REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PHILIPPINE SECURITIES SETTLEMENT CORP., Petitioner,	**CTA EB NO. 2277** (CTA Case No. 9058)
- versus -	Present: **DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO,** *and* **CUI-DAVID,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: FEB 22 2022 3:40pm

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DECISION

RINGPIS-LIBAN, *J.*:

The Case

Before the Court is a Petition for Review seeking the reversal of the Amended Decision[1] dated August 22, 2019 ("Assailed Amended Decision") and Resolution[2] dated March 12, 2020 ("Assailed Resolution") of the Court of Tax Appeals Special First Division ("Special First Division"), partially upholding the assessments issued by Respondent against Petitioner for taxable year 2010. Petitioner prays that this court (a) re-open the case and allow it to present and offer in evidence additional documentary and testimonial evidence, (b) cancel the assessments for deficiency income tax ("IT"), expanded withholding tax ("EWT"), withholding tax on compensation ("WTC"), final

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1 Penned by Associate Justice Erlinda P. Uy, with Presiding Justice Roman G. Del Rosario and Associate Justice Cielito N. Mindaro-Grulla concurring; Docket, pp. 1981-2018.

2 *Id.*, pp. 2250-2278.

withholding tax ("FWT"), and final withholding value-added tax ("FWVAT"), in the amount of Php11,346,155.00, inclusive of the twenty-five percent (25%) surcharge, twenty percent (20%) deficiency interest and twenty percent (20%) delinquency interest, and (c) cancel the twelve percent (12%) delinquency interest in the amount of Php6,323,473.07 computed from January 01, 2018 until full payment thereof.

The Parties

Petitioner Philippine Securities Settlement Corp. is a domestic corporation duly organized and existing under Philippine law with registered principal address at the 37F Tower 1, The Enterprise Center, Ayala Avenue, Makati City.[3]

On the other hand, Respondent is the duly appointed Commissioner of Internal Revenue vested under appropriate laws with the authority to carry out the functions, duties, and responsibilities of his Office, including *inter alia*, the power to decide disputed assessments, cancel and abate tax liabilities pursuant to the provisions of the National Internal Revenue Code ("NIRC") of 1997, as amended and other laws, rules and regulations. He may be served with summons, pleadings, and other processes at his office at the Bureau of Internal Revenue ("BIR") National Office Building, BIR Road, Diliman, Quezon City.[4]

The Facts

The facts as found by the court *a quo* are as follows:

> "On April 13, 2012, petitioner received a letter-request from the Bureau of Internal Revenue (BIR) requesting petitioner to submit its books of accounts and tax returns for Taxable Year 2010, attaching thereto Letter of Authority (LOA) No. 047-2012-00000083 dated 30 March 2012 for the examination of petitioner's books of accounts and other accounting records of all internal revenue taxes for TY 2010.
>
> On November 6, 2013, petitioner received respondent's Preliminary Assessment Notice (PAN) assessing petitioner for deficiency IT, EWT, WTC, FWT and FWVAT for TY 2010 in the total amount of [Php]7,458,186.07, inclusive of penalties and surcharge. Petitioner filed its protest to the PAN on November 21, 2013.

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3 *Id*, Decision dated August 15, 2018, pp. 1693-1694.
4 *Id*, Decision dated August 15, 2018, p. 1694.

On April 21, 2014, petitioner received a copy of respondent's Final Assessment Notice (FAN), assessing petitioner for alleged deficiency IT, EWT, WTC, FWT, and FWVAT for TY 2010 in the total amount of [Php]6,797,415.03, inclusive of penalties and surcharge. Petitioner filed its Protest to the FAN with a request for reinvestigation on May 21, 2014.

On April 28, 2015, petitioner received respondent's FDDA, assessing petitioner for deficiency IT, EWT, WTC, FWT, and FWVAT for TY 2010 in the total amount of [Php]7,601,925.55, inclusive of interest, penalty, and surcharge, with the following findings/conclusions, *inter alia*, to wit:

1) Petitioner is liable for deficiency IT in the total amount of [Php]4,989,902.97.

2) The discrepancy in accounts receivable (AR) from receipts per petitioner's VAT Returns to assess petitioner for the deficiency IT is for alleged unreported income in the total amount of [Php]475,609.65.

3) Petitioner is liable for the deficiency IT for alleged non-withholding of EWT and FWT in the total amount of [Php]6,170,231.59.

4) In assessing petitioner for deficiency EWT, respondent claims that petitioner is liable for EWT at a rate of two percent (2%) on its payments to 'Contractors' pursuant to Section 2.57.2 (E) of RR No. 2-98, as amended.

5) Petitioner is liable for the deficiency IT due to the disallowance of its salaries and wages for alleged non-withholding in the total amount of [Php]1,928,255.53.

6) Petitioner is liable for deficiency IT due to alleged unsupported expenses in the total amount of [Php]447,132.93.

7) The disallowance of petitioner's expenses resulting from the fees paid to Range Computer Services (RANGE) in the total amount of [Php]251,755.10 for being

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substantiated by alleged invalid official receipts (ORs) due to the fact that the aforementioned ORs do not contain RANGE's authority-to-print-number (ATP).]

8) The disallowance of petitioner's expenses resulting from foreign travel expenses in the total amount of [Php]195,377.83 paid to Marsman Drysdale Travel, Inc. due to alleged inconsistencies in the name/s appearing in the ORs with the Cost-Sharing Agreement. It is respondent's position that, following the Cost-Sharing Agreement, it is inconsistent with such agreement for petitioner to claim the entire amount of travel expenses resulting from the official business travels of common officers of the PDS Group.

9) Petitioner is liable for the deficiency IT due to disallowed prior period expenses in the total amount of [Php]116,411.53 for being accrued prior to TY 2010.

10) Petitioner is liable for interest, penalty, and surcharge in the total amount of [Php]3,405,404.15 resulting from the alleged deficiency IT, EWT, WTC, FWT, and FWVAT for TY 2010.

On May 28, 2015, the instant Petition for Review was filed by petitioner."[5]

The Ruling of the Special First Division

On August 15, 2018, the court *a quo* promulgated a Decision, the dispositive portion of which reads:

"**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **PARTIALLY GRANTED**.

The compromise penalties in the amount of [Php]32,000.00 for petitioner's alleged deficiency FWT and FWVAT are **CANCELLED** and **SET ASIDE**.

[5] *Id.*, Decision dated August 15, 2018, pp. 1694-1696.

The assessments issued by respondent against petitioner for taxable year 2010 covering deficiency EWT, WTC, FWT, FWVAT and income tax are hereby **PARTIALLY UPHELD**. Accordingly, petitioner is hereby **ORDERED TO PAY** respondent the reduced amount of **[Php]3,895,016.71**, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows.

Tax	Basic	25% Surcharge	Total
EWT	118,663.23	29,665.81	148,329.04
WTC	225,346.24	56,336.56	281,682.80
FWT	468,376.01	56,336.56	585,470.01
FWVAT	187,350.41	46,837.60	234,188.01
Income Tax	2,116,277.48	529,069.37	2,645,346.85
Total	**[Php]3,116,013.37**	**[Php]529,069.37**	**[Php]3,895,016. 71**

In addition, petitioner is **ORDERED TO PAY** following deficiency and delinquency interest, computed in accordance with the provisions of Section 249 of the NIRC of 1997, in its original text and as amended by RA No. 10963 (TRAIN law), *viz*.:

1) Deficiency interest at the rate of twenty percent (20%) *per annum* on the basic deficiency EWT, WTC, FWT, FWVAT, and income tax, computed from the dates indicated below until full payment thereof **<u>until December 31, 2017</u>**:

Tax	Basic	Commencement dates
EWT	[Php] 118,663.23	January 15, 2011
WTC	225,346.24	January 15, 2011
FWT	468,376.01	January 15, 2011
FWVAT	187,350.41	January 15, 2011
Income Tax	[Php]2,116,277.48	April 15, 2011

2) Delinquency interest at the rate of 20% *per annum* on the total amount of [Php]3,895,016.71 and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from October 24, 2012 **<u>until December 31, 2017</u>**;

3) **<u>Delinquency interest at the rate of 12% on the total unpaid amount [basic taxes,</u>**

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> **surcharges, and interests computed on (a) and (b) above] from January 1, 2018 until the same is fully paid.**
>
> **SO ORDERED.**"[6]

Aggrieved, Petitioner filed a "Motion for Partial Reconsideration (with Motion for Leave to Re-Open Case for Presentation of Additional Evidence)"[7] on September 04, 2018. The Special First Division denied Petitioner's Motion for Leave to Re-Open Case for Presentation of Additional Evidence and partially granted its Motion for Partial Reconsideration in the Assailed Amended Decision, *viz*.:

> "**WHEREFORE**, in light of the foregoing considerations, petitioner's *Motion for Leave to Re-Open Case for Presentation of Additional Evidence* is **DENIED** for lack of merit.
>
> On the other hand, petitioner's *Motion for Partial Reconsideration* is **PARTIALLY GRANTED**. Accordingly, the Court's Decision dated August 15, 2018, is hereby amended to read as follows:
>
> > '**WHEREFORE**, in light of the considerations, the instant Petition for Review is **PARTIALLY GRANTED**.
> >
> > The assessments issued by respondent against petitioner for taxable year 2010 covering deficiency income tax in the amount of [Php]4,989,902.97 and compromise penalties in the amount of [Php]32,000.00 for petitioner's alleged deficiency FWT and FWVAT are **CANCELLED** and **SET ASIDE**.
> >
> > However, the assessments for deficiency EWT, WTC, FWT and FWVAT are hereby **UPHELD WITH MODIFICATIONS**. Accordingly, petitioner is hereby **ORDERED TO PAY** respondent the amount of **[Php]11,346,155.00**, inclusive of the 25% surcharge, 20% deficiency interest and 20% delinquency interest imposed under Sections 248(A)(3), 249(8) and (C) of the NIRC of

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[6] *Id.*, Decision dated August 15, 2018, pp. 1755-1756.

[7] *Id.*, pp. 1853-1906.

1997, as amended, respectively, computed until December 31, 2017 as follows:

	IT	EWT	WTC	FWT	WVAT	Total
Basic Tax	[Php]2,058,015.79	[Php]110,030.09	[Php]225,346.24	[Php]468,376.01	[Php]187,350.41	[Php]3,049,118.54
Add: 25% Surcharge	514,503.95	27,507.52	56,336.56	117,094.00	46,837.60	762,279.63
20% Deficiency Interest from April 15, 2011 to April 28, 2015 ([Php]2,058,015.79 x 20% x 1,474/365 days)	1,662,200.15					1,662,200.15
20% Deficiency Interest from January 15, 2011 to April 28, 2015 [P110,030.09 x 20% x 1,564/365 days]		94,294.27				94,294.27
[[Php]225,346.24 x 20% x 1,564/365 days]			193,118.64			193,118.64
([Php]468,376.01 x 20% x 1,564/365 days)				401,391.82		401,391.82
20% Deficiency Interest from January 10, 2011 to April 28, 2015 [[Php]187,350.41 x 20% x 1,569/365 days]					161,070.02	161,070.02
Total Amount Due as of April 28, 2015	**[Php]4,234,719.89**	**[Php]231,831.88**	**[Php]474,801.44**	**[Php]986,861.83**	**[Php]395,258.03**	**[Php]6,323,473.07**
20% Deficiency Interest from April 29, 2015 to December 31, 2017 ([Php]2,058,015.79 x 20% x 978/365 days)	1,102,870.93					1,102,870.93
[[Php]110,030.09 x 20% x 978/365 days]		58,964.07				58,964.07
[[Php]225,346.24 x 20% x 978/365 days]			120,760.88			120,760.88
[[Php]438,376.01 x 20% x 978/365 days]				250,998.21		250,998.21
[[Php]187,350.41 x 20% x 978/365 days]					100,399.28	100,399.28
20% Delinquency Interest from April 29, 2015 to December 31, 2017 (P4,234,719.89 x 20% x 978/365 days)	2,269,345.78					2,269,345.78
[[Php]231,831.88 x 20% x 978/365 days]		124,236.48				124,236.48
[[Php]474,801.44 x 20% x 978/365 days]			254,441.53			254,441.53
[[Php]986,861.83 x				528,849.79		528,849.79

20% x 978/365 days]						
[[Php]395,258.03 x 20% x 978/365 days]					211,814.98	211,814.98
Total Amount Due as of December 31, 2017	**[Php]7,606,936.60**	**[Php]415,032.43**	**[Php]850,003.85**	**[Php]1,766,709.83**	**[Php]707,472.29**	**[Php]11,346,155.00**

In addition, petitioner is **ORDERED TO PAY** respondent delinquency interest at the rate of twelve percent (12%) on the total amount due of **[Php]6,323,473.07** as of April 28, 2015, 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 the Train Law, as implemented by RR No. 21-2018.

SO ORDERED.

SO ORDERED."[8]

Thereafter, both Respondent and Petitioner filed their respective motions for partial reconsideration on September 20, 2019[9] and September 23, 2019[10]. In the Assailed Resolution, the Special First Division denied Petitioner's motion while partially granting Respondent's motion, to wit:

"**WHEREFORE**, in light of the foregoing, [P]etitioner's *Motion for Partial Reconsideration (Re: Amended Decision dated 22 August 2019)* is **DENIED** for lack of merit. While, respondent's *Motion for Partial Reconsideration (of the Amended Decision dated August 22, 2019)* is **PARTIALLY GRANTED**. The Amended Decision dated August 22, 2019 is **AFFIRMED** with modification, as follows:

'**WHEREFORE**, in light of the considerations, the instant Petition for Review is **PARTIALLY GRANTED**.

The compromise penalties in the amount of [Php]32,000.00 for petitioner's alleged deficiency

[8] *Id.*, Amended Decision dated August 22, 2019, pp. 2016-2018.
[9] *Id.*, Motion for Partial Reconsideration (of the Amended Decision dated August 22, 2019), pp. 2224-2235.
[10] *Id.*, Motion for Partial Reconsideration (Re: Amended Decision dated 22 August 2019), pp. 2177-2197.

FWT and FWVAT are **CANCELLED** and **SET ASIDE**.

The assessments for deficiency IT, EWT, WTC, FWT and FWVAT are hereby **UPHELD WITH MODIFICATIONS**. Accordingly, petitioner is hereby **ORDERED TO PAY** respondent the amount of **[Php]11,346,155.00,** inclusive of the 25% surcharge, 20% deficiency interest and 20% delinquency interest imposed under Sections 248(A)(3), 249(8) and (C) of the NIRC of 1997, as amended, respectively, computed until December 31, 2017 as follows:

	IT	EWT	WTC	FWT	WVAT	Total
Basic Tax	[Php]2,058,015.79	[Php]110,030.09	[Php]225,346.24	[Php]468,376.01	[Php]187,350.41	[Php]3,049,118.54
Add: 25% Surcharge	514,503.95	27,507.52	56,336.56	117,094.00	46,837.60	762,279.63
20% Deficiency Interest from April 15, 2011 to April 28, 2015 ([Php]2,058,015.79 x 20% x 1,474/365 days)	1,662,200.15					1,662,200.15
20% Deficiency Interest from January 15, 2011 to April 28, 2015 [[Php]110,030.09 x 20% x 1,564/365 days]		94,294.27				94,294.27
[[Php]225,346.24 x 20% x 1,564/365 days]			193,118.64			193,118.64
([Php]468,376.01 x 20% x 1,564/365 days)				401,391.82		401,391.82
20% Deficiency Interest from January 10, 2011 to April 28, 2015 [[Php]187,350.41 x 20% x 1,569/365 days]					161,070.02	161,070.02
Total Amount Due as of April 28, 2015	**[Php]4,234,719.89**	**[Php]231,831.88**	**[Php]474,801.44**	**[Php]986,861.83**	**[Php]395,258.03**	**[Php]6,323,473.07**
20% Deficiency Interest from April 29, 2015 to December 31, 2017 ([Php]2,058,015.79 x 20% x 978/365 days)	1,102,870.93					1,102,870.93
[[Php]110,030.09 x 20% x 978/365 days]		58,964.07				58,964.07
[[Php]225,346.24 x 20% x 978/365 days]			120,760.88			120,760.88
[[Php]438,376.01 x 20% x 978/365 days]				250,998.21		250,998.21

[[Php]187,350.41 x 20% x 978/365 days]					100,399.28	100,399.28
20% Delinquency Interest from April 29, 2015 to December 31, 2017 ([Php]4,234,719.89 x 20% x 978/365 days)	2,269,345.78					2,269,345.78
[[Php]231,831.88 x 20% x 978/365 days]		124,236.48				124,236.48
[[Php]474,801.44 x 20% x 978/365 days]			254,441.53			254,441.53
[[Php]986,861.83 x 20% x 978/365 days]				528,849.79		528,849.79
[[Php]395,258.03 x 20% x 978/365 days]					211,814.98	211,814.98
Total Amount Due as of December 31, 2017	**[Php]7,606,936.60**	**[Php]415,032.43**	**[Php]850,003.85**	**[Php]1,766,709.83**	**[Php]707,472.29**	**[Php]11,346,155.00**

In addition, [P]etitioner is **ORDERED TO PAY** [R]espondent delinquency interest at the rate of twelve percent (12%) on the total amount due of **[Php]6,323,473.07** as of April 28, 2015, 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 the Train Law, as implemented by RR No. 21-2018.

SO ORDERED.

SO ORDERED."[11]

The Proceedings in the Court of Tax Appeals En Banc

On July 02, 2020, Petitioner filed the present "Petition for Review".[12]

On July 17, 2020, the Court issued a Resolution[13] ordering Respondent to comment on the Petition for Review within ten (10) days from notice.

[11] *Id.*, Resolution dated March 12, 2020, pp. 2277-2278.
[12] Rollo, pp. 1-57.
[13] *Id.*, pp. 142-143.

On August 29, 2020, Respondent filed *via* registered mail its "Comment/Opposition (To the Petition for Review dated July 1, 2020)"[14] ("Comment/Opposition").

On September 23, 2020, the Court issued a Resolution[15] noting Respondent's Comment/Opposition and referring the case to mediation.

On January 07, 2021, the Court issued a Resolution[16] granting the parties' Request for Extension of mediation proceedings. The parties were ordered to submit to the Court within fifteen (15) days from January 08, 2021 or until January 23, 2021, the Compromise Agreement and the necessary joint motion for consideration and approval.

On March 01, 2021 a Resolution[17] was issued denying the parties' "Joint Motions to Suspend Proceedings" filed on January 08, 2021[18] and February 02, 2021[19], and submitting the case for decision, without prejudice to the subsequent filing by the parties of their perfected compromise agreement.

On June 30, 2021, the Court issued a Resolution noting the Mediator's Report dated June 08. 2021 indicating unsuccessful mediation.

Assignment of Errors

Petitioner enumerates in its petition the following issues[20] to be resolved:

1) Whether Petitioner is entitled to the re-opening of the case for the presentation of additional evidence; and

2) Whether Petitioner is entitled to the cancellation of:

   a. The assessments for deficiency IT, EWT, WTC, FWT and FWVAT for taxable year 2010 in the amount of Php11,346,155.00, inclusive of the twenty-five percent (25%) surcharge, twenty percent (20%) deficiency interest and twenty percent (20%) delinquency interest; and

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[14] *Id.*, pp. 144-152.
[15] *Id.*, pp. 154-155.
[16] *Id.*, pp. 158-159.
[17] *Id.*, pp. 170-172.
[18] *Id.*, pp. 160-164.
[19] *Id.*, pp. 165-168.
[20] *Id.*, Petition for Review, Issues, pp. 6-7.

b. The twelve percent (12%) delinquency interest on the total amount of Php6,323,473.07, computed from January 01, 2018 until full payment thereof.

The Arguments of Parties

Petitioner asserts that it should be allowed to reopen the trial to present additional evidence for the just resolution of the case. According to Petitioner, Republic Act No. 1125 expressly provides that the Court of Tax Appeals (CTA) shall not be bound by strict rules of procedure.

Citing *BPI-Family Savings Bank, Inc. v. Court of Appeals*[21] and *Philippine Phosphate Fertilizer Corporation v. Commissioner of Internal Revenue*[22], Petitioner maintains that the paramount consideration of the court in deciding cases should be the ascertainment of truth and the just determination of every action. As such, Petitioner should be permitted to submit relevant documents of the other members of the Philippines Dealings System Group ("PDS Group") in order to substantiate its claims that the alleged tax deficiencies are mere reimbursements to the other members of the PDS Group.

Moreover, Petitioner avers that it is entitled to the cancellation of the assessments for deficiency EWT, WTC, FWT, FWVAT and income tax for the following reasons:

I. EWT

a) Rent - Parking Space (Accrual) – Petitioner argues that contrary to the findings of the Court, the foregoing payments were subjected to the proper EWT as evidenced by its BIR Form No. 1604E.

b) Rent - Parking Space (Amortization of Prepaid Expense) – Petitioner argues that the amount was properly subjected to EWT. An examination of Annex F of the Report of the Independent Certified Public Accountant ("ICPA") indicates that Petitioner withheld five percent (5%) on its income payments to SPI Parking Services, Inc. in the amount of Php12,293.10 resulting in an EWT payment of Php614.66.

c) Rent - Computer Equipment – Petitioner argues that it is not liable because it has sufficiently shown that the

[21] G.R. No. 122480, April 12, 2000.
[22] G.R. No. 141973, June 28, 2005.

assessment item represents allocated expenses pursuant to the Cost Sharing Agreement ("CSA"), including all other reimbursements within the PDS Group. Allegedly, cost-sharing arrangements between interrelated companies, similar to Petitioner's, are considered by Respondent not to be subject to income tax, consequently, not subjected to EWT.

d) Rent - Car Lease and Transportation Equipment – Petitioner argues that it already withheld the amount of two percent (2%) and five percent (5%) on all its payments representing Rent - Car Lease and Rent - Transportation Equipment for being made to transportation contractors and financial leasing contractors. Allegedly, these payments were made to the following entities: Orix Metro Leasing and Finance Corporation and Orix Auto Leasing Philippines Corporation, and that the payments made were in the nature of payments for car leasing.

e) Professional Fees – Petitioner argues that the assessment item may be reconciled, all of which have been properly subjected to EWT.

f) Director's Fees – Petitioner argues that the same was subjected to the proper application of withholding tax.

g) Payment to Contractors/Subcontractors - Outside Services – Petitioner argues that Annex BB of the ICPA clearly indicates that Petitioner withheld the proper amount. Additionally, the Court erred in ruling that it failed to show proof of actual remittance of the same; and that remittance of withholding tax is a disputable presumption. As such, the fact of remittance stands unless such fact has been contested by Respondent.

h) Payment to Contractors/Subcontractors - Other Outside Services – Petitioner argues that it has sufficiently shown that the payments are allocated expenses pursuant to the CSA which is reimbursable by Petitioner to the PDS Group.

i) Payment to Contractors/Subcontractors - Advertising – Petitioner argues that these payments represent mere reimbursements/allocated expenses pursuant to the CSA, and as such, they are not subject to EWT. Even assuming that the services rendered by Isla Lipana & Co. to Petitioner are separate and distinct than that of the Philippine Depository & Trust Corp. ("PDTC"), Isla Lipana & Co is a general professional partnership. Consequently, payments made to it are exempt from EWT in accordance with Section 2.57.5 of Revenue Regulations No. 2-98, as amended.

j) Payment to Contractors/Subcontractors - Communication. Light and Water – Petitioner argues that these payments represent mere reimbursements/allocated expenses pursuant to the CSA, and as such, they are not subject to EWT.

k) Payment to Contractors/Subcontractors – Miscellaneous – Petitioner argues that this amount represents mere accruals and amortization of prepaid expenses which were subjected to the proper withholding tax.

l) Payment to Contractors/Subcontractors – Others – Petitioner argues that it was able to present various accounting documents to substantiate the transactions recorded here.

II. WTC

Petitioner argues that there is no factual and/or legal basis for comparing the amounts of "Allocation of salaries and benefits from affiliates" with that of "Allocation of salaries and benefits to affiliates" as they are unrelated accounts, and as such, cannot and should not be compared against each other.

III. FWT & FWVAT

Petitioner argues that the income payments made by PDTC to Tata Consulting Services, Ltd. ("Tata Consulting"), a non-resident foreign corporation based in India. Allegedly, it was able to present payment instructions and check vouchers authorizing payment to PDTC for its share in the payments to Tata Consulting allegedly showing sufficient proof of the existence of the obligation to reimburse/allocate expenses.

Even assuming that Petitioner was the actual payor, any and all such payments are exempt from FWT and FWVAT, for under the RP-India Tax Treaty, "business profits" are exempt from Philippine taxes.

IV. Income Tax

a) Disallowed Prior Period Expense – Petitioner argues that it claimed the expenses as deductions in taxable year 2010 because the actual expense as shown by the billings received was more than the estimated expenses accrued in taxable year 2009. Petitioner claimed the difference between the two amounts in taxable year 2010 - the year when it received such billings - which portion of the expense Petitioner could not have ascertained in taxable year 2009.

b) Disallowed Expenses due to Non-Withholding – As discussed above, Petitioner is not liable for EWT on its expenses.

Even assuming *arguendo* that Petitioner is liable for EWT, an examination of the ICPA Report will clearly indicate that Petitioner is still not liable for income tax for taxable year 2010, since the excess Minimum Corporate Income Tax ("MCIT") and tax credits are sufficient to absorb any effect of audit adjustment on 2010 taxable income.

V. Surcharge

Petitioner argues that both the Final Assessment Notice ("FAN") and Final Decision on Disputed Assessment ("FDDA") issued by Respondent did not demand payment of the twenty-five percent (25%) surcharge. Consequently, it is erroneous for the court *a quo* to require Petitioner to pay when Respondent himself did not.

VI. Deficiency and Delinquency Interests

Petitioner argues that deficiency interest may not be properly imposed on deficiency FWT, WTC, EWT and VAT, but only on deficiency income tax, estate tax and donor's tax. Likewise, delinquency interest cannot and should not be imposed on top of deficiency interest.

> Furthermore, Petitioner relied in good faith on the rulings issued by Respondent that reimbursements are not subject to withholding tax. On the basis of such good faith reliance, Petitioner is entitled to the cancellation of the imposition of deficiency and delinquency interest.

On the other hand, Respondent contends in his Comment/Opposition that Petitioner's failure to present additional evidence during the course of trial is a simple case of negligence. Respondent declares that Petitioner should not be allowed to present additional evidence, because in doing so the court would be putting premium on Petitioner's negligence.

Respondent also contends that the imposition of both deficiency and delinquency interest are in accordance with the letters of the provision of Section 249 of the NIRC of 1997, as amended.

The Ruling of the Court

Timeliness of Petition

The Court in Division issued the Assailed Resolution, denying Petitioner's "Motion for Partial Reconsideration (Re: Amended Decision dated 22 August 2019)", on March 12, 2020. It was mailed to Petitioner on March 13, 2020[23] and received by Petitioner on June 17, 2020.[24] Pursuant to Rule 4, Section 2(a)(1)[25] in relation to Rule 8, Section 3(b)[26] of the Revised Rules of the

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[23] Docket, Notice of Resolution dated March 12, 2020, p. 2249.

[24] Rollo, Petition for Review, Statement of Material Facts and Proceedings (with Statement of Material Dates), p. 5.

[25] **Sec. 2.** *Cases within the jurisdiction of the Court en banc.* — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:

xxx xxx xxx

(1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture; x x x

[26] **Sec. 3.** *Who may appeal; period to file petition.* — x x x

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (Rules of Court, Rule 42, sec. 1a)

Court of Tax Appeals[27] (RRCTA), Petitioner had fifteen (15) days from date of receipt of the resolution or until July 02, 2020 within which to file the petition.

On July 02, 2020, Petitioner timely filed the present "Petition for Review". Hence, the Court *En Banc* validly acquired jurisdiction.

We now proceed to the merits of the case.

At the outset, Petitioner presents no new argument to persuade Us that it has a meritorious case. In fact, the instant Petition for Review is a replica of the "Motion for Partial Reconsideration (Re: Amended Decision dated 22 August 2019)"[28] filed by Petitioner on September 23, 2019 before the Special First Division, the arguments of which had been fully and exhaustively resolved by the Court in Division in the Assailed Amended Decision and Assailed Resolution.

The Special First Division did not err in its refusal to reopen the case and allow Petitioner to submit additional evidence

The basis for a motion to reopen a case to introduce further evidence in civil actions may be found in Section 5, Rule 30 of the Rules of Court, which reads:

> "**Section 5.** *Order of trial.* — Subject to the provisions of Section 2 of Rule 31, and unless the court for special reasons otherwise directs, the trial shall be limited to the issues stated in the pre-trial order and shall proceed as follows:
>
> xxx xxx xxx
>
> (f) The parties may then respectively adduce rebutting evidence only, unless the court, **for good reasons and in the furtherance of justice**, permits them to adduce evidence upon their original case..."[29]

From the foregoing provision, it is clear that a motion to reopen trial should be filed before judgment is made. A motion to reopen may properly be

[27] A.M. No. 05-11-07-CTA, November 22, 2005.
[28] Docket, pp. 2117-2166.
[29] *Emphasis and underscoring supplied.*

presented only after either or both parties have formally offered, and closed their evidence, but before judgment.[30]

In criminal actions on the other hand, a motion to reopen a case is allowed even after promulgation but before finality of judgment. Section 24, Rule 119 of the Revised Rules on Criminal Procedure provides:

> "**Section 24.** *Reopening.* — At any time before finality of the judgment of conviction, the judge may, *motu proprio* or upon motion, with hearing in either case, reopen the proceedings to avoid a miscarriage of justice. The proceedings shall be terminated within thirty (30) days from the order grating it."

Nevertheless, this Court recognizes as a procedural recourse the filing of a motion to reopen a case after judgment is made, in both civil and criminal actions, deriving validity and acceptance from long, established usage. Moreover, the only controlling guideline governing a motion to reopen is the paramount interest of justice[31], which is subject to the court's judicial discretion.

Borrowing the interpretation of the Supreme Court in *Republic of the Philippines v. Sandiganbayan (Fourth Division), Et. Al.* [32], the evidence which would qualify as a "good reason" and be in furtherance of "the interest of justice" includes additional evidence when it is newly discovered, or where it has been omitted through inadvertence or mistake, or where the purpose of the evidence is to correct evidence previously offered.

Lamentably, an examination of the list of additional supporting documents Petitioner seeks to present and offer in evidence, shows that it does not fall under any of the grounds enumerated. The non-presentation of the documents was not based on accident, mistake or excusable negligence nor the documents sought to be presented come within the purview of newly discovered evidence. Petitioner filed the motion to reopen in order to present additional evidence which it failed to present during the hearing. Indeed, We find that the additional documentary evidence constitutes "forgotten" evidence which Petitioner intends to present only after obtaining an unfavorable decision.

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30 Ramon J. Alegre v. Hon. Manuel T. Reyes, etc., and the People of the Philippines, G.R. No. L-56923, May 09, 1988.

31 Republic of the Philippines v. Sandiganbayan (Fourth Division), Et. Al., G.R. No. 152375, December 16, 2011; Cecilia Rivac v. People of the Philippines, G.R. No. 224673, January 22, 2018 *citing* Rene Cabarles v. Hon. Judge Bonifacio Sanz Maceda and People of The Philippines, G.R. No. 161330, February 20, 2007; Ramon J. Alegre v. Hon. Manuel T. Reyes, etc., and the People of the Philippines, G.R. No. L-56923, May 09, 1988.

32 Republic of the Philippines v. Sandiganbayan (Fourth Division), Et. Al., G.R. No. 152375, December 16, 2011.

A "forgotten evidence" is that which is already available during the conduct of the trial, but was not presented at that stage of the proceedings.[33] For reasons of orderly administration of justice, "forgotten evidence" must be disallowed in a motion to reopen trial, as held in the case of *Office of the Ombudsman, Represented by Hon. Simeon V. Marcelo v. Carmencita D. Coronel*[34], *viz.*:

> "Forgotten evidence refers to evidence already in existence or available before or during a trial; known to and obtainable by the party offering it; and could have been presented and offered in a seasonable manner, were it not for the sheer oversight or forgetfulness of the party or the counsel. **Presentation of forgotten evidence is disallowed, because it results in a piecemeal presentation of evidence, <u>a procedure that is not in accord with orderly justice and serves only to delay the proceedings.</u> A contrary ruling may open the floodgates to an endless review of decisions, whether through a motion for reconsideration or for a new trial, in the guise of newly discovered evidence."**[35]

More importantly, to admit Petitioner's additional documentary evidence without having complied with the requisites for the grant of a motion to reopen trial, and without establishing any "good reason" for the same, is a dangerous proposition and one which the Court refuses to countenance.

Mere invocation by Petitioner of substantial justice will not automatically justify the liberal application of procedural rules. As held in *G.D.L. Marketing v. Hercules Agro Industrial Corporation*[36]:

> "**the bare invocation of 'the interest of substantial justice' line is not some magic wand that will automatically compel this Court to suspend procedural rules**. Procedural rules are not to be belittled, let alone dismissed simply because their non-observance may have resulted in prejudice to a party's substantial rights. Utter disregard of the rules cannot be justly rationalized by harping on the policy of liberal construction."[37]

It must be emphasized that Petitioner was given the opportunity to submit necessary evidence to support its allegations in its original petition before the case was submitted for decision. Now that it obtained an unfavorable decision, Petitioner again prays that it be allowed to present additional evidence to justify its claim. This is too much. A liberal application of the rules of procedure to suit Petitioner's purpose would clearly pave the

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[33] Rodolfo M. Cuenca v. Hon. Alberto P. Atas, Et. Al., G.R. No. 146214, October 05, 2007.
[34] G.R. No. 164460, June 27, 2006.
[35] *Emphasis and underscoring supplied.*
[36] G.R. No. 183239, June 02, 2014.
[37] *Emphasis supplied.*

way for injustice as it would be rewarding an act of negligence with undeserved tolerance.[38]

Considering all these pronouncements, We find that the court *a quo* properly exercised its discretion in ruling that there is no sufficient basis for the reopening of the case.

The Special First Division properly partially upheld the deficiency tax assessments against Petitioner

First, Petitioner asserts that court *a quo* incorrectly upheld the deficiency EWT assessment on Rent-Parking Space (Accrual).

At any rate, We affirm the findings of the court in Division that Respondent was not able to prove that the said assessment item was subjected to the proper EWT. As found by the ICPA, Petitioner's parking rental payments are subjected to withholding taxes only upon payment. Since the assessed Rent-Parking Space (Accrual) represents expenses incurred but not yet paid, it follows that no withholding of tax was yet made by Petitioner in 2010.

As for the deficiency EWT assessment on (a) Rent - Parking Space (Amortization of Prepaid Expense), (b) Professional Fees of Php80,948.61, (c) Director's Fees, (c) Payment to Contractors/Subcontractors – Miscellaneous, and (d) Payment to Contractors/Subcontractors – Others, We find the same unsupported by sufficient documentary proof that the corresponding EWT had already been withheld.

With regard to the deficiency EWT assessments on (a) Rent - Computer Equipment, (b) Payment to Contractors/Subcontractors - Other Outside Services, (c) Payment to Contractors/Subcontractors – Advertising, and (d) Payment to Contractors/Subcontractors – Communication, Light and Water, Petitioner opines that they pertain to reimbursements of expenses allocated from affiliates.

As correctly ruled by the Court in Division however, Petitioner's actual reimbursement for its alleged shared expenses were not established. Official invoices and/or official receipts were not presented for the Court to determine the actual nature of the transactions and their corresponding tax implications. Instead, Petitioner merely presented check vouchers, which are not competent evidence (by itself) of payment.

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[38] Commissioner of Internal Revenue v. A. Soriano Corporation, Court of Tax Appeals and Court of Appeals, G.R. No. 113703, January 31, 1997.

As to the deficiency EWT assessments on Rent - Car Lease and Transportation Equipment, this Court reiterates the findings of the Court in Division, to wit:

> "As to the alleged List of Financing Companies as of 31 July 2019 made by the Securities and Exchange Commission and Certificate of Authority No. 67 issued in favor of Orix Metro pursuant to the Financing Company Act of 1998, the Court cannot take cognizance of the alleged document and list as these are not among the matters which the law mandatorily requires the Court to take judicial notice of, without any introduction of evidence. No evidentiary value can be given to a document as the rules on documentary evidence require that these documents must be formally offered during trial before this Court.
>
> With regard to the Supreme Court and CTA cases cited by petitioner recognizing Orix Metro as engaged in the leasing and financing business and Orix Auto as engaged mainly in the vehicle rental and leasing business, either as a common carrier or private carrier, in the transportation of passengers, merchandise, freight, or cargo, the Court cannot take cognizance of the same. It has been held that the doctrine of judicial notice is to be exercised by the courts with caution; care must taken that the requisite notoriety exists; and every reasonable doubt upon the subject should be promptly resolved in the negative.
>
> As to petitioner's assertion that the Court should have deducted the 2% EWT and 5% EWT that petitioner withheld on the subject income payments, the Court finds the same unmeritorious. It is to be recalled that respondent's assessment was derived after comparing the income payments per petitioner's AFS/ITR with those found in its Alphalist...
>
> xxx xxx xxx
>
> In other words, petitioner's total EWT remittances for the year 2010 were already deducted by respondent in arriving at the deficiency EWT assessment."[39]

Apropos the deficiency EWT assessment on Payment to Contractors/Subcontractors - Outside Services, contrary to Petitioner's argument, Annex BB of the ICPA report shows that no EWT was withheld therefrom. ✓

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[39] Docket, Resolution dated March 12, 2020, pp. 2268-2269.

Bearing in mind the discussion above, the deficiency income tax assessment item on the disallowed expenses (due to the non-withholding of EWT) is upheld.

With respect to the deficiency WTC assessment, a review of the evidence formally offered by Petitioner confirms the findings of the court *a quo*, as follows:

> "Based on the ICPA's reconciliation of the salaries and benefits reflected per petitioner's [Financial Statement] ([Php]17,803,967.06) and total compensation shown per petitioner's BIR Form No. 1601C ([Php]14,479,118.56), the difference of [Php]3,324,848.50 pertains to the following items:

Salaries and benefits per FS		[Php]17,803,967.06
Total Compensation per BIR Form No. 1601C		14,479,118.56
Difference		P3,324,848.50
Accounted for as follows:		
Allocation of salaries and benefits from affiliates:		
From PDSHC	[Php]7,589,433.57	
From PDEX	653,411.41	
From PDTC	4,587,257.45	12,830,102.43
Allocation of salaries and benefits to affiliates		(11,976,194.73)
Accrued vacation leave not claimed as deduction		70,918.00
Retirement benefits expenses not claimed as deduction		542,127.00
Fringe benefits tax		166,596.00
Non-taxable compensation (per BIR Form 1601C)		723,003.20
Accrual of bonus		975,328.64
Total		3,331,880.54
Unaccounted difference		**([Php]7,032.04)**

> We have ruled that the reconciling items, namely, accrued vacation leave of [Php]70,918.00, retirement benefits of [Php]542,127.00, fringe benefits tax of [Php]166,596.00, non-taxable compensation of [Php]723,003.20, and accrued bonus of [Php]975,328.64 totalling to [Php]2,477,972.84, are not subject to WTC. Thus, the only remaining reconciling items are those pertaining to the allocation of salaries and benefits from affiliates

> amounting to [Php]12,830,102.43, allocation of salaries and benefits to affiliates amounting to [Php](11,976,194.73) which when totaled yields to a net amount of [Php]853,907.70. Clearly, the tax base of [Php]853,907.70 used by the Court in arriving at the deficiency WTC was a result of the ICPA's reconciliation of the salaries and benefits as reflected in petitioner's FS and in petitioner's BIR Form No. 1601C. Contrary to petitioner's claim, the amount of [Php]853,907.70 was not based on the Court's comparison of the allocation of salaries and benefits from and to affiliates."[40]

In the matter of the deficiency FWT & FWVAT assessment, Petitioner's allegation that payments made by PDTC to Tata Consulting are exempt under the RP-India Tax Treaty cannot be given credence.

An issue which was neither averred in the complaint nor raised during the trial in the court below cannot be raised for the first time on appeal as it would be offensive to the basic rules of fair play, justice, and due process.[41] Indeed, such rule admits an exception, that is, when the factual bases thereof would not require presentation of any further evidence by the adverse party in order to enable it to properly meet the issue raised in the new theory.[42] Yet, in this case, the exception does not exist for Petitioner has to present testimonial and/or documentary evidence to support the said claim.

Regarding the deficiency income tax assessment due to Disallowed Prior Period Expense, We echo the Special First Division's ruling that by using the accrual method in accounting for its income and expenses, Petitioner should have deducted the amount of Php116,411.53 as expense in 2009 (*i.e.,* the year when it was incurred) and not when in 2010 when Petitioner received the billings thereof. This is because said expense was already recognized in Petitioner's books at the end of the taxable year of 2009. To allow the same expense to be deducted in 2010 will result to a piecemeal realization of the same expense item/account.

Finally, We see no reason to deviate from the computation of the Special First Division that Petitioner is liable to basic deficiency income tax for TY 2010 in the amount of Php2,058,015.79, for the same is a result of a thorough examination of documents submitted.

The Special First Division properly imposed surcharge,

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40 Docket, Amended Decision dated August 22, 2019, pp. 2007-2008.

41 Union Bank of the Philippines v. Court of Appeals, Et. Al. G.R. No. 134068, June 25, 2001.

42 Loreto Bote v. Spouses Robert Veloso and Gloria Veloso, G.R. No. 194270, December 03, 2012 *citing* Rodolfo "Rudy" Canlas, Et. Al. v. Iluminada Tubil, G.R. No. 184285, September 25, 2009.

deficiency and delinquency interests

It is Petitioner's belief that the court *a quo* erred in ruling that it was liable for twenty-five percent (25%) surcharge, since both the FAN and FDDA did not demand payment thereof.

We are not persuaded.

Section 248(A)(3) of the NIRC of 1997, as amended, provides:

> "**SEC. 248.** ***Civil Penalties.*** —
>
> (A) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases:
>
> xxx xxx xxx
>
> (3) **Failure to pay the deficiency tax <u>within the time prescribed for its payment in the notice of assessment</u>**."[43]

An examination of the provision above reveals that the twenty-five percent (25%) surcharge is imposed for late payment of the deficiency tax due. The failure to pay the tax deficiency within the required period of time upon demand is penalized by this additional surcharge. Upon such failure to pay, the surcharge is automatically due.[44] The payment of surcharge is mandatory, even though it was not indicated in the FAN and FDDA by Respondent.[45]

Petitioner is also mistaken in its assertion that deficiency interest only applies to deficiency income tax, estate tax and donor's tax. Section 247(a) of the NIRC of 1997, as amended, is clear. There is no room left for interpretation, to wit:

"TITLE X
STATUTORY OFFENSES AND PENALTIES

CHAPTER I
ADDITIONS TO THE TAX

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43 *Emphasis and underscoring supplied.*
44 Commissioner of Internal Revenue v. Air India and The Court of Tax Appeals, G.R. No. 72443, January 29, 1988.
45 *See* Philex Mining Corporation v. Commissioner of Internal Revenue, Court of Appeals, and The Court of Tax Appeals, G.R. No. 125704, August 28, 1998.

SEC. 247. ***General Provisions.* —**

(a) **The additions to the tax or deficiency tax prescribed in this Chapter <u>shall apply to all taxes, fees and charges imposed in this Code.</u>** The Amount so added to the tax shall be collected at the same time, in the same manner and as part of the tax."[46]

The text of Section 247(a) states without any doubt that the additions under Chapter I, Title X are applicable to all taxes imposed under the NIRC of 1997, as amended. The authority under that provision extends to all taxes regardless of the title under which they are classified.

Thus, the law does not limit these additions to only the three (3) types of internal revenue taxes, namely, income tax, estate tax and donor's tax. Their imposition applies with equal force and effect to the other taxes under the NIRC of 1997, as amended, such as the value-added tax, other percentage taxes, excise tax and documentary stamp tax.

Accordingly, the additions to the tax or deficiency tax such as, among others, Civil Penalties or Surcharges under Section 248, Deficiency Interest under Section 249(B), and Delinquency Interest under Section 249(C), are applicable to Petitioner's deficiency EWT, WTC, FWT and FWVAT, as well.

Indeed, 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.*[47] There, it was 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.

As for Petitioner's contention that delinquency interest cannot and should not be imposed on top of deficiency interest, the same is untenable. Before the amendment of Republic Act No. 10963[48] or the Tax Reform for Acceleration and Inclusion ("TRAIN Law"), Section 249 of the NIRC of 1997,

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[46] *Emphasis and underscoring supplied.*
[47] G.R. Nos. 106949-50 and 106984-85, December 01, 1995.
[48] 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, Approved: December 19, 2017.

as amended, states that the interests, both deficiency and delinquency interests shall be assessed until full payment thereof, *viz.*:

> "**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 rules and regulations, from the date prescribed for 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:
>
> (1) The amount of the tax due on any return 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...."[49]

It is only upon amendment of Section 249 of the TRAIN Law that simultaneous imposition of deficiency and delinquency interest was prohibited, 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 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

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[49] *Emphasis and underscoring supplied.*

> paid: Provided, **<u>That in no case shall the deficiency and the delinquency interest prescribed under Subsections (B) and (C) hereof, be imposed simultaneously</u>**."[50]

Hence, before the effectivity of the TRAIN Law on January 01, 2018, the prevailing rule is that in case of failure to pay a deficiency tax, or any surcharge or interest on such deficiency tax, delinquency interest of twenty percent (20%) per annum shall be assessed and collected.

From the foregoing, the court *a quo* correctly imposed (a) both deficiency interest and delinquency interest simultaneously before the TRAIN Law took effect and (b) only the delinquency interest starting from January 01, 2018.

WHEREFORE, premises considered, the Petition for Review filed with the Court *En Banc* on July 02, 2020 is **DENIED** for lack of merit. Accordingly, the August 22, 2019 Amended Decision and March 12, 2020 Resolution in CTA Case No. 9058 are **AFFIRMED**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

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[50] *Emphasis and underscoring supplied.*

ERLINDA P. UY
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above 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