REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

PHILIPPINE AEROSPACE DEVELOPMENT CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1035
(CTA Case No. 7830)

Present:
DEL ROSARIO, *P.J.,*
CASTAÑEDA JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

MAR 11 2015
10:51 a.m.

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DECISION

RINGPIS-LIBAN, *J.*:

Before the Court is a Petition for Review filed on July 22, 2013 against the Resolution of this Court's Special First Division denying on June 5, 2013 the petitioner's Motion for Partial Reconsideration of the First Division's Decision of December 11, 2012.

THE PARTIES

The petitioner is a government owned and controlled corporation created and existing by virtue of Presidential Decree No. 286, as amended. It holds office at PADC Hangar 2, General Aviation Area, Old MIA Road, Pasay City. It may be served with court processes and notices through its counsel, the Office of the Government Corporate Counsel, at the 3rd Floor, MWSS Building, Katipunan Road, Balara, Quezon City.

The respondent is the duly-appointed Commissioner of the Bureau of Internal Revenue (BIR), vested with authority to, *inter alia*, decide refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (NIRC) and other laws administered by the BIR, and holding office at the BIR National Office Building, Diliman, Quezon City.

THE COURT'S JURISDICTION

On June 20, 2013, PADC received a copy of the Special First Division's Resolution dated June 5, 2013. Under Section 3(b), Rule 8 of the Revised Rules of the CTA (A.M. No. 05-11-07-CTA),[1] PADC had fifteen (15) days from receipt of the said Resolution, or until July 5, 2013, within which to appeal to the Court En Banc by way of a petition for review.

On July 5, 2013, PADC filed a motion for extension of time for fifteen (15) days or until July 20, 2013, within which to file its petition for review. Under Section 3(b), Rule 8 of the Revised Rules of the CTA, the Court may grant an additional period not exceeding fifteen (15) days from the expiration of the original period within which to file the petition for review. Since the motion for extension of time was timely filed, this extension was granted by the CTA En Banc per Minute Resolution (Resolution No. 01-04-05, as amended by En Banc Resolution No. 02-2007) dated July 8, 2013. As the last day of the extended period, July 20, 2013, fell on a Saturday, the Petition for Review was filed on July 22, 2013, the next working day, applying Section 1, Rule 22 of the Rules of Court. Hence, the Petition was timely filed.

THE FACTS

On March 1, 2005, the CIR, through Revenue Region 8, issued Letter of Authority No. 45299 authorizing Revenue District Office 51, Pasay City, to examine PADC's books of accounts and other records covering its internal revenue taxes for January to December 2003.

On December 27, 2006, PADC received a Preliminary Assessment Notice (PAN) dated December 22, 2006, assessing PADC the following for 2003: (1) Deficiency Income Tax of ₱26,923,253.31, and (2) Deficiency Value Added Tax (VAT) of ₱13,806,086.05.

This was followed on January 12, 2007 by a Formal Assessment Notice (FAN), received on the same date, assessing PADC the following: (1)

[1] Dated November 22, 2005, and which took effect starting December 15, 2005.

Deficiency Income Tax of ₱27,206,784.07, and (2) Deficiency VAT of ₱13,948,613.42.

On February 16, 2007, PADC filed it protest against the Formal Assessment Notice, by letter dated February 15, 2007.

On March 15, 2007, PADC filed a supplement to its protest, which expounded the bases of its protest and included supporting documents.

On September 11, 2007, PADC received a letter dated September 5, 2007 from the BIR Regional Director of Revenue Region 8 denying its protest.

By letter dated October 10, 2007, PADC moved for reconsideration of the denial of its protest.

By letter dated November 5, 2007, BIR Revenue Region 8 informed PADC that the tax docket of the case would be referred to Revenue District Office No. 51, Pasig City, for verification, evaluation and appropriate action.

On August 8, 2008, PADC received respondent's Final Decision on Disputed Assessment (FDDA) dated August 1, 2008, denying PADC's protest for alleged failure to submit supporting documents. BIR Revenue Region 8 then assessed PADC the following deficiency taxes:

Income Tax	₱ 32,650,996.77
VAT	16,661,370.88
Expanded Withholding Tax	728,503.90
Withholding Tax on Compensation	5,941,554.64
TOTAL	₱ 55,982,426.19

On September 8, 2008, PADC filed a Petition for Review against the FDDA.

On December 11, 2012, the CTA First Division issued its Decision, which stated in part:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, the Final Decision on Disputed Assessment issued by respondent against petitioner covering deficiency income tax, value-added tax, expanded withholding tax, and withholding tax on compensation

for taxable year 2003 is hereby **AFFIRMED with MODIFICATIONS**; and consequently, petitioner is **ORDERED TO PAY** the subject taxes in the reduced aggregate amount of **THIRTY ONE MILLION TWO HUNDRED SIXTEEN THOUSAND SEVEN HUNDRED ONE PESOS & 45/100 (₱31,216,701.45)**, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

	Basic	**25% Surcharge**	**Total**
Income Tax	₱14,068,418.34	₱3,517,104.59	₱17,585,522.93
Value-added Tax	7,443,795.01	1,860,948.75	9,304,743.76
Expanded Withholding Tax	78,026.62	94,506.65	472,533.27
Withholding Tax on Compensation	3,083,121.19	770,780.30	3,853,901.49
Total	₱24,973,361.16	₱6,243,340.29	₱31,216,701.45

In addition, petitioner is likewise **ORDERED TO PAY** (a) deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income tax of ₱14,068,418.34 computed from April 15, 2004, on expanded withholding tax of ₱378,026.62 and on withholding tax on compensation of ₱3,083,121.19 computed from January 15, 2004, and on value-added tax of ₱7,443,795.01 computed from January 25, 2004, until full payment thereof pursuant to Section 249(b) of the NIRC of 1997, as amended; and (b) delinquency interest at the rate of 20% per annum on the total amount of ₱31,216,701.45 and on the 20% deficiency interest which have accrued as afore-stated, computed from September 3, 2008 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED."

On January 17, 2013, PADC moved for the partial consideration of the First Division's Decision.

On June 5, 2013, the Special First Division denied the PADC's motion for partial Reconsideration, for lack of merit.

On June 20, 2013, PADC received a copy of the Special First Division's Resolution dated June 5, 2013.

On July 5, 2013, PADC filed a motion for extension of time (until July 20, 2013) within which to file its petition for review with the CTA *En Banc.* As stated above, this extension was granted by this Court, and the instant petition was filed on July 22, 2013, which was the next working day after July 20, 2013, which fell on a Saturday.

THE ISSUES

The petition raises two issues, as follows:

First, whether or not the assessments against PADC have factual and legal bases.

Second, whether or not the imposition of simultaneous deficiency and delinquency interests are allowed by law.

APPLICABLE LAW

The assessment of deficiency taxes against the petitioner were made by the respondent under the Tax Reform Act of 1997 (NIRC), as amended. This same law is applicable to the case and shall be applied in the resolution of the instant petition.

THE RULING OF THE COURT

Petitioner assails the alleged lack of legal and factual bases of the assessments made by the respondent against it. The meticulous and detailed evaluation of this allegation by the First Division established only its own baselessness.

According to the First Division, petitioner had only itself to blame, for, among others, failure "to substantiate the amount of inventories allegedly turned over by its former subsidiaries";[2] "failure to reconcile the discrepancy of P18,493,926.37"[3] in purchases from Rolls-Royce and to overcome the presumptive correctness of the tax assessment; its admission of the use of the accrual method;[4] failure to show that director's fees formed part of the employees' compensation income subjected to withholding tax[5] and that director's fees paid to non-employees were subject to expanded withholding

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[2] Decision, p. 12.
[3] *Ibid.*
[4] *Ibid.*, pp. 13-16.
[5] *Ibid.*, p. 21.

taxes;[6] failure to subject to EWT consultants' fees in the month following the accrual;[7] and income not declared or accounted for.[8]

We see no reason to disturb the holdings on this issue by the First Division, as upheld by the Special First Division. It is well for petitioner to remember the rule that tax deductions, being in the nature of tax exemptions, are to be construed in *strictissimi juris* against the taxpayer, for this rule is well settled.[9] Moreover, it has been said that:

> "Corollary to this rule is the principle that when a taxpayer claims a deduction, he must point to some specific provision of the statute in which that deduction is authorized and must be able to prove that he is entitled to the deduction which the law allows. An item of expenditure, therefore, must fall squarely within the language of the law in order to be deductible.[10]"

An examination of the instant petition reveals that the petitioner was generally remiss in adducing specific legal provisions authorizing entitlement to deductions. It is not for this Court to conduct the research necessary to establish the legal bases of the petitioner's claims, for that burden is for him alone to discharge, failure in which would render its claims self-serving and leave this Court no choice but to uphold the presumptive correctness of the assessment. Petitioner should be reminded that "tax assessments by tax examiners are presumed correct and made in good faith, and all presumptions are in favor of the correctness of a tax assessment unless proven otherwise."[11] The burden of proof is on the taxpayer to show the contrary.[12]

Indeed, the dissent of former First Division Chairman and Presiding Justice Ernesto D. Acosta does not pertain to the matter of the alleged lack of legal and factual bases of the assessments *per se*, but rather to the second issue in the instant petition, which is the propriety of the simultaneous imposition of deficiency interest and delinquency interest.

We now proceed to this second issue.

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[6] *Ibid.*

[7] *Ibid.*, pp. 16-17.

[8] *Ibid.*, p. 23.

[9] *Commissioner of Internal Revenue v. General Foods, (Phils.) Inc.*, G.R. No. 143672, April 24, 2003, 401 SCRA 545, 550.

[10] *H. Tambunting Pawnshop, Inc. v. Commissioner of Internal Revenue*, G.R. No. 173373, July 29, 2013, citing *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, No. L-26911, January 27, 1981, 102 SCRA 246, 253.

[11] *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*, G.R. No. 168498, April 24, 2007, citing *Commissioner of Internal Revenue v. Hantex Trading Co., Inc.*, G.R. No. 136975, March 31, 2005, 454 SCRA 301, 329.

[12] *Collector of Internal Revenue v. Bohol Land Transportation Co.*, G.R. Nos. L-13099 and L-13462, April 29, 1960, en banc.

This is hardly the first case where deficiency interest and delinquency interest were simultaneously imposed by this Court. In 2006, this Court rendered a decision imposing a 20% interest on deficiency excise tax and a 20% delinquency interest per annum on the total tax due from Pilipinas Shell Petroleum Corporation, pursuant to Sections 248 and 249 of the NIRC of 1997.[13] In 2007, this Court decided similarly against Petron Corporation,[14] and against the Dumaguete Cathedral Credit Cooperative. Although the two decisions of this Court *En Banc* against the fuel companies were subsequently reversed by the Supreme Court, it was not because of the imposition of simultaneous deficiency and delinquency interests, but because the Supreme Court overruled the BIR's disallowance of the two petroleum firms' use of Tax Credit Certificates in payment of excise taxes, which disallowance resulted in tax deficiencies; inasmuch as the Supreme Court had ruled that the firms had duly settled their tax liabilities with the use of the TCCs, it saw no need to further discuss the propriety of the imposition of twin interests, which had been mooted.[15]

On the other hand, in *Dumaguete Cathedral Credit Cooperative v. CIR*, in the reversal of this Court's ruling against the credit cooperative, the issue of simultaneous deficiency and delinquency interests was more central, but the reversal was granted on the basis of the statutory preferential tax treatment accorded to cooperatives and their members; inasmuch as deficiency withholding taxes did not arise in the case, there could be no deficiency interest thereon, and neither could there be delinquency interest.[16]

The Special First Division provided a clear explanation of the simultaneous imposition of deficiency and delinquency interests based on the NIRC, albeit the only jurisprudential support cited therefor was this Court's 2012 ruling in *Takenaka Corporation Philippine Branch v. CIR*[17] only, plus a brief quotation from Justice Florentino P. Feliciano's *ponencia* in *PICOP v. Court of Appeals*.[18]

In *PICOP*, the Court of Appeals had found PICOP liable for 20% interest per annum on deficiency income tax, and a surcharge of 10% on the same interest. *PICOP*, however, was decided on the basis of the 1977 Tax Code (P.D. No. 1154).

[13] CTA EB Case No. 64, April 28, 2006.
[14] CTA EB Case No. 238, October 30, 2007.
[15] *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue*, G.R. No. 172598, December 21, 2007, and *Petron Corporation v. Commissioner of Internal Revenue*, G.R. No. 180385, July 28, 2010.
[16] *Dumaguete Cathedral Credit Cooperotive v. Commissioner of Internal Revenue*, G.R. No. 182722, January 2010.
[17] CTA EB Case No. 7701, September 4, 2012.
[18] Apparently, *PICOP v. Court of Appeals, Commissioner of Internal Revenue and Court of Tax Appeals*, G.R. Nos. 106949-50, December 1, 1995, en banc.

The instant petition is governed by the Tax Reform Act of 1997 (R.A. No. 8424), as amended. Chapter I of Title X of this law prescribes additions to the tax or deficiency tax as penalties. Section 247(a) provides that the additional amounts "shall be collected at the same time, in the same manner and as part of the tax."

Section 249(c)(3) of this law clearly provides that delinquency interest of 20% per annum shall be assessed and collected in case of failure to pay a deficiency tax, or any surcharge or interest on such deficiency tax, and that this delinquency interest shall form part of the tax. It is thus evident that in this contemplated situation – where the taxpayer fails to pay a deficiency tax, or any surcharge or interest on such deficiency tax, on the due date appearing in the notice or demand – delinquency interest and deficiency tax interest are to be simultaneously assessed and collected.

The deficiency tax interest "shall be assessed and collected from the date prescribed for its payment until the full payment thereof" (Section 249[B]). If this deficiency interest is not paid on the date prescribed, then it shall be subject to delinquency interest.

In his dissent, former Presiding Justice Acosta, after quoting the provisions of Section 249(A), (B) and (C) of the NIRC, opined:

> "Although a reading of the same would allow the interpretation of a simultaneous imposition of the deficiency interest and delinquency interest, I submit my humble opinion that it is not the intent of the law to impose such an undue amount of interest on any unpaid tax due to the Government. Clearly, the imposition of at least 40% per annum interest on any unpaid tax is grossly excessive and unjust.[19]"

In support of this position, Presiding Justice Acosta cited the following jurisprudence: *Jamora, et al. v. Meer, at al.,*[20] *Philippine Refining Company v. Court of Appeals,*[21] and *Dr. Felisa L. Vda de San Agustin v. Commissioner of Internal Revenue.*[22] The first two of these three cases, however, were decided before the Tax Reform Act of 1997.

In the third case of *Vda de San Agustin*, on the other hand, for some reason not indicated in the decision, or perhaps because of oversight, no delinquency interest was assessed by the BIR. As there was no issue raised

[19] Concurring and Dissenting Opinion of Presiding Justice Ernesto D. Acosta, p. 3.
[20] 74 Phil. 22 (1942).
[21] G.R. No. 118794, May 8, 1996.
[22] G.R. No. 138485, September 10, 2001.

regarding delinquency interest, all that CTA and the Supreme Court were able to uphold was the assessment of deficiency tax, including deficiency interest. Thus, *Vda de San Agustin* is not at all decisive of the propriety of the simultaneous imposition of delinquency interest with deficiency interest.

The petitioner, unfortunately, relied exclusively upon Presiding Justice Acosta's dissenting opinion and showed no effort in its petition to buttress it with additional and more authoritative jurisprudence.

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*,[23] where the Supreme Court upheld a 2011 decision of this Court[24] affirming the imposition of delinquency interest under Section 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.*[25]

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*,[26] 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.*[27]

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*

[23] G.R. No. 197117, April 10, 2013.
[24] In CTA EB Case No. 563, March 1, 2011 Decision and May 27, 2011 Resolution.
[25] G.R. No. 170257, September 7, 2011.
[26] G.R. No. 166786, May 3, 2006.
[27] G.R. No. 119122, August 8, 2000.

Court of Tax Appeals.[28] 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."[29] 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,"[30] and the rule is that "equity follows the law."[31]

Ergo, on this second issue, as in the first, the Court finds it proper to sustain the Resolution of the Special First Division.

WHEREFORE, premises considered, the assailed Resolution of the Special First Division is **AFFIRMED** *in toto*, and the instant petition for review is **DENIED** for lack of merit.

SO ORDERED.

Ma. Belen S. L.
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[28] G.R. Nos. L-27752-53, August 30, 1971, 40 SCRA 416, en banc. See also *Central Azucarera Don Pedro v. Court of Tax Appeals and Commissioner of Internal Revenue*, G.R. Nos. L-23236 & L-23254, 31 May 1967, 20 SCRA 344.
[29] Petition for Review, p. 5.
[30] *Pacita David-Chon v. Court of Appeals and Phil. Rabbit Bus Lines, Inc.*, G.R. No. 105294, February 26, 1997, citing *Causapin v. Court of Appeals*, 233 SCRA 615, 625, July 4, 1994.
[31] *Philippine Rabbit Bus Lines, Inc. v. Hon. Ludivico D. Arciaga, et al.*, G.R. No. L-29701, March 16, 1987.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

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

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ROMAN G. DEL ROSARIO
Presiding Justice