Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

LIQUIGAZ PHILIPPINES CORPORATION, ***Petitioner,***	**CTA EB CASE No. 1117** (CTA CASE No. 8149)
-versus-	
COMMISSIONER OF INTERNAL REVENUE, ***Respondent.***	

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COMMISSIONER OF INTERNAL REVENUE ***Petitioner,***	**CTA EB CASE No. 1119** (CTA CASE No. 8149)
-versus-	*Present*: **DEL ROSARIO, P.J, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, and RINGPIS-LIBAN, *JJ.***
LIQUIGAZ PHILIPPINES CORPORATION, ***Respondent.***	Promulgated: JUN 03 2016 3:45 p.m.

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AMENDED DECISION

MINDARO-GRULLA, J.:

Before the Court *En Banc* is a Motion for Reconsideration[1] filed by the Commissioner of Internal Revenue (CIR) and the Motion for Partial Reconsideration[2]

[1] Filed on October 21, 2015.
[2] Filed on October 28, 2015.

filed by Liquigaz Philippines Corporation (LPC), seeking to set aside this Court's Decision promulgated on September 21, 2015, the dispositive portion of which reads:

> "**WHEREFORE**, in the light of the foregoing considerations, the Petition for Review docketed as CTA EB No. 1119 is hereby **DENIED** for lack of merit.
>
> On the other hand, the Petition for Review docketed as CTA EB No. 1117 is hereby **PARTLY GRANTED.**
>
> Accordingly, the Decision dated June 24, 2013 of the Court in Division in CTA Case No. 8149 is hereby **MODIFIED** to read as follows:
>
> > '**WHEREFORE**, premises considered, the Petition for Review is hereby **PARTLY GRANTED**. The assessments issued by respondent against petitioner covering deficiency income tax, value-added tax, expanded withholding tax and withholding tax on compensation for taxable year 2006 are hereby **AFFIRMED** with **MODIFICATIONS**. Accordingly, petitioner is hereby **ORDERED** to **PAY** respondent the reduced amount of **₱81,806,081.69**, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, computed as follows:

Tax Type	Basic Deficiency	25% Surcharge	Total
Income Tax	₱ 55,939,514.83	₱ 13,984,878.71	₱ 69,924,393.54
Value-Added Tax	5,774,369.52	1,443,592.38	7,217,961.90
Expanded Withholding Tax	2,642,579.68	660,644.92	3,303,224.60
Withholding Tax on Compensation	1,088,401.32	272,100.33	1,360,501.65
Total	**₱ 65,444,865.35**	**₱ 16,361,216.34**	**₱ 81,806,081.69**

> > In addition, petitioner is hereby **ORDERED** to **PAY**:
> >
> > a) Deficiency interest under Section 249(B) of the NIRC of 1997 at the rate of twenty percent (20%) per annum on the basic deficiency income tax of ₱69,924,393.54,c

including the 25% surcharge, accruing from April 15, 2007 and until October 31, 2009;

b) Delinquency interest under Section 249(C) of the same Code of 20% per annum, imposed as follows: (1) to the said total amount of ₱69,924,393.54, plus the deficiency interest imposed under the said Section 249(B) beginning November 1, 2009 until full payment thereof; and (2) to the said amounts of ₱7,217,961.90, ₱3,303,224.60, and ₱1,360,501.65, respectively representing the amounts of deficiency VAT, deficiency EWT, and deficiency WTC, commencing from November 1, 2009 until the same are fully paid.

SO ORDERED.'

In view of the partial payment of LPC in the amount of ₱54,806,640.74, LPC is hereby **ORDERED TO PAY** the amount of ₱148,034,009.06, plus delinquency interest at the rate 20% *per annum* from July 19, 2013 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997.

SO ORDERED."

In her Motion, CIR insists that LPC is liable for deficiency value-added tax (VAT) for taxable year 2006 as the deficiency VAT assessment was allegedly the result of unrecorded sales on underclaimed importation in the amount of ₱55,614,853.52. Moreover, CIR asserts that Revenue Regulation (RR) No. 12-99 does not limit the imposition of the deficiency interest only up to the time when the taxpayer is required to pay the tax after being informed thereof.

In its Comment, LPC stresses that the assessment for deficiency VAT resulting from unrecorded sales on underclaimed importation is based on mere presumption as the CIR failed to present in evidence the documents upon which its assessment was based and avers that the Court did not err in holding that RR No. 12-99 limits the imposition of deficiency interest only up to the time when the taxpayer is required to pay the tax after being informed thereof.

In its Motion for Partial Reconsideration, LPC asserts that the Final Assessment Notice (FAN) and Final Letter of Demand (FLD) are null and void, pointing out that the BIR conducted a mere table audit, which is proscribed by law; that the CIR failed to consider the supporting documents submitted by LPC in support of its protest, in violation of due process; and that the CIR failed to inform LPC of the facts and the law on which the assessment is based. Furthermore, LPC submits the application of Tender of Excluded Evidence as this Court may allow reopening of trial for the reception of additional evidence even after promulgation of judgment. LPC also asserts that the period to assess deficiency VAT for the second quarter of 2006, and Expanded Withholding Tax (EWT) and withholding tax on compensation (WTC) for the months of January to September 2006 have already prescribed thus imputing the entire alleged deficiency VAT, EWT and WTC to unprescribed quarters and months of taxable year 2009 has no basis. In addition, LPC claims that the alleged deficiency WTC has been duly explained and accounted for; that the alleged deficiency EWT and income tax have been disputed by evidence; that the alleged deficiency VAT is unfounded; and that the imposition of 25% surcharge is improper. Lastly, LPC insists that the partial payment should be applied to the principal deficiency and not to the entire tax liability, including interests and penalties.

In her Comment, CIR counters that the requirement of due process was properly complied with in issuing the FAN and FLD. Moreover, CIR contends that any question pertaining to the validity of the resolution on the denial of the Tender of Excluded Evidence cannot be ventilated in the Petition for Review, much less the subject of the Motion for Partial Reconsideration.

We rule.

The arguments proffered by LPC and CIR in their respective Motions are mere rehash of the arguments raised before the Court in Division and *En Banc*, which were thoroughly and exhaustively passed upon except on the argument by LPC that mere table audit is proscribed by law.

It must be emphasized that there was no finding that the tax examiner made a table audit just because she did not go to the office of LPC making the assessment. It must be noted that she made mention about a subpoena for the production of records.

Moreover, the application of Revenue Memorandum Order (RMO) No. 16-80 finds no application in this case. Although RMO No. 16-80 does not define the term "table assessment," upon careful reading of the said administrative issuance, such term is akin to an assessment which is not supported by documentary evidence and authorities. Hence, the "table assessment" as understood in RMO No. 16-80, is not the same as that alleged by LPC in this case, which is making an assessment without going to the place of business or office of the taxpayer. An otherwise interpretation would render nugatory the jurisprudence to the effect that *"the CIR ought to know the tax records of all taxpayers"*.[3] Since the CIR knows the tax records of all taxpayers, she can validly issue a tax assessment on the basis of such tax records and the law, even without going to the taxpayer's place of business or office.

On the issue of imposition of deficiency interest, the case of *Takenaka Corporation Philippine Branch vs. Commissioner of Internal Revenue*[4] *(the "Takenaka Case") is in order:*

> "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.*

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[3] BPI-Family Savings Bank, Inc. vs. Court of Appeals et al., G.R. No. 122480, April 12, 2000; Commissioner of Internal Revenue vs. Ironcon Builders and Development Corporation, GR. No. 180042, February 8, 2010.
[4] CTA EB Case No. 745, September 4, 2012.

> *Court of Appeals, et al.*[5] 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." (Italicized in the original)

Thus, deficiency interest must be imposed not just on deficiency income tax but also on deficiency VAT, EWT and WTC.

Also, as to the issue of simultaneous imposition of deficiency and delinquency interests, which shall be reckoned from date prescribed for their payment until full payment thereof, the same *Takenaka* Case is applicable, to wit:

> "Further, as to when the deficiency and delinquency interests legally accrue, Section 249 (B) and (C)(3) of the NIRC of 1997, as amended, evidently states that the deficiency interest on any deficiency tax shall be assessed '*from the date prescribed for its payment until the full payment thereof,'* while the assessment of the delinquency interest that is imposed upon failure to pay a deficiency tax, or any surcharge or interest thereon, shall be reckoned from '*the due date appearing in the notice and demand of the Commissioner until the amount is fully paid.'*
>
> xxx xxx xxx
>
> The law could not be any clearer. It states that the interests, both deficiency and delinquency interests, shall be assessed **until full payment thereof**. 'It bears stressing that the first and fundamental duty of the Court is to apply the law. When the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation.' As has been the Supreme Court's consistent ruling, where the law speaks in clear and

[5] G.R. No. 106949-50, December 1, 1995.

categorical language, there is no occasion for interpretation; there is only room for application.[6]" (Emphasis and underlining in the original)

This is the same ruling adapted by this Court in the case of *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*[7] and *Avon Products Manufacturing, Inc. vs. Commissioner of Internal Revenue.*[8]

WHEREFORE, premises considered, the Motion for Reconsideration filed by the Commissioner of Internal Revenue in CTA EB Case Nos. 1117 and 1119 is **PARTLY GRANTED**. The Motion for Partial Reconsideration filed by Liquigaz Philippines Corporation in CTA EB Case Nos. 1117 and 1119 is hereby **DENIED** for lack of merit.

Accordingly, the Decision dated June 24, 2013 of the Court in Division in CTA Case No. 8149, is hereby **MODIFIED** to read as follows:

> '**WHEREFORE**, premises considered, the Petition for Review is hereby **PARTLY GRANTED**. The assessments issued by respondent against petitioner covering deficiency income tax, value-added tax, expanded withholding tax and withholding tax on compensation for taxable year 2006 are hereby **AFFIRMED** with **MODIFICATIONS**. Accordingly, petitioner is hereby **ORDERED** to **PAY** respondent the reduced amount of **₱81,806,081.69**, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, computed as follows:

Tax Type	**Basic Deficiency**	**25% Surcharge**	**Total**
Income Tax	₱ 55,939,514.83	₱ 13,984,878.71	₱ 69,924,393.54
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Withholding Tax on Compensation	1,088,401.32	272,100.33	1,360,501.65
Total	**₱ 65,444,865.35**	**₱ 16,361,216.34**	**₱ 81,806,081.69**

[6] Citing Abello v. Commissioner, G.R. No. 120721 , February 23, 2005, citing further Cebu Portland Cement Co. v. Municipality of Naga, 24 SCRA 708 [1968] and Rizal Commercial Banking Corporation v. Intermediate Appellate Court, 320 SCRA 279, 289 (1999).
[7] CTA EB No. 1224, September 2, 2015.
[8] CTA EB No. 1062, March 16, 2015.

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

a) Deficiency interest under Section 249(B) of the NIRC of 1997 at the rate of twenty percent (20%) per annum on the total deficiency tax of ₱ 81,806,081.69, including the 25% surcharge accruing from April 15, 2007 until full payment thereof;

b) Delinquency interest under Section 249(C) of the same Code of 20% per annum, imposed to the total amount of as follows: (1) to the said total amount of ₱ 81,806,081.69, plus the deficiency interest imposed under the said Section 249(B) beginning November 1, 2009 until the same are fully paid.

SO ORDERED.'

The **partial payment** of Liquigaz Philippines Corporation in the amount of ₱54,806,640.74, shall be **REDUCED** from the entire tax liability upon full payment thereof.

SO ORDERED.

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

WE CONCUR:

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

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

LOVELL R. BAUTISTA
Associate Justice

(With Concurring and Dissenting Opinion)
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Amended Decision were reached in consultation among the members of the Court En Banc 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

LIQUIGAZ PHILIPPINES CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1117
(CTA Case No. 8149)

x- -x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

LIQUIGAZ PHILIPPINES CORPORATION,
Respondent.

CTA EB No. 1119
(CTA Case No. 8149)

Present:

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

Promulgated:
JUN 03 2016 3:45 p.m.

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CONCURRING AND DISSENTING OPINION

DEL ROSARIO, PJ:

I concur with the *ponencia* in denying the Motion for Partial Reconsideration of Liquigaz Philippines Corporation *(LPC)* and in partly granting the Motion for Reconsideration of the Commissioner of Internal Revenue (CIR).

The point of my dissent relates to the *ponencia's* imposition of 20% deficiency interest on the total deficiency tax of P81,806,081.69, inclusive of the 25% surcharge, representing deficiency Income Tax (IT), Value-Added Tax (VAT), Expanded Withholding Tax (EWT), and Withholding Tax on Compensation (WTC) amounting to P69,924,393.54, P7,217,961.90, P3,303,224.60 and P1,360,501.65, respectively. With due respect, I submit that the 20% deficiency interest can only be imposed on deficiency IT but not on VAT, EWT and WTC.

In this regard, I quote below the recent 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

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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.

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> where the same questions relating to the same event have been put forward by parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt relitigate the same issues.
>
> xxx xxx xxx
>
> **Thus, where the issue involved was not raised nor presented to the court and not passed upon by the court in the previous case, the decision in the previous case is not *stare decisis* of the question presented."** (Emphasis supplied)

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

> **"It will be seen that Section 51 (c) (1) and (e) (1) and (3), of the 1977 Tax Code, authorize the imposition of surcharge and interest only in respect of a *"tax imposed by this Title,"* that is to say, Title II on "Income Tax."** It will also be seen that Section 72 of the 1977 Tax Code imposes a surcharge only in case of failure to file a return or list *"required by this Title,"* that is, *Title II on "Income Tax."* **The thirty-five percent (35%) transaction tax is, however, imposed in the 1977 Tax Code by *Section 210 (b) thereof which Section is embraced in Title V* on *"Taxes on Business"* of that Code.** Thus, while the thirty-five percent (35%) transaction tax is in truth *a tax imposed on* interest *income* earned by lenders or creditors purchasing commercial paper on the money market, the relevant provisions, *i.e.,* Section 210 (b), were *not* inserted in Title II of the 1977 Tax Code. The end result is that the thirty-five percent (35%) transaction tax is *not* one of the taxes in respect of which Section 51 (e) authorized the

> imposition of surcharge and interest and Section 72 the imposition of a fraud surcharge." (Emphases supplied)

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

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

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

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

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

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,**

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deficiency interest may not properly be imposed on VAT, EWT and WTC assessed against LPC.

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**.

All told, I vote to DENY the Motion for Partial Reconsideration of Liquigaz Philippines Corporation, to PARTLY GRANT the Motion for Reconsideration of the Commissioner of Internal Revenue, and to AFFIRM the deficiency Income Tax, Value-Added Tax, Expanded Withholding Tax and Withholding Tax on Compensation for taxable year 2006 WITH MODIFICATION relating to the assessed 20% deficiency interest on Value-Added Tax, Expanded Withholding Tax and Withholding Tax on Compensation which should appropriately be CANCELLED AND SET ASIDE.

ROMAN G. DEL ROSARIO
Presiding Justice

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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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LIQUIGAZ PHILIPPINES CORPORATION, Petitioner,	**CTA EB No. 1117** (CTA Case No. 8149)
- versus -	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	

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COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 1119** (CTA Case No. 8149)
	Present:
- versus -	**DEL ROSARIO,** PJ, **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS,** and **RINGPIS-LIBAN,** JJ.
LIQUIGAZ PHILIPPINES CORPORATION, Respondent.	***Promulgated:*** JUN 03 2016 3:45 p.m.

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CONCURRING AND DISSENTING OPINION

UY, J.:

With all due respect with the learned ponente and my other colleagues, while I concur that the Motion for Partial Reconsideration of Liquigaz Philippines Corporation (LPC) should be denied for lack of merit, I dissent on the partial granting of the Motion for Reconsideration of the Commissioner of Internal Revenue, thereby imposing deficiency interest on the deficiency Value-added tax (VAT), Expanded Withholding Tax (EWT), and Withholding Tax on Compensation (WTC) under Section 249(B) of the National Internal Revenue Code (NIRC) of 1997 against LPC, and the inclusion of said deficiency interest in the computation of delinquency interest under Section 249(C) of the same Code.

Section 249 of the NIRC of 1997 reads:

> "SEC. 249. *Interest.* –
>
> (A) *In General.* – There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) *per annum,* or such higher rate as may be prescribed by the rules and regulations, from the date prescribed for its payment until the amount is fully paid.
>
> (B) *Deficiency Interest.* – Any **deficiency** in the tax due, **as the term is defined in this Code**, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.
>
> (C) *Delinquency Interest.* – In case of failure to pay:
>
> xxx xxx xxx
>
> (3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax." *(Emphases supplied)*

Based on the foregoing Section 249(B), the *"Deficiency Interest"* shall be imposed on "[a]*ny deficiency in the tax due, as the term is defined in this Code"*, *i.e.*, as the term "deficiency" is defined in the NIRC of 1997. Relative thereto, an examination of the said Code discloses that there are only three (3) instances where it defines the term "deficiency", and this relates only and respectively to three (3) types of internal revenue taxes, namely, income tax, estate tax, and donor's tax, pursuant to Sections 56(B), 93 and 104 of the NIRC of 1997, viz:

> "SEC. 56. *Payment and Assessment of Income Tax for Individuals and Corporations.—*
>
> xxx xxx xxx
>
> (B) *Assessment and Payment of Deficiency Tax.—* After the return is filed, the Commissioner shall examine its and assess the correct amount of the tax. The tax or deficiency income tax so discovered shall be paid upon notice and demand from the Commissioner.
>
> As used in this Chapter[1], in respect of a tax imposed by this Title[2], the term **'deficiency'** means:
>
> (1) The amount by which the tax imposed by this Title exceeds the amount shown as the tax by the taxpayer upon his return; but the amount so shown on the return shall be increased by the amounts previously assessed (or collected without assessment) as a deficiency, and decreased by the amount previously abated, credited, returned or otherwise repaid in respect of such tax; or
>
> (2) If no amount is shown as the tax by the taxpayer upon his return, or if no return is made by the taxpayer, then the amount by which the tax exceeds the amounts previously assessed (or collected without assessment) as a deficiency; but such amounts previously assessed or collected without assessment shall first be decreased by the amounts previously abated, credited, returned or otherwise repaid in respect of such tax." *(Emphasis supplied)*
>
> "SEC. 93. *Definition of Deficiency.* — As used in this Chapter[3], the term **'deficiency'** means:
>
> (a) The amount by which the tax imposed by this

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[1] Chapter IX – RETURNS AND PAYMENT OF TAX.
[2] Title II – TAX ON INCOME.
[3] CHAPTER I – ESTATE TAX (under TITLE III – ESTATE AND DONOR'S TAXES).

> Chapter exceeds the amount shown as the tax by the executor, administrator or any of the heirs upon his return; but the amount so shown on the return shall first be increased by the amounts previously assessed (or collected without assessment) as a deficiency and decreased by the amounts previously abated, refunded or otherwise repaid in respect of such tax; or
>
> (b) If no amount is shown as the tax by the executor, administrator or any of the heirs upon his return, or if no return is made by the executor, administrator, or any heir, then the amount by which the tax exceeds the amounts previously assessed (or collected without assessment) as a deficiency; but such amounts previously assessed or collected without assessment shall first be decreased by the amounts previously abated, credited, returned or otherwise repaid in respect of such tax." *(Emphasis supplied)*
>
> "SEC. 104. *Definitions.* — xxx
>
> The term **'deficiency'** means: (a) the amount by which the tax imposed by this Chapter[4] exceeds the amount shown as the tax by the donor upon his return; but the amount so shown on the return shall first be increased by the amounts previously assessed (or collected without assessment) as a deficiency, and decreased by the amounts previously abated, refunded or otherwise repaid in respect of such tax, or (b) if no amount is shown as the tax by the donor upon his return, then the amount by which the tax exceeds the amounts previously assessed (or collected without assessment) as a deficiency, but such amounts previously assessed or collected without assessment shall first be decreased by the amounts previously abated, credited, returned or otherwise repaid in respect of such tax." *(Emphasis supplied)*

Such being the case, the deficiency interest under Section 249(B) should be applied only whenever there is a deficiency income tax, a deficiency estate tax, and a deficiency donor's tax. For this reason, in this case, no deficiency interest under Section 249(B) should be imposed on the deficiency VAT, EWT and WTC assessed against petitioner. Thus, the computation of the delinquency interest

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[4] CHAPTER II – DONOR'S TAX (under TITLE III – ESTATE AND DONOR'S TAXES).

imposed under Section 249(C) should not as well include the said deficiency interest.

Correspondingly, I vote that the dispositive portion in the CTA *En Banc*'s Decision dated September 21, 2015, in its entirety, be maintained, especially on the non-imposition of deficiency interest on the deficiency VAT, EWT and WTC assessed against LPC.

ERLINDA P. UY
Associate Justice