vol.6, p.3733; "P-32.75"	43,323.25	5,198.79	
Docket, vol.6, p.3734; "P-32.101"	4,944.00	593.28	Invoice without TIN of petitioner
Docket, vol.6, p.3735; "P-32.165"	19,776.00	2,373.12	Invoice without TIN of petitioner
Docket, vol.6, p.3736; "P-32.232"	4,187.31	502.48	
Docket, vol.6, p.3737; "P-32.240"	28,800.00	3,456.00	Invoice without TIN of petitioner
Total	**₱ 157,958.56**	**₱ 18,955.03**	

Although the above purchases in the amount of ₱157,958.56 are considered as valid deduction from gross income, the input VAT in the amount of ₱13,253.76[20] pertaining to the purchases supported by invoices without petitioner's TIN shall be disallowed as input tax for VAT computation.

In sum, petitioner's disallowed purchases for TY 2008 shall be reduced by ₱279,965.98, computed as follows:

[20] ₱13,253.76 = ₱2,966.40 + ₱3,864.96 + ₱593.28 + ₱2,373.12 + ₱3,456.00

Importations with photocopied IEDs	₱ 50,957.86
Importation with original copies of BOC Form	67,400.00
Other importation charges	3,649.56
Local purchases for resale	157,958.56
Total Reconsidered Purchases (allowed as deduction)	**₱ 279,965.98**

Meanwhile, the corresponding valid input VAT on the reconsidered purchases amounted to ₱20,342.16, as computed below:

Input VAT on Total Reconsidered Purchases (₱279,965.98 x 12%)	₱ 33,595.92
Less: Input VAT on reconsidered purchases supported by Vat invoices without petitioner's TIN	13,253.76
Valid input VAT on the reconsidered purchases	**₱ 20,342.16**

Consequently, petitioner's basic deficiency income tax and value-added tax still due for TY 2008 shall be reduced to ₱1,528,360.47 and ₱595,845.95, respectively, computed as follows:

Basic Deficiency Income Tax Still Due per the January 25, 2017 Decision	₱ 1,626,348.56
Less: Income Tax Due on Total Reconsidered Purchases (₱279,965.98 x 35%)	97,988.09
Adjusted Basic Deficiency Income Tax Still Due	**₱ 1,528,360.47**

Basic Deficiency VAT Still Due per the Jan. 25, 2017 Decision	₱ 616,188.11
Less: Valid Input VAT on the Reconsidered Purchases	20,342.16
Adjusted Basic Deficiency VAT Still Due	**₱ 595,845.95**

II. Petitioner was not sufficiently informed of the factual and legal basis of the assessment (disallowance of ₱12,511,344.83 as valid purchases) which rendered the said assessment void *ab initio*, regardless of petitioner's response to the said assessment.

The issue of the right to due process has already been raised by petitioner in its Memorandum and has already been passed upon by the Court in the assailed Decision.

Nonetheless, the Court reiterates that petitioner was properly informed of the factual and legal basis of the subject assessment pursuant to Section 228 of the NIRC of 1997, as amended.

III. Petitioner humbly submits that the 50% rule should be made to apply only to that part of the claimed meetings and conferences expense that is lacking supporting documents.

Petitioner maintains that the 50% rule is applicable in the instant case since there is a showing that expenses were incurred, the exact amount of the unsupported expenses for meetings and conferences could not be ascertained; and the reason for not being able to ascertain the exact amount of the said unsupported expenses is the absence of documentary evidence to support the same.

Moreover, the alleged 50% rule should only be applied to the amount of ₱662,134.85, which represents the unsupported expenses, for it is the only part that is in dispute, while the expenses for meetings and conferences that were fully substantiated should be allowed as deduction in full.

Petitioner's argument lacks merit.

As stated in the assailed Decision[21], based on Section 2.4(c) of RMC No. 23-00, the 50% rule may be resorted to by respondent when no invoices or receipts are submitted by the taxpayer to prove its claimed expense deduction. Considering that petitioner presented documents supporting its entire claimed expense from which respondent found ₱682,560.15 as valid expense deduction, the 50% rule does not apply.

In its Memorandum, petitioner seeks to apply the 50% rule on the entire meetings and conferences expense claimed and not only to the unsupported portion, as hereunder quoted,[22] which is contrary to its claim in the instant motion:

> "4.68 Thus, it is submitted that should the entire amount being claimed by petitioner as deductible expenses for meetings and conferences not be considered as a valid deduction, it is prayed of the Honorable court that, in the spirit of equity, a certain portion of these expenses, not less than 50% thereof, be allowed as valid deductions".

Petitioner has known from the start that the 50% rule, whenever applicable, applies to the entire amount of expense claimed and not selectively on the basis of unsupported portion only. It would be amiss to apply the 50% rule only to the unsubstantiated portion of the claimed expense when the taxpayer has already proven a portion as valid claim. Even in the case of *Mariano Zamora vs. Collector of Internal Revenue and Court of Tax Appeals*[23], the 50% rule was applied to the entire amount of expense claimed and not only to a portion thereof.

[21] Docket, vol.6, p. 3640.
[22] Memorandum (for Petitioner), docket, vol.6, p. 3604.
[23] G.R. No. L-15290, May 31, 1963.

Again, even if the Court would apply the 50% rule, the amount of ₱682,560.15 allowed by respondent as deduction from gross income is even greater than the amount of ₱672,347.50 representing 50% of the total claimed expense of ₱1,344,695.00.

IV. After going over the documents relative to the subject business trip (plane ticket), petitioner has discovered that the balance/difference actually pertained to hotel charges and taxi fares during the same business trip.

In the assailed Decision[24], the Court has ruled that petitioner was able to substantiate the amount of ₱169,890.00 as the cost of plane ticket, which is not subject to Fringe Benefit Tax (FBT) pursuant to Section 2.33(B)(7)(a) and (b) of RR No. 03-98 in relation to Section 33(A) of the NIRC of 1997, as amended. However, petitioner failed to explain the discrepancy of ₱81,960.73 between the assessed amount of ₱251,850.73 and the substantiated amount of ₱169,890.00; thus, the Court sustained the ₱81,960.73 discrepancy.

According to petitioner, it has always been at a loss why respondent has referred the subject airline ticket to the amount of ₱251,850.73 when the actual airline ticket is only ₱161,299.03. After much analysis and going over the documents relative to the subject business trip, petitioner was allegedly able to clear out that the difference actually pertained to hotel charges and taxi fares during the same business trip. In view thereof, petitioner attached the check voucher[25] and breakdown of expenses[26] to its motion for the reconciliation of the aforementioned figures. It is allegedly unfortunate that petitioner was not able to address this, since it was preoccuppied with arguing that the airline ticket – the only expense singled out by the BIR Examiner – is a legitimate business expense and not subject to FBT. While it is conceded that petitioner may not have been able to adduce evidence to explain the discrepancy because of the confusion created by the erroneous assessment, the fact allegedly remains that it was able to prove that the trip was a legitimate business trip. It necessarily follows then that all of the related expenses to such trip are not purportedly subject to FBT.

The Court is not persuaded.

Petitioner knew from the time the Notice of Informal Conference[27] until the PAN[28] and the FANs/FLD[29] were issued that it was assessed of FBT for the plane ticket based on the amount of ₱251,850.73. From the receipt of the

[24] Docket, vol.6, p. 3657.
[25] Docket, vol.6, p. 3738.
[26] Docket, vol.6, p. 3739.
[27] Exhibit "R-3", BIR Records, pp. 496 to 499.
[28] Exhibit "R-6", BIR Records, pp. 554 to 558.
[29] Exhibit "R-7", BIR Records, pp. 559 to 568.

first notice up to this Petition for Review, petitioner has every opportunity to be heard, refute the subject assessment and present the necessary documents in support of its claim.

As found by the Court, petitioner was only able to prove the amount of ₱169,890.00 as not subject to FBT but failed to give any justification or discussion on the remaining ₱81,960.73 amount of discrepancy. By stating that 'the actual airline ticket is only ₱161,299.03', petitioner is aware that there is still a difference that needs to be explained but failed to do so. It is only now, after a portion of the assessment was sustained, that petitioner relays its confusion on the subject assessment.

It has already established that the plane ticket in the amount of ₱169,890.00 is for a legitimate business trip. The expenses relative to the said business trip, such as inland travel expenses (food, beverages and local transportation), except lodging cost in a hotel amounting to an average US$300.00 or less per day, shall not be subject to FBT in accordance with Section 2.33(B)(7)(a) of RR No. 03-98, provided that the said expenses are substantiated.

Considering that the documents presented by petitioner to support the alleged difference are just introduced only in the instant motion, the same cannot be admitted by the Court for being forgotten evidence. Furthermore, even if the said documents are admitted by the Court, the same do not justify the expenses incurred. The said documents are internally-produced documents, particularly, summary of reimbursements and check voucher which are quite self-serving and are not corroborated by invoices/receipts of expenses actually incurred.

Accordingly, the Court's Decision on the subject matter shall not be disturbed.

V. Petitioner contends that the simultaneous imposition of deficiency and delinquency interest is contrary to law and seriously prejudicial to the taxpayer.

Petitioner submits that the imposition of deficiency interest under Section 249(B) of the NIRC, as amended, extends only up to the time when the taxpayer is required to pay the assessed tax after being informed thereof; and that the imposition of the delinquency interest under Section 249(C) of the same law shall commence from the time when the concerned taxpayer failed to pay the assessed tax within the time allowed as stated in the formal letter of demand. Otherwise, the alleged deficiency interest would be allowed to accrue at the same time that the delinquency interest begins to accrue, which will result in an unduly harsh, even usurious, 40% interest rate per annum, and be an absurd application of law.

The Court disagrees with petitioner.

Section 249 of the NIRC of 1997, as amended, reads:

> "SEC. 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:
>
> (1) The amount of the tax due on any return to be filed, or
> (2) The amount of the tax due for which no return is required, or
> (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, interest at the rate prescribed in Subsection (A) hereof **until the amount is fully paid**, which interest shall form part of the tax." (*Emphasis supplied*)

Based on the above provision, deficiency interest and delinquency interest are distinct from each other. Deficiency interest is imposed on any tax still due from the taxpayer, when the latter paid a lower amount of tax than the actual due upon audit. Such interest shall be collected from the date prescribed for its payment until full payment thereof.

On the other hand, delinquency interest is imposed due to the delay in the payment of the amount of tax due or of deficiency tax, surcharge or interest thereon on the due date indicated in notice of the Commissioner. Such interest shall be collected from the due date on the notice until full payment thereof.

The above provision is very apparent that any deficiency in the tax due is subject to deficiency interest from the date prescribed for its payment until the full payment thereof, and not up to the time when the taxpayer is required to pay the assessed tax. The Court should apply the law in a manner that would give effect to their letter and spirit, especially when the law is clear as to its intent and purpose.[30]

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[30] *Corpuz vs. People,* G.R. No. 180016, April 29, 2014.

The ruling of this Court *En Banc* in the case of *Takenaka Corporation Philippine Branch vs. Commissioner of Internal Revenue*[31] *(the 'Takenaka Case')* as to the simultaneous imposition of deficiency and delinquency interests, is applicable to the instant case, to wit:

> "Further, as to when the deficiency and delinquency interests legally accrue, Section 249 (B) and (C)(3) of the NIRC of 1997, as amended, evidently states that the deficiency interest on any deficiency tax shall be assessed *'from the date prescribed for its payment until the full payment thereof,'* while the assessment of the delinquency interest that is imposed upon failure to pay a deficiency tax, or any surcharge or interest thereon, shall be reckoned from *'the due date appearing in the notice and demand of the Commissioner until the amount is fully paid.'*
>
> Clearly, these two (2) interests are different in nature. **Deficiency interest is imposed for the *shortage* of taxes paid, while delinquency interest is imposed for the *delay* in payment of taxes.** Hence, having different nature for their existence, petitioner cannot assail double imposition of interest as the law itself allows the simultaneous imposition of these two kinds of interests.
>
> xxx xxx xxx
>
> The law could not be any clearer. It states that the interests, both deficiency and delinquency interests, shall be assessed **until full payment thereof.** 'It bears stressing that the first and fundamental duty of the Court is to apply the law. When the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation.' As has been the Supreme Court's consistent ruling, where the law speaks in clear and categorical language, there is no occasion for interpretation; there is only room for application." *(Emphasis supplied)*

VI. Petitioner contends that the delinquency interest only attaches when the assessment becomes final, executory and demandable.

According to petitioner, the imposition of delinquency interest should only commence from the time that the taxpayer's protest has finally been disposed of with finality, and after the latter has exhausted all of the administrative and judicial remedies. Before then, there is allegedly no legal obligation as of yet on the part of the taxpayer to pay anything under the disputed assessment.

Petitioner's contention is unfounded.

Again, the imposition of delinquency interest is based on Section 249(C) of the NIRC of 1997, as amended, which states that in case of failure to pay the

[31] CTA *EB* Case No. 745, September 4, 2012.

amount of tax due on any return to be filed or for which no return is required or 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, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax.

It is very clear from the foregoing that the delinquency interest is computed from the due date appearing in the notice and demand of the Commissioner.

VII. Petitioner avers that deficiency interests only applies to "any deficiency in the tax due, as the term is defined in this code" pursuant to Section 249(B) of the NIRC, and therefore, should only be imposed in relation to income tax, estate tax, and donor's tax.

Petitioner's aversion is bereft of merit.

As regards the imposition of deficiency interest, the *Takenaka Case* is also in order:

> "The issue is no longer novel as the same was sufficiently discussed by the Supreme Court in *Paper Industries Corporation Philippines (PICOP) v. Court of Tax Appeals, et al.* The Supreme Court held that Section 247(a) of the NIRC of 1997, as amended [now Section 247(a) of the NIRC of 1997, as amended], 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.
>
> xxx xxx xxx
>
> Thus, ...the imposition of the deficiency interest under Section 249(B) of the NIRC of 1997, as amended, clearly applies to all internal revenue taxes imposed by the present Tax Code..."

Therefore, the deficiency interest has been rightly imposed by the Court not only on the deficiency income tax but also on the deficiency VAT, EWT and FBT.

WHEREFORE, premises considered, respondent's **Motion for Reconsideration (On the Decision of the Honorable Court dated 25 January 2017)** is **DENIED** for lack of merit. However, petitioner's **Motion for Reconsideration (Re: Decision dated 25 January 2017)** is **PARTIALLY GRANTED**. Accordingly, the Court's Decision dated January 25, 2017, is hereby modified to read as follows:

'**WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED.** The assessments covering deficiency income tax, VAT, EWT, and FBT for TY 2008 are **UPHELD** but in the modified amount of **₱2,696,629.82**, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, and the amount of **₱6,250.10** representing 25% surcharge, 20% deficiency and delinquency interest on the partial deficiency EWT payment of ₱6,175.32 or in the aggregate sum of **₱2,702,879.92**, computed as follows:

Tax Type	Basic	Surcharge	Total
Income Tax	₱ 1,528,360.47	₱ 382,090.12	₱ 1,910,450.59
VAT	595,845.95	148,961.49	744,807.44
EWT	21,526.50	5,381.63	26,908.13
FBT	11,570.93	2,892.73	14,463.66
Subtotal	**₱2,157,303.85**	**₱ 539,325.97**	**₱2,696,629.82**
25% surcharge, 20% deficiency and delinquency interest on the ₱6,175.32 deficiency EWT paid by petitioner on Oct. 9, 2012			**₱ 6,250.10**
Subtotal			**₱ 6,250.10**
TOTAL			**₱2,702,879.92**

In addition, petitioner is liable to pay:

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

Type of Tax	Basic Tax	Deficiency interest computed from
Income Tax	₱ 1,528,360.47	April 15, 2009
VAT	₱ 595,845.95	January 25, 2009
EWT	₱ 21,526.50	January 15, 2009
FBT	₱ 11,570.93	January 10, 2009

b) Delinquency interest at the rate of 20% per annum on the total amount of ₱2,696,629.82 and on the deficiency interest which have accrued as afore-stated in (a) computed from February 13, 2012 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED.

Ma. Belen S. L.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

ATTESTATION

I attest that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Amended 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