REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

BATANGAS ELECTRIC 1 COOPERATIVE 1 (BATELEC 1), *Petitioner,*	**CTA CASE NO. 8423**
– versus –	Members: **BAUTISTA**, *Chairperson* **FABON-VICTORINO**, and **RINGPIS-LIBAN**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUN 01 2018 2:10 p.m.

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AMENDED DECISION

BAUTISTA, J.:

For resolution are the following:

1. Respondent's Motion for Partial Reconsideration Re: Decision dated 11 January 2018 ("Motion for Partial Resolution") filed on January 31, 2018; with petitioner's Comment & Reply filed by registered mail on March 20, 2018, and received by the Court on April 4, 2018; and

2. Petitioner's Manifestation and Motion filed on February 1, 2018; with respondent's Comment/Opposition (Re: Manifestation and Motion) ("Comment/Opposition ") filed on March 12, 2018.

On January 11, 2018, the Court *En Banc* promulgated an Amended Decision[1], wherein the Court held that petitioner is liable to pay deficiency value added tax ("VAT") and deficiency expanded withholding tax ("EWT"). In the same decision, the Court also held

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[1] *Records, CTA Case No. 8423, Vol. 3, Amended Decision,* pp. 1247-1269.

that petitioner is not liable to pay compromise penalty and withholding tax on compensation ("WTC"), however, it is liable for 20% deficiency interest. In addition to these, the Court also ordered petitioner to pay deficiency and delinquency interests. The dispositive portion of the Amended Decision reads as follows:[2]

> **WHEREFORE,** premises considered, the instant Petition for Review is hereby **DENIED**. The deficiency VAT assessments issued by respondent against petitioner for TY 2007 are hereby upheld in the amount of **Php4,421,092.19**, inclusive of the 25% surcharge imposed under *Section 248(A)(3) of the 1997 NIRC*. Also, petitioner is liable for 20% deficiency interest which have accrued on the payments made on February 15, 2011 representing EWT and WTC in the amounts of **Php80,659.38** and **Php80,981.96**, respectively, computed as follows:

TAX TYPE	BASIC	25% SURCHARGE	20% DEFICIENCY INTEREST ON PAYMENT MADE ON FEBRUARY 15, 2011	TOTAL
VAT	Php 3,536,873.75	Php 884,218.44	-	Php 4,421,092.19
EWT	-	-	Php 80,659.38	80,659.38
WTC	-	-	80,981.96	80,981.96
TOTAL	PHP 3,536,873.75	PHP 884,218.44	PHP 161,641.34	PHP 4,582,733.53

> In addition, petitioner is **ORDERED** to pay:
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> 1. Deficiency interest at the rate of twenty percent (20%) *per annum* on the basic deficiency VAT of Php3,536,873.75 computed from January 25, 2008 until full payment thereof pursuant to *Section 249(B) of the 1997 NIRC;*
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> 2. Delinquency interest at the rate of twenty percent (20%) *per annum* on the amount of Php4,421,092.19, representing basic deficiency VAT of Php3,536,873.75 and 25% surcharge of Php884,218.44 computed from January 5, 2012 until full payment thereof, pursuant to *Section 249(C) of the 1997 NIRC;* and
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> 3. Delinquency interest at the rate of twenty percent (20%) *per annum* on the deficiency interest of Php161,641.34 (Php80,659.38 plus Php80,981.96) due on the February 15, 2011 deficiency Withholding Tax payment computed from January 5, 2012 until full payment thereof, pursuant to *Section 249(C) of the 1997 NIRC.*

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[2] *Records, Vol. 3, Amended Decision,* pp. 1267-1268.

SO ORDERED.[3]

Unsatisfied with the Amended Decision, respondent filed his Motion for Partial Reconsideration on January 31, 2018; while, petitioner filed a Manifestation and Motion, which shall be treated as a Motion for Reconsideration, on February 1, 2018. The Court ordered petitioner and respondent to file their respective comments on each other's Motions in a Resolution dated February 14, 2018.

Respondent filed his Comment/Opposition on March 12, 2018.

On March 19, 2018, the Judicial Records Division issued a Records Verification Report, which states that petitioner failed to file its comment on respondent's Motion for Partial Reconsideration.

On March 20, 2018, petitioner filed its Comment & Reply by registered mail.

Records show that counsel for petitioner received the Resolution dated February 14, 2018 on March 5, 2018, thus it has until March 15, 2018 within which to file its comment. The Comment & Reply was filed beyond the period provided without any explanation whatsoever. Petitioner states that it filed the Comment & Reply together in order to save costs and expenses without taking into consideration the period given by the Court. Petitioner could have easily filed a Motion for Extension to file its comment. For this reason, the Court will consider the arguments set forth therein as a Reply to respondent's Comment/Opposition filed on March 12, 2018.

On March 28, 2018, respondent's Motion for Partial Reconsideration Re: Decision dated 11 January 2018; and petitioner's Manifestation and Motion were submitted for resolution.

Respondent's Motion for Partial Reconsideration

Respondent claims that while the Court sustained the deficiency VAT assessment issued by respondent against petitioner for taxable

[3] Emphases retained.

year 2007, the Court erred in not imposing compromise penalty in the assailed Amended Decision. Respondent cites *Section 255 of the 1997 National Internal Revenue Code ("1997 NIRC"),* which provides that failure to file a return and pay the tax due merits the imposition of compromise penalty. Respondent also states that petitioner disregarded *Revenue Memorandum Order ("RMO") No. 7-2015,* in relation to *RMO No. 1-90,* which provides for the Revised Consolidated Schedule of Compromise Penalties for Violations of the *1997 NIRC,* despite their being valid administrative issuances.

<u>Petitioner's Motion</u>

In its Motion, petitioner extends its appreciation to the Court for the resolution of the instant case. It points out that while it stands behind its allegations that it paid the correct taxes, it has learned its lesson to carefully and properly document its tax payments and tax compliances; and that it has improved and will continue improving its internal system and processes. Petitioner claims that it already processed payment with BIR Revenue District Office ("RDO"), Batangas City, as shown in the table below. To prove payment, petitioner attached as annexes copies of the respective electronic filing and payment ("e-FPS") Payment Form 0605, Filing Reference Number, and Transaction Acknowledgment, summarized as follows:

ANNEX	TRANSACTION REFERENCE NUMBER	AMOUNT
Annex "A"	269-363-180131-50351	Php 97,940.38
Annex "B"	269-363-180131-50292	Php 16,885,422.89
Annex "C"	269-363-180131-50232	Php 98,509.20
TOTAL		**PHP 17,081,872.47**

Petitioner claims that the foregoing amounts due as of January 31, 2018, were computed by the BIR RDO, Batangas City taking into consideration the Amended Decision of the Court dated January 11, 2018; that BIR RDO Batangas City computed the interest by simultaneously imposing both the deficiency and delinquency interest beginning January 5, 2012, thus effectively assessing an interest of 40% *per annum* from 2012. Petitioner states that it made full payment in accordance with BIR's computation to avoid any further interest.

However, petitioner begs clarification on the interest due in light of *Section 75 of Republic Act No. 10963,* otherwise known as the *Tax*

Reform for Acceleration and Inclusion ("TRAIN Law"), which provides "that in no case shall the deficiency and the delinquency interest prescribed under Subsections (B) and (C) of Section 249 of the 1997 NIRC be imposed simultaneously." Petitioner asserts that since the *TRAIN Law* took effect on January 1, 2018, the Court should apply *Section 75* thereof.

Petitioner argues that the *TRAIN Law* can be considered a curative law, remedying unconscionable and confiscatory interest effectively amounting to 40% *per annum,* hence, should be retroactively applied; and that even respondent admits the legal effect of the *TRAIN Law* when he cited *Moog Controls v. Commissioner of Internal Revenue*[4] in his Comment.

Likewise, petitioner begs equal treatment in the computation of the deficiency and delinquency interests as another taxpayer, citing *Liquigaz v. CIR*[5] (*"Liquigaz"* case). In that case, the Court *En Banc* held that deficiency interest shall accrue from the date prescribed for its payment up to the deadline set by the BIR for payment of the assessed tax, while the delinquency interest shall run from the said deadline until the assessed tax is fully paid; that the *Liquigaz* case levied only 20% interest *per annum* instead of the 40% interest *per annum* beginning January 12, 2012 computed by the BIR and paid by petitioner; and that equal treatment and non-discrimination would mean that petitioner's tax liability should also be levied only deficiency interest or delinquency interest at a given point in time and not simultaneously.

Petitioner states further that in the *Liquigaz* case, the Court *En Banc* ruled on the limited applicability of deficiency interest on deficiency income tax, deficiency estate tax and deficiency donor's tax because the *1997 NIRC* only has three instances where the term "deficiency" is defined, namely for income tax, estate tax, and donors tax, pursuant to *Sections 56(8), 93 and 104,* for this reason, no deficiency interest should be imposed on deficiency EWT, VAT and WTC.

Finally, petitioner begs for leeway, substantial justice and equity considering that it is a non-stock and non-profit organization providing rural electrification in the province of Batangas. It further states that the full payment of the amount computed by the BIR was

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[4] CTA Case No. 9077, February 22, 2018.
[5] CTA *EB* No. 1117, September 21, 2015.

immediately made to avoid further interest; that petitioner is trying its best to minimize cost and expenses for the ratepayers by asking the application of the *TRAIN Law* and the *Liquigaz* doctrine in the instant case which can actually lower the tax due and even entitle petitioner to some refund if possible; and that its savings would also be the savings of its member-consumers.

In its Comment/Opposition, respondent states that it is clear in the provisions of the *TRAIN Law* that it does not have a retroactive application. According to respondent, *Article 4 of the New Civil Code* provides that "laws shall have no retroactive effect unless the contrary is provided;" and that it is a well-settled rule of statutory construction that statutes are to be construed as having only prospective operation, unless the intendment of the legislature to give them retroactive effect is expressly declared or is necessarily implied from the language used. Respondent further argues that the *TRAIN Law* is a substantive law and being such, it may not be construed to have a retroactive effect. Respondent also posits that it is not a curative law; that curative statutes are intended to supply defects, abridge superfluities in existing laws and curb certain evils, they make valid that which before enactment of the statute was invalid; and that the *TRAIN law* does not have such characteristics hence, it is a substantive law which does not have a retroactive application.

Meanwhile, petitioner counter-argues in its Reply that the Court was correct in not imposing compromise penalty. Petitioner maintains that a compromise penalty is levied only in case of each failure to file an information or return, statement or list, or keep any record or supply any information required. Petitioner claims that it lost the case because of insufficiency of evidence and failure to substantiate its claims; that the fact that it tried to present documents, records, and information that are available after the lapse of so many years, it would show that there was no willful neglect or malice in complying with its tax obligations; and that there was no willful neglect as there was good faith effort to comply with the requirements. It pointed out that it is a large electric cooperative with extremely voluminous transactions.

The Court *En Banc* will now resolve the instant Motions, and finds no merit in respondent's Motion for Partial Reconsideration.

The case of *CIR v. Lianga Bay Logging Co. Inc., et al.*[6] is a case in point where the Supreme Court held that the imposition of compromise penalty without the conformity of the taxpayer is illegal and unauthorized. It follows that a compromise penalty may be imposed if the taxpayer has agreed to it, and there is nothing in the records which would show that petitioner consented to the compromise penalty.

As to petitioner's Motion, the Court finds no merit in petitioner's assertion that according to the *Liquigaz* case, the Court *En Banc* ruled that: *(1)* deficiency interest shall accrue from the date prescribed for its payment up to the deadline set by the BIR for payment of the assessed tax, while the delinquency interest shall run from the said deadline until the assessed tax is fully paid; and *(2)* deficiency interest should only be applied to income tax, estate tax, and donors tax, pursuant to *Sections 56(8), 93 and 104*.

It must be emphasized that petitioner cited the Court *En Banc's* decision in CTA *EB* Case Nos. 1117 and 1119, or the *Liquigaz* case, <u>dated September 21, 2015</u>. Petitioner may have missed the Amended Decision by the Court *En Banc* in the same case promulgated on June 3, 2016, wherein it ruled that deficiency interest must be imposed not just on deficiency income tax but also on deficiency VAT, EWT, and WTC. In the same Amended Decision, the Court *En Banc* addressed the issue of simultaneous imposition of deficiency and delinquency interests. The Court *En Banc* in that case ruled in this wise:

> On the issue of imposition of deficiency interest, the case of Takenaka Corporation Philippine Branch vs. Commissioner of Internal Revenue (the 'Takenaka Case') is in order:
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> > 'The issue is no longer novel as the same was sufficiently discussed by the Supreme Court in Paper Industries Corporation of the Philippines (PICOP) v. Court of Appeals, et al. The Supreme Court held that Section 247(a) of the NIRC of 1977, 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.'

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[6] G.R. No. L-35266, January 21, 1991, 193 SCRA 86.

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Thus, deficiency interest must be imposed not just on deficiency income tax but also on deficiency VAT, EWT and WTC.

Also, as to the issue of simultaneous imposition of deficiency and delinquency interests, which shall be reckoned from date prescribed for their payment until full payment thereof, the same Takenaka Case is applicable, 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.
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> xxx xxx xxx
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> 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.

This is the same ruling adapted by this Court in the case of Medicard Philippines, Inc. vs. Commissioner of Internal Revenue and Avon Products Manufacturing, Inc. vs. Commissioner of Internal Revenue.

Petitioner alleges that the *TRAIN Law* should be given a retroactive effect, and that it can be considered a curative law, remedying the unconscionable and confiscatory interest effectively amounting to 40% *per annum*, hence, should be retroactively applied.

The Court is not convinced.

A curative statute makes valid that which before enactment of the statute was invalid.[7] *Section 249 of the 1997 NIRC,* which provides for the deficiency and delinquency interests has never been declared as invalid by the Supreme Court, thus, there was nothing to cure by the passing of the *TRAIN Law.*

Prior to the enactment of the *TRAIN Law, Section 249 of the 1997 NIRC* justifies the simultaneous imposition of deficiency interest and delinquency interest. *Section 249, paragraphs (A), (B) and (C)* clearly provide that the imposition of both the deficiency interest and delinquency interest are to be reckoned from the date prescribed for their payment and until the full payment thereof.[8] Thus, that being the prevailing law at the time the assessment was made, it is only proper that petitioner should be liable for deficiency and delinquency interest at 20% *per annum* from the date prescribed for its payment until December 31, 2017, that is, from January 25, 2008 until December 31, 2017, for deficiency interest; and from January 5, 2012 until December 31, 2017 for delinquency interest. The *TRAIN Law,* which took effect on January 1, 2018, should be applied prospectively.

Petitioner states that it processed payment with BIR RDO Batangas City. However, upon conducting its own computation based on the Assailed Decision, the Court found that petitioner's payments in the total amount of Php17,081,872.47[9], is <u>not sufficient</u> to cover the basic deficiency taxes and increments in the total amount of Php25,624,171.24 (Php4,582,733.53 plus Php7,025,297.18 plus Php13,897,834.03 plus Php118,306.51), computed as follows:

TAX TYPE	BASIC	25% SURCHARGE	20% DEFICIENCY INTEREST ON PAYMENT MADE ON FEBRUARY 15, 2011	TOTAL
VAT	Php 3,536,873.75	Php 884,218.44	-	Php 4,421,092.19
EWT	-	-	Php 80,659.38	80,659.38
WTC	-	-	80,981.96	80,981.96
TOTAL	**PHP 3,536,873.75**	**PHP 884,218.44**	**PHP 161,641.34**	**PHP 4,582,733.53**

[7] *Tatad v. Garcia,* G,R, No. 114222, April 6, 1995, 243 SCRA 436.
[8] *Toyota Manila Bay Corporation v. Commissioner of Internal Revenue,* CTA *EB* No. 1280, and *Commissioner of Internal Revenue v. Toyota Manila Bay Corporation,* CTA *EB* No. 1287, August 22, 2017.
[9] *Records, Vol. 3, BIR Forms 1605,* pp. 1284-1292.

In addition and in light of the *TRAIN Law* which took effect on January 1, 2018, petitioner is **ORDERED TO PAY**:

a. Deficiency interest amounting to Php7,025,297.18 at the rate of twenty percent (20%) *per annum* on the basic deficiency VAT of Php3,536,873.75 computed **from January 25, 2008 until December 31, 2017**, pursuant to *Section 249(B) of the 1997 NIRC*, computed as follows:

DEFICIENCY INTEREST		
Pursuant to *Sec. 249(B) of 1997 NIRC*		
(January 25, 2008 to December 31, 2017)		
Basic VAT Due	Php	3,536,873.75
Deficiency Interest Rate		20%
Total	Php	707,374.75
Multiplied by Period		
(9 years and 340 days)		9.93150685
TOTAL DEFICIENCY INTEREST	**PHP**	**7,025,297.18**

b. Delinquency interest amounting to Php13,897,834.03 at the rate of twenty percent (20%) *per annum* on the amount of Php4,421,092.19, representing basic deficiency VAT of Php3,536,873.75 and 25% surcharge of Php884,218.44; on the deficiency interest amounting to Php7,025,297.18 which have accrued as afore-stated in (a) and on the deficiency interest on EWT and WTC amounting to Php161,641.31, **computed from January 5, 2012[10] until December 31, 2017**, pursuant to *Section 249(C) of the 1997 NIRC*, computed as follows:

DELINQUENCY INTEREST		
Pursuant to *Sec. 249(C) of 1997 NIRC*		
(January 5, 2012 to December 31, 2017)		
Basic VAT Due Plus Surcharge	Php	4,421,092.19
Deficiency Interest on VAT		7,025,297.18
Deficiency Interest on WT		161,641.34
Total	Php	11,608,030.71
Delinquency Interest Rate		20%
Total		2,321,606.14
Multiplied by Period		
(5 years and 360 days)		5.98630137
TOTAL DELINQUENCY INTEREST	**PHP**	**13,897,834.03**

c. Delinquency interest amounting to Php118,306.51 at the rate of twelve percent (12%) *per annum* on the amount of

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[10] *BIR Records, Vol. 2, Exhibit "15,"* p. 1654.

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Php4,421,092.19, representing basic deficiency VAT of Php3,536,873.75 and 25% surcharge of Php884,218.44; on the deficiency interest amounting to Php7,025,297.18 which have accrued as afore-stated in (a) and on the deficiency interest on EWT and WTC amounting to Php161,641.31, **computed from January 01, 2018 until January 31, 2018,** pursuant to *Section 249(C) of the 1997 NIRC, as amended by Section 75 of RA No. 10963*, computed as follows:

DELINQUENCY INTEREST		
Pursuant to Sec. 75 of *RA No. 10963 (TRAIN Law)*		
(January 1, 2018 to January 31, 2018)		
Basic VAT Due Plus Surcharge	Php	4,421,092.19
Deficiency Interest on VAT		7,025,297.18
Deficiency Interest on WT		161,641.34
Total	Php	11,608,030.71
Delinquency Interest Rate		12%
Total		1,392,963.69
Multiplied by Period (31 days)		0.08493151
TOTAL DELINQUENCY INTEREST	**PHP**	**118,306.51**

The **partial payment** of petitioner in the amount of Php17,081,872.47, shall be **DEDUCTED** from the entire tax liability upon full payment thereof.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

ON LEAVE
MA. BELEN M. RINGPIS-LIBAN
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 *Article VIII, Section 13 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