REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

HOTEL SPECIALIST (TAGAYTAY), INC., Petitioner,	**CTA CASE NO. 9349**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson, and* **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAY 30 2019 9:35 Am

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RESOLUTION

MANAHAN, *J.*:

For the Court's resolution are:

1. petitioner's **Motion for Reconsideration (Re: Decision dated 18 January 2019)**, filed on February 4, 2019, with respondent's **Comment (On Petitioner's Motion for Reconsideration)**, filed on March 11, 2019; and

2. respondent's **Motion for Partial Reconsideration [re: Decision dated January 18, 2019]**, filed through registered mail on February 6, 2019 and received by the Court on February 13, 2019, with petitioner's **Comment/Opposition (Respondent's Motion for Partial Reconsideration)**, filed on March 8, 2019.

Both parties move for the reconsideration of the Decision promulgated on January 18, 2019, the dispositive portion of which is quoted as follows:

> "**WHEREFORE**, premises considered, the Petition for Review is **PARTIALLY GRANTED**. The assessment issued by respondent against petitioner for taxable year 2009 is **AFFIRMED with MODIFICATION**. Accordingly, petitioner is **ORDERED TO PAY** respondent the amount of ₱17,350,792.92, ₱9,780,127.69, ₱542,523.63 and ₱104,141.81, representing deficiency income tax, value-added tax, expanded withholding tax, and withholding tax on compensation, respectively, inclusive of the 25% surcharge, 20% deficiency interest and 20% delinquency interest imposed thereon under Sections 248(A)(3), 249(B) and (C) of the 1997 NIRC, as amended, respectively, computed until December 31, 2017, detailed below:
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> xxx xxx xxx
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> In addition, petitioner is **ORDERED TO PAY** delinquency interest at the rate of 12% computed from January 1, 2018 until full payment thereof, pursuant to Section 249(C) of the 1997 NIRC, as amended by Republic Act No. 10963, also known as the Tax Reform for Acceleration and Inclusion (TRAIN) and as implemented by RR No. 21-2018, on the following amounts:

Income Tax	₱ 11,844,475.66
VAT	6,677,818.02
EWT	391,789.59
WTC	75,207.19

> **SO ORDERED.**"

Petitioner's Motion for Reconsideration

In its motion, petitioner states that the Court committed a serious reversible error when it ruled that petitioner is still liable for the 25% surcharge and 20% delinquency interests with regards the deficiency withholding tax on compensation (WTC), deficiency expanded withholding tax (EWT) and deficiency income tax on "revenue not subjected to tax" and "disallowed per allocation of expense". It also claims that the Court committed a serious reversible error when it did not allow the deduction of "disallowed expenses due to non-withholding" pursuant to the payment made on May 10, 2016 and when it ruled that petitioner is still liable for value-added tax (VAT) on the service charges. Petitioner further alleges that the deficiency interest under Section 249(B) of the 1997 National Internal Revenue Code (NIRC), as amended, should be applied only whenever there is a deficiency income tax, a deficiency estate tax and deficiency donor's tax.

On the other hand, respondent asserts that the Court correctly imposed 25% surcharge and 20% delinquency interest. He further contends that the Court correctly upheld the disallowance of expenses due to non-withholding. He also alleges that petitioner is still liable for the VAT on the service charges. Respondent also claims that deficiency interest is imposable on all taxes covered by the Tax Code.

Petitioner's motion lacks merit.

The issues and arguments presented by petitioner in its motion have already been considered, weighed and resolved by the Court in the assailed Decision.

The Court ruled that the imposition of the 25% surcharge and 20% delinquency interests on deficiency WTC and deficiency EWT is mandatory in this case. The imposition of surcharge is to discourage delay in the payment of taxes due to the State. The delay in the payment of deficiency tax within the time prescribed for its payment in the notice of assessment justifies the imposition of a 25% surcharge, pursuant to Section 248(A)(3) of the 1997 NIRC, as amended. Moreover, Section 249(C)(3) of the 1997 NIRC, as amended, mandates the imposition of such interest in the event that the taxpayer is held liable for deficiency taxes. Based on established doctrine, these charges incident to delinquency are compensatory in nature and are imposed for the taxpayer's use of the funds at the time when the State should have control of said funds.

Moreover, the Court also ruled that although petitioner paid the income tax due on the "revenue not subjected to tax" and "disallowed per allocation of expense", it is still required to pay the increments thereon, such as the 25% surcharge and the 20% delinquency interest imposed under Sections 248(A)(3) and 249(C) of the 1997 NIRC, as amended.

In the case of *Takenaka Corporation Philippine Branch vs. Commissioner of Internal Revenue*[1], the Court *En Banc* ruled that:

> 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*".
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> xxx xxx xxx
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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.

Petitioner further argues that the Court committed a serious reversible error when it did not allow the deduction of "disallowed expenses due to non-withholding" in view of its payment. The Court stressed that a deduction is allowed even when no tax was withheld only when the corresponding deficiency withholding taxes were paid at the time of the audit/investigation or reinvestigation/ reconsideration. In this case, petitioner received the Final Decision on Disputed Assessment (FDDA) on April 14, 2016 but it paid the

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[1] CTA EB Case No. 745 (CTA Case No. 7701), September 4, 2012.

deficiency EWT and WTC only on May 10, 2016. Thus, petitioner's payment cannot be considered as paid at the time of the audit/investigation or reinvestigation/reconsideration.

Petitioner also claims that it is not subject to VAT on the service charges by reason of its payment. However, the Court found that petitioner failed to adduce sufficient evidence to support its claim that the amount of ₱25,014,441.24 represents 100% of the service charges it collected and that the remaining amount actually pertains to service charges and tips distributed to its employees, which were merely held in trust and did not redound to its benefit.

On the issue of imposition of deficiency interest, the Supreme Court, in the case of *Paper Industries Corporation of the Philippines (PICOP) vs. Court of Appeals, et al.* and *Commissioner of Internal Revenue vs. Paper Industries Corporation of the Philippines, et al.*[2] held that Section 247(a) of the 1977 NIRC, as amended [now Section 247(a) of the 1997 NIRC, 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. The Supreme Court ruled:

> 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

[2] G.R. Nos. 106949-50 and 106984-85, December 1, 1995.

interest and Section 72 the imposition of a fraud surcharge

It is not without reluctance that we reach the above conclusion on the basis of what may well have been an inadvertent error in legislative draftsmanship, a type of error common enough during the period of Martial Law in our country. Nevertheless, we are compelled to adopt this conclusion. We consider that the authority to impose what the present Tax Code calls (in Section 248) *civil penalties* consisting of additions to the tax due, must be expressly given in the enabling statute, in language too clear to be mistaken. The grant of that authority is not lightly to be assumed to have been made to administrative officials, even to one as highly placed as the Secretary of Finance.

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

"Title X

Statutory Offenses and Penalties

Chapter I

Additions to the Tax

> Section 247. *General Provisions.* — (a) The additions to the tax or deficiency tax prescribed in this Chapter shall *apply to all taxes, fees and charges imposed in this Code*. The amount so added to the tax shall be collected at the same time, in the same manner and as part of the tax. xxx

> Section 248. *Civil Penalties.* — (a) There shall be imposed, *in addition to the tax required to be paid, penalty equivalent to twenty-five percent (25%) of the amount due,* in the following cases:
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> xxx xxx xxx
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> (3) failure to pay the tax within the time prescribed for its payment; or
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> xxx xxx xxx
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> (c) the penalties imposed hereunder shall form part of the tax and the entire amount shall be subject to the interest prescribed in Section 249.
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> Section 249. *Interest.* — (a) *In General.* — There shall be assessed and collected *on any unpaid amount of tax, interest* at the rate of *twenty percent (20%) per annum* or *such higher rate as may be prescribed by regulations,* from the date prescribed for payment until the amount is fully paid. xxx" (Emphases supplied)

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

Thus, contrary to petitioner's argument, the inevitable conclusion from the foregoing discussion is that the imposition of deficiency interest under Section 249(B) of the 1997 NIRC, as amended, clearly applies to all internal revenue taxes imposed by the present Tax Code. Moreover, it must be emphasized that Section 249(B) should not be read in isolation but must be read in light of the provisions of Sections 247(a) and 249(a) of the same Code[3], as held in the case of *Obosa vs. Court of Appeals, et al.*[4] which states that:

> xxx Truly, law must be understood not by "the letter that killeth but by the spirit that giveth life." Law should not be read and interpreted in isolated academic abstraction nor even for the sake of logical symmetry but always in context of pulsating social realities and specific environmental facts. xxx

Respondent's Motion for Partial Reconsideration

In his motion, respondent invokes the following grounds:

1. The Court erred in ruling on matters that were never substantiated in the administrative level and never assailed in the Petition for Review.

2. The Court erred in ruling that the assessment arising from disallowed excess tax credits carried over to succeeding periods and disallowed MCIT should be cancelled on the ground that respondent failed to provide factual and legal basis for the disallowance thereof.

3. The Court erred in cancelling the compromise penalty.

On the other hand, petitioner argues that the *Pilipinas Total Gas, Inc. case* is not applicable in the present case as it involves a refund case, and not an assessment. It also claims that the Court is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.

Respondent's motion lacks merit.

Section 8 of Republic Act No. 1125 (An Act Creating the Court of Tax Appeals) provides categorically that the Court of Tax Appeals shall be a court of record and as such **it is required to conduct a**

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[3] *Takenaka Corporation Philippine Branch vs. Commissioner of Internal Revenue*, CTA EB Case No. 745 (CTA Case No. 7701), September 4, 2012.
[4] G.R. No. 114350, January 16, 1997.

formal trial *(trial de novo)* where the parties must present their evidence accordingly if they desire the Court to take such evidence into consideration.[5]

As such, parties are expected to litigate and prove every aspect of their case anew and formally offer all their evidence. No value is given to documentary evidence submitted in the Bureau of Internal Revenue unless it is formally offered in the Court of Tax Appeals. Thus, the review of the Court of Tax Appeals is not limited to whether or not the Commissioner committed gross abuse of discretion, fraud, or error of law, as contended by the Commissioner. As evidence is considered and evaluated again, the scope of the Court of Tax Appeals' review covers factual findings.[6]

Moreover, the Court has already ruled that respondent failed to provide legal and factual bases for the disallowed excess tax credits carried over to succeeding periods and disallowed MCIT in the Formal Letter of Demand nor FDDA. Hence, these disallowances were held as null and void for not being compliant with Section 228 of the 1997 NIRC, as amended.

As to the compromise penalty, the case of *Commissioner of Internal Revenue vs. Lianga Bay Logging Co. Inc., et al.*[7] is a case in point where the Supreme Court held that the imposition of compromise penalty without the conformity of the taxpayer is illegal and unauthorized. It follows that a compromise penalty may be imposed if the taxpayer has agreed to it, and there is nothing in the records which would show that petitioner consented to the compromise penalty.

Thus, the Court finds no compelling reasons that will justify the reversal of the assailed Decision.

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration (Re: Decision dated 18 January 2019)** and respondent's **Motion for Partial Reconsideration [re: Decision dated January 18, 2019]** are **DENIED** for lack of merit.

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[5] *Commissioner of Internal Revenue vs. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.

[6] *Philippine Airlines, Inc. (PAL) vs. Commissioner of Internal Revenue* and *Commissioner of Internal Revenue vs. Philippine Airlines, Inc. (PAL)*, G.R. Nos. 206079-80 and 206309, January 17, 2018.

[7] G.R. No. L-35266, January 21, 1991.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice