REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

MEDICARD PHILIPPINES, INC. ("MEDICARD")
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1224
(CTA Case No. 7948)

Present:

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

Promulgated:

JAN 29 2016 3:15 p.m.

x---x

R E S O L U T I O N

CASTAÑEDA, JR., *J.*:

For resolution of the Court *En Banc* is petitioner's **Motion for Reconsideration** filed on September 29, 2015, with respondent's **Comment** filed through registered mail on December 2, 2015 and received by this Court on December 10, 2015.

The subject of the instant motion pertains to the Decision of the Court *En Banc* dated September 2, 2015, the dispositive portion of which reads:

"**WHEREFORE**, in view thereof, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, the Decision dated June 5, 2014 is hereby **MODIFIED**, as follows:

'**WHEREFORE**, premises considered, the deficiency VAT assessment issued by respondent against petitioner covering taxable year 2006 is hereby **AFFIRMED WITH MODIFICATIONS**. Accordingly, petitioner is ordered to pay respondent the reduced amount of ₱220,234,609.48, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

Basic Deficiency VAT	₱176,187,687.58
Add: 25% Surcharge	44,046,921.90
TOTAL	**₱220,234,609.48**

In addition, petitioner is ordered to pay:

(a) Deficiency interest at the rate of 20% per annum on the basic deficiency VAT of ₱176,187,687.58 computed from January 25, 2007 until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended; and

Delinquency interest at the rate of 20% per annum on the total amount of ₱220,234,609.48 (representing basic deficiency VAT of ₱176,187,687.58 and 25% surcharge of ₱44,046,921.90) and on the deficiency interest which have accrued as afore-stated in (a), computed from June 19, 2009 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.'

SO ORDERED."

Petitioner argues in its motion that: (1) the Court *En Banc* should apply the Amended Decision of this Court's Third Division in the case of *Maxicare Healthcare Corporation v. Commissioner of Internal Revenue*, docketed as CTA Case No. 8441 dated May 5, 2015; (2) the subject assessment is void due to the absence of a letter of authority (LOA) and for lack of factual and legal bases; (3) The ratio as determined by the Court Commissioned Independent Certified Public Accountant (ICPA) in determining petitioner's gross sales for January 2006 should be adopted by this Court; and (4) This Court cannot allow the simultaneous imposition of deficiency and delinquency interests.

On the other hand, respondent mainly argues that petitioner cannot raise new issues on appeal, *i.e.*, petitioner's reliance on BIR Ruling No. DA-(VAT-054)-529-2008.

The issues to be resolved by the Court *En Banc* are as follows: (1) Whether the *Maxicare case* is applicable in this case; (2) Whether the subject assessment is void; (3) Whether the Court erred in not applying the ratio as determined by the ICPA for petitioner's January 2006 gross sales; and (4) Whether deficiency and delinquency interests can be simultaneously imposed.

We deny the instant Motion.

The *Maxicare case* is not applicable in the instant case

Prefatorily, the Court *En Banc* notes that the *Maxicare case* is still pending review before this Court. At any rate, due to the apparent factual similarities between the instant case and the *Maxicare case*, *i.e.*, both are HMOs being assessed for deficiency VAT, and because the subject Amended Decision of this Court's Third Division is raised herein as a ground to reconsider the assailed decision, the Court *En Banc* is tasked to compare the aforesaid cases without, however, dwelling on the issues involved in *Maxicare* which is *sub judice*.

Petitioner asserts that the *Maxicare case* should equally be applied in this case because it likewise relied in good faith on BIR Ruling No. DA-(VAT-054)-529-2008 dated December 15, 2008, as in the *Maxicare case* where petitioner therein relied on DA-(VAT-026)-375-08 in determining the composition of its gross receipts for VAT purposes of HMOs.

Petitioner's reliance on *Maxicare* is misplaced.

Merely for purposes of discussion and assuming that the factual findings in *Maxicare* are correct, it is noteworthy that unlike in *Maxicare*, herein petitioner cannot be said to be in good faith. Thus:

Pertinent Facts	Instant Case	Maxicare Case
Taxable period covered (CY)	CY 2006	CY 2008
Date of issuance of the BIR Ruling	December 15, 2008	October 31, 2008

fu

In *Maxicare*, the subject assessment covers CY 2008, while BIR Ruling DA-(VAT-026)-375-08 was issued on October 31, 2008. In the instant case, the subject assessment covers CY 2006, or two years before BIR Ruling No. DA-(VAT-054)-529-2008 was issued.

In other words, without necessarily concluding that petitioner in *Maxicare* is in good faith, herein petitioner cannot be said to have acted in good faith considering that as early as 2006, it already excluded from its gross receipts the amounts allegedly earmarked for medical utilization that do not redound to its benefit. It was only in 2008 when it secured a favorable ruling from the BIR to the effect that said amounts shall be excluded from its gross receipts for purposes of VAT. Thus, it cannot be said that petitioner merely relied on the subject BIR Ruling issued in 2008 when it filed its VAT Returns one (1) to two (2) years earlier in 2006 and 2007, where it already excluded the subject amounts.

In relation thereto, the Supreme Court stated in the consolidated cases of *Commissioner of Internal Revenue v. San Roque Power Corporation, Taganito Mining Corporation v. Commissioner of Internal Revenue and Philex Mining Corporation v. Commissioner of Internal Revenue*,[1] that the taxpayer cannot benefit from a BIR Ruling before the date of its issuance, in this wise:

> "**San Roque, therefore, cannot benefit from BIR Ruling No. DA-489-03 because it filed its judicial claim prematurely on 10 April 2003, before the issuance of BIR Ruling No. DA-489-03 on 10 December 2003**. To repeat, San Roque cannot claim that it was misled by the BIR into filing its judicial claim prematurely because BIR Ruling No. DA-489-03 was issued only after San Roque filed its judicial claim. At the time San Roque filed its judicial claim, the law as applied and administered by the BIR was that the Commissioner had 120 days to act on administrative claims. This was in fact the position of the BIR prior to the issuance of BIR Ruling No. DA-489-03. Indeed, San Roque never claimed the benefit of BIR Ruling No. DA-489-03 or RMC 49-03, whether in this Court, the CTA, or before the Commissioner."*(Emphasis supplied)*

Considering the foregoing, the Court *En Banc* finds petitioner's argument unmeritorious.

---

[1] G.R. Nos. 187485, 196113 and 197156, February 12, 2013.

The absence of an LOA in this case does not invalidate the subject assessment

On this score, petitioner reiterates that the absence of an LOA renders the subject assessment void. Likewise, it argues that contrary to this Court's findings, the BIR examined its financial books and records when it authorized the verification of the supporting documents to its administrative protest.

Again, petitioner's argument is specious.

With respect to the issue regarding the absence of an LOA, petitioner merely rehashed its arguments which the Court *En Banc* thoroughly discussed in the assailed decision, and which discussion was set forth by petitioner in the instant motion.

On the other hand, with respect to petitioner's assertion that an LOA should have been issued *vis a vis* the BIR's verification of the supporting documents presented by petitioner in its administrative protest, *We* find that the issuance of an LOA is likewise not indispensable.

True, as stated by petitioner in the instant motion, one of the purposes of the LOA is to prevent unauthorized investigation and harassment during investigation. Corollary thereto is that not all investigations require the issuance of an LOA, where such investigation is not unauthorized and does not cause undue harassment to the taxpayer.

In the instant case, the documents examined by the BIR are documents which, as petitioner admits, support its position in the administrative protest. Therefore, it necessarily and logically follows that petitioner authorized the examination of the supporting documents to its protest because these documents emanated from petitioner. Petitioner could not have submitted supporting documents to the BIR which it does not authorize or intend to be examined, or to a certain extent, cause undue harassment to petitioner itself.

Hence, the examination of the supporting documents forwarded by petitioner to the BIR is an authorized examination which does not necessitate the issuance of an LOA. There is no violation of petitioner's right against unauthorized investigation and undue harassment albeit the absence of an LOA because the documents examined by the BIR are the same supporting documents submitted by petitioner in support of its protest.

Petitioner merely rehashed its arguments as to the factual and legal bases of the subject assessment

Petitioner further reiterates that the amounts earmarked should have been excluded from its gross receipts. Furthermore, it still maintains that it was able to substantiate the adjustments recommended by the ICPA and that its earnings from clinic and laboratory facilities are exempt from VAT.

These issues have been squarely resolved in the assailed decision.

As to the exclusion of the amounts that were included in the gross receipts, the same has been discussed in the preceding discussion.

As to whether petitioner was able to substantiate the adjustments recommended by the ICPA, re-examination of the records shows that aside from the journal entries presented by petitioner, no other evidence was submitted to support the same.

In the old case of *Consolidated Mines, Inc. v. Court of Tax Appeals*, [2] The Supreme Court explained the nature of books of account as evidence, in this wise:

> "In order to render admissible books of account it must appear that they are books of original entry, that the entries were made in the ordinary course of business, contemporaneously with the facts recorded, and by one who had knowledge of the facts. San Francisco Teaming Co. v. Gray (1909) 11 CA 314, 104 P 999. See Brown v. Ball (1932) 123 CA 758, 12 P2d 28, to the effect that the books must be kept in the regular course of business.
>
> xxx xxx xxx
>
> Code Iowa, No. 3658, providing that "books of account" are receivable in evidence, etc., means a book containing charges, and showing a continuous dealing with persons generally. A book, to be admissible, must be kept as an account book, and the charges made in the usual course of business. *Security Co. v. Graybeal*, 52 NW 497, 85 Iowa 543, 39 Am St Rep 311.
>
> Books of account may therefore be admissible under the rule. **In tax cases, however, this Court appears not to place**

[2] GR Nos. L-18843 and L-18844, August 29, 1974.

> **too high a probative value on them, considering the statement in the case of *Collector of Internal Revenue v. Reyes* that 'books of account' do not prove *per se* that they are veracious; in fact they may be more consistent than truthful." Indeed, books of account may be used to carry out a plan of tax evasion."**[3]

In the afore-quoted case, the Supreme Court explained that in tax cases, books of account do not prove *per se* that they are veracious, such that books of account alone may not be accorded high probative value. Mere presentation of books of account without presenting supporting documents may even be used to carry out plans for tax evasion.

Guided by the foregoing principle, *We* rule that absent any document to support the subject journal entries, the Court *En Banc* is constrained to give scant consideration to the said pieces of evidence.

As to the VAT-exempt status of petitioner's medical, dental and laboratory services, the Court *En Banc* ruled in the assailed decision, as follows:

> "True, Section 109 (G) of the NIRC of 1997, as amended, provides that medical, dental, hospital and veterinary services, except those rendered by professionals, shall be exempt from VAT. Thus, petitioner's medical, dental and laboratory services could have been VAT-exempt.
>
> However, the VATable transaction and the time and manner by which the membership fees or premiums were collected, prevent the applicability of Section 109 (G) of the NIRC of 1997, as amended, in favor of petitioner.
>
> Since the membership fees or premiums were pre-paid by petitioner's clients, VAT accrues the moment the same were paid. In other words, it is petitioner's sale of service of procuring for its members, any and all future and contingent health services covered by their respective contracts, in consideration of the membership fees or premiums which are pre-paid, that is subject to VAT. Whether or not petitioner's future and contingent health services were eventually rendered in its clinics or laboratories do not affect the VATability of petitioner's transactions, as the same were already subjected thereto the moment it sold its services to its member-clients."

---

[3] Id., citing Deerings California Codes Annotated, Civil Procedure, Evidence, No. 1953f, p. 515; L-11534 & L-11558, Nov. 25, 1958.

To reiterate, it does not matter whether petitioner's future services were eventually rendered in its clinics or laboratories. Considering that the membership fees or premiums were pre-paid, the pertinent VAT incidences occurred the moment petitioner sold its services of procuring for its members, any and all future and contingent health services covered by their respective contracts. The performance of future and contingent health services at petitioner's own clinics and laboratories are but incidental and necessary consequences of its primary obligation.

The correct ratio of petitioner's January sales to total sales of 2006 is at 6.41%

Petitioner believes that the correct basis for its January sales to total sales of 2006 should be one twelfth (1/12) and not 6.41%.

We disagree.

If *We* subscribe with the position of petitioner, it would appear that its monthly sales shall equally be divided among each month of CY 2006, *i.e.*, 1/12 x gross receipts = monthly sales. In other words, should *We* divide petitioner's gross receipts by 12, the resulting quotient or amount will not only reflect its January sales, but it shall likewise reflect petitioner's monthly sales for all other succeeding months. Hence, petitioner's monthly sales for January 2006 shall be equal and uniform for all the succeeding months of CY 2006. Said computation would therefore lead to inaccurate or erroneous determination of petitioner's monthly sales in relation to its VAT liability.

As per petitioner's January monthly VAT Return, it reflected total sales in the amount of ₱124,507,677.87. Consequently, to arrive at the correct ratio of petitioner's January sales *vis a vis* its total sales for CY 2006, we divide the same by its total gross receipts for CY 2006. Hence, the 6.41% ratio as determined by this Court is correct.

Deficiency and Delinquency interests can be simultaneously imposed

Finally, petitioner avers that the double imposition of interest would amount to unjust collection of penalties tantamount to being punitive in character.

We do not agree.

This Court *En Banc* has consistently held that the plain reading of Section 249 of the 1997 NIRC justifies the simultaneous imposition of deficiency interest and delinquency interest.

The Supreme Court recently upheld this interpretation in a Resolution dated November 10, 2014 in *Republic Cement [as surviving corporation in a merger involving FR Cement Corporation] v. Commissioner of Internal Revenue*:

> "After a careful perusal of the records, the Court resolves to **DENY** the instant petition and AFFIRM the July 18, 2012 Decision and November 21, 2012 Resolution of the Court of Tax Appeals (CTA) En Banc in CTA EB No. 821 for failure of Republic Cement Corporation (petitioner) to show that the CTA En Banc committed any reversible error in assessing it for deficiency creditable withholding value-added tax (CWVAT) for taxable year 1999 in the amount of Pl0,044,824.64, inclusive of 25% surcharge, **and in imposing deficiency interest of 20% per annum on the basic deficiency CWVAT of P8,035,859.71 from January 25, 2000 until full payment thereof, as well as delinquency interest of 20% per annum on the total deficiency taxes of Pl0,044,824.64 and on the 20% deficiency interest that have accrued from January 31, 2005 until full payment thereof.**
>
> **As correctly ruled by the CTA *En Banc*, the simultaneous imposition of deficiency and delinquency interests are sanctioned under Section 249 of the National Internal Revenue Code (NIRC), which explicitly provides that deficiency interest shall be reckoned from the date prescribed for payment of the *deficiency tax* until full payment thereof while *delinquency interest* shall also be collected computed from the due date prescribed under the Assessment Notice until full payment thereof.**
>
> **SO ORDERED.**" *(Emphasis supplied)*

Consequently, *Avon Products Manufacturing, Incorporated v. CIR* [4] discussed the legal bases for the Court's position on this point, thus:

> "Petitioner submits that the Court in Division seriously erred in its simultaneous imposition of the deficiency interest and the delinquency interest upon the amounts payable by

[4] CTA EB No. 1062, March 16, 2015.

petitioner. The latter argues that deficiency interest and delinquency interest provided under Section 249 (B) and 249 (C) of the NIRC are not intended to be imposed simultaneously. Otherwise, it will amount to an interest that is excessive, iniquitous, unconscionable and exorbitant.

We do not agree with petitioner.

Section 249 of the NIRC of 1997 provides:

'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 required to be filed, or

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

(3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax.

xxx xxx xxx.'

Interest is imposed to compensate the State for the delay in paying the tax and for the concomitant use by the taxpayer of funds that rightfully should be in the government's hands. It is imposable upon failure of the taxpayer to pay the tax on the date fixed in the law for its payment.

In this case, by its own argumentation, petitioner stresses that the deficiency interest under subsection (B) of Section 249 is applicable where the taxpayer is found to have a tax deficiency. Since We find in this Decision that petitioner is liable to the deficiency excise tax assessed by respondent, there can be no doubt that petitioner is likewise liable to the deficiency interest imposed by the Court in Division.

Furthermore, We see no legal obstacle for the Court in Division to simultaneously impose the deficiency interest and the delinquency interest.

Nowhere in Section 249 does it state that if subsection (B) is applicable, subsection (C) would be rendered inapplicable, or *vice versa*. Furthermore, there is no indication in the same Section 249 that the beginning of the imposition of delinquency interest under subsection (C) would end upon the imposition of deficiency interest under subsection (B). Especially so that both subsection (B) and subsection (C) provide that the interests shall respectively accrue until full payment thereof.

It is a cardinal rule in statutory construction that no word, clause, sentence, provision or part of a statute shall be considered surplusage or superfluous, meaningless, void and insignificant. To this end, a construction which renders every word operative is preferred over that which makes some words idle and nugatory. This principle is expressed in the maxim *Ut magis valeat quam pereat*, that is, we choose the interpretation which gives effect to the whole of the statute — its every word. Thus, every word of Section 249 should be given effect." *(Underscoring supplied; citations omitted)*

We likewise emphasize *Our* ruling in *Philippine Aerospace Development Corporation v. Commissioner of Internal Revenue*,[5] where the Court *En Banc* held that:

"The propriety of the simultaneous imposition of deficiency and delinquency interests was more definitively resolved in April 2013. This was in *First Lepanto Taisho Insurance Corporation v. Commissioner of Internal Revenue*, where the Supreme Court upheld a 2011 decision of this Court affirming the imposition of delinquency interest under Section

[5] CTA EB No. 1035 (CTA Case No. 7830), promulgated on March 11, 2015, penned by Associate Justice Ma. Belen M. Ringpis-Liban.

249(c)(3) of the 1997 NIRC. The Supreme Court ruled this imposition 'to be proper, because failure to pay the deficiency tax assessed within the time prescribed for its payment justifies the imposition of interest at the rate of twenty percent (20%) per annum, which interest shall be assessed and collected from the date prescribed for its payment until full payment is made.'

Earlier in 2011, the Supreme Court sustained the 2005 rulings of this Court imposing 20% delinquency tax on deficiency taxes, inclusive of deficiency interest, in *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*.

In 2006, the Supreme Court also upheld a 2004 Court of Appeals decision where the latter imposed delinquency interest at 20% per annum in addition to the interest on deficiency VAT and deficiency documentary stamp tax, in *Michel J. Lhuiller Pawnshop, Inc. v. Commissioner of Internal Revenue*, although without discussion of the propriety of multiple simultaneous interests.

And even earlier, in 2000, the Supreme Court likewise upheld the imposition of 20% annual delinquency interest on deficiency amusement tax, inclusive of 20% deficiency interest, in *Philippine Basketball Association v. Court of Appeals, Court of Tax Appeals, and Commissioner of Internal Revenue*.

Actually, double interests have been sustained by the Supreme Court at least as early as 1971, in *Commissioner of Internal Revenue v. Connel Bros. (Phil.) and Court of Tax Appeals*. Under the tax law at the time, R.A. No. 2343 of 1959, these were the "interest on deficiency" and what may be referred to as "additional interest" (in case of non-payment within the prescribed period), at the rates of 6% per annum and 1% per month, respectively.

It is abundantly clear, from the foregoing discussion of the law and jurisprudence, that under the circumstance laid down by Section 249(c)(3) of the Tax Reform Act of 1997 – *i.e.*, in case of failure to pay a deficiency tax, or any surcharge or interest on such deficiency tax – delinquency interest of 20% per annum shall be assessed and collected.

The petitioner asked whether or not simultaneous deficiency and delinquency interests 'are allowed by law and equity.' The answer is in the law itself, which does not merely allow but prescribes simultaneous imposition under the aforecited circumstance. As this is undoubtedly proper under

> the law – and petitioner has not assailed the validity of the law itself – there is neither need nor duty for this Court to expand the discussion to the realm of equity, for 'equity is applied only in the absence of, and never against, statutory law, and the rule is that 'equity follows the law.'"[6]

All told, there is no merit in petitioner's argument that deficiency and delinquency interests may not simultaneously be imposed.

To conclude, petitioner failed to present arguments that would merit the reconsideration of the assailed decision. Hence, *We* are constrained to deny the instant Motion.

WHEREFORE, in view thereof, petitioner's Motion for Reconsideration is hereby **DENIED**, for lack of merit.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

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

LOVELL R. BAUTISTA
Associate Justice

(I Join the Concurring and Dissenting Opinion of P.J. Del Rosario)
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

---

[6] Id., citing *First Lepanto Taisho Insurance Corporation v. CIR,* G.R. No. 197117, Apr. 10, 2013; *Rizal Commercial Banking Corporation v. CIR,* G.R. No. 170257, Sept. 7, 2011; *Michel Lhuiller Pawnshop, Inc. v. CIR,* G.R. No. 166786, May 3, 2006; *Philippine Basketball Association v. Court of Appeals, Court of Tax Appeals and CIR,* G.R. No. 119122, Aug. 8, 2000; *CIR v. Connel Bros. (Phil.) and Court of Tax Appeals,* G.R. Nos. L-27752-53, Aug. 30, 1971, 40 SCRA 416; and *Philippine Rabbit Bus Lines, Inc. v. Hon. Ludivico D. Arciaga*, et al., G.R. No. L-29701, March 16, 1987.

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS LIBAN
Associate Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

MEDICARD PHILIPPINES, INC. ("MEDICARD"), Petitioner,	**CTA EB NO. 1224** (CTA Case No. 7948)
	Present:
- versus -	Del Rosario, *P.J.*, Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Cotangco-Manalastas, *and* Ringpis-Liban, *JJ*.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JAN 29 2016 3:15 p.m.

x- -x

CONCURRING AND DISSENTING OPINION

DEL ROSARIO, PJ:

I concur with the *ponencia* in holding that the *Maxicare case* is inapplicable in the present case; the absence of Letter of Authority does not invalidate the assessment; the correct ratio of petitioner's January sales to total sales is at 6.41%; and petitioner merely rehashed its arguments as to the factual and legal basis of the subject assessment.

With due respect, the point of my dissent relates to the *ponencia's* ruling that deficiency interests can be imposed in this case insofar as it relates to VAT.

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

---

[1] CTA EB No. 1062, January 15, 2016.

"xxx I am not unaware of *Paper Industries Corporation of the Philippines vs. Court of Appeals, Commissioner of Internal Revenue, and Court of Tax Appeals (PICOP)*,[2] which somehow made mention of deficiency interest under the NIRC of 1977. I must stress, however, that *PICOP* cannot be relied upon to justify the imposition of deficiency interest on petitioner's excise tax liability. *PICOP* did not state nor resolve the issue whether or not the deficiency interest provided for in Section 249 (B) of the NIRC of 1997, as amended, may be imposed on tax other than donor's, estate, and income taxes. Thus, not having been resolved therein, *PICOP* cannot be considered as a doctrine on the matter. The case of *Office of the Ombudsman vs. Honorable Court of Appeals and Former Deputy Ombudsman for the Visayas Arturo C. Mojica*,[3] is instructive:

> "The legal maxim "*stare decisis et non quieta movere*" (follow past precedents and do not disturb what has been settled) states that where the same questions relating to the same event have been put forward by parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt relitigate the same issues.
>
> xxx xxx xxx
>
> **Thus, where the issue involved was not raised nor presented to the court and not passed upon by the court in the previous case, the decision in the previous case is not *stare decisis* of the question presented."** (Emphasis supplied)

If *PICOP* has any relevance to the present controversy, it is the doctrinal precedent that **deficiency interest may be imposed only on tax specifically covered by the relevant provision of the NIRC of 1977**. Thus, the Court in *PICOP*, while recognizing that transaction tax is in the nature of income tax and that deficiency interest is imposable on income tax, nonetheless declined to impose such deficiency interest on transaction tax after noting the significant provisions of the NIRC of 1977: ***first*, it is Section 51 (c)(1), (e)(1), and (3) which impose deficiency interest; *second*, Section 51 (c) (1) confines such deficiency interest on taxes covered by TITLE II; and, *third*, that transaction tax does not fall within TITLE II.** Thus:

> **"It will be seen that Section 51 (c) (1) and (e) (1) and (3), of the 1977 Tax Code, authorize the imposition of surcharge and interest only in respect of a *"tax imposed by this Title,"* that is to say, Title II on "Income Tax."** It will also be seen that Section 72 of the 1977 Tax Code imposes a

[2] G.R. Nos. 106949-50, December 1, 1995.
[3] G.R. No. 146486, March 4, 2005.

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

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

> 'Section 249.Interest-
>
> (B) Deficiency Interest. – Any deficiency in the tax due, **as the term is defined in this Code**, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.' (Emphasis supplied)

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

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

Finally, Sections 247 (a) and 249 (A) are **general provisions** that impose "additions" to the tax and "interest" thereon. Both sections may not be read in isolation from the relevant and **specific provision** of Section 249 (B) with respect to the imposition of "deficiency" interest, more so as all these provisions fall within the same Chapter I of Title X of the NIRC of 1997, as amended."

MM

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

In sum, I submit that deficiency interest may be imposed only on tax specifically covered by the relevant provisions of the NIRC, *i.e., income tax, donor's tax and estate tax*; conversely, deficiency interest may not properly be imposed on *"taxes other than income tax, donor's tax and estate tax,"* like the subject deficiency VAT assessed against petitioner.

In view of the foregoing, I vote to partially grant the Motion for Reconsideration of petitioner. Accordingly, the assailed judgment of the Court in Division, as affirmed by the Court *En Banc*, should be sustained with modification relating to the imposition of 20% deficiency interest on deficiency VAT, which should appropriately be cancelled and set aside.

ROMAN G. DEL ROSARIO
Presiding Justice