REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

ICONIC BEVERAGES, INC.,
Respondent.

CTA EB NO. 1412
(CTA Case No. 8607)

x-------------------------------------x

ICONIC BEVERAGES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1417
(CTA Case No. 8607)

Present:

DEL ROSARIO, *PJ*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, *JJ.*

Promulgated:

JUL 16 2018 2:21 p.m.

x- -x

RESOLUTION

Fabon-Victorino, J.:

This resolves:

1. Iconic Beverages, Inc.'s (IBI) *Motion for Partial Reconsideration [of the Decision dated January 30,*

2018] filed on February 20, 2018, *sans* any *Comment/Opposition* from the Commissioner of Internal Revenue (CIR) despite notice; and

2. CIR's *Motion for Reconsideration* filed on February 21, 2018, with IBI's *Comment/Opposition* thereto filed on May 9, 2018.

Both unconvinced with the ruling of the Court *En Banc,* Iconic Beverages, Inc. (IBI) and the Commissioner of Internal Revenue (CIR) move for the reconsideration of the Decision promulgated on January 30, 2018, disposing the consolidated cases as follows:

> **WHEREFORE**, the *Petitions for Review* filed on February 9, 2016 and January 22, 2016 by the Commissioner of Internal Revenue and Iconic Beverages, Inc., respectively, are hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**

IBI cites the following arguments in support of its plea:

I. THE HONORABLE COURT ERRED IN HOLDING THAT THAT (sic) THE DEFICIENCY INCOME TAX ISSUED BY THE BUREAU OF INTERNAL REVENUE AGAINST [IBI] FOR TAXABLE YEAR 2009 IS CORRECT AND IN FINDING THAT THE ROYALTY INCOME EARNED BY [IBI] FOR TAXABLE YEAR 2009 IS NOT PASSIVE INCOME.

   A. ROYALTY INCOME EARNED BY [IBI] FOR TAXABLE YEAR 2009 IS NOT IN ACCORD WITH THE PRIMARY PURPOSE OF [IBI's] BUSINESS.

   B. [IBI's] ROYALTY INCOME IS INCIDENTAL AND AROSE FROM A ONE-TIME TRANSACTION.

   C. ABSENCE OF INCOME FROM OTHER SOURCES OR INACTIVITY IN ANY OTHER BUSINESS ACTIVITY DOES NOT REMOVE [IBI's] ROYALTY INCOME FOR TAXABLE YEAR 2009 FROM ITS CLASSIFICATION AS PASSIVE INCOME UNDER SECTION 27(D)(1) OF THE NATIONAL INTERNAL REVENUE CODE OF 1997 ("1997 NIRC")

II. THE HONORABLE COURT ERRED IN HOLDING THAT DEFICIENCY AND DELINQUENCY INTEREST MAY BE IMPOSED SIMULTANEOUSLY FOR THE SAME UNPAID TAXES.

A. ASSUMING ARGUENDO THAT THE ROYALTY INCOME IS ORDINARY INCOME, THIS HONORABLE COURT INCORRECTLY IMPOSED THE DEFICIENCY INTEREST AND DELINQUENCY INTEREST SIMULTANEOUSLY TO THE SAME UNPAID TAX.

III. THE HONORABLE COURT DID NOT RULE ON THE ISSUE ON APPLICABILITY OF SECTION 34(L) OF THE 1997 NIRC WHICH ALLOWS A 40% OPTIONAL STANDARD DEDUCTION FROM THE GROSS INCOME.

A. ASSUMING FURTHER THAT THE ROYALTY INCOME IS ORDINARY INCOME, APPLYING SECTION 34(L) OF THE 1997 NIRC, WHICH ALLOWS A 40% OPTIONAL STANDARD DEDUCTION FROM THE GROSS INCOME, [IBI] IS NOT LIABLE FOR ANY DEFICIENCY INCOME TAX.

For his part, the CIR insists that the contrary to the finding of the Court *En Banc* the amount of Php50,009,617.40, representing IBI's expenses, should be substantiated by sufficient evidence.

In opposition, IBI submits that CIR's motion should be denied on account of the following grounds:

1. [CIR's] arguments in the *Motion* is a mere rehash of the arguments in his *Motion for Partial Reconsideration [Re: Decision dated 14 August 2015]* dated September 1, 2015 (Motion for Partial Reconsideration), which did not persuade the 1st Division of the Court of Tax Appeals (CTA); and

2. [CIR] never questioned [IBI's] claimed deductions for taxable year 2009 in the examination and assessment stages, the resolution of [IBI's] protest letter dated May 16, 2012 (Protest), and in the entire proceedings before this Honorable Court. Because [CIR] only raised the claimed deduction issue for the first time on appeal in his *Motion for Partial Reconsideration [Re: Decision dated 14 August 2015]* dated September 1, 2015, the belated raising of the said issue should not be entertained by the Honorable Court.

Both the *Motion for Partial Reconsideration* filed by IBI and the *Motion for Reconsideration* filed by the CIR must be denied.

A plain reading of the arguments raised by both the IBI and the CIR reveals that they are the very same issues they raised in their respective previous pleadings filed with and resolved by the Court in Division and subsequently on appeal by the Court *En Banc*. There are no new or substantial arguments raised to warrant a modification much more a reversal of the assailed Decision of January 30, 2018.

Anent IBI's claim that the Court *En Banc* did not rule on the issue on the applicability of Section 34(L) of the 1997 NIRC which allows a 40% optional deduction from the gross income, suffice it to say that it was not raised as an issue in its *Petition for Review* dated January 21, 2016, filed with the Court *En Banc*. Nevertheless, it bears stressing that the said issue was thoroughly discussed and passed upon by the Court in Division in the Resolution of January 6, 2016. Thus, when the Court *En Banc* denied IBI's *Petition for Review* assailing the Resolution of January 6, 2016, the disquisition made by the Court in Division on the matter was deemed affirmed.

WHEREFORE, the *Motion for Partial Reconsideration* filed by Iconic Beverages, Inc. and the *Motion for Reconsideration* filed by the Commissioner of Internal Revenue are hereby **DENIED**, for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

(With Concurring and Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

(On Leave)
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

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MANAHAN, *JJ.*

Promulgated:

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CONCURRING AND DISSENTING OPINION

***DEL ROSARIO, P.J.*:**

I concur with the *ponencia* in denying for lack of merit the Motion for Partial Reconsideration filed by Iconic Beverages, Inc. and the Motion for Reconsideration filed by the Commissioner of Internal Revenue.

In view, however, 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 12%, pursuant to Section 249 of the National Internal Revenue Code (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 deficiency and delinquency interest, and the mode by which such interests may be computed. A comparison of the provision of Section 249 on interest under the NIRC <u>and</u> 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; **<u>or (ii) upon issuance of a notice and demand by the Commissioner of Internal Revenue, whichever comes earlier</u>** 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 hereunder:

	Tax Due	FAN	January 1, 2018	Full Payment

A) Old Law

20% — 20% — deficiency interest (from Tax Due to Full Payment)

20% — delinquency interest (from FAN to Full Payment)

B) TRAIN

12% — deficiency interest (from Tax Due to FAN)

12% — delinquency interest (from FAN to Full Payment)

C) *Ponencia*

20% — deficiency interest (from Tax Due to January 1, 2018)

20% / 12% — delinquency interest (from FAN to Full Payment; 20% until January 1, 2018, 12% thereafter)

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:

> _First_, the TRAIN Law prescribes 12% interest, 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. Thus, the computation of deficiency interest should now be in accordance with the TRAIN Law, that is -- **at 12% and only until demand; while**

delinquency interest at the rate also if 12% should be from date of demand until full payment.

Incidentally, in computing deficiency and delinquency interests, the provisions of the TRAIN Law are not being applied retroactively. At the time that petitioner is adjudged liable to pay the deficiency taxes with corresponding deficiency interest and delinquency interest, the prevailing provisions are that of the TRAIN Law which specifically state <u>that there shall be no simultaneous imposition of deficiency and delinquency interests</u>. Thus, the Court has no recourse but to apply the same. To be sure, <u>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</u>. **<u>It is clearly and plainly provided that upon TRAIN Law's effectivity, "in no case shall the deficiency and delinquency interests be imposed simultaneously</u>.**"

In view of the effectivity of the TRAIN Law on January 1, 2018, **the amendatory provisions of the TRAIN Law on the imposition 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 Motion for Partial Reconsideration filed by Iconic Beverages, Inc. and the Motion for Reconsideration filed by the Commissioner of Internal Revenue;

(ii) **MODIFY** the August 14, 2015 Decision of the Court in Division; and

(iii) **ORDER** Iconic Beverages Corporation to **PAY** the Bureau of Internal Revenue the amount of ₱88,254,300.60 inclusive of twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, *<u>and</u>* to **PAY** the Bureau of Internal Revenue the following:

(a) **Deficiency interest** at the rate of 12% per annum on the basic deficiency income tax, computed from April 15, 2010, the date prescribed for payment, until <u>April 17, 2012</u>, the date of Iconic Beverages Inc.'s receipt of the

Final Assessment Notice dated March 30, 2012, pursuant to Section 249(B) of the NIRC of 1997, as amended by the TRAIN Law.

(b) **Delinquency interest** at the rate of 12% per annum on the total amount of ₱88,254,300.60 and on the 12% deficiency interest which have accrued as aforestated in item (a) above, **computed from** April 15, 2012[1] until the amount is fully paid, pursuant to Section 249(C) of the NIRC of 1997, as amended.

ROMAN G. DEL ROSARIO
Presiding Justice

[1] The due date appearing in the Assessment Notice dated March 30, 2012.