REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

LOURDES COLLEGE,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1164
(CTA Case No. 8038)

Present:

Del Rosario, *P.J.,*
Castañeda, Jr.
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas,
Ringpis-Liban, *JJ.*

Promulgated:

FEB 02 2016 3:35 p.m.

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DECISION

RINGPIS-LIBAN, J.

Before the Court En Banc is a Petition for Review filed by petitioner Lourdes College under Sec. 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals seeking the nullification of the Decision[1] dated December 12, 2013 (Assailed Decision), and the Resolution[2] dated April 11, 2014 of the same

[1] Rollo CTA EB Case No. 1164, pp. 349-368.
[2] Rollo pp. 71

Second Division of the Court (Court in Division) denying the petitioner's Motion for Reconsideration.

THE FACTS

The antecedent facts stated in the assailed Decision are as follows:

> "Petitioner is a non-stock, non-profit educational corporation organized and existing under the laws of the Philippines, offering basic education and higher education courses under the authority of the Department of Education and Commissioner of Higher Education, respectively, with address at Hayes-Capistrano Streets, Cagayan de Oro City.
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> Respondent is the duly appointed Commissioner of Internal Revenue and holds office at the BIR National Office Building, Government Center, Diliman, Quezon City.
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> Pursuant to the Letter of Authority No. 00056663 dated November 29, 2007, Regional Director, Mustapha M. Gandarosa, authorized Revenue Officer Tindug C. Casan of Revenue District No. 98, Revenue Regional No. 16. Cagayan De Oro City to examine petitioner's books of accounts and other accounting records for all internal revenue taxes from March 1, 2006 to April 30, 2007.
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> As a result of said investigation, Regional Director Gandarosa, sent a Formal Letter of Demand to petitioner demanding payment of deficiency expanded withholding tax (EWT) and deficiency fringe benefit tax in the total amount of P4,222,510.10, inclusive of surcharges, interest and compromise penalty.
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> In a letter dated November 20, 2008, petitioner protested the said assessments. In response, respondent, through Revenue District Officer Noel B. Gonzales of Revenue District No. 98, revised and reduced the previous assessments, but included a new assessment for donor's tax in the amount of P1,031,814.58 which petitioner protested in a letter dated June 29, 2009.
>
> Thereafter, petitioner, through letters dated July 17, 2009 and August 3, 2009, informed respondent of its position on the said assessments.

In a letter dated August 25, 2009, Revenue District Officer Gonzales stated that petitioner is still liable to pay P1,382,362.47, inclusive of all legal increments. Thereafter, a Final Decision on Disputed Assessment (FDDA) dated December 28, 2009, signed by Regional Director Esmeralda M. Tabule, was received by petitioner stating therein that the latter's arguments were found to be frail and unmeritorious. Hence, the assessment is good as undisputed and shall likewise subsist.

The aforesaid letter was followed by another FDDA dated January 26, 2010 which was received by petitioner on February 16, 2010 containing reduced assessments x x x"

On March 18, 2010, petitioner filed its Petition for Review[3] before the Court in Division.

In her Answer[4], respondent CIR interposed the following Special and Affirmative Defenses:

1) The deficiency Expanded Withholding Tax (EWT) and deficiency Fringe Benefit Tax (FBT) assessments for fiscal year May 1, 2006 to April 30, 2007 were issued in accordance with the law and regulations;

2) Petitioner's contention that the denial of its appeal was patently arbitrary, oppressive and illegal has no basis in fact and law;

3) A perusal of the records of the case would show that respondent, in answer to petitioner's letters dated June 29, 2009 and August 3, 2009, respectively, reflected the details of the assessments for deficiency Withholding Tax-Compensation, Expanded Withholding Tax, Fringe Benefit Tax, and Donor's Tax in the total amount of P1,382,362.47, inclusive of surcharges imposed pursuant to the provision of Section 248(B) of the NIRC, as amended by R.A. 8424 and interest of 20% per annum imposed pursuant to the provision of Section 249(B) of the same Code;

4) The denial of petitioner's protests was further boosted by the Final Decision on Disputed Assessment (FDDA) dated January 26, 2010 issued by respondent stating that petitioner's arguments raised in

[3] CTA Case No. 8038 Docket, pp. 1-8.
[4] Ibid, pp. 51-58.

its series of rebuttal letters were found to be frail and unmeritorious, hence, the assessment is good as undisputed and shall likewise subsist;

5) On appeal to the CIR, the latter affirmed the FDDA issued by the Regional Director of Revenue Region 16, Cagayan de Oro City;

6) Respondent further submits that Section 203 of the 1997 Tax Code does not apply to petitioner's deficiency withholding tax assessment because it was not assessed for internal revenue taxes directly related in the operation of its business, but for its liability as withholding agent for failure to withhold, account for and remit the deficiency expanded and compensation withholding taxes as required by Revenue Regulation No. 2-98 and Revenue Regulation No. 6-2001, as amended;

7) In order for expenses paid as financial assistance or scholarship to some of petitioner's faculty members pursuing graduate studies, furnished in cash or in kind by an employer to an individual employee (except rank and file employees) to be exempt from the coverage of Section 33(A) of the 1997 Tax Code, the same must be actually substantiated to fully establish that the amount was exclusively utilized for the benefit or convenience of the company under the 'convenience of the employer rule;

8) Petitioner miserably failed to actually substantiate its claim for exemption from the fringe benefit tax; and

9) Tax assessments are entitled to presumption of correctness and made in good faith.

After trial on the merits wherein both parties presented their respective evidence, and upon the submission of petitioner's memorandum, without respondent's memorandum, the case was submitted for decision.

On December 12, 2013 and April 11, 2014, the Court in Division rendered the questioned Decision and Resolution.

Aggrieved, petitioner filed before the Court *En Banc* this Petition for Review[5].

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[5] Rollo CTA EB Case No. 1164, pp. 349-368, pp. 12-67, with Annexes.

In a Resolution[6] dated June 18, 2014, respondent CIR was directed by the Court *En Banc* to file its comment in this case. Per Records Verification Report of the Judicial Records Division of this Court dated September 3, 2014,[7] respondent failed to file her Comment on the Petition for Review.

In a Resolution dated September 25, 2014,[8] the Court gave due course to the Petition for Review and ordered the parties to file their respective memoranda. Petitioner filed its Memorandum on December 12, 2014. Per Records Verification Report of the Judicial Records Division of this Court dated January 22, 2015, respondent failed to file her Memorandum.

In a Resolution dated February 18, 2015, this case was deemed submitted for decision.

ISSUE

The issues raised by petitioner can be summarized into one issue -- whether the Court in Division erred in denying the Petition for lack of merit and holding petitioner liable to pay the amount of P1,121,516.27 inclusive of 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997 and pay deficiency interest and delinquency interest.

ARGUMENTS

Petitioner argues that the Court in Division failed to resolve whether the CIR, in its letter to petitioner dated February 19, 2010, was a decision that validly denied petitioner's protest; that the Court in Division erred in sustaining the donor's tax assessment and in requiring petitioner to show proof that the payments represents payment of the School to the Congregation for the services rendered by the sisters; that the Court in Division erred in sustaining the fringe benefit tax assessment on scholarship grants given to two faculty members teaching in the tertiary level and in holding that petitioner did not submit other documentary evidence to show that the amount paid was incurred and paid in connection with the scholarship programs granted to its personnel; that the Court in Division erred in partially sustaining the CIR's assessment for expanded withholding taxes and delinquency interest.

Respondent, on the other hand, in failing to file her Comment and Memorandum as directed by this Court, was unable to put forth her arguments.

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[6] Ibid, pp. 388-389.
[7] Ibid, p. 390.
[8] Ibid, pp.392-393.

RULING OF THE COURT EN BANC

After a careful review of petitioner's arguments and the records of the case, the Court *En Banc* finds no reason to reverse or modify the Decision and Resolution of the Court in Division. The records of the case show that the Court in Division fully and exhaustively resolved the issues raised in its Petition and subsequent Motion for Reconsideration, and that the arguments raised by petitioner to the Court *En Banc* are a mere rehash of arguments that have already been resolved.

The CIR's Adoption of the FDDA Issued by the Regional Director is a Valid Decision on Petitioner's Protest

Petitioner avers that the CIR, in denying their protest, did not state the basis thereof. However, upon reviewing the records, the Court finds that petitioner was validly informed of the basis of the CIR's ruling.

As discussed in the Assailed Decision:

> "[R]ecords show that petitioner's protest was denied by Final Decision on Disputed Assessment dated January 26, 2010, issued by Regional Director Tabule, and which petitioner received on February 16, 2010. Thereafter, petitioner opted to elevate the denial of its protest to the Commissioner on February 17, 2010, which is well within the thirty (30) day reglementary period provided by law. However, the same was denied by the Commissioner in a letter dated February 19, 2010 in this wise:
>
> > 'In reference to your letter dated February 17, 2010, please be informed that the letter issued by Regional Director Esmeralda M. Tabule dated January 25, 2010, is considered by this Office as **Final Decision on Disputed Assessment**. In which case, your remedy is the filing of an appeal before the CTA within 30 days from the date of the said Decision.'"

It is clear that the CIR, by stating in her letter that the "letter issued by Regional Director Esmeralda M. Tabule dated January 25, 2010, is considered by this Office as **Final Decision on Disputed Assessment**," adopted the findings of the Regional Director as her decision on the disputed assessment, as well as the basis thereof. Petitioner therefore cannot claim that it is unaware of the basis of the assessment against it.

Amount Paid by Petitioner to the Congregation is Subject to Donor's Tax

Petitioner argues that the amount paid by the School to the Congregation for the services rendered by the ten (10) sisters were actually paid by the School to the Congregation, since the sisters are not allowed to receive income under their vow of poverty. Hence, the amount paid to the Congregation was not a donation but an income of the corporation.

This Court agrees with the findings of the Court in Division that petitioner cannot invoke exemption from payment of donor's tax since petitioner failed to prove that the amount of P2,326,010.52 paid by petitioner to the Congregation is considered as income of the latter.

As correctly ruled by the Court in Division in the Assailed Resolution:

> "Notwithstanding the admission of petitioner that the payment was made for the services rendered by the ten sisters, it should have presented documents such as withholding certificate for compensation, SSS remittance forms or any similar documents, that would prove that the amount of P2,316,010.52, represents petitioner's payment to the Congregation for the services rendered. Without any supporting documents, this Court cannot determine the intent of petitioner as to the sum of money given to the Congregation. Considering so, petitioner cannot invoke its exemption from donor's tax pursuant to Section 101(A)(3) of the 1997 Tax Code; particularly, whether or not more than thirty percent (30%) of said gifts is used by such donee for administration purposes:
>
> Sec. 101. Exemption of Certain Gifts. – The following gifts or donations shall be exempt from the tax provided for in this Chapter:
>
> **(A) In the Case of Gifts Made by a Resident.-**
>
> "(1) x x x

> "**3) Gift in favor of** an educational and/or charitable, **religious,** cultural or social welfare **corporation,** institution, accredited nongovernmental organization, trust or philanthropic organization or research institution or organization: *Provided, however,* That not more than thirty percent (30%) of said gifts shall be used by such donee for administration purposes. x x x" (Emphasis supplied.)
>
> In addition, Section 99(B) of the 1997 Tax Code provides that the tax payable by the donor if the donee is a stranger is thirty percent (30%) of the net gifts. For the purpose of said tax, a stranger is a person who is not a:
>
> (1) Brother, sister (whether by whole or half-blood), spouse, ancestor, and lineal descendant; or
>
> (2) Relative by consanguinity in the collateral line within the fourth degree of relationship
>
> (3) Any contribution in cash or in kind to any candidate, political party or coalition of parties for campaign purposes shall be governed by the Election Code, as amended."
>
> Based on the foregoing provision, those amounts that were actually paid to the Congregation are considered donations to strangers, since the Congregation is not considered as one of those enumerated in the abovementioned provision. Thus, the tax rate of 30% of the net gift will apply."

Petitioner is Liable to Pay Fringe Benefit Taxes

Petitioner argues that the Court in Division erred in affirming the CIR's fringe benefit tax assessment since it was based on an erroneous finding that petitioner did not submit other supporting documentary evidence to prove that the amount for the scholarship grants was incurred and paid in connection with the scholarship programs granted by petitioner to its personnel.

Pursuant to Section 33 of the 1997 NIRC, fringe benefits are generally taxable, "unless the fringe benefit is required by the nature of, or necessary to the trade, business or profession of the employer, or when the fringe benefit is for the convenience or advantage of the employer." Therefore, if the fringe benefit is granted for the convenience and advantage of the employer, the same shall be tax exempt. In order to claim exemption from fringe benefit taxes petitioner must present proof of exemption from payment thereof.

We agree with the holding of the Court in Division that petitioner is liable to pay fringe benefit taxes. As aptly stated by the Court in Division, in the Assailed Resolution, viz,:

> "This Court deems it necessary to re-examine the agreement contracts signed by Lagrito, Velez, Betitia and Estroga. Based on the records of the case, this Court cannot fully appreciate the materiality and veracity of the said documents on the following grounds:
>
> 1. the respective positions of the grantees were not specifically stated in the agreement contracts;
>
> 2. the amount granted were not specifically stated in the agreement between petitioner and Dr. Judith Chavez;
>
> 3. failure to establish the contract of agreement between petitioner and Dr. Judith Chavez;
>
> 4. the contract of agreement did not directly, indirectly or impliedly mention that such expenditure shall be treated as incurred for the convenience and furtherance of the employer's trade or business; and
>
> 5. the contracts of agreement were not notarized.
>
> Even if petitioner admitted that the alleged fringe benefit was paid to two managerial employees, Elizabeth Lagrito and Judith Chavez, and the others were not managerial or supervisory but rank and file employees, petitioner's primary evidence (agreement contract) failed to prove otherwise and convince this Court that it is exempt from paying the fringe benefit tax. A mere allegation is neither proof nor evidence. It should be emphasized that when tax assessment is assailed, the burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but that he (taxpayer) is right. And if the taxpayer fails to present evidence or proof in support of his allegations in his petition for review, such as in this case, conformably to the doctrine of the presumption in favor of the correctness of tax assessment, this Court has no option but to sustain the assessment against the taxpayer."

Petitioner is Liable to Pay Expanded Withholding Taxes

Petitioner avers that the CTA Second Division erred in partially sustaining the deficiency expanded withholding tax assessment of the CIR because, in effect, it counted twice the same salaries subject of the expanded withholding taxes.

In sustaining the CIR's assessment, the Court in Division ruled as follows:

> "Of the foregoing expenses subject of the present assessment for deficiency expanded withholding tax, records show that the following pertain to expenses for the period covered May 2007 to December 2007 for which the corresponding expanded withholding taxes were properly remitted by petitioner to the BIR:

Nature of Income Payment	Amount of Income Payment		Amount of Tax Withheld
Professional Fees			
Dr. Araceli Paterno	P 315,504.00		
Dr. Mary Bernadette Varias	31,125.50		
Dr. Stephanie Jacutin	31,125.50		
Dr. Regina Mercado	21,000.00	P 398,755.00	P 39,875.50
Security Agency			
Lonestar Security Services	197,929.90		
Win Source Security Services	384,000.00	581,929.90	11,638.59
Janitorial Fees		19,800.00	396.00
JCL Construction		58,112.00	1,162.24
TOTAL		**P1,058,596.90**	**P 53,072.33**

> Considering that the fiscal year subject of this assessment relates to the fiscal year May 1, 2006 to April 30, 2007, the assessment for the above-stated expenses in the total amount of P1,058,596.00 with corresponding withholding taxes of P53,072.33 should be cancelled.

> However, the assessment for the remaining professional fees of P76,793.70, as determined below, for which petitioner admitted that it inadvertently failed to subject to expanded withholding taxes of P76,779.37 shall remain:

Professional Fees	Amount of Income Payment	Tax Rate	Amount of EWT
- per FS	P 119, 110.00	10%	P 11, 911.00
- Cinches,Florecilla	51,400.00	10%	5,140.00
-Emano, Milagrita	76,403.43	10%	7,640.34
-Escudero, Consuelo	75, 695.27	10%	7,569.53
- Paterno, Aracel	445,185.00	10%	44,518.50
TOTAL	**767,793.70**		**76,779.37**

Notice that respondent recognized a total tax remittance in the amount of P63,377.19 thereby reducing petitioner's basic expanded withholding tax due. Considering that of said amount, P53,072.33 pertains to remittances for the period May to December 2007, thus, only the amount of P10,304.86 (P63,377.19 less P53,072.33) shall be deducted from the tax due of P76,779.37. Consequently, petitioner's basic deficiency expanded withholding tax due for the fiscal year ended April 30, 2007 amounts to P66,474.51 (P76,779.37 less P10, 304.86)."

We find no error in the ruling of the Court in Division finding petitioner liable for Expanded Withholding Taxes.

Petitioner is Liable for Delinquency Interest

Petitioner avers that it should not be held liable for delinquency interest since the same is imposed only if there is a final and executory assessment which the taxpayer refused to pay as demanded and the same cannot be imposed on a reduced assessment.

Section 249 (C) (3) of the 1997 NIRC provides:

(C) Delinquency Interest. – **In case of failure to pay**:

(1) The amount of the tax due on any return required to be filed, or

(2) The amount of the tax due for which no return is required, or

(3) **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.** *(Emphasis Supplied)*

This Court affirms the Court in Division's ruling that petitioner is liable for delinquency interest since petitioner continuously refused to pay the assessed taxes, which taxes were found by the Court to be in order.

Well settled is the rule that "tax assessments by tax examiners are presumed correct and made in good faith, and all presumptions are in favor of the correctness of a tax assessment unless proven otherwise."[9] In this case, the pieces of evidence presented by petitioner failed to prove that the assessments are erroneously imposed.

WHEREFORE, the Petition for Review is hereby **DENIED for lack of merit.** Accordingly, the Decision dated December 12, 2013 and Resolution dated April 11, 2014 are hereby affirmed *in toto.*

SO ORDERED.

Ma. Belen S L

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

see concurring & dissenting opn.

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

WITH CONCURRING AND DISSENTING OPINION.

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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[9] *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue,* G.R. No. 168498, April 24, 2007, 522 SCRA 144, citing *Commissioner of Internal revenue v. Hantex Trading Co.,* G.R. No. 136975, March 31, 2005.

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO – MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court En Banc before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

LOURDES COLLEGE, Petitioner,	**CTA EB NO. 1164** (CTA Case No. 8038)
	Present:
- versus -	Del Rosario, *P.J.*, Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Cotangco-Manalastas, *and* Ringpis-Liban, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: FEB 02 2016 3:35 p.m.

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CONCURRING AND DISSENTING OPINION

DEL ROSARIO, PJ:

I concur with the *ponencia* in denying the Petition for Review for lack of merit.

Nonetheless, upon review of the case records, it appears that 20% deficiency interest was imposed on the assessed basic withholding tax on compensation, expanded withholding tax, and fringe benefit tax, which was affirmed by the Court *En Banc*. Although this particular issue was not raised, I deemed it appropriate to address the same if only to provide a just determination of the controversy.

In this regard, I quote below the position I have taken in *Avon Products Manufacturing, Inc. vs. Commissioner of Internal Revenue*[1] on the imposition of deficiency interest:

> "xxx I am not unaware of *Paper Industries Corporation of the Philippines vs. Court of Appeals, Commissioner of Internal Revenue, and Court of Tax Appeals (PICOP)*,[2] which somehow made mention of deficiency interest under the NIRC of 1977. I must stress, however, that *PICOP* cannot be relied upon to justify the imposition of deficiency interest on petitioner's excise tax liability. *PICOP* did not state nor resolve the issue whether or not the deficiency interest provided for in Section 249 (B) of the NIRC of 1997, as amended, may be imposed on tax other than donor's, estate, and income taxes. Thus, not having been resolved therein, *PICOP* cannot be considered as a doctrine on the matter. The case of *Office of the Ombudsman vs. Honorable Court of Appeals and Former Deputy Ombudsman for the Visayas Arturo C. Mojica*,[3] is instructive:
>
>> "The legal maxim "*stare decisis et non quieta movere*" (follow past precedents and do not disturb what has been settled) states that where the same questions relating to the same event have been put forward by parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt relitigate the same issues.
>>
>> xxx xxx xxx
>>
>> **Thus, where the issue involved was not raised nor presented to the court and not passed upon by the court in the previous case, the decision in the previous case is not *stare decisis* of the question presented."** (Emphasis supplied)
>
> If *PICOP* has any relevance to the present controversy, it is the doctrinal precedent that **deficiency interest may be imposed only on tax specifically covered by the relevant provision of the NIRC of 1977**. Thus, the Court in *PICOP*, while recognizing that transaction tax is in the nature of income tax and that deficiency interest is imposable on income tax, nonetheless declined to impose such deficiency interest on transaction tax after noting the significant provisions of the NIRC of 1977: *first*, it is Section 51 (c)(1), (e)(1), and (3) which impose deficiency interest; *second*, Section 51 (c) (1) confines such deficiency interest on taxes covered by TITLE II; and, *third*, that transaction tax does not fall within TITLE II. Thus:

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[1] CTA EB No. 1062, January 15, 2016.
[2] G.R. Nos. 106949-50, December 1, 1995.
[3] G.R. No. 146486, March 4, 2005.

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> **"It will be seen that Section 51 (c) (1) and (e) (1) and (3), of the 1977 Tax Code, authorize the imposition of surcharge and interest only in respect of a *"tax imposed by this Title,"* that is to say, Title II on "Income Tax."** It will also be seen that Section 72 of the 1977 Tax Code imposes a surcharge only in case of failure to file a return or list *"required by this Title,"* that is, *Title II on "Income Tax."* **The thirty-five percent (35%) transaction tax is, however, imposed in the 1977 Tax Code by *Section 210 (b) thereof which Section is embraced in Title V* on*"Taxes on Business"* of that Code.** Thus, while the thirty-five percent (35%) transaction tax is in truth *a tax imposed on* interest *income* earned by lenders or creditors purchasing commercial paper on the money market, the relevant provisions, *i.e.,* Section 210 (b), were *not* inserted in Title II of the 1977 Tax Code. The end result is that the thirty-five percent (35%) transaction tax is *not* one of the taxes in respect of which Section 51 (e) authorized the imposition of surcharge and interest and Section 72 the imposition of a fraud surcharge." (Emphases supplied)

True, the Supreme Court in *PICOP* declared that the present provision of the NIRC mentions that **additions** on tax applies to all taxes. While such pronouncement may not be construed beyond the context in which it was made, *PICOP* simply confirmed that *in general*, certain penalties and charges are applicable to all types of tax or deficiency tax; PICOP, however, did not categorically construe the provision of Section 249 (B) that deals with "deficiency interest" on the type of tax "as defined in [the] Code". Note that the present NIRC is explicit with respect to the type of tax on which deficiency interest may be imposed, viz:

> 'Section 249.Interest-
>
> (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.' (Emphasis supplied)

Section 249 (B) cannot be any clearer: the deficiency interest must refer only to 'deficiency in the tax due, <u>as the term is defined in [the] Code</u>.'

Verily, as the law stands, only donor's, estate, and income taxes carry a provision on deficiency tax; they are the types of taxes on which such deficiency interest may be imposed.

Finally, Sections 247 (a) and 249 (A) are **general provisions** that impose "additions" to the tax and "interest" thereon.

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> Both sections may not be read in isolation from the relevant and **specific provision** of Section 249 (B) with respect to the imposition of "deficiency" interest, more so as all these provisions fall within the same Chapter I of Title X of the NIRC of 1997, as amended."

Otherwise stated, Sections 247 (a) and 249 (A) must reasonably be read and construed subject to the provision of Section 249 (B) - - all these provisions being covered by the same Chapter I of Title X of the NIRC of 1997, as amended.

In sum, deficiency interest may be imposed only on tax specifically covered by the relevant provisions of the NIRC, *i.e., income tax, donor's tax and estate tax*; conversely, deficiency interest may not properly be imposed on the basic withholding tax on compensation, expanded withholding tax, and fringe benefit tax assessed against petitioner.

All told, I vote to deny the Petition for Review for lack of merit and to affirm the judgment of the Court in Division with modification relating to the imposition of 20% deficiency interest on the assessed basic withholding tax on compensation, expanded withholding tax, and fringe benefit tax, which should appropriately be cancelled and set aside.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
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LOURDES COLLEGE,
Petitioner,

CTA EB No. 1164

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

FEB 02 2016 3:35 p.m.

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CONCURRING AND DISSENTING OPINION

UY, J.:

With all due respect with the learned ponente and my other colleagues, I dissent on the imposition of the deficiency interests on the deficiency Withholding Tax on Compensation (WTC), deficiency Expanded Withholding Tax (EWT), and deficiency Fringe Benefit Tax (FBT), under Section 249(B) of the National Internal Revenue Code (NIRC) of 1997, and the inclusion thereof in the computation of delinquency interests under Section 249(C) of the same Code, as decreed by the Court in Division in CTA Case No. 8038. As for the other matters tackled in the Decision of the Court *En Banc*, I fully concur with the disquisitions made therein.

Section 249 of the NIRC of 1997 reads:

"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 the rules and regulations, from the date prescribed for its 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:
>
> xxx xxx xxx
>
> (3) 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." *(Emphases supplied)*

Based on the foregoing Section 249(B), the *"Deficiency Interest"* shall be imposed on *"*[a]*ny deficiency in the tax due, as the term is defined in this Code"*, *i.e.*, as the term "deficiency" is defined in the NIRC of 1997. Relative thereto, an examination of the said Code discloses that there are only three (3) instances where it defines the term "deficiency", and this relates only and respectively to three (3) types of internal revenue taxes, namely, income tax, estate tax, and donor's tax, pursuant to Sections 56(B), 93 and 104 of the NIRC of 1997, viz:

> "SEC. 56. *Payment and Assessment of Income Tax for Individuals and Corporations.*—
>
> xxx xxx xxx
>
> (B) *Assessment and Payment of Deficiency Tax.*— After the return is filed, the Commissioner shall examine its and assess the correct amount of the tax. The tax or deficiency income tax so discovered shall be paid upon notice and demand from the Commissioner.
>
> As used in this Chapter[1], in respect of a tax imposed by this Title[2], the term **'deficiency'** means:

[1] Chapter IX – RETURNS AND PAYMENT OF TAX.
[2] Title II – TAX ON INCOME.

(1) The amount by which the tax imposed by this Title exceeds the amount shown as the tax by the taxpayer upon his return; but the amount so shown on the return shall be increased by the amounts previously assessed (or collected without assessment) as a deficiency, and decreased by the amount previously abated, credited, returned or otherwise repaid in respect of such tax; or

(2) If no amount is shown as the tax by the taxpayer upon his return, or if no return is made by the taxpayer, then the amount by which the tax exceeds the amounts previously assessed (or collected without assessment) as a deficiency; but such amounts previously assessed or collected without assessment shall first be decreased by the amounts previously abated, credited, returned or otherwise repaid in respect of such tax." *(Emphasis supplied)*

"SEC. 93. *Definition of Deficiency.* — As used in this Chapter[3], the term **'deficiency'** means:

(a) The amount by which the tax imposed by this Chapter exceeds the amount shown as the tax by the executor, administrator or any of the heirs upon his return; but the amount so shown on the return shall first be increased by the amounts previously assessed (or collected without assessment) as a deficiency and decreased by the amounts previously abated, refunded or otherwise repaid in respect of such tax; or

(b) If no amount is shown as the tax by the executor, administrator or any of the heirs upon his return, or if no return is made by the executor, administrator, or any heir, then the amount by which the tax exceeds the amounts previously assessed (or collected without assessment) as a deficiency; but such amounts previously assessed or collected without assessment shall first be decreased by the amounts previously abated, credited, returned or otherwise repaid in respect of such tax." *(Emphasis supplied)*

"SEC. 104. *Definitions.* — xxx

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[3] CHAPTER I – ESTATE TAX (under TITLE III – ESTATE AND DONOR'S TAXES).

> The term **'deficiency'** means: (a) the amount by which the tax imposed by this Chapter[4] exceeds the amount shown as the tax by the donor upon his return; but the amount so shown on the return shall first be increased by the amounts previously assessed (or collected without assessment) as a deficiency, and decreased by the amounts previously abated, refunded or otherwise repaid in respect of such tax, or (b) if no amount is shown as the tax by the donor upon his return, then the amount by which the tax exceeds the amounts previously assessed (or collected without assessment) as a deficiency, but such amounts previously assessed or collected without assessment shall first be decreased by the amounts previously abated, credited, returned or otherwise repaid in respect of such tax." *(Emphasis supplied)*

Such being the case, the deficiency interest under Section 249(B) should be applied only whenever there is a deficiency income tax, a deficiency estate tax, and a deficiency donor's tax. For this reason, in this case, no deficiency interest under Section 249(B) should be imposed on the deficiency WTC, deficiency EWT, and deficiency FBT assessed against petitioner. Correspondingly, the computation of the delinquency interest imposed under Section 249(C) should not as well include the said deficiency interest.

Correspondingly, I vote for the DELETION of: (i) the imposition of deficiency interest at the rate of 20% *per annum* on the basic WTC, EWT, and FBT as stated in sub-paragraph (a)(1),(2), and (ii) the statement "*and on the 20% deficiency interest, which have accrued as aforestated in (a)*" found in subparagraph (b), both of the third paragraph of the dispositive portion of the assailed Decision.

ERLINDA P. UY
Associate Justice

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[4] CHAPTER II – DONOR'S TAX (under TITLE III – ESTATE AND DONOR'S TAXES).