

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL
REVENUE,

Petitioner,

- versus -

RIECKERMANN PHILIPPINES,
INC.,

Respondent.

CTA EB NO. 1855
(CTA Case No. 8715)

Present:

DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, and
MODESTO-SAN PEDRO, JJ.

Promulgated:

FEB 24 2020

ff
1:10 p.m.

X-----X

AMENDED DECISION

RINGPIS-LIBAN, L:

For the Court's resolution are the following:

- 1) Petitioner's "Motion for Reconsideration (Decision dated 27 August 2019)" ("Motion for Reconsideration") filed on September 18, 2019, with Respondent's "Comment to Petitioner's Motion for Reconsideration" filed on October 15, 2019; and
- 2) Respondent's "Motion for Partial Reconsideration" filed on September 24, 2019, without comment thereon.¹

¹ Records Verification Report issued by the Judicial Records Division dated January 14, 2020.

Both parties move for reconsideration of the Court’s Decision² dated August 27, 2019 (“Assailed Decision”), the dispositive portion of which reads:

“**WHEREFORE**, premises considered, the Petition for Review filed with the Court *En Banc* on June 07, 2018 is **DENIED** for lack of merit. The Assailed Decision dated January 15, 2018 and Assailed Resolution dated May 02, 2018 are **AFFIRMED with MODIFICATION** in the computation of the deficiency interest and delinquency interests in view of the effectivity of Republic Act No. 10963 (“TRAIN Law”)³ on January 01, 2018 and the issuance of Revenue Regulation (“RR”) No. 21-2018⁴ dated September 14, 2018.

The assessment issued by CIR against [Respondent] for calendar year 2007 covering deficiency income tax, VAT, WTC and EWT is **UPHELD**. Accordingly, Respondent is **ORDERED TO PAY FIVE HUNDRED FIFTY-FOUR THOUSAND SEVEN HUNDRED FIFTY-EIGHT PESOS AND TWO CENTAVOS (Php554,758.02)** representing deficiency taxes for calendar year 2007, inclusive of twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, and twenty percent (20%) deficiency interest and 20% delinquency interest imposed under Section 249(A) and (B), respectively, of the same Code, computed until December 31, 2017, which is prior to its amendment under the TRAIN Law, thus:

	IT	VAT	EWT	WTC	TOTAL
Basic Tax Due	Php6,886.01	Php65,308.76	Php10,963.26	Php21,722.51	Php104,880.54
Add: 25% Surcharge	1,721.50	16,327.19	2,740.82	5,430.63	26,220.14
20% Deficiency Interest from April 16, 2008 to September 03, 2013					
$[Php6,886.01 \times 20\% \times 1967/365 \text{ days}]$	7,421.80				7,421.80
20% Deficiency Interest from January 26, 2008 to September 03, 2013					

² Rollo, pp. 79-91.

³ An Act Amending Sections 5, 6, 24, 25, 27, 31, 32, 33, 34, 51, 52, 56, 57, 58, 74, 79, 84, 86, 90, 91, 97, 99, 100, 101, 106, 107, 108, 109, 110, 112, 114, 116, 127, 128, 129, 145, 148, 149, 151, 155, 171, 174, 175, 177, 178, 179, 180, 181, 182, 183, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 232, 236, 237, 249, 254, 264, 269, and 288; Creating New Sections 51-A, 148-A, 150-A, 150-B, 237-A, 264-A, 264-B, and 265-A; and Repealing Sections 35, 62, And 89; All Under Republic Act No. 8424, Otherwise Known as the National Internal Revenue Code of 1997, as Amended, and for Other Purposes.

⁴ Regulations Implementing Section 249 (Interest) of the National Internal Revenue Code (NIRC) of 1997, as amended under Section 75 of the Republic Act (RA) No. 10963 or the “Tax Reform for Acceleration and Inclusion (TRAIN Law)”.

$[Php65,308.76 \times 20\% \times 2048/365 \text{ days}]$		73,288.95			73,288.95
20% Deficiency Interest from January 16, 2008 to September 03, 2013					
$[Php10,963.26 \times 20\% \times 2058/365 \text{ days}]$			12,362.95		12,362.95
20% Deficiency Interest from January 16, 2008 to September 03, 2013					
$[Php21,722.51 \times 20\% \times 2058/365 \text{ days}]$				24,495.85	24,495.85
Total Amount Due, September 03, 2013	Php16,029.31	Php154,924.90	Php26,067.03	Php51,648.99	Php248,670.23
Add: 20% Deficiency Interest from September 04, 2013 to December 31, 2017					
$[Php6,886.01 \times 20\% \times 1580/365 \text{ days}]$	5,961.59				5,961.59
$[Php65,308.76 \times 20\% \times 1580/365 \text{ days}]$		56,541.28			56,541.28
$[Php10,963.26 \times 20\% \times 1580/365 \text{ days}]$			9,491.48		9,491.48
$[Php21,722.51 \times 20\% \times 1580/365 \text{ days}]$				18,806.34	18,806.34
20% Delinquency Interest from September 04, 2013 to December 31, 2017					
$[Php16,029.31 \times 20\% \times 1580/365 \text{ days}]$	13,877.43				13,877.43
$[Php154,924.90 \times 20\% \times 1580/365 \text{ days}]$		134,126.77			134,126.77
$[Php26,067.03 \times 20\% \times 1580/365 \text{ days}]$			22,567.62		22,567.62
$[Php51,648.99 \times 20\% \times 1580/365 \text{ days}]$				44,715.29	44,715.29
Total Amount Due, December 31, 2017	Php35,868.33	Php345,592.95	Php58,126.13	Php115,170.61	Php554,758.02

In addition, Respondent is **ORDERED TO PAY** delinquency interest at the rate of twelve percent (12%), which is double the legal interest rate for loans or forbearance of any money, on the total amount due as of September 03, 2013 in the amount of **Php248,670.23**, as determined above, computed from January 01, 2018 until full payment thereof pursuant to Section 249(C) of the Tax Code, as amended by TRAIN Law and implemented by RR No. 21-2018.



However, the following partial payments made by Respondent shall have to be deducted in the final settlement of the above deficiency taxes including surcharge, deficiency interest and delinquency interest:

Tax Type	Basic	25% Surcharge	Total
Income Tax	Php512,461.70		Php 512,461.70
Value-added Tax	878,959.36		878,959.36
Withholding Tax on Compensation	21,722.51	Php 13,259.66	34,982.17
TOTAL	Php1,413,143.57	Php13,259.66	Php1,426,403.23

SO ORDERED.⁵

In his Motion for Reconsideration, Petitioner claims that the subject assessments became final, executory, and unappealable by reason of the failure of Respondent to timely file a Petition for Review within thirty (30) days from the lapse of the 180-day period provided under Section 228 of the National Internal Revenue Code (“NIRC”) of 1997, as amended.

In view thereof, Petitioner prays that the Assailed Decision be modified, and another one be rendered declaring the subject assessments final, executory and demandable.

Respondent opposes Petitioner’s motion, stating that his argument is a mere verbatim reiteration of his contention in its petition filed with the Court *En Banc*, as well as his Memorandum and Motion for Partial Reconsideration filed before the Court in Division, and that the Assailed Decision already passed upon the said issue.

As to its own “Motion for Partial Reconsideration”, Respondent submits that considering Section 249 of the NIRC of 1997, as amended, provides that deficiency and delinquency interest are only due until the full payment of the unpaid tax, the second part of the computation in the dispositive portion of the Assailed Decision which includes interest from September 04, 2013 to December 31, 2017 must be adjusted.

As a result, Respondent prays for the following:

- 1) That Respondent be liable for deficiency interest and delinquency interest for its deficiency income tax, value-added tax (“VAT”), expanded withholding tax (“EWT”) and withholding tax on compensation (“WTC”) for taxable year 2006 until May 15, 2014 only; and

⁵ Rollo, pp. 88-90.

- 2) The deficiency EWT due, including the deficiency and delinquency interest due thereon up to May 14, 2014 and the twenty-five percent (25%) surcharge and the unpaid deficiency and delinquency interest from February 04, 2011 to May 15, 2014 on the deficiency WTC be deducted from Respondent's overpayment on May 15, 2014.

We resolve.

***Petitioner's Motion for
Reconsideration lacks merit***

We find Petitioner's argument in its Motion for Reconsideration devoid of merit. Petitioner fails to raise any new and substantial argument, and no cogent reason exists to warrant a reconsideration of the Court's Assailed Decision. Nevertheless, We shall take time to explain why his motion must be set aside, if only to clear any lingering doubt on the matter.

Petitioner avers that the subject deficiency assessments had already become final, executory and demandable. The established facts of this case, however, show that Respondent was able to timely file an appeal to the Court *a quo*, which prevented the assessments from becoming final, executory and demandable.

The facts are undisputed.

On January 07, 2011, Respondent received the Formal Letter of Demand ("FLD") dated January 03, 2011 with attached Details of Discrepancies and Assessment Notices. Accordingly, on January 25, 2011, Respondent filed a Letter of Protest to the FLD. On September 03, 2013, Respondent received from Respondent the Final Decision dated August 28, 2013 signed by Regional Director Jonas DP. Amora. Consequently, on October 03, 2013 or within thirty (30) days from the receipt of the Final Decision, Respondent filed a Petition for Review with the Court of Tax Appeals Second Division ("Second Division").⁶

Indeed, it took two (2) years, eight (8) months and eight (8) days for Respondent to file its petition with the Court in Division, from the time it filed an administrative protest to the assessment. And yet, this is permissible under the last paragraph of Section 228⁷ of the NIRC of 1997, as amended, as long as the petition

⁶ Docket, Decision, Facts, pp. 693-694.

⁷ "If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, **the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period**; otherwise, the decision shall become final, executory and demandable."

is filed within thirty (30) days from receipt of the decision denying the protest, which is what happened in the instant case.

In the case of *Lascona Land Co., Inc. v. Commissioner of Internal Revenue*⁸, the Supreme Court declared that in case the Commissioner of Internal Revenue (“CIR”) failed to act on the disputed assessment within the 180-day period from date of submission of documents, a taxpayer can either file a Petition for Review with the Court of Tax Appeals (“CTA”) within thirty (30) days after the expiration of the 180-day period or await the final decision of the CIR on the disputed assessments and appeal such final decision to the CTA within thirty (30) days after receipt of a copy of such decision.

Besides, Section 11 of Republic Act (“R.A.”) No. 1125⁹, as amended by R.A. No. 9282¹⁰, states in part that Respondent has thirty (30) days either (1) from receipt of denial of the protest or (2) from the lapse of the 180-day period fixed by law for the CIR to act upon the protest, within which to file an appeal before this Court:

“SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* — Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.

Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. A Division of the CTA shall hear the appeal: *Provided, however,* That with respect to decisions or rulings of the Central Board of Assessment Appeals and the Regional Trial Court in the exercise of its appellate jurisdiction appeal shall be made by filing a petition for review under a procedure analogous to that provided for under rule 43 of the 1997 Rules of Civil Procedure with the CTA, which shall hear the case *en banc*.¹¹



⁸ G.R. No. 171251, March 05, 2012.

⁹ An Act Creating the Court of Tax Appeals, June 16, 1954.

¹⁰ An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes, March 30 2004.

¹¹ *Emphasis and underscoring supplied.*

In this regard, a taxpayer can opt to wait for the final decision of the CIR on the protested assessment. A taxpayer has the right to appeal such final decision to the CTA by filing a Petition for Review within thirty (30) days after receipt of a copy of such decision or ruling, even if the 180-day period fixed by law for the CIR to act on the disputed assessments has already expired.

From the foregoing, it is evident that the subject assessments have not yet attained finality by operation of law for Respondent was able to file its Petition for Review with the Second Division thirty (30) days after receipt of Petitioner's Final Decision on the assessment.

Respondent's "Motion for Partial Reconsideration" is impressed with merit

Conversely, this Court finds merit in Respondent's contention that the computation of deficiency and delinquency interests must be revised.

As it happens, the Second Division, in its Decision¹² dated January 15, 2018, found Respondent liable for four (4) assessment items: (a) income tax, (b) VAT, (c) EWT, and (d) WTC. The Court *a quo* also recognized that Respondent made the following partial payments with respect to the aforementioned deficiency assessments:

Tax Type	Amount Paid
Income Tax ¹³	Php 512,461.70
VAT ¹⁴	878,959.36
WTC ¹⁵	34,982.17

Under Section 249 of the NIRC of 1997, as amended by Republic Act 10963, also known as Tax Reform for Acceleration and Inclusion ("TRAIN Law"), interest (on the basic deficiency tax due) shall be collected from the date prescribed for its payment until the full payment thereof, 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 double the legal interest

¹² Docket, pp. 692-732.

¹³ *Id.*, Joint Stipulation of Facts, Par. 7, p. 157.

¹⁴ *Id.*

¹⁵ *Id.*, p. 618.

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 the amount is fully paid**: Provided, That in no case shall the deficiency and the 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.* – In case of failure to pay:

xxx xxx xxx

(1) 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.”¹⁶

From the aforementioned provision, it follows that deficiency and delinquency interests should only be assessed up to the date the taxpayer fully settles payment of the deficiency tax due.

We however cannot subscribe to Respondent’s view that it is liable for deficiency and delinquency interests until May 15, 2014 only, for all the assessment items. Additionally, the Court notes that the partial payments for income tax and VAT were paid on May 15, 2014; for WTC on June 25, 2015; and that no partial payment was made for EWT. Moreover, the payment for WTC on June 25, 2015 did not fully settle the WTC liability.

Lastly, upon computation, the Court notes that Respondent made an overpayment, although the exact amount of overpayment may be only ascertained upon date of final settlement of the subject assessments.

WHEREFORE, premises considered, Petitioner’s “Motion for Reconsideration (Decision dated 27 August 2019)” is **DENIED**, while Respondent’s “Motion for Partial Reconsideration” is **PARTIALLY GRANTED**.

¹⁶ *Emphasis and underscoring supplied.*



The Court’s Decision dated August 27, 2019 is amended to read as follows:

“The assessment issued by CIR against Respondent for calendar year 2007 covering deficiency income tax, VAT, WTC and EWT is **UPHELD**. Accordingly, Respondent is **ORDERED TO PAY THREE HUNDRED FORTY-NINE THOUSAND FIVE HUNDRED SIX PESOS AND 59/100 (Php349,506.59)** representing deficiency taxes for calendar year 2007, inclusive of twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, and twenty percent (20%) deficiency interest and 20% delinquency interest imposed under Section 249(A) and (B), respectively, of the same Code, computed until December 31, 2017, which is prior to its amendment under the TRAIN Law, thus:

	IT ¹⁷	VAT ¹⁸	EWT ¹⁹	WTC ²⁰	TOTAL
Basic Tax Due	Php6,886.01	Php65,308.76	Php10,963.26	Php21,722.51	Php104,880.54
Add: 25% Surcharge	1,721.50	16,327.19	2,740.82	5,430.63	26,220.14
20% Deficiency Interest from April 16, 2008 to September 03, 2013					
$[Php6,886.01 \times 20\% \times 1967 / 365 \text{ days}]$	7,421.80				7,421.80
20% Deficiency Interest from January 26, 2008 to September 03, 2013					
$[Php65,308.76 \times 20\% \times 2048 / 365 \text{ days}]$		73,288.95			73,288.95
20% Deficiency Interest from January 16, 2008 to September 03, 2013					
$[Php10,963.26 \times 20\% \times 2058 / 365 \text{ days}]$			12,362.95		12,362.95
20% Deficiency Interest from January 16, 2008 to September 03, 2013					
$[Php21,722.51 \times 20\% \times 2058 / 365 \text{ days}]$				24,495.85	24,495.85
Total Amount Due, September 03, 2013	Php16,029.31	Php154,924.90	Php26,067.03	Php51,648.99	Php248,670.23

¹⁷ Interest shall be computed only up to May 15, 2014 since deficiency income tax due (*i.e.*, basic tax + surcharge + interest) was fully paid on such date. [Php19,218.62 tax due v. Php512,461.70 payment]

¹⁸ Interest shall be computed only up to May 15, 2014 since deficiency VAT due (*i.e.*, basic tax + surcharge + interest) was fully paid on such date. [Php185,576.60 tax due v. Php878,959.36 payment]

¹⁹ Interest shall be computed until full payment thereof since no payment was made on deficiency EWT due.

²⁰ Deficiency interest shall be computed until full payment of the basic tax on June 25, 2015. Whereas, delinquency interest shall be computed based on the total amount due as of September 03, 2013 until the date of payment on June 25, 2015. However, since, the total amount due as of September 03, 2013 was not fully satisfied by the payment made June 25, 2015 [Php51,648.99 tax due v. Php34,982.17 payment], the remaining balance therefrom amounting to Php16,666.82 shall be computed with delinquency interest until full payment thereof.

Add: 20% Deficiency Interest from September 04, 2013 to May 15, 2014					
$[Php6,886.01 \times 20\% \times 254/365 \text{ days}]$	958.38				958.38
$[Php65,308.76 \times 20\% \times 254/365 \text{ days}]$		9,089.55			9,089.55
20% Delinquency Interest from September 04, 2013 to May 15, 2014					
$[Php16,029.31 \times 20\% \times 254/365 \text{ days}]$	2,230.93				2,230.93
$[Php154,924.90 \times 20\% \times 254/365 \text{ days}]$		21,562.15			21,562.15
20% Deficiency Interest from September 04, 2013 to June 25, 2015					
$[Php21,722.51 \times 20\% \times 660/365 \text{ days}]$				7,855.81	7,855.81
20% Delinquency Interest from September 04, 2013 to June 25, 2015					
$[Php51,648.99 \times 20\% \times 660/365 \text{ days}]$				18,678.54	18,678.54
20% Delinquency Interest from June 26, 2015 to December 31, 2017					
$[(Php51,648.99 - Php34,982.17) \times 20\% \times 920/365 \text{ days}]$				8,401.90	8,401.90
20% Deficiency Interest from September 04, 2013 to December 31, 2017					
$[Php10,963.26 \times 20\% \times 1580/365 \text{ days}]$			9,491.48		9,491.48
20% Delinquency Interest from September 04, 2013 to December 31, 2017					
$[Php26,067.03 \times 20\% \times 1580/365 \text{ days}]$			22,567.62		22,567.62
Total Amount Due, December 31, 2017	Php19,218.62	Php185,576.60	Php58,126.13	Php86,585.24	Php349,506.59

In addition, Respondent is **ORDERED TO PAY** delinquency interest at the rate of twelve percent (12%), which is double the legal interest rate for loans or forbearance of any money, on the total EWT and WTC due as of September 03, 2013 in the amount of **Php42,733.85²¹**, computed from January 01, 2018 until full payment thereof pursuant to Section 249(C) of the Tax Code, as amended by TRAIN Law and implemented by RR No. 21-2018.

However, the following partial payments made by Respondent shall have to be deducted in the final settlement of the above deficiency taxes including surcharge, deficiency interest and delinquency interest:



²¹ Since deficiency income tax and VAT due were already fully paid, only delinquency interest on the EWT (Php26,067.03) and remaining WTC (Php16,666.82) due as of September 03, 2013 shall be computed until full payment thereof.

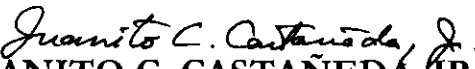
Tax Type	Basic	25% Surcharge	Total
Income Tax	Php 512,461.70		Php 512,461.70
Value-added Tax	878,959.36		878,959.36
Withholding Tax on Compensation	21,722.51	Php 13,259.66	34,982.17
TOTAL	Php1,413,143.57	Php13,259.66	Php1,426,403.23

SO ORDERED.”

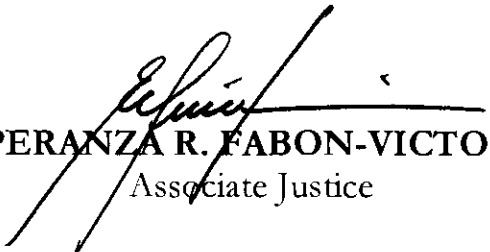

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice


JUANITO C. CASTAÑEDA, JR.
Associate Justice

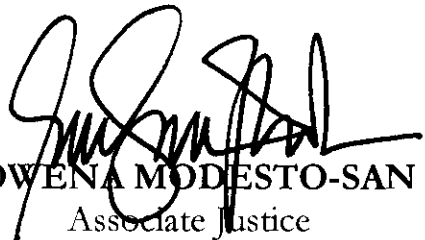

ERLINDA P. UY
Associate Justice


ESPERANZA R. FABON-VICTORINO
Associate Justice


CIELITO N. MINDARO-GRULLA
Associate Justice


CATHERINE T. MANAHAN
Associate Justice


JEAN MARIE A. BACORRO-VILLENA
Associate Justice


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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