REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

SOLID VIDEO CORPORATION, Petitioner,	**CTA CASE NO. 9051**
	Members:
- versus -	**FABON-VICTORINO,** *and* **RINGPIS-LIBAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAY 02 2019 3:58 p.m.

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AMENDED DECISION

RINGPIS-LIBAN, *J.*:

For this Court's resolution is petitioner's **Motion for Partial Reconsideration (Re: Decision dated October 25, 2018)**, filed through registered mail on November 15, 2018, and received by this Court on November 23, 2018, without respondent's comment thereto despite due notice as per Records Verification dated January 21, 2019.

Petitioner seeks for partial reconsideration of the Court's Decision (assailed Decision)[1] promulgated on October 25, 2018, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. The assessments issued by respondent against petitioner covering deficiency income tax and VAT for CY 2010 are **AFFIRMED WITH MODIFICATIONS**. Accordingly, petitioner is **ORDERED TO PAY** respondent the aggregate amount of **THIRTEEN MILLION TWO HUNDRED SEVENTY-SEVEN THOUSAND FOUR HUNDRED EIGHTY-FIVE**

[1] Docket vol. 3, pp. 1023-1054.

PESOS AND TWENTY-SEVEN CENTAVOS (₱13,277,485.27), inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, and deficiency and delinquency interests imposed under Sections 249(B) and (C) of the same Code, until December 31, 2017, computed as follows:

	Income Tax	VAT	Total
Basic Tax Due	₱ 3,155,095.39	₱ 442,921.25	₱ 3,598,016.64
Add: 25% Surcharge	788,773.85	110,730.31	899,504.16
20% Deficiency Interest from April 16, 2011 to May 15, 2015 *[₱3,155,095.40 x 20% x 1,491/365 days]*	2,577,669.72	-	2,577,669.72
20% Deficiency Interest from Jan. 26, 2011 to May 15, 2015 *[₱442,921.25 x 20% x 1,571/365 days]*		381,276.32	381,276.32
Total Amount Due, May 15, 2015	**₱ 6,521,538.96**	**₱ 934,927.88**	**₱ 7,456,466.84**
Add: 20% Deficiency Interest from May 16, 2015 to Dec. 31, 2017 *[₱3,155,095.40 x 20% x 961/365 days]*	1,661,395.44		1,661,395.44
[₱442,921.25 x 20% x 961/365 days]		233,231.41	233,231.41
20% Delinquency Interest from May 16, 2015 to Dec. 31, 2017 *[₱6,521,538.96 x 20% x 961/365 days]*	3,434,081.61		3,434,081.61
[₱934,927.88 x 20% x 961/365 days]		492,309.97	492,309.97
Total Amount Due, December 31, 2017	**₱11,617,016.01**	**₱1,660,469.26**	**₱13,277,485.27**

In addition, petitioner is **ORDERED TO PAY** respondent delinquency interest at the rate of twelve percent (12%) on the total amount due as of May 15, 2015 in the amount of **₱7,456,466.84**, as determined above, computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN), as implemented by RR No. 21-2018.

SO ORDERED."[2]

Petitioner submits that this Court erred in sustaining and upholding the foregoing deficiency income tax and VAT assessments, and in imposing surcharge, as well as deficiency and delinquency interests thereon. Thus, it moves for the partial reconsideration of the assailed Decision based on the following grounds:

1. The Court erred in its conclusion that petitioner had "undeclared service income" in the amount of ₱9,872,088.83 in CY 2010; and

[2] Docket vol. 3, pp. 1053-1054.

2. Even assuming for the sake of argument that petitioner is liable for deficiency income tax and VAT for CY 2010, petitioner submits that the Court erred in its computation of the applicable deficiency interest and delinquency interest, and in requiring petitioner to pay 25% surcharge on the foregoing deficiency taxes.

After thorough evaluation of petitioner's motion, the Court finds petitioner's arguments partially meritorious.

1. The Court erred in its conclusion that petitioner had "undeclared service income" in the amount of ₱9,872,088.83 in CY 2010.

Income Tax Deficiency

To recall, respondent imputed against petitioner an undeclared service income in the amount of ₱17,970,985.52 upon comparing petitioner's service income per BIR Forms 2307 as against its service income per Income Tax Return (ITR).

In the assailed Decision, this Court considered the adjustments worth ₱8,098,896.69 and consequently reduced the assessed undeclared service income to ₱9,872,088.83 (₱17,970,985.52 less ₱8,098,896.69).

Based on petitioner's reconciliation, the amount of ₱9,872,088.83 allegedly consists of the following items:

	Per petitioner's reconciliation[3]	Adjustments per assailed Decision[4]	Remaining undeclared service income
a. Sales of goods erroneously considered by petitioner's customer as sales of services	₱ 8,547,346.30		₱ 8,547,346.30
b. Advances from customer received in 2010 for services rendered in 2011	6,732,890.31	₱ 6,732,890.33	
c. Sales of goods erroneously considered as sales of services by BIR	1,967,312.89	325,004.35	1,642,308.54
d. Service income without details included in BIR's computation	996,159.03	934,439.62	61,719.41
e. Double posting by BIR of service income - Leyte National University	96,512.00	96,512.00	-
f. Difference between actual commission income from Solid Trading Limited and amount computed by BIR	10,050.39	10,050.39	-
g. Other service income without BIR Form No. 2307	(379,285.79)		(379,285.79)

[3] Decision, docket vol. 3, p. 1038-1039.
[4] Decision, docket vol. 3, pp. 1039-1043.

Rounding off difference	0.39		0.37
Total	**₱17,970,985.52**	**₱8,098,896.69**	**₱9,872,088.83**

Among the items above, petitioner seeks reconsideration on the sales of goods erroneously considered by petitioner's customers as sales of services in the amount of ₱8,547,346.30 *(item a above)* and sales of goods erroneously considered as sales of services by the BIR in the amount of ₱1,642,308.54 *(item c above)*.

- *Sales of goods erroneously considered by petitioner's customers as sales of services - ₱8,547,346.30*

In the assailed Decision, this Court upheld the assessed service income of ₱8,547,346.30 in this wise:

> "However, even if it was established that the aforesaid amount of ₱8,547,346.30 actually refers to sales of goods and not services, the same does not tally with any of the following sales of services to FEU per BIR Forms No. 2307 considered by respondent in his computation:[5]

Withholding Agent	Period Covered	Sales of Services
FEU	2nd Quarter	₱ 1,875,000.00
FEU	3rd Quarter	5,243,924.00
FEU	4th Quarter	6,176,916.00
	Total	**₱ 13,295,840.00**

> Without the related invoices and official receipts supporting the amount of ₱13,295,840.00, the Court cannot ascertain the inclusion of the ₱8,547,346.30 sales of goods in respondent's assessment. Thus, the Court upholds the assessed service income of ₱8,547,346.30."

Contesting the Court's findings, petitioner maintains that it presented copies of sales invoices covering the sales to Far Eastern University (FEU) for the second, third and fourth quarters of CY 2010 in the amount of ₱13,295,840.00 – *i.e.*, Sales Invoice (SI) Nos. 19634 *(Exhibit "P-31-2")* and 19694 *(Exhibit "P-31-1")*; and that the sale of goods to FEU in the amount of ₱8,547,346.30 forms part of the total sales in the amount of ₱13,295,840.00 that was reported in petitioner's Annual ITR for CY 2010.

[5] BIR Records, p. 193 in relation to pp. 90-92.

According to petitioner, it issued SI Nos. 19634 and 19694 to FEU in CY 2010 and SI No. 19837 in CY 2011, covering the aggregate amount of ₱14,344,624.21, broken down below:

	Total Sale of Goods (Net of VAT)	Total Sale of Services (Net of VAT)	Total Sales (Net of VAT)
SI 19634 *(Exh. P-31-2)*	₱2,455,130.72	₱1,294,869.28	₱3,750,000.00
SI 19694 *(Exh. P-31-1)*	7,034,223.79	3,453,624.42	10,487,848.21
SI 19837 (Advance payment for sales made in CY 2011)	106,776.00	-	106,776.00
Total	**₱ 9,596,130.51**	**₱4,748,493.70**	**₱14,344,624.21**

Petitioner explains that out of the ₱14,344,624.21 invoiced by petitioner, only the amount of ₱13,295,840.00 was subjected by FEU to CWT in CY 2010 because this was the total amount paid by FEU in CY 2010. The difference of ₱1,048,784.21 (₱14,344,624.21 less ₱13,295,840.00) pertains to the 10% retention amount on the sales covered by SI 19694, which was eventually paid by FEU in CY 2011, to wit:

Total Sales per SI Nos. 19634, 19694 and 19837	₱14,344,624.21	
Less: 10% Retention	1,048,784.21	₱ 13,295,840.00
Total CWT per BIR Forms No. 2307 of FEU		13,295,840.00
Difference		**₱0.00**

Petitioner claims that based on the foregoing, it has sufficiently explained the difference between the amounts of sales shown in the invoices issued to FEU and the CWT Certificates that were issued by FEU in CY 2010. Petitioner further avers that evidence on record clearly shows that the sales to FEU in the amount of ₱13,295,840.00 were included as part of gross sales/revenues reported in petitioner's ITR for CY 2010 in the amount of ₱126,971,675.00, and was therefore, subjected to 30% corporate income tax in CY 2010. Thus, petitioner maintains that the deficiency income tax assessment on the alleged undeclared service income should be cancelled, otherwise, petitioner will erroneously and unjustly be required to pay income tax on the same sale of goods twice.

The Court finds merit in petitioner's claim.

A perusal of the 'Summary of Sales of Goods Erroneously Considered by Petitioner's Customer as Sales of Services'[6] shows that petitioner had sales to FEU during CY 2010 in the amount of ₱14,237,848.21 as supported by the

[6] Exhibit "P-31".

corresponding sales invoices[7]. Out of the total sales of ₱14,237,848.21, the ICPA was able to identify that the amount of ₱9,489,354.57 pertains to sales of goods while ₱4,748,493.72 pertains to sales of services which were all reported in petitioner's ITR, as summarized below:

Exhibit No.	SI No.	Sale of Goods	Sale of Service	Total Sales (Net of VAT)
P-31-1	19694	₱ 7,034,223.85	₱ 3,453,624.44	₱ 10,487,848.29*
P-31-2	19634	2,455,130.72	1,294,869.28	3,750,000.00
Total		**₱9,489,354.57**	**₱4,748,493.72**	**₱ 14,237,848.29**

**with a rounding-off difference of 0.08.*

Based on petitioner's summary of transactions with FEU attached as Annex A[8] to its Motion for Partial Reconsideration, the amount of ₱13,295,840.00 representing sales of services per BIR Forms No. 2307 is broken down as follows:

Per BIR Records	Amount per BIR Forms No. 2307	Particulars
p. 92	1,875,000.00	50% of SI 19634
p. 91	5,243,924.00	50% of SI 19694
p. 90		50% of SI 19634 - ₱1,875,000.00
		20% of SI 19694 - ₱2,097,570.00
		20% of SI 19694 - ₱2,097,570.00
	6,176,916.00	Advance payment for 2011 sales - ₱106,776.00
Total	**13,295,840.00**	

Further verification reveals that of the ₱14,237,848.21 sales supported by SI Nos. 19694 and 19634, the amount of ₱13,189,063.39 was erroneously included in the sales of services to FEU per BIR Forms No. 2307 considered by respondent in his computation, as detailed below:

Sales per Invoice			Sales of services per BIR 2307	
Exhibit	**SI No.**	**Amount**	**Reference (BIR Records)**	**Amount**
			p. 91	₱ 5,243,924.11[9]
			p. 90	4,195,139.28[10]
P-31-1	19694	₱ 10,487,848.21	***subtotal***	***₱ 9,439,063.39***
			p. 92	₱ 1,875,000.00
			p. 90	1,875,000.00
P-31-2	19634	₱ 3,750,000.00	***subtotal***	***₱ 3,750,000.00***
Total		**₱14,237,848.21**	**Total**	**₱13,189,063.39**

[7] Exhibits "P-31-1" and "P-31-2".
[8] Docket vol. 3, p. 1076.
[9] 50% of ₱10,487,848.21.
[10] 40% of ₱10,487,848.21.

As gleaned from above, the sale of ₱10,487,848.21 per SI No. 19694 was only 90% collected (₱9,439,063.39 divide by ₱10,487,848.21) whereas the sale of ₱3,750,000.00 per SI No. 19634 was fully collected. The difference of ₱1,048,784.82 (₱14,237,848.21 less ₱13,189,063.39), which is the 10% of the ₱10,487,848.21 sale per SI No. 19694, allegedly pertaining to retention fee, remains unpaid, hence, not included in the BIR Forms No. 2307 for CY 2010. This rationalizes the ICPA's computation of petitioner's collection on sales of goods in the amount of ₱8,785,932.13, wherein the subject amount of ₱8,547,346.30 was derived from, as shown:[11]

PARTICULARS	AMOUNT
90% collection of sales of goods **(Exhibit No. P-31-1)**	6,330,801.41
100% collection of sales of goods **(Exhibit No. P-31-2)**	2,455,130.72
Total collections pertaining to sales	8,785,932.13
10% retention fee of service income	(345,362.44)
Advance payment	106,777.00
Total	8,547,346.69
Per Assessment	8,547,346.30
Difference	**0.39**

Verily, the amount of ₱6,330,801.41 represents 90% of the ₱7,034,223.85 sale of goods corresponding to SI No. 19694 while the amount of ₱2,455,130.72 represents 100% of the sale of goods corresponding to SI No. 19634. These sales of goods were included in the Gross Sales/Revenue reported in petitioner's annual ITR for CY 2010 in the amount of ₱126,971,675.00[12] as evidenced by the General Ledger-Sales for CY 2010[13].

Therefore, considering that petitioner was able to prove that the amount of ₱8,547,346.30 pertains to sales of goods which were reported in its ITR, and that the same were erroneously indicated as sales of services in the BIR Forms No. 2307 considered by respondent in the assessment, the assessed service income in the amount of ₱8,547,346.30 shall be cancelled.

- *Sales of goods erroneously considered as sales of services by the BIR - ₱1,642,308.54*

In the assailed Decision[14], this Court cancelled the deficiency income tax assessment to the extent of ₱325,004.35 since only the said amount pertains to sales of goods which were verified to have been included in the service income reflected per BIR Forms No. 2307 upon which the respondent's assessment was based.

[11] Exhibit "P-31".
[12] Exhibit "P-9", docket vol. 2, p. 855, Line 17C.
[13] Exhibit "P-30-1".
[14] Docket vol. 3, pp. 1040-1042.

Consequently, the asssessed undeclared service income of ₱1,642,308.54, out of the ₱1,967,312.89 claimed as pertaining to sales of goods erroneously considered as sales of services by respondent remains.

Petitioner observed that the Court only considered the sales of goods as valid if the amount of sales shown in the BIR Form No. 2307 matches the total sales of goods and services reported in its books of accounts for CY 2010. It posits that the Court erred in disregarding the other sales of goods merely because there were discrepancies between the amount of income payments that were subjected to creditable withholding tax (CWT) per BIR Forms No. 2307 and the amount of sales recorded in petitioner's books of accounts for CY 2010.

Petitioner points out that the amounts shown in the BIR Forms No. 2307 and the amounts of sales recorded in its books do not always match due to timing difference. It avers that it uses the accrual method in recording its revenues for income tax purposes, while its withholding agents use the cash method for the withholding of CWT on their income payments. Petitioner allegedly records the sales of goods in its books upon issuance of sales invoice, regardless of whether payment has been made whereas its witholding agents withhold the CWT and issue the CWT Certificate upon payment. Thus, it submits that such difference in accounting periods results to discrepancies between the amounts reported in the ITR and the amounts reflected in the BIR Forms No. 2307.

Petitioner further alleges that notwithstanding the discrepancies, it can be gleaned that the amount of ₱1,651,156.49 pertains to sales of goods while the balance pertains to sales of services. In any case, the ICPA was able to verify that the sales of goods and services in the amount of ₱1,967,312.89 was reported as part of petitioner's gross income in ITR and was, therefore, subjected to 30% regular corporate income tax in CY 2010.

However, petitioner's assertion is unfounded. It only stated that the discrepancies were due to timing difference but failed to establish the veracity of the same. Merely stating a reason without giving proof to that effect does not hold water. Mere allegation and speculation is not evidence, and is not equivalent to proof.[15]

Even if the ICPA was able to determine that the amount of ₱1,651,156.49 refers to sales of goods, out of the ₱1,967,312.89 subject sales reported in petitioner's ITR, still, petitioner failed to prove that the entire amount is included in respondent's computation of the assessed income. Thus this Court reiterates its findings in the assailed Decision, to wit:

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[15] *Office of the Ombudsman vs. Ma. Nimfa P. De Villa*, G.R. No. 208341, June 17, 2015, *citing Navarro vs. Clerk of Court Cerezo,* 492 Phil. 19, 22 (2002).

"Based on this Court's review and validation, of the ₱1,651,156.49 sales of goods, only the amount of ₱325,004.35 was verified to have been included in the service income reflected per BIR Forms No. 2307 upon which the respondent's assessment was based, as shown below: xxx

The Court observed that the ₱31,577.32 sale to Cardinal Santos Medical Center has no corresponding BIR Form No. 2307 and was not included in respondent's computation. Moreover, the remaining ₱1,294,574.82 (₱1,651,156.49 less ₱325,004.35 and ₱31,577.32) sales of goods cannot be ascertained as forming part of the amounts indicated in the BIR Forms No. 2307, hence, it cannot be determined whether the same were actually part of the assessed income.

In fine, the Court cancels the deficiency income tax assessment only on the amount of ₱325,004.35 representing sales of goods erroneously considered as sales of services per BIR Forms No. 2307."

Accordingly, the assessed service income in the amount of ₱1,642,308.54 (₱1,967,312.89 less ₱325,004.35) shall remain.

In sum, the assessed undeclared service income is reduced to ₱1,324,742.53, computed as follows:

Undeclared service income per assailed Decision	₱ 9,872,088.83
Less: Reconsidered sales of goods erroneously considered by petitioner's customer as sales of services	8,547,346.30
Undeclared Service Income as Adjusted	**₱1,324,742.53**

All else being the same, petitioner is still liable to pay basic deficiency income tax for CY 2010 in the amount of ₱590,891.50, computed as follows:

Taxable Income (Loss) per ITR		₱18,265,923.00
Add: Undeclared Service Income		1,324,742.53
Total		₱19,590,665.53
Tax Due (30%)		₱ 5,877,199.66
Less: Payments/Credits		
Tax Paid per Return	₱4,302,734.00	
Creditable Withholding Tax	1,177,043.00	
Total	₱5,479,777.00	
Less: Disallowed Creditable Withholding Tax	193,468.84	5,286,308.16
Basic Deficiency Income Tax		**₱ 590,891.50**

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VAT Deficiency

As discussed under the Income Tax Deficiency, petitioner seeks to reconsider the finding that the latter had undeclared service income of ₱9,872,088.83 in CY 2010. In relation thereto, petitioner submits that there is likewise no basis for the Court's conclusion that petitioner is liable for deficiency VAT on the same undeclared service income for CY 2010.

In the assailed Decision[16], petitioner's undeclared sales/receipts on service income not subjected to VAT in the amount of ₱4,282,139.22 was computed in this manner:

Undeclared Service Income	₱ 9,872,088.83
Less: Commission Income	5,589,949.61
Undeclared Service Income not subjected to VAT	**₱4,282,139.22**

Based on the above discussion, petitioner was able to prove that the assessed undeclared income of ₱8,547,346.30 pertains to sales of goods erroneously considered as sales of services. Consequently, only the amount of ₱1,324,742.53 was left on the assessment.

Meanwhile, it must be pointed out that the commission income of ₱5,589,949.61 was properly reported in petitioner's GL-Sales[17] and was included in the ₱11,377,842.00 service income per ITR, as shown below:

Service Income per Exhibit "P-30":	
Service Income-Repairs	₱ 1,030,470.51
Service Income-Equipment Rental	8,928.57
Service Income-Integration	4,837,629.47
Service Income-Integration Discount	(89,135.77)
Commission Income	5,589,949.61
Service Income per ITR	**₱11,377,842.39**

Per respondent's assessment:[18]		
Service Income per 2307		₱ 23,023,019.78
Add: Service Income	₱ 996,159.03	
Posted twice-Leyte Normal University	(96,512.00)	
Goods misclassified as service-EDL	(173,839.29)	725,807.74
Service Income as adjusted		₱ 23,748,827.52
Add: Commission income from STL		5,600,000.00
Total		₱ 29,348,827.52

[16] Docket vol. 3, pp. 1046-1047.
[17] Exhibit "P-30-1" (59/59).
[18] Exhibit "P-8", Details of Discrepancy, docket vol. 2, p. 849.0

Less: Service Income per ITR		11,377,842.00
Undeclared Income		**₱17,970,985.52**

As such, the commission income does not form part of the assessed undeclared income, hence, the deduction of the same from the undeclared service income for the purpose of computing the deficiency VAT is unwarranted.

Thus, petitioner's undeclared sales/receipts on service income not subjected to VAT amounts to ₱1,324,742.53.

All else being the same, petitioner is liable for basic deficiency VAT for CY 2010 in the reduced amount of ₱88,033.64, computed as follows:

Vatable Sales/Receipts per VAT Returns			₱116,874,744.09
Add: Undeclared Sales/Receipts			1,324,742.53
Total Vatable Sales/Receipts, as Adjusted			₱118,199,486.62
Output Tax Due			₱ 14,183,938.39
Less: Creditable Input Tax			
Input Tax Carried Over from Previous Period		₱ 2,291,168.83	
Creditable VAT Withheld		73,148.14	
Current Input Tax		11,259,943.75	
Total		₱13,624,260.72	
Less: Overclaimed Input Tax Credit	₱79,207.50		
Input tax on Sale to Gov't closed to expense	1,444.29		
Unsupported Creditable VAT withheld	3,382.61	84,034.40	13,540,226.32
Net VAT Payable			₱ 643,712.07
Less: VAT Payments			555,678.43
Basic Deficiency VAT			**₱ 88,033.64**

2. Even assuming that petitioner is liable for deficieny income tax and VAT for CY 2010, the Court erred in its computation of the applicable deficiency and delinquency interests, and in requiring petitioner to pay 25% surcharge on the foregoing deficiency taxes.

On the application of 20% deficiency and 20% delinquency interest

Assuming *arguendo* that there is basis for respondent's deficiency tax assessments, petitioner seeks to reconsider the manner of computation of deficiency and delinquency interest due on the deficiency income tax and VAT for CY 2010.

In the assailed Decision, the Court effectively imposed *(a)* 20% deficiency interest and 20% delinquency interest *per annum* on petitioner's deficiency income tax and VAT liability for CY 2010 computed until December 31, 2017, pursuant to Section 249(B) and (C) of the NIRC of 1997, as amended, prior to the effectivity of the TRAIN Law; and *(b)* 12% delinquency interest on the total unpaid basic deficiency tax, surcharge, deficiency interest as of May 15, 2015 computed from January 1, 2018 until full payment pursuant to Section 249(C) of the same Code as amended by the TRAIN Law.

Petitioner submits that the imposition of 40% *per annum* interest on the deficiency taxes partake the nature of an imposition that is penal, rather than compensatory and is clearly excessive and unconscionable.

Petitioner further maintains that the computation is erroneous for being contrary to the law prescribing the rules on the imposition of deficiency and delinquency interest. Subscribing to the Separate (Concurring and Dissenting) Opinion of Presiding Justice Del Rosario in the case of *Felonila Z. Caluag vs. People of the Philippines*[19], petitioner posits that the computation of deficiency and delinquency interests should follow what is written in the law at the time of promulgation of the decision. Considering that compensatory interest is imposed by law or by the courts as penalty or indemnity for damages, there is no reason for this Court to utilize the old version of a law for a judgement made under the new law.

Simply put, petitioner believes that the relative provisions of the TRAIN Law shall be applied in the instant case in that the simultaneous imposition of 20% deficiency and 20% delinquency interest be removed and the deficiency and delinquency interests be imposed at the rate of 12% since at the time when petitioner was adjudged to be liable to pay the deficiency taxes, with the corresponding deficiency and delinquency interests, the TRAIN Law was already in effect.

The Court disagrees with petitioner.

As consistently held by this Court, the simultaneous imposition of deficiency and delinquency interests is justified by Section 249 of the NIRC of 1997, as amended, which 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 rules and

[19] CTA EB Crim. No. 047 (CTA Crim. Case No. O-330), September 17, 2018.

regulations, from the date prescribed for 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:

(1) The amount of the tax due on any return to be filed, or

(2) The amount of the tax due for which no return is required, or

(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."

Based on the above provision, there is a clear differentiation between deficiency interest and delinquency interest. Deficiency interest is imposed on any tax still due from the taxpayer, when the latter paid a lower amount of tax than the actual due upon audit, which shall be collected from the date prescribed for its payment until full payment thereof whereas the delinquency interest is imposed due to the delay in the payment of the amount of tax due or of deficiency tax, surcharge or interest thereon on the due date indicated in notice of the Commissioner, which shall be collected from the due date on the notice until full payment thereof.

The ruling of the Court in the case of *Takenaka Corporation Philippine Branch vs. Commissioner of Internal Revenue*[20] *(the 'Takenaka Case')*, as to the simultaneous imposition of deficiency and delinquency interests, is instructive, thus:

"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

[20] CTA EB Case No. 745, September 4, 2012.

reckoned from *'the due date appearing in the notice and demand of the Commissioner until the amount is fully paid.'*

Clearly, these two (2) interests are different in nature. **Deficiency interest is imposed for the *shortage* of taxes paid, while delinquency interest is imposed for the *delay* in payment of taxes.** Hence, having different nature for their existence, petitioner cannot assail double imposition of interest as the law itself allows the simultaneous imposition of these two kinds of interests.

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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 categorical language, there is no occasion for interpretation; there is only room for application.[21]"

Upon the passage of Republic Act (R.A.) No. 10963, otherwise known as the "Tax Reform for Acceleration and Inclusion" (TRAIN Law), which took effect on January 1, 2018, Section 249 of the NIRC of 1997 was amended to read as follows:

"SEC. 75. Section 249 of the NIRC, as amended is hereby further amended to read as follows:

SEC. 249. *Interest.* –

(A) *In General.* - There shall be assessed and collected on any unpaid amount of tax, interest at the rate of double the legal interest rate for loans or forbearance of any money in the absence of an express stipulation as set by the Bangko Sentral ng Pilipinas from the date prescribed for payment until the amount is fully paid: *Provided,* That in no case shall the deficiency and delinquency interest prescribed under Subsections (B) and (C) hereof be imposed simultaneously.

(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

[21] 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).

assessed and collected from the date prescribed for its payment until the full payment thereof, or upon issuance of a notice and demand by the Commissioner of Internal Revenue, whichever comes earlier.

(C) *Delinquency Interest.* xxx xxx xxx."

To implement the same, Revenue Regulations (RR) No. 21-2018[22] was issued on September 14, 2018. Sections 5 & 6 thereof provides:

"**SECTION 2. RATE OF INTEREST. –** There shall be assessed and collected on any unpaid amount of tax, interest at the rate of double the effective legal interest rate for loans or forbearance of any money in the absence of an express stipulation as set by the Bangko Sentral ng Pilipinas (BSP) from the date prescribed for its payment until the amount is fully paid.

The rate of interest per BSP Memorandum No. 799 series of 2013 for loans or forbearance of any money in the absence of an express stipulation is six percent (6%). Thus, the rate of legal interest imposable under Section 249 of the Tax Code, as amended, shall be twelve percent (12%). Xxx.

SECTION 3. DEFICIENCY INTEREST. – Interest imposed on any deficiency tax due, which interest shall be assessed and collected from the date prescribed for its payment until: (a) full payment thereof, or (2) upon issuance of a notice and demand by the Commissioner or his authorized representative, whichever comes first.

xxx xxx xxx

SECTION 5. NO DOUBLE IMPOSITION OF INTEREST. – Upon the effectivity of the TRAIN Law, in no case shall the deficiency and delinquency interest prescribed herein be imposed simultaneously.

xxx xxx xxx

SECTION 6. TRANSITORY PROVISION. - In cases where the tax liability/ies or deficiency tax/es became due before the effectivity of the TRAIN Law on January 1, 2018, and where the full payment thereof will only be accomplished after the said effectivity date, the interest rates shall be applied as follows:

[22] Subject: Regulations Implementing Section 249 (Interest) of the National Internal Revenue Code (NIRC) of 1997, as amended under Section 75 of the Republic Act (RA) No. 10963 or the "Tax Reform for Acceleration and Inclusion (TRAIN Law)".

Period	*Applicable Interest Type and Rate*
For the period up to December 31, 2017	Deficiency and/or delinquency interest at 20%
For the period January 1, 2018 until full payment of the tax liability	Deficiency and/or delinquency interest at 12%

> The double imposition of both deficiency and delinquency interest under Section 249 prior to its amendment will still apply in so far as the period between the date prescribed for payment until December 31, 2017."

Based on the foregoing, the TRAIN Law introduced the following amendments: *(1)* the rate of interest for deficiency and/or delinquency was reduced to 12%; *(2)* the running of the period for the computation of deficiency interest starts from the date prescribed for its payment until either full payment thereof or upon issuance of notice or demand by the CIR, whichever comes earlier; *(3)* the simultaneous imposition of deficiency and delinquency interests is effectively eliminated.

However, it is clear from the transitory provision of the TRAIN Law that, in cases where the deficiency taxes became due before the effectivity of the TRAIN Law on January 1, 2018 and the full payment thereof will only be accomplished after the said effectivity date, the interest rate of 20% shall be applied for the period up to December 31, 2017 while the interest rate of 12% shall be applied for the period January 1, 2018 until full payment thereof. The simultaneous imposition of deficiency and delinquency interest under Section 249 prior to its amendment will still apply in so far as the period between the date prescribed for payment until December 31, 2017.

Considering that the deadline for payment of petitioner's deficiency income tax and VAT for CY 2010 stated in the Final Decision on Disputed Assessment (FDDA) was on May 15, 2015[23], which was prior to the effectivity of the TRAIN Law, the applicable interest rates, as properly computed by this Court in the assailed Decision, shall be *(a)* 20% deficiency interest rate from the date prescribed for its payment until December 31, 2017; *(b)* 20% delinquency interest from May 16, 2015 until December 31, 2017; and *(c)* 12% delinquency interest from January 1, 2018 until full payment thereof.

The principle is well entrenched that statutes, including administrative rules and regulations, operate prospectively only, unless the legislative intent to the contrary is manifest by express terms or by necessary implication.[24] There being no clear legislative intent to retroactively apply the provisions of the TRAIN law, the same should only be applied prospectively, *i.e.,* beginning January 1, 2018.

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[23] Exhibit "P-8", docket vol. 2, p. 848.
[24] *BPI Leasing Corporation vs. Court of Appeals, et al.,* G.R. No. 127624, November 18, 2003.

On the imposition of 25% surcharge

Petitioner argues that the imposition of a 25% surcharge on the deficiency tax assessments constitutes a violation of petitioner's right to due process. Since the FDDA issued by respondent did not include any surcharge as part of its assessment, there is no basis for this Court to impose a surcharge that repondent did not impose.

Petitioner's argument is bereft of merit.

Verily, the imposition of the 25% surcharge is based on the petitioner's failure to pay the deficiency income tax and VAT within the time prescribed for its payment in the FDDA, pursuant to Section 248(A)(3) of the NIRC of 1997, as amended, to wit:

> "SEC. 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 deficiency tax within the time prescribed for its payment in the notice of assessment;"

A perusal of the FDDA[25] reveals that the CIR indicated the deadline for payment of the deficiency taxes to be on or before May 15, 2015 and that the said FDDA is his final decision, which is appealable to the Court. Since petitioner failed to pay the same on the due date stated therein, the 25% surcharge was properly imposed upon its deficiency income tax and VAT liabilities.

The law is very clear. The imposition of surcharge is mandatory. This is justified because the intention of the law is precisely to discourage delay in the payment of taxes due to the State. It is basic that "surcharge" is an overcharge or exaction imposed by law as an addition to the main tax required to be paid. It is not really a penalty as used in criminal law but a civil administrative sanction provided primarily as a safeguard for the protection of the State revenue and to reimburse the government for the expenses in investigating and the loss resulting from the taxpayer's fraud. In other words, the imposition of a surcharge is not penal but compensatory in nature - they are compensation to the State for the delay in the payment, or for the concomitant use of the funds

[25] Exhibit "P-8", docket vol. 2, p. 848.

by the taxpayer beyond the date he is supposed to have paid them to the State.[26]

WHEREFORE, premises considered, petitioner's **Motion for Partial Reconsideration (Re: Decision dated October 25, 2018)** is **PARTIALLY GRANTED**. Accordingly, the Decision dated October 25, 2018, is hereby amended to read as follows:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED.** The assessments issued by respondent against petitioner covering deficiency income tax and VAT for CY 2010 are **AFFIRMED WITH MODIFICATIONS.** Accordingly, petitioner is **ORDERED TO PAY** respondent the aggregate amount of **TWO MILLION FIVE HUNDRED FIVE THOUSAND SIX HUNDRED EIGHTY-THREE PESOS AND SIXTY-NINE CENTAVOS (₱2,505,683.69)**, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, and deficiency and delinquency interests imposed under Sections 249(B) and (C) of the same Code, until December 31, 2017, computed as follows:

	Income Tax	**VAT**	**Total**
Basic Tax Due	₱ 590,891.50	₱ 88,033.64	₱ 678,925.14
Add: 25% Surcharge	147,722.87	22,008.41	169,731.28
20% Deficiency Interest from April 16, 2011 to May 15, 2015 *[₱590,891.50 x 20% x 1,491/365 days]*	482,750.26		482,750.26
20% Deficiency Interest from Jan. 26, 2011 to May 15, 2015 *[₱88,033.64 x 20% x 1,571/365 days]*		75,781.29	75,781.29
Total Amount Due, May 15, 2015	**₱1,221,364.63**	**₱185,823.34**	**₱1,407,187.97**
Add: 20% Deficiency Interest from May 16, 2015 to Dec. 31, 2017: *[₱590,891.50 x 20% x 961/365 days]*	311,148.89		311,148.89
[₱88,033.64 x 20% x 961/365 days]		46,356.34	46,356.34
20% Delinquency Interest from May 16, 2015 to Dec. 31, 2017 *[₱1,221,364.63 x 20% x 961/365 days]*	643,140.50		643,140.50
[₱185,823.34 x 20% x 961/365 days]		97,849.99	97,849.99
Total Amount Due, December 31, 2017	**₱2,175,654.02**	**₱330,029.67**	**₱2,505,683.69**

> In addition, petitioner is **ORDERED TO PAY** respondent delinquency interest at the rate of twelve percent (12%) on the total amount due as of May 15, 2015 in the amount of **₱1,407,187.97** as determined above, computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the

26 *Tambunting Pawnshop, Inc., vs. Commissioner of Internal Revenue,* CTA EB No. 245 (CTA Case No. 6776), May 24, 2007, citing *Republic of the Phils. vs. Phil. Bank of Commerce,* 34 SCRA 369

NIRC of 1997, as amended by Republic Act (RA) No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN), as implemented by RR No. 21-2018.

SO ORDERED."

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

I CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

ATTESTATION

I attest that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ESPERANZA R. FABON-VICTORINO
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Acting Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice