REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

****

FELONILA Z. CALUAG,
Petitioner,

CTA EB CRIM. No. 047
(CTA Crim. Case No. O-330)

Present:

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

- versus -

PEOPLE OF THE PHILIPPINES,
Respondent.

Promulgated:

SEP 17 2018
3:36 p.m.

x - x

DECISION

UY, *J.*:

This Petition for Review[1] filed on February 22, 2018, seeks to set aside the Decision dated September 6, 2017, and the Resolution dated January 19, 2018, both promulgated by the Third Division of this Court (Court in Division) in CTA Crim. Case No. O-330, entitled, *"People of the Philippines, Plaintiff, vs. Felonila Z. Caluag, Accused"*[2], the dispositive portions of which read as follows:

Decision dated September 6, 2017:

"**WHEREFORE,** premises considered, judgment is

[1] EB Docket, pp. 4 to 53.
[2] Ponencia of Associate Justice Ma. Belen Ringpis-Liban, concurred by Associate Justices Lovell R. Bautista and Esperanza Fabon-Victorino, of the CTA Third Division.

hereby rendered finding accused **FELONILA Z. CALUAG**, guilty beyond reasonable doubt, of violating Section 255 of the National Internal Revenue Code of 1997, as amended, and she is hereby sentenced to suffer a penalty of one (1) year imprisonment and is ordered to pay a fine in the amount of ₱10,000.00, with subsidiary imprisonment in case accused has no property with which to meet the said fine, or is unable to pay such fine, pursuant to Section 280 of the NIRC of 1997, as amended.

As regards the civil liability, accused is ordered to pay the income tax due in the amount of ₱77,746,481.82 as basic deficiency income tax and ₱38,873,240.91 as 50% surcharge.

In addition, accused is ordered to pay 20% deficiency interest on the basic deficiency income tax of ₱77,746,481.82 and 20% delinquency interest (on the total amount comprising of the basic deficiency income tax, 50% surcharge and 20% deficiency interest) per annum counted from April 15, 2006 until full payment thereof, pursuant to Section 249(C) (3) of the NIRC of 1997 as amended.

SO ORDERED."

<u>Resolution dated January 19, 2018:</u>

"**WHEREFORE,** premises considered, the instant **Motion for Reconsideration** is **DENIED** for lack of merit.

SO ORDERED."

THE FACTS

Petitioner Felonila Z. Caluag (Caluag) was charged in CTA Crim Case No. 0-330 under the Amended Information[3] dated May 10, 2013, for violating Section 255, paragraph 1 of the 1997 National Internal Revenue Code (NIRC), as amended, the accusatory portion of which reads:

"That on various dates in 2005 in Sta. Maria,

[3] Division Docket (CTA Crim. Case No. O-330) – Vol. II, pp. 666 to 668.

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Bulacan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, a registered taxpayer of Revenue District No. 25B and with Tax Identification Number 173-100-004-000, sold refined gold to the *Bangko Sentral ng Pilipinas* totaling 10,032.456 troy ounces valued at Two Hundred Forty-Three Million Four Hundred Thirty-One Thousand Five Hundred Seventy Pesos and Eighteen Centavos (Php243,431,570.18), excluding refining charges, and despite receipt of payment amounting to Two Hundred Forty-Three Million Eighty-Seven Thousand One Hundred Thirty Pesos and Seventy Centavos (243,087,130.70), said accused, although required by law and the rules and regulations to file her annual income tax return for taxable year 2005 on or before April 15, 2006, feloniously, knowingly and willfully failed to file said annual income tax return, which resulted in accused's failure to pay the income tax due thereon amounting to Seventy-Seven Million Seven Hundred Forty-Six Thousand Four Hundred Eighty-One Pesos and Eighty-Two Centavos (Php77,746,481.82), excluding the interest and the surcharges, to the damage and prejudice of the Government.

CONTRARY TO LAW."

Petitioner was arraigned on June 5, 2013, where she entered her plea of not guilty to the crime charged against her with the assistance of defense counsel de parte, Atty Gabriel A. Silvera.[4]

The Pre-Trial Conference was terminated on July 3, 2013, and the Court in Division issued a Pre-Trial Order[5] on July 17, 2013.

During trial, the prosecution presented four (4) witnesses, namely, Ma. Racel B. Wacan, Teogenes T. Abrigo, Jr., Erlinda R. Derramas and Yolanda J. Benjamin. In addition, the prosecution filed its "Formal Offer of Evidence" on January 3, 2014, to which petitioner filed her "Comment on Formal Offer" on February 5, 2014.

In the Resolutions dated February 18, 2014, and April 16, 2014, the Court in Division admitted all the Exhibits of the prosecution,

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[4] Minutes of the Hearing dated June 5, 2013, Division Docket (CTA Crim. Case No. O-330) – Vol. II, p. 670.
[5] Division Docket (CTA Crim. Case No. O-330) – Vol. II, pp. 740 to 755.

subject to the final evaluation and/ or appreciation of their purposes, materiality, relevancy and probative value to the issues involved in the case.

On February 28, 2014, petitioner filed a "Motion for Leave of Court to File Demurrer to Evidence," to which the prosecution filed its "Comment (To Motion for Leave to File Demurrer to Evidence" on March 21, 2014. In the Resolution dated April 16, 2014, the Court in Division granted petitioner's "Motion for Leave of Court to File Demurrer to Evidence."

On May 5, 2014, petitioner filed the "Demurrer to Evidence," and the prosecution filed a "Comment [To Demurrer to Evidence]" on May 15, 2014. On May 27, 2014, the Court in Division issued a Resolution denying the Demurrer to Evidence.

On June 18, 2014, petitioner filed a "Motion for Reconsideration," while the prosecution filed its "Comment [To Accused's "Motion for Reconsideration]" on July 2, 2014. On July 14, 2014, petitioner filed a "Reply to Comment." In the Resolution dated July 24, 2014, the Court in Division denied the Motion for Reconsideration for lack of merit.

In addition to her own testimony, petitioner presented, for her defense, the following witnesses, namely: Jose Filomar R. Bas, Roselier C. Cruz, Marinela C. Labudlay, Maritess F. Encina and Arnel B. Magbag.

On June 20, 2016, petitioner filed a "Formal Offer of Evidence," to which the prosecution filed its "Comment/Opposition (To Accused's Formal Offer of Evidence)" on June 30, 2016. In the Resolution dated July 20, 2016, the Court in Division admitted into evidence Exhibits "38", "39, "40" and "41," and denied the other Exhibits, for failure of the petitioner to present the originals for comparison.

On August 24, 2016, the prosecution filed its "Memorandum," while petitioner filed her "Memorandum for the Accused" on September 13, 2016. Thus, in the Resolution dated September 15, 2016, the case was deemed submitted for decision.

In the assailed Decision dated September 6, 2017, petitioner was found guilty beyond reasonable doubt, of violating Section 255 of the NIRC of 1997, as amended, and was sentenced to suffer a

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penalty of one (1) year imprisonment; pay a fine of ₱10,000.00, with subsidiary imprisonment pursuant to Section 280 of the NIRC of 1997, as amended. Moreover, petitioner was ordered to pay civil liability, with surcharge, deficiency interest on the basic deficiency income tax, as well as delinquency interest pursuant to Section 249 (C) (3) of the NIRC of 1997, as amended.

Aggrieved, petitioner filed a "Motion for Reconsideration" on September 22, 2017, to which respondent filed its "Comment and Opposition (To the Accused's Motion for Reconsideration filed September 22, 2017)" on November 6, 2017.

In the assailed Resolution dated January 19, 2018,[6] the said *Motion for Reconsideration* was denied by the Court in Division for lack of merit.

Undaunted, petitioner filed a *Motion for Extension of Time to File Petition for Review*[7] before the Court *En Banc* on February 7, 2018. On February 12, 2018, petitioner was granted a final and non-extendible period of fifteen days from February 7, 2018, or until February 22, 2018, within which to file her Petition for Review.[8]

On February 22, 2018, petitioner filed the instant *Petition for Review*,[9] praying that the Decision dated September 6, 2017 and Resolution dated January 19, 2018, be set aside and that an order of acquittal be issued.

Without necessarily giving due course to the *Petition for Review*, the respondent was ordered by the Court *En Banc* to file its comment thereon.[10] Pursuant thereto, respondent filed its "Comment (On Petitioner's Petition for Review)" on May 25, 2018. Thereafter, the instant *Petition for Review* was submitted for decision on June 7, 2018.[11]

Hence, this decision.

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[6] Division Docket (CTA Crim. Case No. O-330) – Vol. IV, pp. 2096 to 2100.
[7] EB Docket, pp. 1 to 2.
[8] EB Docket, p. 3.
[9] EB Docket, pp. 4 to 53.
[10] Resolution dated May 9, 2018, EB Docket, pp. 300 to 301.
[11] EB Docket, pp. 309 to 310.

THE ISSUE

The sole issue for resolution raised by the petitioner in this case is whether or not the prosecution failed to prove the elements of the offense charged, to wit:

> "6.1 accused in 2005 sold refined gold to the BSP, with a total weight of 10,032.456 troy ounces, valued at P243,431,570.18;
>
> 6.2 she received payment from the BSP amounting to P243,087,130.70, the net amount after refining charges;
>
> 6.3 despite receipt of such payment, accused failed to file her annual income tax return for taxable year 2005 on or before 15 April 2006, as required by law and the rules and regulations; and most importantly,
>
> 6.4 that accused feloniously, knowingly and wilfully failed to file said annual income tax return, which resulted in her failure to pay the income tax due thereon amounting to P77,746,481.82, excluding interests and surcharges."[12]

Petitioner's arguments:

Petitioner contends that the findings of fact and conclusions of law arrived at in the Decision are contrary to the facts of the case and evidence presented by the prosecution, as well as being inconsistent with prevailing jurisprudence on the matter.

Allegedly, the findings that she earned income are speculative and they lack factual basis. While she admitted measly earnings, the prosecution did not even know how much it was, hence, there is no basis for the taxes allegedly due.

Petitioner also points out that the BSP Certification of income was defective and inadmissible. Thus, the prosecution was not able to prove the authenticity and correctness of the BSP Certification.

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[12] EB Docket, pp. 5 to 6.

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Anent the Letters of Delivery and Sale, these were never properly identified nor authenticated according to the Rules of Court. The original copies of the alleged Letters of Delivery, or even certified true copies thereof, were never presented, despite assurances from the prosecution, and opportunities given by the Court. Section 3 (e) of Rule 131 of the Rules of Court provides that evidence willfully suppressed would be adverse if produced.

Moreover, petitioner asserts that the BSP itself did not pay excise taxes to the BIR for the subject period that she is being held liable for taxes. Thus, this clearly shows that the BSP believed that it was not subject to taxes in its purchases of gold sourced locally. And for her part, petitioner claims that there was no willful and deliberate intention to fail to file her annual Income Tax Return for the taxable year 2005.

Finally, petitioner avers that the BSP itself failed to withhold taxes due on the sales of gold by traders like herself. To convict her in this case is to violate her constitutional right to the equal protection of the law.

Respondent's counter-arguments:

Respondent counters that the arguments raised in the Petition for Review are a mere rehash of what has already been passed upon and resolved by the Court in Division. Hence, there is no cogent and compelling reason to disturb, or reverse the assailed Decision and Resolution.

Allegedly, it was proven that petitioner had gold sale transactions with the BSP in 2005, and received a net payment of ₱243,087,130.70. The sheer number of transactions and the amount involved shows that the petitioner willfully failed to report any of the sales transactions through an Income Tax Return, nor did she pay any of the corresponding taxes due. Thus, the acts of petitioner in not declaring and paying her taxes due despite full knowledge that she is required to do so shows her propensity to evade taxes.

Finally, respondent counter-argues that all the elements of the offense for a violation of Section 255 of the NIRC of 1997, as amended, are present.

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THE COURT *EN BANC'S* RULING

The instant Petition for Review lacks merit.

In the case at bar, petitioner Felonila Z. Caluag was found guilty of willfully failing to file her Income Tax Return for taxable year 2005. Thus, she was convicted for violating of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, which states:

> "**SEC. 255.** *Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.* — Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax, make a return, keep any record, or supply correct and accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply such correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years. x x x."

Based on the foregoing, the prosecution was tasked with proving the following elements beyond reasonable doubt:

1. The taxpayer is required under the NIRC of 1997 to pay any tax, make a return, keep any record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations;

2. The taxpayer failed to pay the required tax, make a return or keep the required record, or supply the correct and accurate information; and

3. The taxpayer willfully failed to pay such tax, make such return, keep such record, or supply such correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations.

To sustain the conviction of petitioner Caluag under Section 255 of the NIRC of 1997, as amended, all of the foregoing elements must be shown to have been present in this case.

Petitioner Caluag is required under the NIRC of 1997 to file an annual Income Tax Return.

A taxpayer's duty to file an annual income tax return is rooted on Sections 51 and 74 of the NIRC of 1997, as amended. The pertinent portions of the said provisions read:

> "**SEC. 51.** ***Individual Return***. –
>
> (A) Requirements. -
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> (1) Except as provided in paragraph (2) of this Subsection, the following individuals are required to file an income tax return:
>
> (a) Every Filipino citizen residing in the Philippines;
>
> xxx xxx xxx
>
> (4) The income tax return shall be filed in duplicate by the following persons:
>
> (a) A resident citizen – on his income from all sources;
>
> xxx xxx xxx
>
> (B) Where to File. – Except in cases where the Commissioner otherwise permits, the return shall be filed with an authorized agent bank, Revenue District Officer, Collection Agent or duly authorized Treasurer of the city or municipality in which such person has his legal residence or principal place of business in the Philippines, or if there be no legal residence or place of business in the Philippines, with the Office of the Commissioner.
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> (C) When to File. –
>
> (1) The return of any individual specified above shall be filed on or before the fifteenth (15^{th})

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day of April of each year covering income for the preceding taxable year.

xxx xxx xxx

SEC. 74. ***Declaration of Income Tax for Individuals. —***

(A) In General. — Except as otherwise provided in this Section, every individual subject to income tax under Sections 24 and 25 (A) of this Title, who is receiving self-employment income, whether it constitutes the sole source of his income or in combination with salaries, wages and other fixed or determinable income, shall make and file a declaration of his estimated income for the current taxable year on or before April 15 of the same taxable year. In general, '*self-employment income*' consists of the earnings derived by the individual from the practice of profession or conduct of trade or business carried on by him as a sole proprietor or by a partnership of which he is a member. Nonresident Filipino citizens, with respect to income from without the Philippines, and nonresident aliens not engaged in trade or business in the Philippines, are not required to render a declaration of estimated income tax. The declaration shall contain such pertinent information as the Secretary of Finance, upon recommendation of the Commissioner, may, by rules and regulations prescribe. An individual may make amendments of a declaration filed during the taxable year under the rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner."

In this case, petitioner Caluag testified that she started selling gold to the BSP sometime in 2004.[13] A regular transaction allegedly involves around 2 kilos of gold, worth Three Million Pesos (₱3,000,000.00).[14] She further testified that there was usually a Two Peso (₱2.00) profit margin per gram of gold,[15] minus an assay fee of One Thousand Six Hundred Pesos (₱1,600.00), and other

[13] TSN dated March 18, 2015, p. 20, Division Docket (CTA Crim Case No. O-330) – Vol. III, p. 1635-t.
[14] TSN dated March 18, 2015, p. 21, Division Docket (CTA Crim Case No. O-330) – Vol. III, p. 1635-u.
[15] TSN dated March 18, 2015, pp. 22 to 23, Division Docket (CTA Crim Case No. O-330) – Vol. III, pp. 1635-v to 1635-w.

expenses.[16] In fact, petitioner Caluag readily admitted that she earned income from her transactions with the BSP, estimating a net profit of ₱400.00 per kilo of gold sold to the BSP, to wit:

> "JUSTICE BAUTISTA
>
> Madali nga pero Malaki ang gastusin mo sabi mo. Nalulugi ka dahil Malaki ang gastusin mo sabi mo. Ba't ka pa nagbebenta ng palugi?
>
> MS. CALUAG
>
> E kahit po kasi meron konting konting natitira kasi po iyon lamang ang aming hanapbuhay na, mula't sapul ito po and hanapbuhay namin... Interrupted
>
> JUSTICE BAUTISTA
>
> Kahit palugi? Kahit palugi?
>
> MS. CALUAG
>
> Meron pong konting konting natitira.
>
> JUSTICE BAUTISTA
>
> Sabi mo sa salaysay mo Malaki ang gastusin mo? Malaki ang gastusin sa pagkuha ng ginto sa Meycauayan. Sabi mo palugi dahil Malaki ang gastusin Mo tapos nagbebenta ka pa sa BSP, bakit ganon?
>
> MS. CALUAG
>
> Kasi po ito ang kinamulatan namin hanapbuhay kahit ho konting konti iyong, pang-ano lang sa araw araw pwede e na po sa amin.
>
> JUSTICE BAUTISTA
>
> Pwede na iyong palugi?
>
> MS. CALUAG
>
> Kahit po konting konti na lang ang natitira.

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[16] TSN dated March 18, 2015, pp. 23 to 29, Division Docket (CTA Crim Case No. O-330) – Vol. III, pp. 1635-w to 1635-cc.

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JUSTICE BAUTISTA

May natitira, hindi palugi. Kasi sa sinumpaang salaysay mo ang sabi mo sa Question 31, Malaki ang gastusin mo. Hindi ka kumita dahil Malaki ang gastusin mo. Ang tanong dito, bakit ka pa nagbebenta, palugi pala? Ano ang sagot mo doon sa tanong?

MS. CALUAG

Meron naman pong natitira kaunti lang iyon pong pang-ano naming sa araw araw.

JUSTICE BAUTISTA

Meron pa. Meron pa palang kinikita.

MS. CALUAG

Kahit po kaunti.

JUSTICE BAUTISTA

Kaunti. Gano kalaki iyong kaunti na 'yon? Gaano kalaki? Piso? 50 sentimos per gramo? Ano?

MS. CALUAG

Kasi po iyong isang kilo e ano e Php2,000.00 po ang kinikita.

JUSTICE BAUTISTA

Php2,000.00 ang kita mo.

MS. CALUAG

Aalisin po iyong Php1,600.00. Iyon pong Php400.00 na natitirang panggastos sa pang-araw araw malaking bagay po sa amin.

JUSTICE BAUTISTA

Magkano natira s'yo?

JUSTICE LIBAN

Php400.00

MS. CALUAG

Php400.00 po.

JUSTICE BAUTISTA

Php400.00 lang araw araw.

JUSTICE VICTORINO

Araw araw ba kayong nagbebenta sa Central Bank?

MS. CALUAG

Hindi naman po. Pagka po kami nakaipon ng pangangalakal na halimbawa pwede nang ibenta, iniluluwas na po namin."[17]

Aside from petitioner's direct admission, the prosecution also presented a Certification dated April 1, 2011,[18] stating that the total annual gold sales of petitioner Caluag to the BSP for the year 2005 is as follows:

YEAR	CONTENTS PAID (IN TR. OZ.)	VALUE	REFINING CHARGES	NET PAYMENT
2005	**10,032.456**	**₱243,431,570.18**	**₱344,439.48**	**₱243,087,130.70**
2006	9,403.056	286,967,743.48	324,034.40	286,643,709.08
2007	6,589.311	210,542,016.79	228,497.21	210,313,519.58
2008	8,895.066	346,840,356.26	314,355.28	346,526,000.98
2009	4,249.120	186,482,588.24	147,066.34	186,335,521.90
TOTAL	39,169.009	₱1,274,264,274.95	₱1,358,392.71	₱1,272,905,882.24

Moreover, this Court notes that apart from her bare assertions that she did not earn substantial income, petitioner Caluag never actually denied nor disputed that her transactions with the BSP resulted to net payments amounting to hundreds of millions.

Based on the explicit admission of petitioner Caluag that she

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[17] TSN dated March 18, 2015, pp. 30 to 32, Division Docket (CTA Crim Case No. O-330) – Vol. III, pp. 1635-dd to 1635-ff.
[18] Exhibit "N[5]," Division Docket (CTA Crim. Case No. O-330) – Vol. III, p. 1256.

had in fact, earned income from her transactions with the BSP, regardless of how much her income was, petitioner was unmistakably duty bound to file her annual income tax return with the BIR. Hence, the first element of the crime charged, requiring petitioner Caluag to file an annual income tax return, is clearly satisfied.

Petitioner Caluag did not file her annual Income Tax Return.

In this case, the Court in Division ruled that the prosecution was able to prove that petitioner Caluag had in fact, failed to file her income tax return for taxable year 2005. Thus, full credence is given to the Certification dated April 14, 2011,[19] issued by Revenue District Officer Teogenes T. Abrigo, Jr., stating that based on its ITS generated registration with RDO No. 25B, accused Caluag is registered for One-Time Transaction, effective September 20, 2000, and that there is no record on file to show that she filed annual ITRs and VAT Returns for years 2005 to 2009.

In stark contrast to the evidence presented by the prosecution, petitioner Caluag merely alleged, without proof, that she paid taxes.[20] However, the records show that petitioner never submitted any proof of the filing of any tax return for the taxable year concerned. Thus, there is no basis to deviate from the finding of the Court in Division, that the second element of the crime charged was sufficiently proven by the prosecution in this case.

The failure of petitioner Caluag to file the required return was willful.

The presence of the first two elements, however, does not support a verdict of conviction, unless the prosecution was able to prove, beyond reasonable doubt that the failure of petitioner Caluag to file her income tax return for taxable year 2005, was done *willfully,* with knowledge and voluntariness, and with *intentional* violation of a known legal duty.

According to Black's Law Dictionary,[21] the term "willful" is defined as:

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[19] Exhibit "D[5]," Division Docket (CTA Crim. Case No. O-330) – Vol. III, p. 1244.
[20] TSN dated March 18, 2015, pp. 43 to 44, Division Docket (CTA Crim Case No. O-330) – Vol. III, pp. 1635-QQ to 1635-RR.
[21] 6th Edition, St. Paul Minn. West Publishing Co., 1990, p. 1599.

> "An act or omission is 'willfully' done, if done voluntarily and intentionally and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose to either to disobey or to disregard the law xxx xxx xxx
>
> A willful act may be described as one done intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly, or inadvertently. A willful act differs essentially from a negligent act. The one is positive and the other negative.
>
> Act is 'willful' within meaning of section *(sic)* of Internal Revenue Code imposing penalty for willful failure to pay federal income and social security taxes withheld from employees if it is voluntary, conscious and intentional; no bad motive or intent to defraud the United States need be shown, and a 'reasonable cause' or 'justifiable excuse' element has no part in definition. *Harrington v. U.S.,* C.A.R.I., 504 F.2d 1306, 1315."

Moreover, 'willfulness' in tax crimes has been simply defined as:

> "Willful in the tax crime statutes means a voluntary, intentional violation of a known legal duty and bad faith or bad purpose need not be shown."[22]

In this case, petitioner Caluag maintains that she was under the impression that she was not liable for taxes on the sales of gold to the BSP. However, when asked if she never filed or paid for an income tax return, she merely alleged, without submitting proof, that she did, to wit:

"JUSTICE VICTORINO

Wala kang alam. Tanong. Ito, sabi mo nag-umpisa

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[22] [Mertens (Law of Federal Income Taxation) Chapter 47.04, page 28, Volume 13, see *U.S. v. Green*, 757 F2d 116, 85-1 USTC 9178 (CA7 1985), in which the Court, citing *U.S. v. Moore*, 627 F2d 830 (CA 1980) and *U.S. v. Verkuilen*, 690 F2d 648, 82-2 USTC 9618 (CA7 1982), upheld the conviction of a tax protester for willful failure to file returns], also cited in *People of the Philippines vs. Estelita Delos Angeles*, CTA Crim. Case No. O-027, November 25, 2009.

ka na magbenta ng ginto sa BSP o sa iyong negosyo nang 2004, ibig nyo bang sabihin mula nang 2004 hanggang sa taon na kung saan kayo nadedemanda, 2005, e hindi kayo nagbayad o nagfile ng income tax return?

MS. CALUAG

Meron *(sic)* po akong, meron *(sic)* po kaming income tax return.

JUSTICE VICTORINO

Meron *(sic)* kayong?

MS. CALUAG

Meron *(sic)* po akong binayaran.

JUSTICE VICTORINO

Binayaran.

MS. CALUAG

Opo.

JUSTICE VICTORINO

Doon sa Rentas Internas?

MS. CALUAG

Opo.

JUSTICE VICTORINO

Nasaan po iyon? Kung nagbayad kayo sa BIR, nasaan po iyong pinagbayaran ninyo? Dahil sinasabi ng BIR hindi kayo nagbayad sa kinita ninyo. Sabi nyo *(sic)* meron. Asan? *(sic)*

MS. CALUAG

Dadalhin ko po. Hindi ko po dala ngayon e.

JUSTICE VICTORINO

So kung pababalikin ka ng court madadala mo iyong dokumento na 'yon (*sic)?*

MS. CALUAG

Opo."[23]

The records of this case, however, show that petitioner Caluag never submitted proof of the filing of any tax return for the taxable year in question. Clearly, her failure to present her alleged income tax return implies that she does not have one.

Nonetheless, what is actually more significant and revealing in this case, is that petitioner Caluag, in declaring that she had an income tax return, betrays herself. In this instance, petitioner Caluag implicitly admits that she was aware of her duty to file a tax return, and yet failed to do so. This expresses her conscious and deliberate failure to file the subject return, thus proving the third element of the crime charged.

With respect to the imposable penalty for the crime charged in this case, Section 255 of the NIRC of 1997 provides that upon conviction, a fine of not less than Ten Thousand Pesos (₱ 10,000.00), and imprisonment of not less than one (1) year, but not more than ten (10) years, shall be imposed. There being no showing that petitioner Caluag is disqualified from the scope of the Indeterminate Sentence Law, the same shall apply. Hence, the imposable penalty shall not be less than the minimum penalty of one (1) year, and the maximum penalty shall not exceed ten (10) years, the maximum prescribed by law.

In this case, this Court upholds the imposition of a fine in the amount of ₱ 10,000.00, and the indeterminate penalty of one (1) year, as minimum, to two (2) years as maximum term of imprisonment, as proper under the circumstances. The same is without prejudice to Section 280 of the NIRC of 1997, which provides for the imposition of a subsidiary imprisonment at the rate of one (1) day for each Eight pesos and fifty centavos (₱ 8.50), subject to the rules established in Article 39 of the Revised Penal Code, in the event that petitioner Caluag has no property with which to meet the fine imposed upon her, or is unable to pay such fine.

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[23] TSN dated March 18, 2015, pp. 43 to 44, Division Docket (CTA Crim Case No. O-330) – Vol. III, pp. 1635-QQ to 1635-RR.

Petitioner is civilly liable for income tax due for taxable year 2005.

In criminal cases, the action for the recovery of civil liability for taxes and penalties is deemed jointly instituted in the criminal action.[24] Thus, the judgment in a criminal case shall not only impose the penalty, but shall also order payment of the taxes subject of the criminal case.[25]

In this case, petitioner Caluag is liable for taxes resulting from her failure to file the requisite income tax return for taxable year 2005.

Relative thereto, it is noted that the Certification dated April 1, 2011,[26] states that the total annual gold sales of petitioner Caluag to the BSP for the year 2005 amounted to ₱243,431,570.18, and resulted in a net payment of ₱243,087,130.70. In support thereof, the prosecution likewise presented a Computation Sheet,[27] detailing petitioner's deficiency income taxes for taxable year 2005, to wit:

Taxable Year	**Undeclared Sales (Sales to BSP)**	**Personal Exemption**	**Taxable Income**	**Basic Income Tax Due**
2005	₱243,087,130.70	₱20,000.00	₱243,067,130.70	₱77,746,481.82

For her part, petitioner offered self-serving testimony, stating that she incurred considerable expenses in her transactions with the BSP, without providing any details or proof of what these expenses are.[28] Thus, she merely faulted the BIR for using her gross income as the basis for their computation, without making any effort to substantiate her alleged expenses.[29]

It should be stressed that Section 34 (A) (1) (b) of the NIRC of 1997, as amended, emphasizes the importance of substantiating the taxpayer's expenses or deductions from gross income, to wit:

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[24] Section 11, Rule 9, Revised Rules of the Court of Tax Appeals (RRCTA).
[25] Section 205 (b), NIRC of 1997, as amended.
[26] Exhibit "N[5]," Division Docket (CTA Crim. Case No. O-330) – Vol. III, p. 1256.
[27] Exhibit E[5]," Division Docket (CTA Crim. Case No. O-330) – Vol. III, p. 1206.
[28] Judicial Affidavit of Felonila Z. Caluag, Exhibit "40," Division Docket (CTA Crim. Case No. O-330) – Vol. III, pp. 1620 to 1630, at pages 1622 to 1629.
[29] Judicial Affidavit of Felonila Z. Caluag, Exhibit "40," Division Docket (CTA Crim. Case No. O-330) – Vol. III, pp. 1620 to 1630, at pages 1628 to 1629.

> "**SEC. 34.** ***Deductions from Gross Income.*** — Except for taxpayers earning compensation income arising from personal services rendered under an employer-employee relationship where no deductions shall be allowed under this Section other than under Subsection (M) hereof, in computing taxable income subject to income tax under Sections 24(A); 25(A); 26; 27(A), (B) and (C); and 28(A)(1), there shall be allowed the following deductions from gross income:
>
> ***(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."

In view of the absence of any competent evidence to substantiate petitioner's claim that she actually incurred expenses in relation to her transactions with the BSP, there can be no allowable deductions in this case. Hence, the computation made by the BIR, based on the Certification dated April 1, 2011,[30] stating petitioner Caluag received a net payment of ₱243,087,130.70 from the BSP for taxable year 2005.

In the case of *Commissioner of Internal Revenue vs. General Foods (Phils.), Inc.*,[31] the Supreme Court said:

> "It is a governing principle in taxation that tax exemptions must be construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority; and he who claims an exemption must be able to justify his claim by the clearest grant of organic or statute law. An exemption from the common burden cannot be

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[30] Exhibit "N[5]," Division Docket (CTA Crim. Case No. O-330) – Vol. III, p. 1256.
[31] G.R. No. 143672, April 24, 2003.

> permitted to exist upon vague implications.
>
> Deductions for income tax purposes partake of the nature of tax exemptions; hence, if tax exemptions are strictly construed, then deductions must also be strictly construed."

Based on the foregoing, it is clear that greater weight should be accorded to the prosecution's evidence, as it is more worthy of belief than that which is offered in opposition thereto.

Petitioner Caluag is likewise liable for penalty and interest, in addition to the basic taxes due.

Anent petitioner Caluag's civil liability, Section 248 (B) of the NIRC of 1997, as amended, states that there is a fifty percent (50%) penalty in addition to the basic taxes due, to wit:

> "**SEC. 248.** ***Civil Penalties –***
>
> xxx xxx xxx
>
> (B) In case of willful neglect to file the return within the period prescribed by this Code or by the rules and regulations, or in case a false or fraudulent return is willfully made, the penalty to be imposed shall be fifty (50%) of the tax or of the deficiency tax, in case any payment has been made on the basis of such return before the discovery of the falsity or fraud: *Provided,* That a substantial underdeclaration of taxable sales, receipts or income, or a substantial overstatement of deductions, as determined by the Commissioner pursuant to the rules and regulations to be promulgated by the Secretary of Finance, shall constitute *prima facie* evidence of a false or fraudulent return: *Provided, further,* That failure to report sales, receipts or income in an amount exceeding thirty percent (30%) of that declared per return, and a claim of deductions in an amount exceeding thirty percent (30%) of actual declarations, shall render the taxpayer liable for substantial under-declaration of sales, receipts or income or for overstatement of deductions, as mentioned herein."

In addition, deficiency and delinquency interests shall be imposed up to December 31, 2017, according to original provisions of

Sections 249 (B) and 249 (C) (1) of the NIRC of 1997, as amended, to wit:

> "**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 tax due on any return required to be filed;
>
> xxx xxx xxx
>
> 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."

The rate of delinquency interest to be imposed, however, is modified with the passage of R.A. No. 10963, otherwise known as the "Tax Reform for Acceleration and Inclusion" (TRAIN Law). Under the said law, which took effect on January 1, 2018, Section 249 of the NIRC of 1997 was amended to read as follows:

> "SEC. 75. Section 249 of the NIRC, as amended is hereby further amended to read as follows:
>
> SEC. 249. *Interest.* –
>
> (A) *In General.* – There shall be assessed and collected on any unpaid amount of tax, **interest at the rate of double the legal interest rate for loans or forbearance of any money in the absence of an express stipulation as set by the Bangko Sentral ng Pilipinas from the date prescribed for payment until**

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the amount is fully paid: Provided, **That in no case shall the deficiency and delinquency interest prescribed under Subsections (B) and (C) hereof be imposed simultaneously**.

(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.

(C) *Delinquency Interest.* xxx xxx xxx." *(Emphasis supplied)*

Based on the foregoing, the following amendments are noted:

1. The interest rate is reduced to "double the legal interest rate for loans or forbearance of any money in the absence of an express stipulation as set by the Bangko Sentral ng Pilipinas."

   Currently, the legal interest rate is 6%,[32] hence the interest rate to be applied on any unpaid amount of tax shall be 12%, which is lower than the twenty (20%) interest imposed under Section 249 of the NIRC of 1997.

2. In no case shall the deficiency interest and delinquency interest be imposed simultaneously. As such, the overlapping of interest penalties under the NIRC of 1997 has been effectively eliminated.

3. The period for the application of deficiency interest is modified to run from the date prescribed for its payment until the full payment thereof, or upon issuance of a notice and demand by the CIR, whichever comes earlier. Hence, under the TRAIN law, the running of the period for the computation of the deficiency interest may be interrupted by the issuance of a notice and demand by the CIR.

   It bears noting that under the NIRC of 1997, the deficiency interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof and is

[32] BSP MB Circular No. 799, Series 2013 which took effect on July 1, 2013.

not interrupted by the issuance of a notice or demand from the CIR.

The principle is well entrenched that statutes, including administrative rules and regulations, operate prospectively only, unless the legislative intent to the contrary is manifest by express terms or by necessary implication.[33] There being no clear legislative intent to retroactively apply the provisions of the TRAIN law, the same should only be applied prospectively, *i.e.*, beginning January 1, 2018.

Furthermore, it bears emphasis that tax burdens are not to be imposed, nor presumed to be imposed, beyond what the statute expressly and clearly imports, tax statutes being construed *strictissimi juris* against the government. Any doubt on whether a person, article or activity is taxable is generally resolved against taxation.[34]

Considering the foregoing principles, the effects of the amendments under the TRAIN Law, particularly the imposition of interests, shall be applied prospectively to this case.

Thus, as of January 1, 2018, the interests to be imposed must already be 12%, and there must no longer be a simultaneous imposition of deficiency and delinquency interests.

To summarize, in addition to the basic taxes due, the following are likewise imposed:

1) A fifty percent (50%) penalty, in accordance with Section 248 (B) of the NIRC of 1997, as amended;

2) Deficiency interest at the rate of twenty percent (20%) per annum, from the date prescribed for payment until **December 31, 2017**, pursuant to the original text of Section 249(B) of the NIRC of 1997, as amended;

3) Delinquency interest at the rate of twenty percent (20%) per annum, from the date prescribed for payment until **December 31, 2017**, pursuant to the original text of Section 249(C)(1) of the NIRC of 1997, as amended; and

4) Delinquency interest at the rate of 12% on the total unpaid

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[33] *BPI Leasing Corporation vs. Court of Appeals, et al.,* G.R. No. 127624, November 18, 2003.
[34] *Dizon vs. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 3008.

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amount from **January 1, 2018**, until the same is fully paid, pursuant to Section 249 of the NIRC of 1997, as amended by the TRAIN Law.

WHEREFORE, in light of the foregoing, the instant *Petition for Review* is **DENIED**. The Decision dated September 6, 2017 and Resolution dated January 19, 2018 are hereby **AFFIRMED with MODIFICATION**.

Petitioner Felonila Z. Caluag is hereby found **GUILTY BEYOND REASONABLE DOUBT** of violating Section 255 of the NIRC of 1997, as amended. She is hereby sentenced to an indeterminate penalty of one (1) year, as minimum, to two (2) years as maximum term of imprisonment, and to pay a fine in the amount of ₱ 10,000.00, with subsidiary imprisonment pursuant to Section 280 of the NIRC of 1997, as amended, in the event that petitioner Caluag has no property with which to meet the fine imposed upon her, or is unable to pay such fine.

In addition, petitioner Felonila Z. Caluag is **ORDERED TO PAY** the total amount of One Hundred Sixteen Million Six Hundred Nineteen Thousand Seven Hundred Twenty Two Pesos and Seventy Three Centavos (₱116,619,722.73) for taxable year 2005, inclusive of the 50% penalty imposed under Section 248(B) of the NIRC of 1997, as amended, computed as follows:

Taxable Year	BASIC INCOME TAX DUE	50% Penalty	TOTAL	Date Prescribed for Payment
2005	₱77,746,481.82	₱38,873,240.91	₱116,619,722.73	April 15, 2006

In addition, petitioner Felonila Z. Caluag is ORDERED TO PAY:

(a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income tax from the date prescribed for payment until December 31, 2017;

(b) Delinquency interest at the rate of 20% per annum as follows: (a) on the total amount of One Hundred Sixteen Million Six Hundred Nineteen Thousand Seven Hundred Twenty Two Pesos and Seventy Three Centavos (₱116,619,722.73); and (b) on the 20% deficiency interest which have accrued as stated in (a) hereof, computed from the date prescribed for payment until December 31, 2017; and

(c) Delinquency interest at the rate of 12% on the total unpaid amount [basic taxes, surcharges, and interests computed on (a) and (b) above] from January 1, 2018, until the same is fully paid.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

With Concurring & Dissenting Opinion

ROMAN G. DEL ROSARIO
Presiding Justice

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

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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 *En Banc*.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

FELONILA Z. CALUAG,
Petitioner,

-versus-

PEOPLE OF THE PHILIPPINES,
Respondent.

CTA EB CRIM. NO. 047
(CTA Crim. Case No. O-330)

Present:

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

Promulgated:
SEP 17 2018 3:36 p.m.

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CONCURRING AND DISSENTING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* in denying the Petition for Review filed by petitioner Felonila Z. Caluag, thereby upholding the Decision dated September 6, 2017 and Resolution dated January 19, 2018 of the Court in Division, albeit with modification relative to the imposition of deficiency and delinquency interests.

Anent the imposition of deficiency and delinquency interests, in view of the effectivity of Republic Act No. 10963 (TRAIN Law) on January 1, 2018, I submit that the imposable delinquency interest and deficiency interest on petitioner's deficiency income tax liability should be at the rate of 12%, pursuant to Section 249 of the NIRC of 1997, as amended by the Train Law.

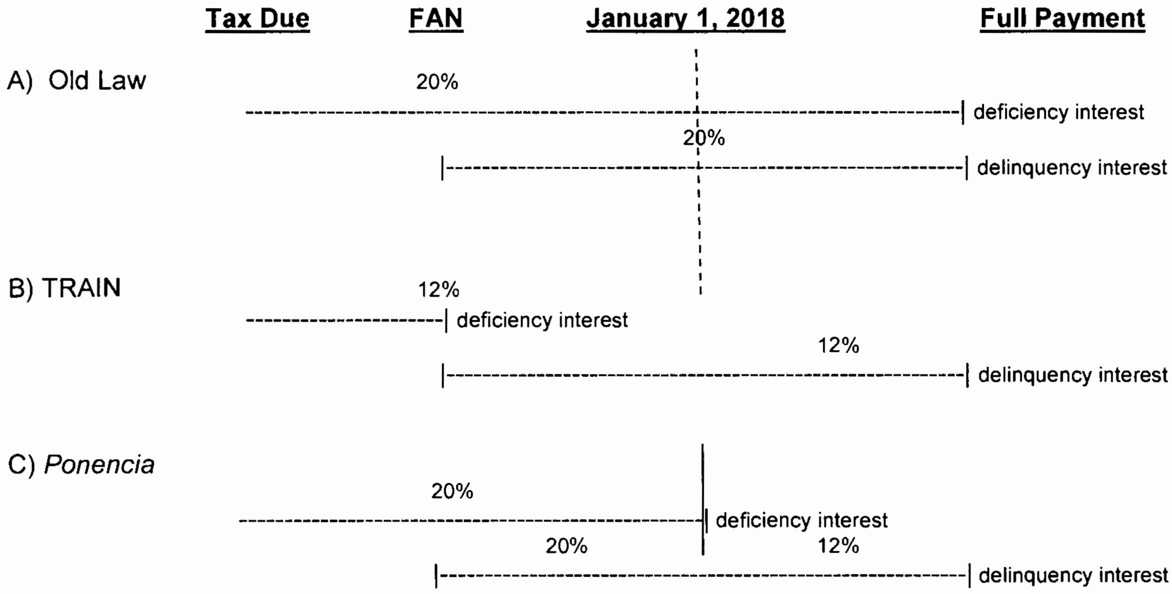
It must be emphasized that deficiency interest and delinquency interest on tax are based on law. When the law is amended during the pendency of a case, and there being a

specific provision as to when the amendment becomes effective, there is no reason for the Court not to apply the law as amended.

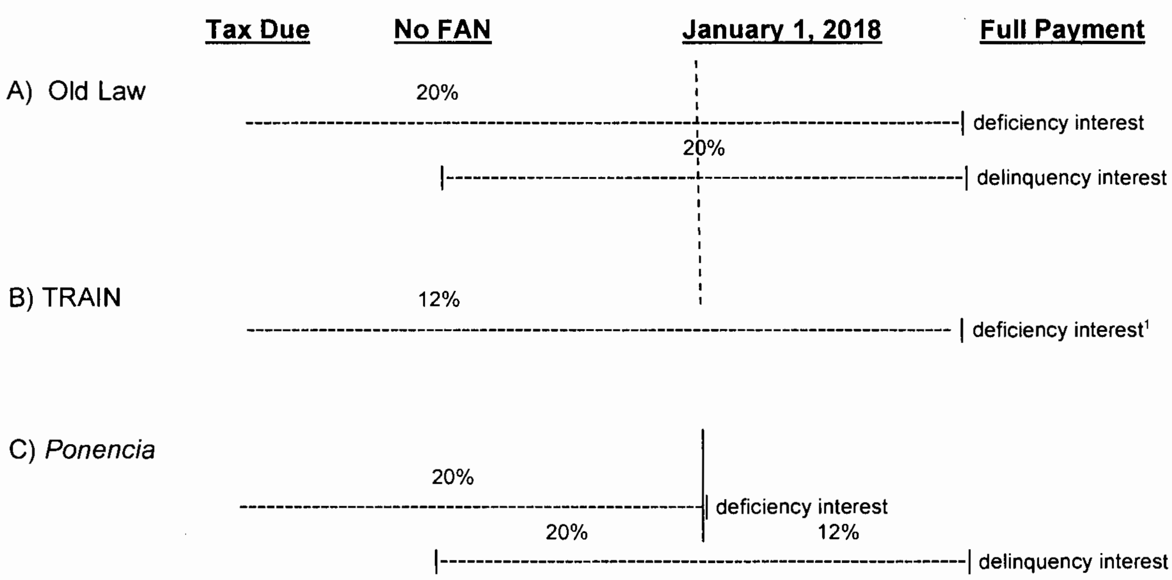
Parenthetically, the TRAIN Law made a substantial modification on the rate of interest and the mode by which interest may be computed. A comparison of the provision of Section 249 on interest under the NIRC and its amendment under the TRAIN Law would readily highlight the radical incongruity, *viz.*:

Section 249, NIRC of 1997, as amended	**Section 249, NIRC, as amended by the TRAIN Law**
Deficiency Interest **20% per annum**, from the date prescribed for its payment until the full payment thereof	**Deficiency Interest** **12% per annum**, **from the date prescribed for its payment until: (i) the full payment thereof**; or (ii) upon issuance of a notice and demand by the Commissioner of Internal Revenue, whichever comes earlier Provided that **<u>in no case shall the deficiency and delinquency interest be imposed simultaneously</u>**
Delinquency Interest **20% per annum**, until fully paid	**Delinquency Interest** **12% per annum**, until fully paid

The comparative provision of Section 249, before and after its amendment by the TRAIN Law *vis-à-vis* the imposition of interest in the *ponencia,* is graphically shown hereafter:



In the present case, in the absence of a FAN or formal letter of demand, the computation of **deficiency interest** should be in accordance with the TRAIN Law, that is -- **at 12% until full payment,** without imposing delinquency interest.



From the foregoing, it is readily apparent that Section 249 of the NIRC of 1997, as amended by the TRAIN Law, incorporates three (3) provisos that cannot be applied without setting aside the original version of Section 249 of the NIRC of 1997:

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[1] From date prescribed for payment until full payment in case no FAN or demand is made; delinquency interest may not be imposed simultaneously with deficiency interest.

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First, the TRAIN Law prescribes 12% deficiency and delinquency interests, which is double the legal interest rate for loans or forbearance of money, while the old provision prescribes the rate of 20% per annum;

Second, under the TRAIN Law, **the deficiency interest is computed from date prescribed for its payment: (i) until the full payment thereof**; or (ii) until the issuance of a notice and demand by the CIR, whichever comes earlier. The old version confined its computation strictly from the date prescribed for its payment until the full payment thereof; and

Third, the TRAIN Law proscribes the simultaneous imposition of deficiency interest and delinquency interest, which the old version allows.

In other words, since the TRAIN Law clearly **became effective on January 1, 2018**, there can be no logical and practical approach than to apply it in accordance with its clear language. As aforestated, as applied to the present case, the computation of **deficiency interest** should now be in accordance with the TRAIN Law, that is -- **at 12% until full payment** in the absence of demand (FAN) *sans* delinquency interest which cannot be imposed simultaneously with deficiency interest.

In computing deficiency and delinquency interests, the provisions of the TRAIN Law are not being applied retroactively. At the time that petitioner was adjudged to be liable to pay the deficiency taxes with corresponding deficiency interest and delinquency interest, the prevailing provisions are that of the TRAIN Law which **specifically states the rate of interests, the manner of computation and the proscription against the simultaneous imposition of deficiency and delinquency interests**. Thus, the Court has no recourse but to apply the same. To be sure, **there is nothing in the TRAIN Law which provides that the rate and manner of computing deficiency and delinquency interests shall be applied only to assessments issued after TRAIN Law's effectivity. It is clearly and plainly provided that upon TRAIN Law's effectivity, "in no case shall the deficiency and delinquency interests be imposed simultaneously."**

In view of the effectivity of the TRAIN Law on January 1, 2018, **the amendatory provisions of the TRAIN Law on the imposition**

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of deficiency and delinquency interests must be applied in determining the amount of petitioner's tax liability.

All told, I **VOTE** to:

(i) **DENY** the Petition for Review filed by petitioner Felonila Z. Caluag;

(ii) **AFFIRM** the assailed Decision dated September 6, 2017 and Resolution dated January 19, 2018 in so far as the Court in Division found petitioner Felonila Z. Caluag **GUILTY BEYOND REASONABLE DOUBT** for violation of Section 255 of the NIRC of 1997, as amended, and imposing upon her the appropriate penalty of imprisonment and fine, with subsidiary imprisonment;

(iii) **AFFIRM with MODIFICATION** the assailed Decision dated September 6, 2017 and Resolution dated January 19, 2018 and **ORDER** petitioner to **PAY** the **Bureau of Internal Revenue** the following:

a. The amount of **₱116,619,722.73** representing its income tax liability for taxable year 2005, inclusive of the 50% penalty imposed under Section 248 (B) of the NIRC of 1997, as amended, computed as follows:

TAXABLE YEAR	BASIC INCOME TAX DUE	50% PENALTY	TOTAL
2005	**₱77,746,481.82**	**₱38,873,240.91**	**₱116,619,722.73**

b. **Deficiency interest** at the rate of twelve percent (12%) per annum on the basic deficiency income tax, computed from April 15, 2006 until full payment pursuant to Section 249 (B) of the NIRC of 1997, as amended by RA No. 10963.

ROMAN G. DEL ROSARIO
Presiding Justice