REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

ALFREDO V. MISAJON, in his capacity as Assistant Commissioner of the Bureau of Internal Revenue, *Petitioner,*	**CTA EB No. 1361** *(CTA Case No. 8564)*
	Present:
-versus-	Del Rosario, *P.J.*, Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, and Manahan, *JJ.*
SOCIAL SECURITY SYSTEM, represented by its President and CEO EMILIO S. DE QUIROS, JR., *Respondent.*	Promulgated: MAY 24 2017 3:47 p.m.

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DECISION

DEL ROSARIO, P.J.:

This is a Petition for Review filed pursuant to Section 3(b), Rule 8[1] of the Revised Rules of the Court of Tax Appeals[2] seeking for the nullification of the Decision[3] dated June 24, 2015 of the Court of Tax

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[1] Rule 8- Procedure in Civil Cases xxx
Sec. 3. Who may appeal; period to file petition. – xxx
(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.
[2] A.M. No. 05-11-07-CTA
[3] Penned by Associate Justice Amelia R. Cotangco-Manalastas and concurred by Associate Justice Juanito C. Castañeda, Jr. and Associate Justice Caesar A. Casanova.

Appeals' (CTA) Second Division (Court in Division) which upheld with modification the disputed deficiency Withholding Tax on Compensation (WTC), deficiency Expanded Withholding Tax (EWT), and deficiency Withholding VAT and other percentage tax for taxable year 2004, as well as the subsequent Resolution dated September 4, 2015 of the Court in Division denying therein petitioner's Motion for Partial Reconsideration for lack of merit.

PARTIES

Petitioner Alfredo V. Misajon, the respondent before the Court in Division, is the Assistant Commissioner of the Bureau of Internal Revenue (BIR) Large Taxpayers Service, with office address at BIR National Office Building, BIR Road, Diliman, Quezon City.[4]

Respondent Social Security System *(SSS for brevity)*, the petitioner before the Court in Division, is a government-owned and controlled corporation (GOCC) created by virtue of Republic Act (RA) No. 1161, as amended by RA No. 8282, with principal office address at SSS Building, East Avenue, Diliman, Quezon City.[5]

FACTS

The facts of the case are undisputed.

The deficiency tax assessments arose as a result of the BIR's issuance of Letter of Authority No. 000096205 dated April 6, 2006 for the examination of the books of accounts and other accounting records of SSS for all internal revenue taxes for taxable year 2004.[6]

The BIR issued a Preliminary Assessment Notice (PAN) with Details of Discrepancies dated December 18, 2007, which was received by SSS on the same date, assessing the latter deficiency WTC of P38,291,668.24, deficiency EWT of P35,411,849.85, and

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[4] Decision in CTA Case No. 8564, Rollo, p. 22; Par. 1, Joint Stipulations/Admission of Facts and Issues (JSAFI), CTA Case No. 8564 Docket, p. 244.
[5] Decision in CTA Case No. 8564, Rollo, pp. 21-22; Par. 2, JSAFI, CTA Case No. 8564 Docket, p. 244.
[6] Decision in CTA Case No. 8564, Rollo, 22; Exhibit 1, BIR Records, p. 573; par. 4, JSAFI, CTA Case No. 8564 Docket, p. 245.

deficiency withholding tax on government payment of P84,653,797.91, inclusive of interest.[7]

SSS protested the said PAN through its letter dated January 2, 2008, which the BIR received on even date.[8]

SSS received on January 10, 2008 the Audit Result/Assessment Notices WC-04-000106, EWT-04-000196, and VT-04-000247, all dated January 9, 2008, and the Formal Letter of Demand (FLD) with Details of Discrepancies dated January 10, 2008.[9] The BIR found due from SSS a deficiency WTC of P38,699,726.58, deficiency EWT of P35,789,219.16, and deficiency withholding VAT and other percentage taxes withheld of P85,555,918.14, inclusive of interest.[10]

SSS filed its Protest Letter dated January 30, 2008 against the FAN and the FLD, with attached Preliminary Assessment Reconciliation Analysis and Explanatory Notes, which petitioner received on January 31, 2008.[11]

On September 27, 2012, SSS received the BIR's Final Decision on Disputed Assessment (FDDA) upholding the assessments. The BIR found SSS liable for deficiency WTC of P61,103,445.85, deficiency EWT of P54,386,601.73, and deficiency withholding VAT and other percentage taxes withheld of P135,085,228.57, or in the aggregate amount of P250,575,276.15 for taxable year 2004, inclusive of interest.[12]

On October 29, 2012, SSS filed a Petition for Review[13] before the Court in Division and the case was docketed as CTA Case No. 8564.

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[7] Rollo, p. 23; par. 10, JSAFI, CTA Case No. 8564 Docket, p. 245; Exhibit "7", BIR Records, pp. 1356-1359.
[8] Rollo, p. 23.
[9] Rollo, p. 23; Exhibits "9-a", "9-b", "9-c", "9", BIR Records, pp. 1389, 1387, 1386, 1413 to 1416.
[10] Exhibit "9", BIR Records, pp. 1415-1416.
[11] Rollo, p. 23.
[12] Rollo, p. 24; Exhibit "12", BIR Records, pp. 1424-1425.
[13] Rollo, p. 24; CTA Case No. 8564 Docket, pp. 6-45.

After trial, the Court in Division rendered the assailed Decision[14] on June 24, 2015 partially granting the Petition for Review, the dispositive part of which reads:

> "WHEREFORE, premises considered, the instant Petition for Review is hereby PARTIALLY GRANTED. Accordingly, the assessed basic deficiency withholding tax on compensation, deficiency expanded withholding tax, and deficiency withholding VAT and other percentage tax for taxable year 2004 are upheld but in the modified amount of P67,314,515.98, computed as follows:
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> | Tax Type | Basic Deficiency Taxes |
> |---|---|
> | Withholding Tax on Compensation | P23,998,188.36 |
> | Expanded Withholding Tax | 13,518,496.99 |
> | VAT and Other Percentage Tax Withheld | 29,797,830.63 |
> | Total | P67,314,515.98 |
>
> Furthermore, petitioner shall not be held liable for the interest and penalty, in addition to the basic tax due, pursuant to Sections 247(b) and 251 of the NIRC of 1997, as amended.
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> SO ORDERED."[15]

The Court in Division declared that it has jurisdiction over the Petition for Review filed on October 29, 2012 since SSS has thirty (30) days from receipt of the FDDA on September 27, 2012, or until October 27, 2012, within which to appeal the same before the CTA pursuant to Section 228 of the National Internal Revenue Code *(NIRC)* of 1997, as amended, and since October 27, 2012 fell on a Saturday, SSS filed the Petition for Review on the next working day which was on October 29, 2012.[16]

Anent the issue of imposition of 20% interest under Section 249 and the penalty under Section 251 of the NIRC of 1997, the Court in Division held that it is the employee responsible for the withholding and remittance of the tax who is personally liable for the accrued interest, deficiency interest and/or delinquency interest on the deficiency tax pursuant to Section 247 of the NIRC of 1997. The Court in Division further ruled that conviction is necessary in order for a person to be held liable for the penalty prescribed under Section 251 of the NIRC,

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[14] Rollo, pp. 21-56.
[15] Rollo, p. 55.
[16] Rollo, pp. 31-32.

and without proof of conviction, the head, chief accountants and other person holding similar position cannot be held liable for the penalty.[17]

As regards the disputed deficiency WTC, the Court in Division held that SSS is liable for underwithholding of the correct tax due on compensation of its employees in the amount of P277,148.36. It likewise upheld the deficiency tax on other benefits amounting to P23,721,040.00 which is based on the following benefits, namely: gift *cheques*, loyalty awards and incentive awards. It ruled that gift *cheques* given to employees and loyalty awards cannot be considered as *de minimis* benefits considering that SSS did not provide detailed schedules showing the breakdown of the supposed *de minimis* benefits to determine which portion of benefits are exempt for each employee as there is a limit in the amount of each *de minimis* benefit pursuant to Section 2 of Revenue Regulations (RR) No. 08-00; that the Retirement Incentive Award shall not be excluded from the taxable income of the retiring employees and consequently subject to withholding tax on compensation for failure of SSS to provide the following: (i) detailed schedules showing the breakdown of the Incentive Awards; (ii) SSS Manual on Personnel Policies, Rules and Regulations; and (iii) proof that the concerned employees retired from the service in accordance with the rules laid down in the manual that entitles the employees to the payment of the Retirement Incentive Award.[18]

Concerning the deficiency EWT, the Court in Division adjudged SSS as liable thereto in the amount of P13,518,496.99 out of the P54,386,601.73 assessed by the BIR.[19] The Court in Division made the following findings:

> 1. Out of P110,926,351.20 Supplies and Materials Inventory assessment, the amount of P105,948,120.95 is subject to 1% EWT and the amount of P4,978,230.25 is not subject to withholding tax as it pertains to payments to government which are supported with corresponding Disbursement Vouchers.[20]
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> 2. The total Furniture and Equipment expense of P5,319,394.96 is subject to 1% EWT. Accordingly, accruals

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[17] Rollo, pp. 32-35.
[18] Rollo, pp. 35-42.
[19] Rollo, pp. 42-53.
[20] Rollo, pp. 45-46.

are subject to withholding tax pursuant to Section 2.57.4 of RR No. 2-98 while the claimed reimbursements are also subject to withholding since SSS did not provide evidence to support the same.[21]

3. The Additions to Property and Equipment pertaining to Computer Equipment in the amount of P1,072,672,424.42 is subject to 1% EWT. The said amount consists of an unaccounted difference of P40,443,079.42, Purchases of P78,192,781,63, Restoration of Accruals of P1,777,186.47, Reclassification from Intangible Assets of P935,583,031.96, Year-end accruals of P15,145,769.00, and Other adjustments of P1,530,575.94.[22]

4. Freight charges of P9,883,186.50 is subject to 2% EWT. Accordingly, the accruals are subject to withholding, and SSS did not submit supporting documents for the alleged reimbursements and failed to establish as well the basis of its exclusion from withholding.[23]

5. Light and Water expense of P107,670,335.58 is subject to 2% EWT. Out of the P107,974,557.10 assessment, only P304,221.52 is not subject to withholding tax as it pertains to payments to tax-exempt electric cooperatives supported by Disbursement Vouchers, Billings, Receipts and Certificates. Electric cooperatives registered with the National Electrification Administration (NEA) and/or Cooperative Development Authority (CDA) are exempt from income tax pursuant to Sections A(3) and B(1)(b) of Revenue Memorandum Circular No. 72-2003, and consequently not subject to 2% EWT.[24]

6. The M/R expense accounts *(i.e., M/R-Transportation Equipment of P15,843,930.31, M/R-Furniture & Equipment of P249,493,797.25 and M/R-Building of P158,206,748.07)*, which was attributed by SSS to accruals in 2005, are subject to 2% EWT. Accruals should have been subjected to withholding tax in 2004 pursuant to Section 2.57.4 of RR No.

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[21] Rollo, p. 46.
[22] Rollo, pp. 46-48.
[23] Rollo, p. 48.
[24] Rollo, pp. 48-51.

2-98, and SSS failed to show that proper withholding and remittance were made in 2005.[25]

7. The discrepancy of P2,052,901.43 between the Office Space Rental of P88,822,264.04 *(net of adjustment of P1,743,948.46 pertaining to payments to government agency and foreign payees duly supported by Disbursement Vouchers),* and the amount per Alpha list of P86,769,362.61 is subject to 5% EWT.[26]

With respect to deficiency withholding VAT and other percentage tax assessment, which pertained to Additions to Property and Equipment and Supplies and Materials Inventory, the Court in Division observed that the justification provided by SSS on these two income payments are the same with the discussion in the deficiency EWT; and that no additional supporting documents were provided by SSS to prove that the same are not subject to withholding VAT; hence, the basic deficiency withholding VAT and other percentage tax assessment to the extent of P29,797,830.63 was sustained.[27]

On July 10, 2015, petitioner filed his Motion for Partial Reconsideration Re: Decision dated June 24, 2015, but the same was denied in the Court in Division's Resolution dated September 4, 2015,[28] the dispositive portion of which reads:

> "WHEREFORE, premises considered, the instant Motion for Partial Reconsideration is hereby DENIED for lack of merit.
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> SO ORDERED."[29]

On September 24, 2015, petitioner filed a Motion for Extension of Time to File Petition for Review, which was granted on September 30, 2015, thereby allowing petitioner to file a Petition for Review until October 10, 2015.[30]

On October 12, 2015, petitioner filed through registered mail his Petition for Review and the same was received by the Court *En Banc*

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[25] Rollo, p. 51.
[26] Rollo, pp. 51-52.
[27] Rollo, pp. 53-55.
[28] Rollo, pp. 57-58.
[29] Rollo, p. 58.
[30] Rollo, p. 6.

on October 15, 2015.[31] The Petition for Review was timely filed since the due date for filing on October 10, 2015 fell on a Saturday; hence, petitioner had until October 12, 2015, the next working day, to file the Petition for Review pursuant to Sec. 1, Rule 22 of the Rules of Court.[32]

In the Resolution dated October 28, 2015, SSS was directed to file its comment, not a motion to dismiss, within ten (10) days from notice, to the Petition for Review.[33]

Within the extended period allowed per Minute Resolution dated December 7, 2015,[34] SSS filed on December 15, 2015 its Comment (To the Petition for Review dated 9 October 2015).[35]

In the Resolution dated January 29, 2016, the Petition for Review was given due course and the parties were required to submit their respective memoranda within thirty (30) days from receipt thereof.[36]

On March 14, 2016, petitioner filed his Manifestation that he is adopting the arguments raised in his Petition for Review filed on October 12, 2015 as his Memorandum.[37] SSS, on the other hand, filed through registered mail its Memorandum[38] on March 18, 2016. SSS also filed its Manifestation[39] on May 5, 2016 submitting additional copies of its Memorandum in compliance with the Resolution dated April 5, 2016.[40]

The case was submitted for decision on June 17, 2016.[41]

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[31] Rollo, pp. 8-62
[32] Section 1. How to compute time. – In computing any period of time prescribed or allowed by these Rules, or by order of the court, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included. If the last day of the period, as thus computed, falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day.
[33] Rollo, pp. 67-68.
[34] Rollo, p. 71.
[35] Rollo, pp. 72-76.
[36] Rollo, pp. 77-78.
[37] Rollo, pp. 79-80.
[38] Rollo, pp. 84-98.
[39] Rollo, p. 100.
[40] Rollo, p. 99.
[41] Rollo, pp. 104-105.

ISSUE

Whether the assailed Decision of the Court in Division dated June 24, 2015 which upheld with modification the disputed deficiency assessments and declared SSS as not liable for interest and penalty pursuant to Sections 247(b) and 251 of the NIRC is correct.

PARTIES' ARGUMENTS

Petitioner argues that Section 251 of the NIRC is inapplicable in the present case. It is his claim that the amount sought to be collected from the offender under Section 251 is a penalty which is equivalent to the amount of tax not withheld, or not accounted for and remitted, and this penalty is far from the civil liability for interest and surcharge. Petitioner points out further that Section 247(b) applies without any relation to Section 251; hence, conviction is not necessary to hold the officer or employee liable for interest and surcharge.[42]

Petitioner further contends that respondent is liable for expanded withholding taxes in the amount of P54,386,601.73 in accordance with Section 57 of the NIRC and RR Nos. 6-2001 and 17-2003; that respondent failed to rebut the result of the investigation made by the investigating examiners; that there was a discrepancy on respondent's income payments shown in the Financial Statements against those already subjected to expanded withholding tax and the same resulted to under withholding - - thus, the assessment for EWT is proper;[43] that respondent's various purchase of goods amounting to P1,770,2899.33 *(sic)* were not subjected to the 3% withholding VAT on Government Money Payments as prescribed by the provisions of RR 2-98 and Section 114(C) of the NIRC, resulting to deficiency VAT and other percentage tax of P135,085,228.57;[44] and, that the burden of proof is on the taxpayer contesting the validity of an assessment and that the presumption in favor of the correctness of tax assessment stands where evidence to the contrary is wanting.[45]

SSS counter-argues that Section 251 is under Chapter 1 of Title X of the NIRC while the criminal provisions are in Chapter II of Title X, where Section 255 can be found; that conviction is necessary whether

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[42] Petition for Review, Rollo, p. 11-12.
[43] Petition for Review, Rollo, pp. 12-14.
[44] Petition for Review, Rollo, pp. 14-15.
[45] Petition for Review, Rollo, pp. 15-16.

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the omission or failure was inadvertent or deliberate as the law states that the agent shall be liable upon conviction to a penalty equal to the total amount of the tax not withheld, or not accounted for and remitted; [46] that while Section 247 is the general provision identifying the person who could be held liable where the withholding agent is the government or any of its agencies and government controlled corporation, Section 251 states when the withholding agent could be held liable for failure to collect and remit the tax due - - that is, when there is conviction; that a withholding agent would not benefit from his failure to withhold and remit the taxes due, hence, such acts of the withholding agent must be shown to be deliberate for him/her to be held liable; and that holding him/her liable without a conviction would amount to denial of due process of law.[47]

SSS further avers that the application of Section 251 is made clearer from Revenue Memorandum Order No. 23-2014. It insists that the liability of the government officials and employees responsible for the withholding of the tax attaches only when there is a conviction. It further discusses that even if the penalties for deficiency in withholding taxes is imposable, the same should be waived in favor of its officials and employees relying on BIR Ruling No. 042-2001 dated September 20, 2001 and the ruling in *Republic of the Philippines vs. The Philippine Bank of Commerce (G.R. No. L-20951, July 31, 1970).*[48]

Anent the assessment and its presumption of regularity, SSS asserts that the same may be rebutted by evidence, which it did, though only partial, resulting to the partial grant of its petition by the Court in Division. It states that presumptions are not facts and therefore disputable.[49]

According to SSS, the assailed Decision dated 24 June 2015 of the Court Second Division is correct.[50] The questioned decision was rendered in accordance with the mandate of the Constitution as it shows the factual bases as well as the law relied upon in support of its conclusion, holding it liable to pay the basic deficiency taxes of P67,314,515.98.[51]

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[46] Comment (To the Petition for Review dated 9 October 2015), Rollo, p. 72.
[47] Comment (To the Petition for Review dated 9 October 2015), Rollo, pp. 72-73.
[48] Respondent's Memorandum, Rollo, pp. 93-95.
[49] *Comment (To the Petition for Review dated 9 October 2015),* Rollo, p. 73.
[50] Respondent's Memorandum, Rollo, p. 88.
[51] Respondent's Memorandum, Rollo, p. 89.

SSS posits that the denial of the Motion for Reconsideration as contained in the Resolution dated 4 September 2015 of the Court in Division is correct as the grounds raised therein were a mere rehash of the arguments which have been fully discussed and ruled upon.[52]

SSS finally concludes that the present Petition has not shown any reversible error in the assailed Decision and Resolution issued by the Court in Division.[53]

COURT *EN BANC'S* RULING

It is observed that petitioner did not question the Court in Division's findings and conclusion about the liability of SSS for deficiency WTC in the amount of P23,998,188.36 as stated in the assailed Decision. As far as this assessment is concerned, the same has attained finality. Settled is the rule in this jurisdiction that issues not raised in the pleadings, as opposed to ordinary appeal of criminal cases where the whole case is opened for review, are deemed waived or abandoned.[54]

With respect to petitioner's contentions regarding respondent's liability for EWT of P54,386,601.73, and withholding VAT and other percentage tax of P135,085,28.57, the same are found to be mere reiteration or amplification of his arguments presented in his Memorandum[55] and in his Motion for Partial Reconsideration[56] filed before the Court in Division, which had been squarely passed upon and settled in the assailed Decision.

The Court in Division had scrutinized the various items involved in the disputed deficiency EWT, and withholding VAT and other percentage tax assessments and came out with detailed findings in pages 22 to 34 of the assailed Decision,[57] which sufficiently support its conclusion that SSS is liable only to basic deficiency EWT of P13,518,496.99, and withholding VAT and Other Percentage Tax of

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[52] Respondent's Memorandum, Rollo, p. 96
[53] Respondent's Memorandum, Rollo, p. 96.
[54] Bedes vs. Court of Appeals, G.R. No. 174373, October 15, 2007.
[55] CTA Case No. 8564 Docket, pp. 517-529, 520-522.
[56] CTA Case No. 8564 Docket, pp. 577-583.
[57] CTA Case No. 8564 Docket, pp. 562-574; Rollo, pp. 42-54.

P29,797,830.63.[58] Since the findings and conclusion of the Court in Division are supported with evidence, and considering that petitioner has utterly failed to point out which particular findings in the assailed Decision are erroneous, or contrary to law, the Court *En Banc* sees no cogent reason to deviate from the findings and conclusion reached in the assailed Decision.

Anent the imposition of surcharge and deficiency and delinquency interests against SSS pursuant to Sections 248 and 249 of the NIRC, petitioner insists that conviction is not necessary to hold the responsible officer or employee liable for such interest and surcharge.

Civil penalties at the rate of 25% or 50%, deficiency interest of 20%, and delinquency interest of 20% are additions to tax authorized under Sections 247, 248 and 249 of Title X, Chapter 1 of the NIRC, which provide:

> "TITLE X-STATUTORY OFFENSES AND PENALTIES
> Chapter I-Additions to the Tax
>
> **SEC. 247.** ***General Provisions***.-
>
> (a) **The additions to the tax or deficiency tax prescribed in this Chapter shall apply to all taxes**, fees and charges imposed in this Code. The amount so added to the tax shall be collected at the same time, in the same manner and as part of the tax.
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> (b) **If the withholding agent is the Government or any of its agencies, political subdivisions or instrumentalities, or a government-owned or controlled corporation, the employee thereof responsible for the withholding and remittance of the tax shall be personally liable for the additions to the tax prescribed herein**. xxx
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> xxx xxx xxx
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> **SEC. 248.** ***Civil Penalties.*** -
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> (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:

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[58] CTA Case No. 8564 Docket, p. 575.

(1) Failure to file any return and pay the tax due thereon as required under the provisions of this Code or rules and regulations on the date prescribed; or

(2) Unless otherwise authorized by the Commissioner, filing a return with an internal revenue officer other than those with whom the return is required to be filed; or

(3) Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment; or

(4) Failure to pay the full or part of the amount of tax shown on any return required to be filed under the provisions of this Code or rules and regulations, or the full amount of tax due for which no return is required to be filed, on or before the date prescribed for its payment.

(B) In case of willful neglect to file the return within the period prescribed by this Code or by rules and regulations, or in case a false or fraudulent return is willfully made, the penalty to be imposed shall be **fifty percent (50%)** of the tax or of the deficiency tax, in case any payment has been made on the basis of such return before the discovery of the falsity or fraud: Provided, That a substantial underdeclaration of taxable sales, receipts or income, or a substantial overstatement of deductions, as determined by the Commissioner pursuant to the rules and regulations to be promulgated by the Secretary of Finance, shall constitute prima facie evidence of a false or fraudulent return: Provided, further, That failure to report sales, receipts or income in an amount exceeding thirty percent (30%) of that declared per return, and a claim of deductions in an amount exceeding thirty percent (30%) of actual deductions, shall render the taxpayer liable for substantial underdeclaration of sales, receipts or income or for overstatement of deductions, as mentioned herein.

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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.

(D) *Interest on Extended Payment*. – If any person required to pay the tax is qualified and elects to pay the tax on installment under the provisions of this Code, but fails to pay the tax or any installment hereof, or any part of such amount or installment on or before the date prescribed for its payment, or where the Commissioner has authorized an extension of time within which to pay a tax or a deficiency tax or any part thereof, there shall be assessed and collected interest at the rate hereinabove prescribed on the tax or deficiency tax or any part thereof unpaid from the date of notice and demand until it is paid." *(Boldfacing supplied)*

Section 247(b) of the NIRC is plain and unequivocal in declaring that if the withholding agent involving the assessed tax is the Government or any of its agencies, political subdivisions or instrumentalities, or a government-owned or controlled corporation, the **employee** thereof **responsible for the withholding and remittance of the tax shall be personally liable for the additions to the tax**. In other words, the additions to the tax may not be imposed on the Government or any of its agencies, political subdivisions or instrumentalities, or a government-owned or controlled corporation, like herein respondent SSS, as it is the personal liability of the employee who is responsible for the withholding and remittance of the assessed tax.

True, Section 247(a) of the NIRC is a general provision which states that the **"additions to the tax or deficiency tax shall apply to all taxes"**. Section 247(a), however, must not be read in isolation but in relation to the other provisions of Section 247 as well as the other

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Sections found in Chapter I, Title X of the NIRC so as to render all of them effective.

While Section 247(a) made no distinction as to whether the taxpayer being assessed and made liable for the "additions to the tax or deficiency tax" is an individual or a private or public corporation, it must be read and construed together with Section 247(b). Section 247(b) is clear and categorical that "if the withholding agent is the Government or any of its agencies, political subdivisions or instrumentalities, or a government-owned or controlled corporation, the employee thereof responsible for the withholding and remittance of the tax shall be personally liable for the additions to the tax." **To say that the liability to the "additions to the tax" attaches to the taxpayer, irrespective of whether the taxpayer is a private or public corporation, would render senseless or nugatory Section 247(b) which unequivocally imposes the liability to the "additions to the tax" to the employee of the Government or any of its agencies, political subdivisions or instrumentalities, or a government-owned or controlled corporation responsible for the withholding and remittance of the tax.**

It is a fundamental rule in statutory construction that the clauses, phrases, sections and provisions of a law be read as a whole; never as disjointed or truncated parts,[59] for a law is enacted as a single entity and not by installment of paragraphs here and subsections there. Moreover, a law should not be so construed as to produce an absurd result.[60] Statutes should receive a sensible construction, such as will give effect to the legislative intention and so as to avoid an unjust or an absurd conclusion.[61]

When the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application. As the statute is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This is what is known as the plain-meaning rule or *verba legis*. It is expressed in the maxim, *index animi sermo*, or speech is the

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[59] *Samar II Electric Cooperative, Inc. vs. Estrella Quijano*, G.R. No. 144474, April 27, 2007, citing *Civil Service Commission v. Joson, Jr.*, G.R. No. 154674, May 27, 2004, 429 SCRA 773, 786.
[60] *Ang Giok Chip vs. Springfield*, G.R. No. L-33637, December 31, 1931.
[61] *Condrado Cosico, Jr. vs. National Labor Relations Commission*, G.R. No. 118432 May 23, 1997, citing *Commissioner of Internal Revenue v. TMX Sales, Inc.*, G.R. No. 83736 January 15, 1992.

index of intention. Furthermore, there is the maxim *verba legis non est recedendum*, or from the words of a statute there should be no departure.[62]

Applying the foregoing basic and fundamental rules on statutory construction, the inevitable conclusion is that, in a situation where the withholding agent is the Government or any of its agencies, political subdivisions or instrumentalities, or a government-owned or controlled corporation, the framers of the NIRC intended to impose the "additions to tax" specified in Chapter I, Title X, upon the employee responsible for the withholding and remittance of the tax; otherwise, Section 247(b) would not have been incorporated therein. For in the absence of Section 247(b), the liability for the additions to the tax shall be imposed on the income payor, without distinction as to whether the income payor is a private or public person.

Truth to tell, in Revenue Memorandum Order (RMO) No. 8-2003, the Commissioner of Internal Revenue (CIR) has identified the government officials designated as withholding agents who are responsible for the correct withholding of tax and its timely remittance. Pertinent parts of RMO No. 8 -2003 are quoted hereunder:

> "SUBJECT: Compliance of Local Government Units (LGUs), National Government Agencies (NGAs) and other government offices to withholding tax laws, rules and regulations and to clarify and identify the officials responsible for withholding of tax and its remittance
>
> TO: All Regional Directors, Revenue District Officers, Officials of Government Offices and others concerned
>
> I. OBJECTIVES
>
> This Order is issued to:
>
> 1. Ensure the efficient compliance of government withholding agents to existing withholding tax laws, rules and regulations and other related issuances.
>
> 2. **Identify government officials designated as withholding agents <u>personally responsible</u> for the correct withholding of tax and its timely remittance**.

[62] Bolos vs. Bolos, G.R. No. 186400, October 20, 2010.

3. Reiterate Item II(1) of Revenue Memorandum Order No. 14-98 and amend Revenue Memorandum Order No. 70-98 and implement the provisions of R.A. 1051, E.O. 651 and RR 1-87.

4. To effect and monitor collection of delinquent accounts/final assessments from LGUs.

II. RESPONSIBILITY OF GOVERNMENT OFFICIALS

1. **The following government officials are <u>personally charged with the duty to correctly withhold taxes</u> on compensation, expanded and final withholding tax as well as government money payments to persons registered as Non-VAT (percentage, franchise, etc.) and VAT taxpayers and the timely remittance of taxes withheld:**

a. xxx xxx xxx

b. xxx xxx xxx

c. Government Owned or Controlled Corporations (GOCC) — Heads of Offices (officials holding the highest position) and Chief Accountants or other persons holding similar positions officially designated as such by the head of office.

xxx xxx xxx.

2. **The <u>aforesaid officials shall be equally liable to the penalties</u> prescribed in Title X of the National Internal Revenue Code, as amended.**" (Boldfacing and underscoring supplied)

Furthermore, RR No. 1-87 is also explicit in declaring that the designated officers or employee of the government or any of its agencies and instrumentalities, its political subdivisions as well as government-owned or controlled corporations shall be **personally liable** for the additions to the tax prescribed in Chapter I, Title XI (now Title X) of the NIRC, viz.:

"SECTION 3. **Liability of Designated Officers.** —

(a) Additional to the Tax. — The Treasurers and Chief Accountants designated with the duty to withhold and remit taxes withheld in their respective offices, under these regulations **<u>shall be personally liable</u> for the additions to the tax prescribed in Chapter I, Title XI of the NIRC as amended**.

(b) Penalties. — Every officer or employee of the government of the Republic of the Philippines or any of its agencies and instrumentalities, its political subdivisions as well as government-owned or controlled corporations including the Central Bank who, under the provisions of the Tax Code or regulations promulgated thereunder, is charged with the duty to deduct and withhold any internal revenue tax and to remit the same in accordance with the provisions of the Tax Code and other laws, shall be fined in a sum of not less than five thousand pesos but not more than fifty thousand pesos of imprisoned for a period of less than six months and one day but not more than two years, or both, if convicted and found guilty of any of the offenses hereinafter specified:

"1. Those who fail or cause the failure to deduct and withhold any internal revenue tax under any of the withholding tax laws and implementing regulations;

2. Those who fail or cause the failure to remit taxes deducted and withheld within the time prescribed by law and implementing regulations; and

3. Those who fail or cause the failure to file return or statement within the time prescribed, or render or furnish a false or fraudulent return or statement required under the withholding tax laws and regulations." (Boldfacing and underscoring supplied)

To insist on imposing or collecting the "additions to the tax" from SSS would run counter to the clear mandate of Section 247(b) of the NIRC. While the Court is not unmindful of the rationale behind the adoption of the withholding tax system in collecting taxes, the Court cannot go beyond the tenets of the law it seeks to interpret. **Section 247(b) undoubtedly prevents the imposition of the "additions to tax" to SSS as the same is, by its explicit provision, imposable only to its employee who is responsible for the withholding and remittance thereof.** Worth re-echoing the principle that tax statutes are strictly construed against the taxing authority and that tax laws may not be extended by implication beyond the clear import of their language, nor their operation enlarged so as to embrace matters not specifically provided.[63]

Relatedly, Republic Act (RA) No. 1051 bestows upon the responsible official or employee of a government-owned or controlled corporation the duty to ensure that taxes are withheld prior to making any payment. Section 4 of RA 1051 states:

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[63] Philippine Health Care Providers, Inc. vs. Commissioner of Internal Revenue, G.R. No. 167330, September 18, 2009.

> "Section 4. It shall be unlawful for any public officer or employee, **or official or employee of a government owned or controlled corporation to authorize any of the payments mentioned in section one hereof without withholding, or without requiring the previous payment of, the tax liability mentioned in section two hereof**. It shall be equally unlawful for any person or persons to induce or connive with any public officer or employee, or official or employee of a government owned or controlled corporation to commit the unlawful act herein defined or to receive any payment in violation of this Act." (Boldfacing supplied)

While SSS, as a government-owned and controlled corporation, may be held liable to pay the basic deficiency tax assessments, the "additions to the tax," as afore-discussed, cannot be collected from it. Stated differently, since SSS was acting through its official or employee to whom the task of withholding pertains, SSS cannot be made to assume the liability of the official or employee as a consequence of the latter's failure to perform his/her duty.

More importantly, under Section 247(a) of the NIRC, the "amount so added to the tax shall be collected at the same time, in the same manner and as part of the tax". It follows therefore that in collecting the "additions to the tax" from SSS' responsible official or employee, the same must be done **at the same time and in the same manner** as the collection of the basic deficiency taxes assessed against SSS. Thus, it behooves the BIR to observe the procedure outlined in Section 228 of the NIRC and RR No. 12-99, failing which the inherent right to due process of the responsible official or employee against whom the "additions to tax" are sought to be collected would be violated.

In the present case, while the BIR is fully aware that the liability for the "additions to the tax," if any, may only be imposed on SSS' responsible official or employee. Yet, it failed to observe the procedural requirements under Section 228 of the NIRC and RR No. 12-99 with regard to said official or employee. To be specific, the BIR must have shown at the very least that it had issued a Letter of Authority, sent notice of informal conference, issued a Preliminary Assessment Notice, and issued the Final Assessment Notice as well as Formal Letter of Demand against the official or employee of SSS responsible for the withholding and remittance of tax within the period prescribed.

The pronouncement in *CIR vs. Metro Star Superama, Inc.*[64] on the importance of observing due process in the assessment and collection of tax is instructive:

> "It is an elementary rule enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law. In balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizens right is amply protected by the Bill of Rights under the Constitution. Thus, while taxes are the lifeblood of the government, the power to tax has its limits, in spite of all its plenitude. Hence in *Commissioner of Internal Revenue v. Algue, Inc.*, it was said
>
>> Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the other hand, such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself. It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved.
>>
>> xxx xxx xxx
>>
>> It is said that taxes are what we pay for civilized society. Without taxes, the government would be paralyzed for the lack of the motive power to activate and operate it. Hence, despite the natural reluctance to surrender part of one's hard-earned income to taxing authorities, every person who is able to must contribute his share in the running of the government. The government for its part is expected to respond in the form of tangible and intangible benefits intended to improve the lives of the people and enhance their moral and material values. This symbiotic relationship is the rationale of taxation and should dispel the erroneous notion that it is an arbitrary method of exaction by those in the seat of power.
>>
>> **But even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure.** If it is not, then the taxpayer has a right to complain and the

[64] G.R. No. 185371, December 8, 2010.

> courts will then come to his succor. For all the awesome power of the tax collector, he may still be stopped in his tracks if the taxpayer can demonstrate x x x that the law has not been observed."

Considering that SSS, as a government-owned and controlled corporation, may not be held liable for the "additions to tax", and absent any showing that the BIR observed the procedural requirements in assessing and collecting the "additions to tax" from SSS' responsible official or employee, petitioner's prayer for the imposition of surcharge and interest against SSS, and even against its responsible official or employee, is devoid of merit.

Finally, while the procedural requirements laid down in Section 228 of the NIRC and RR No. 12-99 must be observed prior to assessing and collecting the "additions to tax" from SSS' responsible official or employee pursuant to Section 247(b), a criminal conviction is not necessary to hold them personally liable therefor. Criminal conviction is indispensable only in situations where the penalties under the following relevant provisions of the NIRC are sought to be imposed, *viz.*: (i) Section 251 – Failure of a Withholding Agent to Collect and Remit Tax where, in addition to the other penalties provided in Chapter I, Title X, the penalty shall be equal to the amount of the tax not withheld, or not accounted for and remitted; (ii) Section 255 – Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation; and, Section 272 – Violation of Withholding Tax Provision.

In fine, the Court *En Banc* finds SSS liable for the basic deficiency WTC, EWT, and deficiency withholding VAT and other percentage tax in the modified amounts of P23,998,188.36, P13,518,496.99, and P29,797,830.63, respectively, for taxable year 2004, without interest and penalty.

WHEREFORE, premises considered, the Petition for Review is **DENIED** for lack of merit. Accordingly, the June 24, 2015 Decision of the Court in Division holding the Social Security System liable for the assessed basic deficiency withholding tax on compensation, deficiency expanded withholding tax, and deficiency withholding VAT and other percentage tax in the modified amounts of P23,998,188.36, P13,518,496.99, and P29,797,830.63, respectively, for taxable year 2004 is **AFFIRMED**.

The Court *En Banc* declares that no interest and penalty shall be imposed upon Social Security System pursuant to Section 247(b) of the National Internal Revenue Code of 1997, as amended.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(With Concurring and Dissenting Opinion)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

(Joined the Concurring and Dissenting Opinion of Associate Justice Lovell R. Bautista)
CIELITO N. MINDARO-GRULLA
Associate Justice

(Joined the Concurring and Dissenting Opinion of Associate Justice Lovell R. Bautista)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(Joined the Concurring and Dissenting Opinion of Associate Justice Lovell R. Bautista)
CATHERINE T. MANAHAN
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

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

ALFREDO V. MISAJON in his capacity as Assistant Commissioner of the Bureau of Internal Revenue,	**CTA *EB* NO. 1361** (CTA Case No. 8564)
Petitioner,	Members: **DEL ROSARIO,** *P.J.,* **CASTAÑEDA, BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** *and* **MANAHAN,** *JJ.*
- versus -	
SOCIAL SECURITY SYSTEM, represented by its President and CEO EMILIO S. DE QUIROS, JR.,	Promulgated:
Respondent.	MAY 24 2017 3:47 p.m.

x---x

CONCURRING AND DISSENTING OPINION

BAUTISTA, J:

The present case involves the following deficiency tax assessments against respondent Social Security System ("SSS"), a government owned and controlled corporation ("GOCC"), for calendar year ("CY") 2004: withholding tax on compensation ("WTC"), expanded withholding tax ("EWT"), and withholding value-added tax ("VAT") and other percentage tax.

I concur with the conclusion reached by the *ponencia* as to the finality of the deficiency WTC assessment in view of the parties' failure to raise the same as an issue before the Court *En Banc*. I likewise concur with the findings of the Court in Division anent the computation of the deficiency EWT and the deficiency withholding VAT and other percentage tax due from SSS, which was upheld by the majority. I further agree with the *ponencia's* conclusion that the "additions to the tax" specified under *Chapter 1, Title X of the 1997 National Internal Revenue Code, as amended* (the *"1997 NIRC"*)[1] should be imposed on the employee responsible for the withholding and remittance of the tax in case the withholding agent is a GOCC. Finally, I agree with the majority's finding that criminal conviction is not necessary to hold the responsible official or employee of SSS personally liable to the "additions to the tax" unless the same refers to penalties for failure of a withholding agent to collect and remit tax under *Section 251 of the 1997 NIRC.*

I do not agree, however, with the majority in holding that petitioner's prayer for the imposition of surcharge, deficiency interest, and delinquency interest is devoid of merit because SSS cannot be made to assume the liability of its official or employee who is tasked with the withholding of taxes on behalf of respondent, but who failed to perform his or her duty. According to the *ponencia, Section 247(b) of the 1997 NIRC* prevents the imposition of the "additions to the tax" on SSS as the same is, by explicit provision, only imposable on the employee of SSS responsible for the withholding and remittance thereof.

I beg to differ. A review of the applicable provisions is in order.

Section 249 of the 1997 NIRC provides that twenty percent (20%) interest *per annum* shall be imposed on any deficiency in the tax due. Specifically, *Section 249(A)* provides in general that the twenty percent (20%) interest *per annum* shall be imposed on any unpaid amount or tax from the date prescribed for its payment until the full payment thereof; while *Sections 249(B) and (C)(3)* provide that the deficiency interest shall be imposed from the date prescribed for its payment until the full payment thereof, and that the delinquency interest shall be imposed from the due date appearing in the notice and demand of the Commissioner of Internal Revenue ("CIR") until full payment thereof. The relevant provisions state:

> Sec. 249. *Interest.* -
>
> (A) *In general.* - There shall be assessed and collected

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[1] *Republic Act No. 8424,* as amended (1997).

on any unpaid amount or 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:

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.

Meanwhile, *Section 251 of the 1997 NIRC*[2] states that the withholding agent's failure to collect and remit tax shall make such withholding agent - upon conviction - liable for penalty equal to the total amount of the tax not withheld, or not accounted for and remitted, which penalty shall be in addition to other penalties provided under *Chapter I, Title X of the 1997 NIRC* on Additions to the Tax.

Finally, *Section 247(b) of the 1997 NIRC*[3] provides that the employee of a GOCC responsible for the withholding and remittance of the tax shall be personally liable for the additions to the tax

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[2] The relevant provision states:

Sec. 251. *Failure of a Withholding Agent to Collect and Remit Tax.* - Any person required to withhold, account for, and remit any tax imposed by this Code or who willfully fails to withhold such tax, or account for and remit such tax, or aids or abets in any manner to evade any such tax or the payment thereof, shall, in addition to other penalties provided for under this Chapter, be liable upon conviction to a penalty equal to the total amount of the tax not withheld, or not accounted for and remitted.

[3] The relevant provision states:

Sec. 247. *General Provisions.* -

xxx xxx xxx

(b) If the withholding agent is the Government or any of its agencies, political subdivisions or instrumentalities, or a government-owned or -controlled corporation, the employee thereof responsible for the withholding and remittance of the tax shall be personally liable for the additions to the tax prescribed herein.

prescribed.

In determining respondent's liability for interest and penalty under *Sections 249 and 251 of the 1997 NIRC*, respectively, a discussion on the person liable therefor is necessary. A reading of *Section 247(b) of the 1997 NIRC* would show that in the case of GOCCs, such as SSS, additions to the tax prescribed shall be the personal liability of the employee of the GOCC responsible for the withholding and remittance of the tax. Such "additions to the tax" may be in the form of civil penalties under *Section 248*, interest under *Section 249*, penalty for failure to file certain information returns under *Section 250*, or penalties for failure of a withholding agent to collect and remit tax under *Section 251*. Thus, in the event wherein respondent is found to be liable for the additions to the tax enumerated in *Chapter I, Title X of the 1997 NIRC*, its employee responsible for the withholding and remittance of the tax shall be personally liable therefor.

The majority takes the position that *Section 247(b) of the 1997 NIRC* makes a distinction between withholding agents who belong to the Government and those who are not, *i.e.*, between public entities and private entities. According to the majority, *Section 247(b) of the 1997 NIRC* basically exempts GOCCs, such as SSS, from the imposition of the additions to the tax because such "additions to the tax" is the personal liability of the responsible employee of the GOCC.

I respectfully dissent. In my opinion, a plain reading of *Section 247(b) of the 1997 NIRC* should be applied to mean that in the event wherein the Government and its attached agencies are found to be liable for the additions to the tax enumerated in *Chapter I, Title X of the 1997 NIRC*, such government employee responsible for the withholding and remittance of the tax shall be personally liable therefor. Nowhere in *Chapter I, Title X of the 1997 NIRC* does it say that the additions to the tax cannot be imposed on the Government and its attached agencies. In fact, *Section 247(a) of the 1997 NIRC* even makes a categorical declaration that "the additions to the tax or deficiency tax . . . shall apply to all taxes, fees and charges imposed in this Code," which should be interpreted as applying to all persons who are subject to the taxes, fees, and charges imposed in the *1997 NIRC*.

As applied to assessment cases in general, it is my opinion that the additions to the tax enumerated in *Chapter I, Title X of the 1997 NIRC* are made to apply to all taxpayers regardless if such taxpayers are public entities or private entities because the *1997 NIRC* does not distinguish. *Ubi lex non distinguit, nec nos distinguere debemos.*[4]

I humbly submit that what *Section 247(b) of the 1997 NIRC* only seeks to clarify is who shall be liable for the additions to the tax in case the taxpayer found to be deficient is the government - the government employee responsible for the withholding and remittance of the tax. The CIR may still impose the additions to the tax on the government agency found to have deficiency taxes; however, the liability for the payment of the same rests on such responsible employee of said government agency.

Having established that SSS can be subject to the additions to the tax (except that payment for the same remains the liability of the responsible employee of SSS), I will now discuss which additions to the tax may be imposed on the deficiency EWT and withholding VAT and other percentage tax of SSS.

As regards the imposition of the deficiency interest and the delinquency interest under *Section 249 of the 1997 NIRC,* it is my opinion that it was proper for petitioner to impose the same on respondent's deficiency EWT and deficiency withholding VAT and other percentage tax. Insofar as deficiency interest is concerned, *Section 249(B)* clearly provides that the twenty percent (20%) interest *per annum* shall be imposed on any deficiency in the tax due from the date prescribed for its payment until full payment thereof. On the other hand, insofar as delinquency interest is concerned, *Section 249(C)* expressly states that the twenty percent (20%) interest *per annum* shall be imposed on the unpaid amount of the deficiency tax from the due date appearing in the notice and demand of the CIR until the amount is fully paid. Accordingly, it is my view that respondent shall be liable for both deficiency interest and delinquency interest on respondent's deficiency EWT and deficiency withholding VAT and other percentage tax for CY 2004. Specifically, respondent's employee responsible for the withholding and remittance of the aforementioned taxes shall be personally liable for the said deficiency interest and delinquency interest. N

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[4] *CIR v. Reyes,* G.R. Nos. 159694 & 163581, January 27, 2006, 480 SCRA 382; *Secretary of Finance v. Ilarde,* G.R. No. 121782, May 9, 2005, 458 SCRA 218; *Philippine National Oil Company v. Court of Appeals,* G.R. Nos. 109976 & 112800, April 26, 2005, 457 SCRA 32.

In addition, I respectfully submit that the imposition of the twenty-five percent (25%) surcharge under *Section 248(A)(3) of the 1997 NIRC*[5] is proper. It is worthy to note that the imposition of the surcharge is, similar to the imposition of deficiency interest and delinquency interest, mandatory. Again, respondent's employee responsible for the withholding and remittance of the aforementioned taxes shall be personally liable for the twenty-five percent (25%) surcharge.

The imposition of deficiency interest, delinquency interest, and surcharge is but proper in light of the Supreme Court's pronouncements in *Philippine Refining Company v. Court of Appeals*[6] wherein it held that collection of penalty and interest is mandatory in cases of delinquency, thus:

> Our attention has also been called to two of our previous rulings and these we set out here for the benefit of petitioner and whosoever may be minded to take the same stance it has adopted in this case. Tax laws imposing penalties for delinquencies, so we have long held, are intended to hasten tax payments by punishing evasions or neglect of duty in respect thereof. If penalties could be condoned for flimsy reasons, the law imposing penalties for delinquencies would be rendered nugatory, and the maintenance of the Government and its multifarious activities will be adversely affected.
>
> We have likewise explained that <u>it is mandatory to collect penalty and interest at the stated rate in case of delinquency.</u> The intention of the law is to discourage delay in the payment of taxes due the Government, and in this sense, the penalty and interest are not penal but compensatory for the concomitant use of the funds by the taxpayer beyond the date when he is supposed to have paid them to the Government. Unquestionably, petitioner chose to turn a deaf ear to these injunctions.[7]

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[5] The relevant provision states:

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 within the time prescribed for its payment in the notice of assessment; or

[6] G.R. No. 118794, May 8, 1996, 256 SCRA 667.

[7] Underscoring ours.

In view of the foregoing discussion, I humbly submit that respondent should be liable for the twenty-five percent (25%) surcharge, twenty percent (20%) deficiency interest *per annum*, and twenty percent (20%) delinquency interest *per annum*, on its deficiency EWT and deficiency withholding VAT and other percentage tax for CY 2004, the payment of which additions to the tax shall be the personal liability of respondent's employee responsible for the withholding and remittance of the same.

Accordingly, I vote to partially grant the instant Petition for Review. The Decision promulgated on June 24, 2015 and the Resolution promulgated on September 4, 2015 by the Second Division should be affirmed with modifications. Respondent should be ordered to pay the amount of Php78,143,597.89, inclusive of twenty-five percent (25%) surcharge amounting to Php10,829,081.91 imposed under *Section 248(A)(3) of the 1997 NIRC* for the deficiency EWT, and VAT and Other Percentage Tax Withheld, computed as follows:

TAX TYPE		BASIC		25% SURCHARGE		TOTAL
Withholding Tax on Compensation	Php	23,998,188.36	Php	-	Php	23,998,188.36
Expanded Withholding Tax		13,518,496.99		3,379,624.25		16,898,121.24
VAT and Other Percentage Tax Withheld		29,797,830.63		7,449,457.66		37,247,288.29
TOTAL	**PHP**	**67,314,515.98**	**PHP**	**10,829,081.91**	**PHP**	**78,143,597.89**

In addition, respondent should be ordered to pay:

1. Deficiency interest at the rate of twenty percent (20%) *per annum* on the basic deficiency EWT, and VAT and Other Percentage Taxes Withheld computed from the following dates until full payment thereof pursuant to *Section 249(B) of the 1997 NIRC*:

TAX TYPE	BASIC		20% DEFICIENCY INTEREST COMPUTED FROM
Expanded Withholding Tax	Php	13,518,496.99	January 15, 2005
VAT and Other Percentage Tax Withheld		29,797,830.63	January 10, 2005

2. Delinquency interest at the rate of twenty percent (20%) *per annum* on the total amount of Php54,145,409.53 and on the twenty percent (20%) *per annum* deficiency interest which have accrued as aforestated in (1), computed from September 27, 2012 until full payment thereof pursuant to *Section 249(C) of the 1997 NIRC*, computed as follows:

TAX TYPE		BASIC		25% SURCHARGE		TOTAL
Expanded Withholding Tax	Php	13,518,496.99	Php	3,379,624.25	Php	16,898,121.24
VAT and Other Percentage Tax Withheld		29,797,830.63		7,449,457.66		37,247,288.29
TOTAL	**PHP**	**43,316,327.62**	**PHP**	**10,829,081.91**	**PHP**	**54,145,409.53**

LOVELL R. BAUTISTA
Associate Justice