REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

PRISCILA J. CRUZ and JOCELYN CRUZ-DELOS REYES (in substitution of the deceased JULIO S. CRUZ),
Respondents.

CTA EB No. 1646
(CTA Case No. 8103)

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PRISCILA J. CRUZ and JOCELYN CRUZ-DELOS REYES (in substitution of the deceased JULIO S. CRUZ),
Petitioners,

-versus-

THE COMMISSIONER OF THE BUREAU OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1650
(CTA Case No. 8103)

Present:

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

Promulgated:

SEP 26 2019

3:38 p.m.

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RESOLUTION

Fabon-Victorino, J.:

Before the Court are the *Motions for Partial Reconsideration* separately filed by the Commissioner of Internal Revenue (CIR)[1] and petitioners Priscila J. Cruz and Jocelyn Cruz-Delos Reyes (Cruzes),[2] on December 6, 2018 and January 18, 2019, respectively, impugning the Decision[3] of November 13, 2018, the decretal portion of which reads:

> **WHEREFORE**, the Petition for Review dated May 23, 2017 filed by the Commissioner of Internal Revenue (CIR), and the Petition for Review dated May 27, 2017 filed by Priscila Cruz and Jocelyn Cruz De Los Reyes (Cruzes), are both **DENIED**, for lack of merit.
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> Consequently, the Decision dated September 2, 2016 and Resolution dated April 19, 2017, both rendered by the Court in Division are AFFIRMED with MODIFICATION in the computation of deficiency and delinquency interests in view of the effectivity of Republic Act No. 10963 (TRAIN Law) on January 1, 2018.
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> Accordingly, Priscila Cruz and Jocelyn Cruz De Los Reyes (in substitution of the deceased Julio S. Cruz) are **ORDERED TO PAY** the Bureau of Internal Revenue in the amount of **SEVENTY-EIGHT MILLION EIGHT HUNDRED SEVEN THOUSAND FIFTY-SIX PESOS AND NINETY-FIVE CENTAVOS (₱78,807,056.96),** representing basic deficiency income tax, 50% surcharge imposed under Section 248(B) of the NIRC of 1997, as amended, as well as deficiency and delinquency interests imposed under Sections 249(B) and (C) of the same Code, respectively, computed until December 31, 2017 as follows:

Basic deficiency income tax for taxable year 2004	₱ 9,968,725.02
Add: 50% surcharge	4,984,362.51
Deficiency Interest from April 16, 2005 to April 12, 2010 *(₱9,968,725.02 x 20% x 1,823/365 days)*	9,957,800.39
Total Amount Due as of April 12, 2010	**₱24,910,887.92**
Deficiency Interest from April 13, 2010 to December 31, 2017 *(₱9,968,725.02 x 20% x 2,820/365 days)*	15,403,728.52
Delinquency Interest from April 13, 2010 to December 31, 2017 *(₱24,910,887.92 x 20% x 2,820/365 days)*	38,492,440.51

[1] Docket (CTA EB No. 1646), pp. 217-224.
[2] Ibid. at pp. 229-246.
[3] Id. at pp. 190-213.

Total Amount Due as of December 31, 2017	**₱78,807,056.95**

In addition, (the Cruzes) are **ORDERED TO PAY** respondent 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 of **₱24,910,887.92** as of April 12, 2010, as determined above, computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act (RA) No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN), as implemented by Revenue Regulations No. 21-2018.

SO ORDERED.

The CIR's Motion for Partial Reconsideration:

The CIR maintains that the Run After Tax Evaders (RATE) program of the Bureau of Internal Revenue (BIR) allows him to issue a Letter of Authority covering prior or subsequent years and does not limit the efficacy thereof to one (1) taxable year (TY). Further, the Cruzes' continuously declared in their Annual Income Tax Returns (AITRs) that they only realized compensation income despite the other corporate and financial dealings involving substantial amount of money they have entered into. Moreover, the Court found *prima facie* evidence of falsity or fraud in the filing of their tax returns, which also warrant the issuance of a LOA covering prior and subsequent TYs.

Further, since his tax examiners merely probed the Cruzes' AITRs, Audited Financial Statement (AFS), General information Sheet (GIS) of MEHCOR and CRUZCON, together with the Certificate of Landholdings in the name of the foregoing entities, and not their books of account or accounting records, a LOA was not required.

And even granting that a LOA was a precondition for the subject assessment to be valid, the Cruzes were precluded from challenging the efficacy of the issued LOA as they were afforded, and have in fact availed ample remedies provided under the NIRC, as amended, to challenge the subject assessment. The CIR is convinced that the Cruzes are liable and therefore must pay deficiency income taxes in the aggregate amount of ₱804,941,747.88, plus statutory increments covering TYs 1992-2004.

For their part,[4] the Cruzes point out that the arguments advanced by the CIR in his bid for reconsideration are a mere replica of his previous arguments, all of which have been squarely addressed and passed upon by the Court in the impugned Decision of November 13, 2018. In any event, to comply with the Court's directive, they are adopting their Comment to the CIR's Petition for Review.

The Cruzes' Motion for Partial Reconsideration:

The Cruzes submit that the Court *En Banc* erred when it retroactively applied Republic Act (RA) No. 10963 or TRAIN Law in the determining the amount of their tax liability. According to the Cruzes, the Court committed reversible error when it simultaneously imposed delinquency interest at the rate of twelve (12%) on the total amount due of ₱24,910,887.92,[5] and deficiency interest covering April 16, 2005 to December 31, 2017 and apply them retroactively which is repugnant to the principle of prospective application of tax statutes.

They further aver that the CIR's failure to sternly observe the requirements of due process on assessment under Section 228 of the NIRC, as amended, as implemented by RR No. 12-99 rendered the whole assessment invalid.

The Cruzes as well state that LOA 2007-00021886 dated April 30, 2008 is void for the BIR's failure to revalidate it after the expiration of the 120-day period from its issuance, citing Revenue Memorandum Order (RMO) No. 38-88 as authority.

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4 Cruzes' *Compliance with the 08 January 2019 Resolution (Comment on the Commissioner of Internal Revenue's Motion for Partial Reconsideration)*, docket (CTA EB No. 1646), pp. 252-255.

5 The components of this are: 2004 basic deficiency income tax of ₱9,968,725.02; b) 50% surcharge of ₱4,984,362.51; and c) accrued deficiency interest [from April 15, 2005 to April 12, 2010] totaling ₱9,957,800.39.

They also theorize that since the documents obtained by the BIR with the Securities and Exchange Commission (SEC) are inadmissible in evidence pursuant to Section 6 of RA No. 9480, the CIR's finding of the unaccounted sources of cash investment in the total amount of ₱743,366,011.58 predicated therefrom is legally infirm.

Moreover, there is no *prima facie* evidence of a false or fraudulent return justifying the application the 10-year extraordinary period to assess embodied in Section 222(a) of the NIRC, as amended. On that account, the regular three-year period to assess under Section 203 of the same Code should be applied. Hence, the subject assessment has already prescribed.

Citing fragments of the impugned Decision, the CIR retorts[6] that the imposition of the 12% interest as computed in the assailed Decision is accordance with the pertinent provisions of TRAIN Law. Further, the Cruzes were able to amply repudiate the subject PAN and FAN/FLD, hence, due process on assessment was properly observed. In addition, non-revalidation of a LOA after 120 days from issuance did not invalidate the otherwise duly issued LOA. Moreover, the Cruzes' failure to report the source of their cash investment as required in the Tax Code, justifies affirmance of the assailed assessment. Besides the subject assessment was timely issued within the extraordinary 10-year period as the tax returns filed by the Cruzes were tainted with falsity or fraud due to their substantial under declaration of income.

THE RULING OF THE COURT

The Motions for Partial Reconsideration filed by the CIR and the Cruzes are denied.

Save for the Cruzes' protestation on the computation of deficiency and delinquency interests, the matters set forth both by the CIR and Cruzes were obviously truncated from

6 CIR's *Opposition (Cruzes Motion for Partial Reconsideration)* dated March 11, 2019, ibid. at pp. 271-278.

their respective Petitions for Review, all of which were thoroughly discussed and passed upon by the Court in the impugned Decision of November 13, 2018. To restate them anew is frivolous if not a waste of time and resources of the Court.

On the issue of the imposed interests, let it be stressed that prior to the effectivity of the TRAIN Law on January 1, 2018, the then Section 249(A)[7] of the NIRC of 1997 allows the simultaneous imposition of deficiency and delinquency interest. Stated differently, concurrent imposition thereof is legally permitted until December 31, 2017. For this reason, and as diametrically opposed with the Cruzes' posture, the Court simply observed the principle of non-retroactivity of tax statutes when it restricted the simultaneous imposition of deficiency and delinquency interest until December 31, 2017, or before TRAIN took effect on January 1, 2018. This conclusion was duly reflected in the *fallo* of the impugned Decision, thus:

> xxx xxx xxx
>
> Accordingly, Priscila Cruz and Jocelyn Cruz De Los Reyes (in substitution of the deceased Julio S. Cruz) are **ORDERED TO PAY** the Bureau of Internal Revenue in the amount of **SEVENTY-EIGHT MILLION EIGHT HUNDRED SEVEN THOUSAND FIFTY-SIX PESOS AND NINETY-FIVE CENTAVOS (₱78,807,056.96),** representing basic deficiency income tax, 50% surcharge imposed under Section 248(B) of the NIRC of 1997, as amended, as well as deficiency and delinquency interests imposed under Sections 249(B) and (C) of the same Code, respectively, computed until December 31, 2017 as follows:

Basic deficiency income tax for taxable year 2004	₱ 9,968,725.02
Add: 50% surcharge	4,984,362.51
Deficiency Interest from April 16, 2005 to April 12, 2010 *(₱9,968,725.02 x 20% x 1,823/365 days)*	9,957,800.39
Total Amount Due as of April 12, 2010	**₱24,910,887.92**
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Delinquency Interest from April 13, 2010 to December 31, 2017 *(₱24,910,887.92 x 20% x 2,820/365 days)*	38,492,440.51

[7] **Section 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.

Total Amount Due as of December 31, 2017	**₱78,807,056.95**

To rectify the seemingly iniquitous situation of simultaneously slapping the taxpayer with 20% deficiency *and* 20% delinquency interests, the Legislature enacted the TRAIN Law, with Section 75 thereof modifying Section 249(A) of the 1997 NIRC by proscribing the concurrent imposition of deficiency and delinquency interests, as well as reducing the rate of interest from 20% to 12%,[8] to wit:

> **Section 75.** Section 249 of the NIRC, as amended, is hereby further amended to read as follows:
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> SEC. 249. Interest.-
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> (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 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 be deficiency and the delinquency interest prescribed under Subections (B) and (C) hereof, be imposed simultaneously*; (emphasis supplied)

At the risk of being repetitive, the Court prospectively applied TRAIN in the present case. From January 1, 2018, only a *single* interest, specifically a 12% *delinquency interest* on the unpaid amount of ₱24,910,887.92[9] until full settlement was imposed, *viz.*:

> xxx xxx xxx
>
> In addition, (the Cruzes) are **ORDERED TO PAY** respondent 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 of **₱24,910,887.92** as of April 12, 2010, as

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8 In *University of Pangasinan, Inc. vs. Fernandez,* G.R. No. 211228, November 12, 2014, the Supreme Court ruled that effective July 1, 2013, *BSP Circular No. 799,* series of 2013 prescribes a 6% per annum rate of interest for the loan or forbearance of any money, goods or credits and the rate allowed in judgments, in the absence of an express stipulation in loan contracts. Since Section 75 of TRAIN prescribes double the interest rate for loan or forbearance of money, 12% is the proper rate.

9 The components of this are: 2004 basic deficiency income tax of ₱9,968,725.02; b) 50% surcharge of ₱4,984,362.51; and c) accrued deficiency interest [from April 15, 2005 to April 12, 2010] totaling ₱9,957,800.39.

> determined above, computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act (RA) No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN), as implemented by Revenue Regulations No. 21-2018.
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> (underscoring supplied)

WHEREFORE, the Motions for Partial Reconsideration dated December 5, 2018 and January 17, 2019 respectively filed by the Commissioner of Internal Revenue and Priscila J. Cruz and Jocelyn Cruz-Delos Reyes (in substitution of the deceased Julio S. Cruz), are **DENIED**, for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice