REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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COMMISSIONER OF INTERNAL REVENUE, Petitioner,

- versus -

FILPRIDE RESOURCES INCORPORATED, Respondent.

CTA EB No. 1134
(CTA Case No. 8233)

Present:

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

Promulgated:

MAY 02 2016 3:10 p.m.

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RESOLUTION

UY, *J.*:

For resolution is petitioner's **"MOTION FOR RECONSIDERATION (RE: Decision dated 27 November 2015)"** filed on December 21, 2015, with respondent's **"COMMENT/OPPOSITION [To Petitioner's Motion for Reconsideration]"** filed on January 8, 2016, praying for the setting aside of the Court *En Banc*'s Decision promulgated on November 27, 2015, the dispositive portion of which reads:

> "**WHEREFORE**, in the light of the foregoing considerations, the instant Petition for Review is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

In her Motion, the petitioner Commissioner of Internal Revenue (CIR) contends that the assessments issued against respondent Filpride Resources, Inc. (Filpride) are valid and lawful, that assessments are presumed correct and made in good faith; and that the burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the CIR is wrong but the taxpayer is right. Thus, according to petitioner CIR, dereliction on the part of respondent Filpride to satisfactorily overcome the presumption of regularity and correctness of the assessment will justify the judicial upholding of said assessment notice.

The CIR reiterates that (1) respondent Filpride's claim that the discrepancy of 1,396,695.02 liters was directly delivered to its customers is not tenable considering that the arrival date of the fuel per IEIRD with SN 69914783 is March 20, 2006, while the date per sales invoice issued to Sea Oil Philippines is December 18, 2006, and the Withdrawal Certificate No. WCP2005 00065531 is dated December 17, 2006 or the same date appearing per Lighter Loading/Delivery Report; (2) the discrepancy on respondent Filpride's sales to Manila International Airport Authority amounting to ₱10,168,674.56 was assessed pursuant to Section 32 of the NIRC; and (3) respondent Filpride's claim for deduction of income payments amounting to ₱6,839,322.38 were not subjected to withholding tax, for lack of substantiation.

Allegedly, the following amounts were properly assessed of deficiency VAT, to wit: *(a)* discrepancy amounting to ₱2,595,097.18 as per sales reported in respondent Filpride's VAT Return and Income Tax Return; *(b)* undeclared receipts of imported diesel amounting to ₱39,735,937.36; *(c)* understatement of sales of MIAA amounting to ₱10,168,674.56; and *(d)* Filpride's sales to government per Summary List of Sales amounting to ₱149,137,352.78 with a corresponding output VAT at the rate of 7% only; and that the following input taxes were properly disallowed: *(i)* input tax from Herma Shipping and Transport Corp in the amount of ₱54,124.39 does not pertain to taxable year 2006; *(ii)* input tax from local purchases amounting to ₱643,883.16 supported by invalid invoices and/or official receipts; and *(iii)* discrepancy on the claim for VAT credits in the amount of ₱57,367.39.

Finally, the CIR restates that Filpride has withholding tax still due and unpaid in the amount of ₱68,393.22; thus it was properly assessed pursuant to Section 57(B) of the NIRC.

On the other hand, respondent Filpride contends that the petitioner CIR's Motion for Reconsideration is a mere rehash of its Petition for Review.

Moreover, respondent Filpride asserts that while it is true that tax assessments issued by the Bureau of Internal Revenue enjoy the presumption of being correct, such presumption is disputable and must give way to testamentary and documentary evidence; and in this case, whatever presumption the said assessment enjoyed was clearly and unequivocally overcome by the pieces of evidence presented and offered by respondent Filpride during trial.

Respondent Filpride maintains that the assessments for deficiency income tax, value-added tax, and withholding tax, were correctly cancelled and partially terminated, considering that the alleged discrepancy arose merely from the erroneous conversion of the weight of fuel from kilograms to liters and that respondent Filpride was able to prove that the assessment failed to account for the deliveries made directly to its clients.

As regards the issue of alleged understatement of sales to MIAA, respondent Filpride claims that it arose from the inclusion of certain Certificates of Final Tax Withheld at Source pertaining to sales made in the years preceding the assessment. For the deficiency income tax in relation to payments allegedly not subjected to Expanded Withholding Tax, respondent Filpride points out that the same arose out of a mere timing difference in the remittance of the said withholding tax.

THE COURT *EN BANC'S* RULING

The instant Motion for Reconsideration lacks merit.

A cursory reading of the CIR's Motion for Reconsideration shows that the arguments raised therein are exactly the same as those stated in her Petition for Review dated August 27, 2013, which the Court *En Banc* has sufficiently passed upon and exhaustively discussed in the assailed Decision.

To reiterate, a careful review of the factual findings of the Court in Division clearly shows that it is well-supported by law and evidence on record. The CIR, however, failed to show error in the said findings.

Indeed, while tax assessments by tax examiners are presumed correct and made in good faith and that all presumptions are in favor of the correctness of tax assessments; such presumption is not conclusive as it may be rebutted by competent and satisfactory evidence to the contrary. In other words, the presumption of correctness stands, but so long as it is not contradicted or rebutted. Thus, considering that respondent Filpride was able to present sufficient proof in refuting the subject assessments, albeit partially, the presumption of correctness and validity of assessment, being merely *prima facie*, must perforce yield to the evidence on record.

As a corollary, while it may be argued by petitioner CIR that the subject assessments have legal and factual bases, part of such legal and factual bases are found to be erroneous.

WHEREFORE, in light of the foregoing considerations, the petitioner CIR's Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

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

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
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

(On Leave)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 1134** (CTA Case No. 8233)
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- versus -	Del Rosario, *P.J.*, Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Cotangco-Manalastas, *and* Ringpis-Liban, *JJ.*
FILPRIDE RESOURCES INCORPORATED, Respondent.	Promulgated: MAY 02 2016 3:10 p.m.

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CONCURRING AND DISSENTING OPINION

DEL ROSARIO, PJ:

I concur with the *ponencia* in denying the "Motion for Reconsideration (RE: Decision dated 27 November 2015)" filed by the Commissioner of Internal Revenue for lack of merit.

Nonetheless, upon review of the case records, it appears that 20% deficiency interest was imposed on the assessed basic expanded withholding tax (EWT), which petitioner seeks to collect from respondent, *albeit* based on the original assessed amount.[1]

In this regard, I quote below the recent position I have taken in the consolidated cases of *Commissioner of Internal Revenue vs.*

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[1] Petition for Review, CTA En Banc Rollo, p. 12.

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 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**

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[2] CTA EB Nos. 1218 and 1220, April 11, 2016.
[3] G.R. Nos. 106949-50, December 1, 1995.
[4] G.R. No. 146486, March 4, 2005.

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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)

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

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 the basic EWT assessed against respondent**.

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:

> 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.**

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

All told, I vote to deny the Motion for Reconsideration of the Commissioner of Internal Revenue for lack of merit, and to affirm the judgment of the Court in Division with modification relating to the imposition of 20% deficiency interest on the assessed basic EWT, which should appropriately be cancelled and set aside.

ROMAN G. DEL ROSARIO
Presiding Justice