REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

MCDONALD'S PHILIPPINES REALTY CORPORATION, Petitioner,	CTA CASE NO. 8766
	Members:
-versus-	BAUTISTA, *Chairperson*; FABON-VICTORINO, and RINGPIS LIBAN, JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAR 30 2017 2:15 p.m.

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RESOLUTION

***Fabon-Victorino, J.*:**

On December 15, 2016, a Decision was promulgated, the dispositive portion of which reads as follows:

> **WHEREFORE**, the Petition for Review filed by McDonald's Philippines Realty Corporation is **PARTIALLY GRANTED**. The Final Decision on Disputed Assessment issued by respondent against petitioner covering deficiency VAT for CY 2007 is partly upheld. Accordingly, petitioner is hereby **ORDERED** to pay respondent the amount of ₱2,224,211.02 representing the sum of the basic deficiency VAT for taxable CY 2007 in the amount of ₱1,779,368.82 and the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, in the amount of ₱444,842.20, as shown below:

Basic Deficiency VAT	₱ 1,779,368.82
Add: 25% Surcharge	444,842.20
Total	**₱ 2,224,211.02**

In addition, petitioner is liable to pay:

a. Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency VAT of ₱1,779,368.82 computed from January 25, 2008, until full payment thereof pursuant to Section 249(B) of the 1997 NIRC, as amended; and

b. Delinquency interest at the rate of twenty percent (20%) per annum on the 20% deficiency interest which have accrued as aforestated in (a) and on the total amount of ₱2,224,211.02, computed from January 17, 2014 until full payment thereof pursuant to Section 249(C) of the 1997 NIRC, as amended.

SO ORDERED.

On January 12, 2017, petitioner filed a *Motion for Partial Reconsideration,* anchored on the following grounds, to wit:

I. Respondent's right to assess deficiency VAT for the four quarters of CY 2007 has already prescribed.

Petitioner claims that respondent's right to assess has prescribed. It explains that although its interest income was omitted in its 2007 VAT returns, the same was declared in its income tax return for the same year effectively negating the conclusion that it filed a fraudulent return. Thus, in the absence of indications that it filed a false return the three-year prescriptive period to assess under Section 203 of the Tax Code should apply in its case and not the ten-year period under Section 222(a) of the same Code.

Petitioner opines that if every error or omission in the return is regarded as false, such will render inoperative Section 203 of the Tax Code since all deficiency tax assessments arise from errors in the return.

II. Interest Income for CY 2007 is not subject to VAT.

Petitioner further claims that interest income derived from a loan agreement is subject to VAT only if the lender qualifies as a lending investor or dealer in securities. Petitioner however is not a lending investor for it is only licensed to engage the business of leasing real properties, hence, its interest income derived from the loan it granted to Golden Arches Development Corporation (GADC) is not subject to VAT. Moreover, its interest income is neither related to, nor in pursuit of its primary business, thus, the same may not be considered as being incidental to its business activity of real estate leasing.

III. Petitioner is not liable for deficiency interest nor can it be held answerable for simultaneous imposition of deficiency and delinquency interest.

Again, petitioner is of the opinion that it is not liable for deficiency interest as Section 249(B) of the Tax Code limits the imposition thereof to deficiency tax as defined by the same Code, which in turn covers only deficiency income tax, estate tax and donor's tax. Since deficiency VAT was not defined by the Code, deficiency interest may not be imposed on the same.

Further, deficiency and delinquency interest may not be imposed simultaneously for they refer to different periods of time, explaining that deficiency interest starts from the time the deficiency tax was due for payment and ends on the due date stated in the assessment notice. Delinquency interest, on the other hand, starts from the due date in said notice until full payment of tax liabilities. Petitioner believes that deficiency and delinquency interest cannot be imposed at the same time for it is not allowed by law.

Despite opportunity granted, respondent failed to file any comment/opposition to petitioner's motion.

Indubitably, the issues on prescription and the VAT imposed on interest income have been exhaustively scrutinized and discussed in the assailed Decision of December 15, 2016. The Court finds no reason nor rhyme to discuss them anew.

On the imposition of interest, it is axiomatic that a statute must not be read in truncated parts; its provisions must be read in relation to the whole law.[1] Petitioner focused on Section 249(a) of Tax Code without considering Section 247(a) of the same Code, which reads as follows:

> SEC. 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.
>
> xxx xxx xxx

Significantly, the Supreme Court categorically declared in *Paper Industries Corporation of the Philippines (PICOP) vs. Commissioner of Internal Revenue*[2] that imposition of interest and surcharge under Section 247(a) of the NIRC of 1977,[3] as amended, covers failure to pay all taxes, fees and charges imposed under the Tax Code and not just to a particular type of tax, *viz:*

> *xxx* 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.

Given that petitioner was found liable to pay deficiency VAT for CY 2007, it logically follows that it is also liable for deficiency interest due thereon even if deficiency VAT is not defined in the Tax Code.

But can petitioner be held simultaneously liable for both deficiency and delinquency interest?

The answer is in the affirmative.

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[1] *Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 158885, October 2, 2009.
[2] G.R. Nos. 106949-50, December 1, 1995.
[3] Now Section 247(a) of the NIRC of 1997, as amended.

It is well-settled that where the language of the law is clear and unequivocal, it must be given its literal application and applied without interpretation.[4] A cursory reading of Section 249(B)[5] and (C)[6] of Tax Code reveals that: 1) *deficiency interest* attaches when a taxpayer fails to pay a deficiency tax, starting from the date prescribed for its payment until full payment thereof; and 2) *delinquency interest* attaches for failure to pay deficiency tax, surcharge and interest, commencing from the date stated in respondent's notice and demand until the same is fully paid.

Evident from the foregoing that a taxpayer is excused from payment of *both* deficiency and delinquency interest only upon *full payment* of tax liability and increments thereon. Since it was clearly established that petitioner's deficiency VAT and surcharge covering CY 2007 remain unpaid, the imposition of deficiency and delinquency interest thereon as computed in the Decision dated December 15, 2016 is in order.

WHEREFORE, petitioner's *Motion for Partial Reconsideration* dated January 12, 2017 is **DENIED**, for lack of merit. The Decision dated December 15, 2016 is **AFFIRMED,** *in toto*.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[4] *Commissioner of Internal Revenue vs. Ariete,* G.R. No. 164152, January 21, 2010.
[5] **(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.

[6] **(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.

We Concur:

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice