REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

LOURDES COLLEGE,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

Present:

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

Promulgated:
JUL 28 2016 1:15 p.m.

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RESOLUTION

RINGPIS-LIBAN, ***J.*:**

For resolution the petitioner's "Motion for Reconsideration" filed on March 3, 2016, praying that the Court *En Banc* reconsider and set aside its Decision dated February 2, 2016, and in lieu thereof render judgment nullifying and declaring null and void in its entirety the decision of the CIR on the disputed assessment as well as proceedings conducted thereunder against petitioner.

On April 19, 2016, the Court *En Banc* issued a Resolution ordering respondent Commissioner of Internal Revenue (CIR) to file her Comment on the Motion for Reconsideration within ten (10) days from notice.

On May 10, 2016, the CIR filed a "Motion for Extension of Time to File Comment and/or Opposition."

On May 13, 2016, the CIR filed her "Opposition (RE: Motion for Reconsideration dated 01 March 2016)."

Petitioner argues that the Court *En Banc* committed the following errors: in holding that the ruling of the CIR dated 19 February 2010 was a valid decision on petitioner's appeal from the Final Decision of Disputed Assessment (FDDA) dated 28 December 2009 as amended by the FDDA dated 26 January 2010; in upholding the assessment for donor's taxes; in affirming the CTA Second Division's Decision holding petitioner liable to pay fringe benefit taxes; in sustaining the CTA Second Division's affirmation of the CIR's assessment for expanded withholding taxes; and in affirming the CIR's assessment for delinquency interest.

On the other hand, the CIR counter argues that the arguments raised by petitioner have been discussed and considered by the Second Division of this Court and in the Decision of the Court *En Banc* dated February 2, 2016; that petitioner was never denied due process; that petitioner failed to substantiate its claim for exemption for fringe benefit taxes; that petitioner is duty bound to remit to the government the proper amount of tax withheld; that petitioner failed to discharge the burden of proving its exemption from donor's tax; and that all presumptions are in favor of the correctness of tax assessments.

A perusal of the records shows that the arguments raised by petitioner in the "Motion for Reconsideration" have already been passed upon and considered by the Court *En Banc* in the Assailed Decision. In fact, the line of reasoning and allegations are essentially the same in their Memoranda filed before this Court and in the Court in Division, and in the Petition for Review before this Court.

In *Ferdinand Marcos et al. vs. Hon. Raul Manglapus et al.*[1], the Supreme Court emphasized that "in all motions for reconsideration, the burden is upon the movants, petitioner herein, to show that there are compelling reasons to reconsider the decision of the Court." However, in this case, petitioner did not satisfy this burden.

[1] G.R. No. 88211, October 27, 1989.

Thus, the "Motion for Reconsideration" deserves to be denied for failing to present any legitimate argument which could warrant reconsideration of the Court *En Banc's* Decision dated February 2, 2016.

WHEREFORE, premises considered, the "Motion for Reconsideration" is **DENIED** for lack of merit.

SO ORDERED.

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MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

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

Juanito C. Castañeda, Jr.
(With Separate Concurring Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

(I join PJ's Dissenting Opinion)
ERLINDA P. UY
Associate Justice

(I join J. Castañeda's Separate Concurring Opinion)
CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO – MANALASTAS
Associate Justice

REPUBLIC OF THE PHILIPPINES
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EN BANC

LOURDES COLLEGE, *Petitioner,*	**CTA EB NO. 1164** *(CTA Case No. 8038)*
	Present:
- versus -	Del Rosario, *P.J.,* Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Cotangco-Manalastas, and Ringpis-Liban, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUL 28 2016 1:15 p.m.

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DISSENTING OPINION

DEL ROSARIO, PJ:

I cannot give my assent to the view of the majority that ultimately denies petitioner's Motion for Reconsideration as the motion itself presents an issue about the propriety of the imposition of 20% deficiency interest on basic withholding tax on compensation, expanded withholding tax and fringe benefit tax,[1] which is a compelling reason for the Court *En Banc* to reconsider the assailed Decision.

I reiterate my dissent on the Court *En Banc's* Decision that the 20% deficiency interest imposed on the assessed basic withholding tax on compensation, expanded withholding tax and fringe benefit tax should be cancelled and set aside for such kind of interest is imposable only on tax specifically covered and defined by the relevant provisions of the National Internal Revenue Code (NIRC), *i.e., income tax, donor's tax and estate tax.*

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[1] Motion for Reconsideration of petitioner; *Rollo*, pp. 475-508, 505.

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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*[2] 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)*,[3] 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*,[4] 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**

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[2] 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.*

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

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

> **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-
> >
> > (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, as the term is defined in [the] Code.'**
>
> 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 the **same** Chapter I of Title X of the NIRC of 1997, as amended." *(Emphasis supplied)*

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 withholding tax on compensation, expanded withholding tax and fringe benefit tax assessed against petitioner.**

Also apt is my discussion in my Concurring and Dissenting Opinion in *Philippine Aerospace Development Corporation vs. Commissioner of Internal Revenue*[5] which I quote below:

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[5] CTA EB No. 1035, February 9, 2016.

> 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**.

The power of taxation is sometimes called also the power to destroy. It should, therefore, 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 <u>tax not clearly within the context of the law</u>, in addition to 20% delinquency interest per annum and a surcharge of 25% on the amount due under Section 248 of the NIRC, is too burdensome for a taxpayer to survive and continue with its business affairs.**

All told, I vote to PARTLY GRANT the Motion for Reconsideration of Lourdes College and to AFFIRM the judgment of the Court in Division WITH MODIFICATION relating to the imposition of 20% deficiency interest on withholding tax on compensation, expanded withholding tax and fringe benefit tax which should appropriately be CANCELLED AND SET ASIDE.

ROMAN G. DEL ROSARIO
Presiding Justice

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[6] Roxas vs. Court of Tax Appeals, G.R. No. L-25043, April 26, 1968.

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COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** JUL 28 2016 1:15 p.m.

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SEPARATE CONCURRING OPINION

CASTAÑEDA, JR., *J.*:

I concur with the decision of J. Ringpis-Liban which denied the Petition for Review and affirmed *in toto* the December 12, 2013 Decision and the April 11, 2014 Resolution of the Court in Division.

Concerning the imposition of deficiency interests discussed by JJ. Del Rosario and Uy in their Concurring and Dissenting Opinions, it bears stressing that Section 247(a) in relation to Section 249(B) of the 1997 NIRC allows the imposition of deficiency interest on *all* deficiency taxes.

On this point, the Court *En Banc* recently held in *Commissioner of Internal Revenue v. Philippine Tobacco Flue-Curing and Redrying Corporation*[1] (Philippine Tobacco Flue-Curing and Redrying Corporation):

[1] CTA EB Case No. 1218 (CTA Case No. 7991) promulgated April 11, 2016.

"The law is clear. There is no room left for interpretation.

Section 247(a) of the 1997 NIRC provides:

TITLE X
STATUTORY OFFENSES AND PENALTIES

CHAPTER I
ADDITIONS TO THE TAX

SECTION 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." (Emphasis and underscoring supplied)

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

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

Accordingly, the additions to the tax or deficiency tax such as, among others, Civil Penalties or Surcharges under Section 248, Deficiency Interest under Section 249(B), Delinquency Interest under Section 249(C), and Interest on Extended Payment under Section 249(D) are applicable to the deficiency income tax, value-added tax, withholding tax on compensation, expanded withholding tax, documentary stamp tax, and inspection fees of PTFC.

It may be argued that because there are no definitions for deficiency withholding tax, value-added tax, percentage tax, excise tax or documentary stamp tax unlike those provided for income tax in Section 56(B), for estate tax in Section 93 and for donor's tax in Section 104 then no deficiency interest can be imposed on other kinds of taxes provided under the 1997 NIRC. The lacuna or the missing definition was precisely addressed by Section 247(a) when this provision was first legislated as a revision to the 1977 NIRC and then subsequently reenacted in the 1997 NIRC.

The Supreme Court discussed the history of this provision in *Paper Industries Corporation of the Philippines (PICOP) v. Court of Appeals, et al.*

In the case, the Supreme Court held that PICOP was *not* liable for interest and surcharge on the unpaid transaction tax because the 1977 Tax Code applicable at that time authorized the imposition of interest and surcharge *only* on taxes within Title II of the code (Income Tax). Therefore, since transaction tax was embraced under a *different* title, Title V (Taxes on Business), the Court concluded that said transaction tax was not one of the taxes on which interest and surcharge could be imposed. *Nonetheless, it further expounded that this inadvertence in the 1977 NIRC was cured subsequently by fiat.* Thus:

> 'The CIR, both in its petition before the Court of Appeals and its Petition in the instant case, points to Section 51(e) of the 1977 Tax Code as its source of authority for assessing a surcharge and penalty interest in respect of the thirty-five percent (35%) transaction tax due from Picop.
>
> <u>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*.</u>" 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. <u>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</u>.
>
> <u>**It is not without reluctance that we reach the above conclusion on the basis of what may well have been an**</u>

inadvertent error in legislative draftsmanship, a type of error common enough during the period of Martial Law in our country. Nevertheless, we are compelled to adopt this conclusion. We consider that the authority to impose what the present Tax Code calls (in Section 248) *civil penalties* consisting of additions to the tax due, must be expressly given in the enabling statute, in language too clear to be mistaken. The grant of that authority is not lightly to be assumed to have been made to administrative officials, even to one as highly placed as the Secretary of Finance.

The state of the present law tends to reinforce our conclusion that Section 51 (c) and (e) of the 1977 Tax Code did not authorize the imposition of a surcharge and penalty interest for failure to pay the thirty-five percent (35%) transaction tax imposed under Section 210 (b) of the same Code. The corresponding provision in the *current* Tax Code very clearly embraces failure *to pay all taxes imposed in the Tax Code*, without any regard to the Title of the Code where provisions imposing particular taxes are textually located. Section 247 (a) of the NIRC, as amended, reads:

> Title X
> Statutory Offenses and Penalties
>
> Chapter I
> Additions to the Tax
>
> SECTION 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. . . .
>
> SECTION 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 tax within the time prescribed for its payment; or
>
> xxx xxx xxx

> (c) the penalties imposed hereunder shall form part of the tax and the entire amount shall be subject to the interest prescribed in Section 249.
>
> SECTION 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 regulations*, from the date prescribed for payment until the amount is fully paid. . . ..' (Emphases supplied)

In other words, Section 247 (a) of the current NIRC supplies what did not exist back in 1977 when Picop's liability for the thirty-five percent (35%) transaction tax became fixed. **We do not believe we can fill that legislative *lacuna* by judicial fiat. There is nothing to suggest that Section 247(a) of the present Tax Code, which was inserted in 1985, was intended to be given retroactive application by the legislative authority**.' (Underscoring and emphases supplied; citations omitted)

In fact, this Court *En Banc*, through the *ponencia* of J. Mindaro-Grulla in *Takenaka Corporation Philippine Branch v. CIR*, relied upon the same *PICOP* holding. To stress its point, the Court cited *PICOP* and stated that the deficiency interest imposed under Section 249(B) of the 1997 NIRC does *not* apply merely to deficiency income, deficiency estate and deficiency donor's tax *by virtue* of Section 247(a) of the same law. It reads:

> 'Anent the issue on the applicability of deficiency interest under Section 249(B) of the NIRC of 1997, as amended, only to deficiency income tax, deficiency estate tax, and deficiency donor's tax, as held by the Court a quo, petitioner asseverates that such an interpretation would result to absurd conclusions as it would mean triple imposition of 20% interest under Sections 249(A), 249(B), and 249(C) of the NIRC of 1997, simultaneously, effectively giving rise to at least 60% interest *per annum.*
>
> We agree with petitioner.
>
> The issue is no longer novel as the same was sufficiently discussed by the Supreme Court in *Paper Industries Corporation of the Philippines (PICOP) v. Court of Appeals, et al.* The Supreme Court held that

> Section 247(a) of the NIRC of 1977, as amended **[now Section 247(a) of the NIRC of 1997, as amended]**, "very clearly embraces failure to pay **all taxes imposed in the Tax Code**, without any regard to the Title of the Code where provisions imposing particular taxes are textually located.' (emphases and underscoring supplied; citations omitted)
>
> In sum, PTFC's deficiency income tax, VAT, withholding tax on compensation, EWT, DST, and inspection fees were properly subjected to deficiency interest pursuant to Section 249 of the 1997 NIRC." (Citations omitted)

There is no compelling reason to deviate from our recent holding in *Philippine Tobacco Flue-Curing and Redrying Corporation.*[2]

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

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[2] *Id.*