REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	CTA EB No. 1386 (CTA CASE No. 8554)
	Present: DEL ROSARIO, P.J., CASTAÑEDA, JR., BAUTISTA,
-versus-	UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and
LINGKOD BAYAN PAWNSHOP CO. INC., *Respondent.*	MANAHAN, *JJ.* Promulgated: MAR 2 1 2017 3:45pm

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision is a Petition for Review for the Court *En Banc* under *Section 4(b), Rule 8*[1] *of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA), as amended,* of the Decision dated July 29, 2015[2] and the

[1] **SEC. 4.** *Where to appeal; mode of appeal.* –

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(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court *en banc* shall act on the appeal.

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[2] Penned by Associate Justice Esperanza R. Fabon-Victorino concurred in by Associate Justice Lovell R. Bautista; Associate Justice Ma. Belen M. Ringpis-Liban was on leave, *En Banc* Docket, pp. 21-47.

Resolution dated October 28, 2015[3] rendered by the Third Division of this Court, the dispositive portions of which, respectively, read as follows:

<u>Decision dated July 29, 2015:</u>

WHEREFORE, the instant Petition for Review is hereby **PARTIALLY GRANTED**. The assessment issued by respondent Commissioner of Internal Revenue against petitioner Lingkod Bayan Pawnshop Co., Inc. for taxable year 2008, finding petitioner liable for deficiency Income Tax, Documentary Stamp Tax, Expanded Withholding Tax, and increments for late filing/remittance is **AFFIRMED** with modifications.

Accordingly, petitioner is hereby **ORDERED TO PAY** the amount of **ONE HUNDRED SIXTY SEVEN THOUSAND SEVENTY THREE PESOS and TWENTY-FOUR CENTAVOS (₱167,073.24)**, representing deficiency IT, DST, EWT, and increments for late filing/remittance of percentage and expanded withholding taxes pursuant to Sections 248(A)(1),248(A)(3) and 249(B) of the NIRC of 1997, as amended, broken down as follows:

Tax Type	Basic	Surcharge	Interest	Total
Income Tax	₱ 116,156.66	₱ 29,039.17		₱ 145,195.83
Documentary Stamp Tax	4,855.79	1,213.95		6,069.74
Expanded Withholding Tax	2,070.36	517.59		2,587.95
sub-total	**₱ 123,082.81**	**₱ 30,770.71**		**₱ 153,853.52**
Increments on Late Filing/Remittance of Percentage Tax and EWT		13,123.64	₱ 96.08	13,219.72
TOTAL	**₱ 123,082.81**	**₱ 43,894.35**	**₱ 96.08**	**₱ 167,073.24**

In addition, petitioner is hereby **ORDERED TO PAY:**

(a) Deficiency interest at the rate of twenty percent (20%) per annum pursuant to Section 249(B) of the NIRC, as amended:

[3] Penned by Associate Justice Esperanza R. Fabon-Victorino concurred in by Associate Justice Lovell R. Bautista and Associate Justice Ma. Belen M. Ringpis-Liban, *En Banc* Docket, pp. 50-53.

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1. on the basic deficiency income tax of ₱116,156.66, computed from April 15, 2009 until full payment thereof;

2. on the basic deficiency DST of ₱4,855.79, computed from the dates indicated below, until full payment thereof; and

Period	Amount of Advances from Stockholders:	Basic Deficiency DST	20% Deficiency Interest Computed from
January 2008	₱ 100,000.00	₱ 500.00	05-Feb-08
April 2008	100,000.00	500.00	05-May-08
May 2008	150,000.00	750.00	05-Jun-08
August 2008	100,000.00	500.00	05-Sep-08
October 2008	150,000.00	750.00	05-Nov-08
December 2008	371,157.00	1,855.79	05-Jan-09
Total	**₱ 971,157.00**	**₱ 4,855.79**	

3. on the basic deficiency EWT of ₱2,070.36, computed from January 15, 2009, until full payment thereof.

(b) Delinquency interest at the rate of 20% per annum on the total amount of ₱153,853.52 and on the 20% deficiency interest which have accrued as aforestated in (a), computed from September 10, 2012 until full payment thereof, pursuant to Section 249 (C) of the 1997 NIRC, as amended.

(c) Delinquency interest at the rate of 20% per annum on the total deficiency increments for late filing/remittance of percentage and expanded withholding taxes in the amount of ₱13,219.72, computed from September 10, 2012, until full payment thereof, pursuant to Section 249 (C) of the 1997 NIRC, as amended.

SO ORDERED.

Resolution dated October 28, 2015:

WHEREFORE, there being no new matters or issues raised that will merit consideration, let alone modification of the assailed Decision, respondent's Motion for Partial Reconsideration dated August 20, 2015, is hereby **DENIED**, for lack of merit.

SO ORDERED.

The facts of the case, as recited by the Third Division in its Decision, read as follows:

"Petitioner is a domestic corporation with principal office at No. 28 C, Nicanor Roxas St. cor. Isarog St., Manresa I, Quezon City. It is incorporated principally to engage in lending money on personal property delivered as security for loans in accordance with Presidential Decree (PD) No. 114.

Respondent is the Commissioner of the Bureau of Internal Revenue (BIR), with authority to decide administrative tax cases, including disputed assessments. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

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On December 8, 2011, respondent issued a Preliminary Assessment Notice (PAN) with Details of Discrepancies.

About twenty (20) days thereafter or on December 28, 2011, respondent issued the Formal Letter of Demand (FLD) No. 038-B193-087 with Details of Discrepancies or Final Assessment Notices (FAN), which petitioner received on January 5, 2012.

On February 6, 2012, petitioner protested the same.

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On June 20, 2012, petitioner received a Notice of Informal Conference.

On July 4, 2012, petitioner submitted supporting documents like Schedule of Advances from Stockholders and Schedule of Alphalist and Expenses. It also executed a Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code (NIRC) which respondent, through Revenue District Officer Ramer D. Narvaez, accepted on July 11, 2012.

On September 10, 2012, petitioner received respondent's Final Decision dated August 24, 2012, reiterating the assessments indicated in the FAN.

Hence, this Petition for Review filed on October 10, 2012.

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During the trial, petitioner presented its lone witness **Ms. Lorna C. Ignacio**, who, by way of a Judicial Affidavit, testified that as petitioner's Accounting Supervisor, she monitors petitioner's tax compliance and attends all of its tax concerns with the BIR.

On January 5, 2012, petitioner received a FAN dated December 28, 2011 to which it filed a protest on February 6, 2012. Thereafter, petitioner received a notice of reinvestigation of its 2008 internal revenue tax liabilities. During her meeting with Revenue Officer (RO) Victoria Fontanilla on June 14, 2012, the latter requested documents in support of petitioner's protest specifically on the Salaries and Wages not subject to Withholding Tax and Deficiency Stamp tax on the Advances from Stockholders.

During the Informal Conference on July 4, 2012, at Revenue District Office No. 38, she submitted the required documents. However, RO Fontanilla requested further documents, this time, pertaining to petitioner's claim for deduction of expenses from its income. RO Fontanilla also requested submission of a Waiver of the Defense of Prescription which petitioner complied on July 11, 2012.

On July 13, 2012, she presented to RO Fontanilla petitioner's original official receipts for the year 2008 to disprove petitioner's alleged unsupported expenses. However, the said official receipts were disallowed by RO Fontanilla saying that she specified in the Notice of Informal Conference under the "Summary of Deficiency Taxes" that she made a re-computation of petitioner's income tax deficiency which resulted in the reduction of Unsupported Expenses from ₱1,956,856.31 to ₱1,546,551.18. However, the said "Summary of Deficiency Taxes" merely enumerates petitioner's alleged tax deficiencies.

They also discussed other matters enumerated in the "Summary of Deficiency Taxes", such as Rental Payments; Telephone and Communication Expense; Light and Water Expense; Security Services; Transportation and Travel Expense; Office Supplies Expense; Miscellaneous Expenses; and Salaries and Wages. Their discussions failed to convince RO Fontanilla. On September 10, 2012 petitioner received the respondent's Final Decision reiterating the assessments contained in the FAN/FLD No. 038-6193-08 dated December 28, 2011.

To counter the foregoing, respondent first presented **RO Josephine C. Cortuna**, who also executed a Judicial Affidavit, declaring that by virtue of Tax Verification Notice No. TVN2003 00161264 dated October 7, 2009 served upon petitioner together with the Check List of the necessary documents for investigation, she investigated petitioner's tax liabilities for taxable year 2008. Petitioner submitted only some of the required documents on the basis of which she discovered deficiencies on petitioner's IT, EWT, Percentage Tax, DST as well as late remittances of various returns. All these were indicated in her Revenue Officer's Audit Report.

During the Informal Conference, petitioner appeared but failed to submit documentary evidence for its various expenses claimed to have been reported in its Financial Statements. Thus, in her Memorandum dated May 3, 2011, she recommended the issuance of a PAN and endorsement of petitioner's tax docket to the Assessment Division of Revenue Region No. 7. A FAN dated December 28, 2011 was issued to petitioner, and later a Final Decision dated August 24, 2012.

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The Third Division held that the Petition for Review was filed on time. Also, the Division ruled that Lingkod Bayan Pawnshop Co. Inc. (Lingkod Bayan) was able to submit sufficient documents in support of its protest.

As to the merits of the case, the deficiency expanded withholding tax was sustained by the Division for failure of Lingkod Bayan to refute Commissioner of Internal Revenue (CIR)'s findings both in the protest and the Petition for Review. The Division also disallowed several unsupported ordinary expenses as deductions.

However, the salaries and wages claimed by Lingkod Bayan as deduction was proper according to the Third Division, considering that the tax on the basic salary comprising such was properly withheld, and the remaining amount of the said salaries and wages is not taxable but can be still claimed as deduction by Lingkod Bayan. Only the amount pertaining to the 13th month pay was disallowed by the Division since there was no evidence presented to ascertain whether such has been properly subjected to withholding tax.

The tax amnesty deducted by Lingkod Bayan from its gross income was also disallowed but the Court allowed the excess tax credit, as well as the excess Minimum Corporate Income Tax (MCIT) over Normal Income Tax (NIT) as deduction from gross income considering that the CIR did not indicate in the Details of Discrepancy the basis for the disallowance.

As to documentary stamp tax (DST), only the amount of ₱971,157.00 is covered by taxable year 2008, thus the deficiency DST should only pertain to the said amount.

The Division also upheld the increments on late filing, except for the remittance on withholding tax on compensation, which was filed on time.

As to compromise penalty, considering that Lingkod Bayan did not agree to it, such was disallowed by the Division.

CIR's Motion for Partial Reconsideration[4] on August 20, 2015 was denied by the Third Division as per Resolution promulgated on October 28, 2015, hence, CIR's Petition for Review.

CIR argues in her Petition for Review that the Division erred as to the basis of the amount of salaries and wages to be disallowed and that the non-taxable amount as ruled by the Division should also be included therein. CIR also asserts that the disallowance of excess tax credit and MCIT over NIT is proper as Lingkod Bayan failed to prove that it suffered legitimate business reverses. CIR also contends that the full amount for deficiency DST must be included and not just the amount of advances for the taxable year 2008. Lastly, it contends that the assessment of compromise penalty is proper.

We rule to DENY the Petition for Review.

The CIR actually raised no new arguments in his Petition for Review but mere assertions void of explanations.

With respect to the salaries and wages, the CIR merely quoted the Division's ruling thereto and insists on using the amount of ₱3,533,642.54 per FS/ITR, without arguing on such contention. More importantly, it must be noted that the amount assessed by the CIR is the same amount relied upon by this Court, i.e, the amount of ₱3,977,057.00, which consists of salaries and wages in the amount of ₱3,686,660.00 and 13th month pay and incentives in the amount of ₱290,397.00. Thus, this Court has no reason to reverse the finding of the Division as to this deduction.

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[4] Division docket, pp. 1444-1453.

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As to the alleged proper disallowance of excess tax credit and MCIT over NIT, as correctly observed by the Division, said assessment is null and void for failure to indicate the basis thereof. Section 228 of the National Internal Revenue Code (NIRC) of 1997 is clear that "the taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void." The taxpayer should be informed of not only the law, but also of the facts on which an assessment would be made; otherwise, the assessment itself would be invalid.[5]

As to the alleged deficiency DST, the CIR merely quoted the Division's ruling thereto, as well as Section 179[6] of the NIRC pertaining to the DST on all debt instruments, and Revenue Regulations no. 13-2004, without arguing on why the whole amount of the assessed deficiency DST should be included and not just the advances for the taxable year 2008.

In the instant case, except in questioning the amount disallowed in the DST assessment by the Division, the CIR did not attempt to argue as to the substantial merit of the

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[5] *Commissioner of Internal Revenue, vs. United Salvage And Towage (Phils.), Inc.,* G.R. No. 197515, July 2, 2014.

[6] SEC. 179. Stamp Tax on All Debt Instruments. - On every original issue of debt instruments, there shall be collected a documentary stamp tax on One peso (P1.00) on each Two hundred pesos (P200), or fractional part thereof, of the issue price of any such debt instruments: Provided, That for such debt instruments with terms of less than one (1) year, the documentary stamp tax to be collected shall be of a proportional amount in accordance with the ration of its term in number of days to three hundred sixty-five (365) days: Provided, further, That only one documentary stamp tax shall be imposed on either loan agreement, or promissory notes issued to secure such loan.

For purposes of this section, the term debt instrument shall mean instruments representing borrowing and lending transactions including but not limited to debentures, certificates of indebtedness, due bills, bonds, loan agreements, including those signed abroad wherein the object of contract is located or used in the Philippines, instruments and securities issued by the government of any of its instrumentalities, deposit substitute debt instruments, certificates or other evidences of deposits that are either drawing interest significantly higher than the regular savings deposit taking into consideration the size of the deposit and the risks involved or drawing interest and having a specific maturity date, orders for payment of any sum of money otherwise than at sight or on demand, promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation.

legality of the imposition of DST on the whole amount of advances from stockholders. Instead, the CIR solely relied on advancing its theories from what it seems correct by merely reiterating what was written in the Final Demand Letter's Details of Discrepancies and did not anymore present any evidence or argument to provide that the assessment of DST on advances from stockholders for the other taxable years is proper. Hence, the Court Division's finding on the deficiency DST of Lingkod Bayan is upheld.

As to the compromise penalty, the CIR merely quoted the Court Division's ruling thereon, as well as sub-paragraph 5 of paragraph III of Revenue Memorandum Order (RMO) No. 19-2007,[7] without arguing on why a compromise penalty should be imposed on Lingkod Bayan when such is prohibited for by law when not agreed upon by the parties. Pursuant to RMO No. 01-1990, as amended by RMO No. 19-2007, compromise penalties are only suggested in settlement of criminal liability, and may not be imposed or exacted on the taxpayer in the event that a taxpayer refuses to pay the same. The imposition of the same without the conformity of the taxpayer is illegal and unauthorized.[8] Absent any showing that Lingkod Bayan consented to the compromise penalties, the same should not be imposed. Accordingly, this Court holds that the CIR's imposition of compromise penalties, without the consent of Lingkod Bayan, cannot be sustained.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED**. Accordingly, the Decision dated July 29, 2015 and the Resolution dated October 28, 2015 are hereby **AFFIRMED**.

SO ORDERED.

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

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[7] The Consolidated Revised Schedule of Compromise Penalties for Violations of the National Internal Revenue Code.
[8] *Commissioner of Internal Revenue vs. Lianga Bay Logging Co., Inc.,* G.R. No. L-32566, January 21, 1991.

WE CONCUR:

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

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

(joins PJ del Rosario's Concurring and Dissenting Opinion)
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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 En Banc.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 1386** *(CTA Case No. 8554)*
	Present:
- versus -	Del Rosario, *P.J.*, Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, and Manahan, *JJ.*
LINGKOD BAYAN PAWNSHOP CO. INC., *Respondent.*	Promulgated: MAR 21 2017 2:45pm

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CONCURRING AND DISSENTING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* in denying the present Petition for Review, and in affirming the assailed Decision dated July 29, 2015 and the Resolution dated October 28, 2015 of the Court in Division, save however with respect to the imposition of 20% deficiency interest on deficiency Documentary Stamp Tax (DST) and Expanded Withholding Tax (EWT), which I submit should not be imposed against respondent.

This is not the first time I made an opinion that the 20% deficiency interest imposed under Section 249(B) of the National Internal Revenue Code (NIRC) of 1997, as amended, cannot be imposed indiscriminately to all forms of deficiency taxes. I submit that such kind of interest is imposable only on tax specifically covered and defined by the relevant provisions of the NIRC, *i.e., income tax, donor's tax and estate tax.*

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In this regard, I quote below the position I have taken in the consolidated cases of *Commissioner of Internal Revenue vs. Philippine Tobacco Flue-Curing & Redrying Corporation*[1] on the imposition of deficiency interest:

> "xxx I am not unaware of *Paper Industries Corporation of the Philippines vs. Court of Appeals, Commissioner of Internal Revenue, and Court of Tax Appeals (PICOP)*,[2] which somehow made mention of deficiency interest under the NIRC of 1977. I must stress, however, that *PICOP* cannot be relied upon to justify the imposition of deficiency interest on petitioner's excise tax liability. *PICOP* did not state nor resolve the issue whether or not the deficiency interest provided for in Section 249 (B) of the NIRC of 1997, as amended, may be imposed on tax other than donor's, estate, and income taxes. Thus, not having been resolved therein, *PICOP* cannot be considered as a doctrine on the matter. The case of *Office of the Ombudsman vs. Honorable Court of Appeals and Former Deputy Ombudsman for the Visayas Arturo C. Mojica*,[3] is instructive:
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> > "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.
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[1] CTA EB Nos. 1218 and 1220, April 11, 2016. This is consistent with my earlier opinion in *Avon Products Manufacturing, Inc. vs. Commissioner of Internal Revenue, CTA EB No. 1062, January 15, 2016; CIR vs. Staedtler (Philippines), Inc., CTA EB No. 1310, January 28, 2016; Medicard Philippines, Inc. vs. CIR, CTA EB No. 1224, January 29, 2016; Lourdes College vs. CIR, CTA EB No. 1164, February 2, 2016; Philippine Aerospace Development Corporation vs. CIR, CTA EB No. 1035, February 9, 2016; CIR vs. BPI-Philam Life Assurance Corporation, CTA EB No. 1240, February 11, 2016; CIR vs. OfficeMetro Philippines, Inc. (formerly Regus Centres, Inc.), and OfficeMetro Philippines, Inc. vs. CIR, CTA EB Nos. 1210 & 1213, March 7, 2016; and CIR vs. ESS Manufacturing Company, Inc., ESS Manufacturing Company, Inc. vs. CIR, CTA EB Nos. 1169 & 1175, March 30, 2016.*

[2] G.R. Nos. 106949-50, December 1, 1995.

[3] G.R. No. 146486, March 4, 2005.

> **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 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-
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> (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.

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

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the **same** Chapter I of Title X of the NIRC of 1997, as amended."

Also apt is my discussion in my Concurring and Dissenting Opinion in *Philippine Aerospace Development Corporation vs. Commissioner of Internal Revenue*[4] which I quote below:

> Settled is the rule that laws imposing tax is construed strictly against the government and liberally in favor of the taxpayer. **Unless clearly imposed by pertinent provision of law, deficiency interest as an additional tax burden should not simply be presumed. Thus, the obligation to pay deficiency interest may not be applied to taxes other than income tax, donor's tax and estate tax, irrespective of whether an assessment is issued or not. After all, the deficiency tax assessed is still subject to the delinquency interest rate of 20% per annum until fully paid. Truth be told, the delinquency interest rate of 20% is way more than the legal interest of 12% per annum**.

Finally, I would like to re-echo the admonition I made relative to the exercise of the power of taxation *vis-à-vis* the proprietary rights of taxpayers in *Commissioner of Internal Revenue v. Officemetro Philippines, Inc. (formerly REGUS CENTRES, INC.)*[5], which reads:

> **The power of taxation is sometimes called also the power to destroy. Therefore, it should be exercised with caution to minimize injury to the proprietary rights of a taxpayer. It must be exercised fairly, equally and uniformly, lest the tax collector kills the "hen that lays the golden egg."[6] Indeed, the imposition of 20% deficiency interest per annum on a tax not clearly within the context of the law, in addition to 20% delinquency interest per annum <u>and</u> a surcharge of 25% on the amount due under Section 248 of the NIRC of 1997, as amended, is too burdensome for a taxpayer to survive and continue its business affairs.**

In fine, Section 249 (B) of the NIRC is clear and explicit as when deficiency interest may be imposed, i.e., it may be imposed only on *"any deficiency in the tax due as the term is defined in [the National Internal Revenue] Code."* While there are many situations which could give rise to deficiency tax liabilities, **Section 249 (B) of the NIRC <u>qualified</u> the imposition of deficiency interest to "deficiency in the**

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[4] CTA EB No. 1035, February 9, 2016.
[5] CTA EB Nos. 1210 & 1213, dated July 1, 2016.
[6] *Commissioner of Internal Revenue v. SM Prime Holdings, Inc.,* G.R. No. 183505, February 26, 2010, *citing Roxas v. Court of Tax Appeals,* G.R. No. L-25043, April 26, 1968.

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tax due, as the term is defined in the Code." This evidently means that not all situations involving deficiency tax liabilities should be subjected to deficiency interest.

Notably, Sections 248 [Civil Penalties] and 249(C) [Delinquency Interest] of the NIRC, both of which fall under Chapter I of Title X [Statutory Offenses and Penalties], prescribe "Additions to the Tax"; yet, these Sections **did not provide the same qualification** as that which is stated in Section 249(B) of the NIRC. Moreover, Section 248(A) of the NIRC imposes the 25% surcharge simply in addition to the tax required to be paid, and Section 248(B) imposes the penalty of 50% of the tax or of the deficiency tax, **without qualification** similar to that provided in Section 249(B) of the NIRC. In the same vein, delinquency interest provided in Section 249 of the NRIC is imposed **without qualification** on the amount of the tax due, or on the deficiency tax, or on any surcharge or interest thereon. Reasonably construed, in the absence of aforestated qualification, the "additions" to tax apply to all forms of tax.

On the other hand, to impose or demand payment of 20% deficiency interest on all deficiency tax liabilities would render senseless the unequivocal qualification in Section 249(B) of the NIRC that deficiency interest shall be imposed only on *"any deficiency in the tax due as the term is defined in [the National Internal Revenue] Code."* Had it been the intention to impose deficiency interest on all deficiency tax liabilities, this specific qualification would not have been incorporated therein, similar to Sections 248 and 249 (C) of the NIRC.

Since it is only with respect to the donor's tax, income tax and estate tax which incorporate provisions that specifically **define "deficiency"** and considering that Section 249(B) of the NIRC is categorical that deficiency interest shall be imposed only on any deficiency in the tax due **as the term is defined in the NIRC**, I reiterate that the deficiency interest must be imposed only on these three (3) types of taxes. The liability to pay deficiency interest springs from Section 249(B) of the NIRC and its imposition must be strictly exercised in accordance with its precepts. This is consistent with Article 1158 of the Civil Code of the Philippines which provides that "**Obligations derived from law are not presumed**. Only those expressly determined in this Code or in special laws are demandable, and shall be regulated by the precepts of the law which establishes them; xxx xxx xxx."

In sum, deficiency interest may be imposed only on tax specifically covered and defined 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 deficiency DST and EWT assessed against respondent.**

All told, I vote to DENY the Petition for Review of the Commissioner of Internal Revenue, and to AFFIRM the judgment of the Court in Division WITH MODIFICATION relating to the imposition of 20% deficiency interest on deficiency documentary stamp tax and expanded withholding tax, which should appropriately be CANCELLED AND SET ASIDE.

ROMAN G. DEL ROSARIO
Presiding Justice