REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

PARITY PACKAGING CORPORATION,
Respondent.

CTA *EB* NO. 1783
(CTA Case No. 8825)

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

Promulgated:

MAR 05 2019

x- 4:12 p.m. -x

DECISION

MANAHAN, J.:

Before the Court *En Banc* is a Petition for Review,[1] filed by the Commissioner of Internal Revenue (CIR), pursuant to Rule 8, Section 3(b)[2] of the Revised Rules of the Court of Tax Appeals (RRCTA), seeking the reversal and setting aside of the Decision[3] and Resolution,[4] dated September 19, 2017 and January 22, 2018, respectively, of the Court's First Division (Court in Division). The assailed Decision partially cancelled the assessments against Parity Packaging Corporation (Parity)

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[1] *Rollo*, CTA EB No. 1783, Petition for Review (PFR), pp. 6-31.
[2] Rule 8. Procedure in Civil Cases
Section 3. Who may appeal; period to file petition.
xxx xxx xxx
(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.
[3] *Rollo*, pp. 32-86.
[4] *Rollo*, pp. 87-97.

for taxable year 2010. In effect, only the assessments for value-added tax (VAT), expanded withholding tax (EWT), and documentary stamp tax (DST) were upheld, albeit in modified amounts. This was later affirmed in the assailed Resolution resolving the CIR's Motion for Reconsideration.

The Facts

The Court in Division recited the facts, as follows:

> Petitioner Parity Packaging Corporation is registered with the Bureau of Internal Revenue (BIR) under Taxpayer Identification Number 004-464-749-000. Its registered addresss is No. 24 Fortune Avenue, Brgy. Fortune, Marikina City 1809.
>
> Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue who holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.
>
> On December 15, 2011, [Parity] received Letter of Notice No. 116-RLF-10-00-00073 dated December 13, 2011, showing (per PTB of respondent) that [Parity] had an under-declaration of sales for taxable year 2010, purportedly on the basis of a computerized matching conducted by [the BIR] on the information/data provided by third party sources against declaration on VAT returns.
>
> Subsequently, a Letter of Authority No. 116-2012-00000016 dated July 3, 2012 was received by [Parity], thereby authorizing revenue officers Vivien Guillermo and Shella Samaniego to conduct examination of the books of accounts and other accounting records of [respondent] for all internal revenue taxes for taxable year 2010.
>
> [Parity] received a *Notice of Informal Conference* dated September 13, 2013 signed by Alfredo V. Misajon, OIC-Assistant Commissioner (OIC-ACIR), Large Taxpayer Service of the BIR, informing [Parity] of the initial audit findings on the basis of the audit conducted.
>
> On October 24, 2013, a *Preliminary Assessment Notice* (PAN) dated October 24, 2013, together with the Details of Discrepancies, both signed by OIC-ACIR Alfredo V. Misajon, were served to [Parity].

> On November 26, 2013, [Parity] received a *Formal Letter of Demand* (FLD) dated November 26, 2013, with the Audit Result/Assessment Notices Nos. IT-116-LOA-0000016-10-13-224, VT-116-LOA-0000016 -10-13-225, WE-116-LOA-0000016-10-13-226, DS-116-LOA-0000016-10-13-227 and DS-116-LOA-0000016-13-228, for deficiency income tax, VAT, EWT and DST for the year ending December 31, 2010. A "Details of Discrepancies" accompanied the said FLD and Assessment Notices showing the description of the deficiency assessments issued against [Parity].
>
> On April 25, 2014, a *Final Decision on Disputed Assessment* (FDDA) signed by OIC-ACIR Alfredo V. Misajon with even date, was received by [respondent]. In the said FDDA, [the BIR] requested from [Parity] the payment of P326,675,902.19, as total deficiency tax assessments due and collectible (including increments), broken down as follows:

Tax Type	Amount
Income Tax	P 200,123,786.58
VAT	113,075,438.11
EWT	188,576.27
DST	13,288,101.23
Total	**P 326,675,902.19**

> Thus, on May 23, 2014, [Parity] filed a *Petition for Review* before this Court. xxx
>
> xxx xxx xxx
>
> ..., [Parity] was granted ten (10) days from receipt of the said resolution within which to file its *Amended Petition for Review*.[5]

The case proceeded to trial, after which the Court in Division rendered the assailed Decision, the dispositive portion of which states:

> **WHEREFORE**, in light of the foregoing considerations, the instant *Amended Petition for Review* is **PARTIALLY GRANTED**.
>
> Accordingly, the subject deficiency income tax assessment is hereby **CANCELLED** and **SET ASIDE**.

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[5] *Rollo*, Decision dated September 19, 2017, pp. 32-34.

> However, [Parity] is ordered to pay **NINE HUNDRED ELEVEN THOUSAND FOUR HUNDRED TEN PESOS AND FIFTY CENTAVOS (P911,410.50)** for the taxable year 2010, inclusive of the 25% surcharge imposed under Section 248(3) of the NIRC of 1997, computed as follows:

Tax Type	Basic	25% Surcharge	Total
VAT	P 707,893.93	P 176,973.48	P 884,867.41
EWT	10,163.72	2,540.93	12,704.65
DST	11,070.75	2,767.69	13,838.44
Total	**P 729,128.40**	**P 182,282.10**	**P 911,410.50**

> In addition, [Parity] is ordered to pay delinquency interest at the rate of 20% per annum on the said total amount of P911,410.50, computed from April 30, 2014 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997.
>
> **SO ORDERED.**[6]

The CIR's Motion for Reconsideration was denied in the Court in Division's Resolution, dated January 22, 2018, as follows:

> **WHEREFORE**, in light of the foregoing considerations, the instant *Motion for Reconsideration* is **DENIED** for lack of merit.
>
> **SO ORDERED.**[7]

On February 23, 2018, the CIR filed the instant Petition for Review with the Court *En Banc*. After notice,[8] Parity filed its Comment (To the Petition for Review)[9] on April 16, 2018.

The Court *En* Banc no longer required the submission of memoranda, thus, on May 8, 2018, the instant case was deemed submitted for decision.[10]

Issue

Petitioner assigns the following errors:

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[6] *Rollo*, Decision dated September 19, 2017, pp. 85-86.
[7] *Rollo*, p. 96.
[8] *Rollo*, Resolution dated March 26, 2018, pp. 102-103.
[9] *Rollo*, pp. 104-112.
[10] *Rollo*, Resolution dated May 8, 2018, pp. 114-115.

I. The Honorable Court in Division erred in ruling that petitioner's right to assess respondent deficiency VAT for the first quarter of 2010 and deficiency EWT for January to March 2010 had prescribed.

II. The Honorable Court in Division erred in ruling that the deficiency income tax assessment is cancelled and in modifying the deficiency VAT, EWT and DST assessments.[11]

Ruling of the Court

The petition lacks merit.

The Petition for Review was timely filed.

The Court in Division issued the assailed Resolution denying the CIR's Motion for Reconsideration Re: Decision dated 19 September 2017 on January 22, 2018. The CIR received the said resolution on January 24, 2018.[12]

Pursuant to Rule 4, Section 2(a)(2)[13], in relation to Rule 8, Section 3(b) of the RRCTA, the CIR had fifteen (15) days from January 24, 2018 or until February 8, 2018 within which to file his petition for review.

On February 7, 2018, the CIR filed his Motion for Extension of Time to file Petition for Review[14] praying for an additional fifteen (15) days from February 8, 2018, or until February 23, 2018, within which to file his petition for review.

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[11] *Rollo*, PFR, p. 8.
[12] Docket, CTA Case No. 8825, Notice of Resolution dated January 23, 2018, pp. 1340-1341; also, *rollo*, CIR's Motion for Extension of Time to File Petition for Review, pp. 1-4.
[13] Rule 4 Jurisdiction of the Court

Sec. 2. Cases within the jurisdiction of the Court *en banc*. – The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:

xxx xxx xxx

(2) Local tax cases decided by the Regional Trial Courts in the exercise of their original jurisdiction; xxx

[14] *Rollo*, pp. 1-4.

Said motion was granted in the Minute Resolution dated February 12, 2018.[15]

On February 23, 2018, the CIR timely filed the instant petition.

There is no compelling reason to reverse or modify the Court in Division's Decision and Resolution.

At the outset, the Court notes that the present Petition for Review is nearly a word-for-word rehash of the CIR's Motion for Reconsideration submitted before the Court in Division. Furthermore, petitioner raises arguments which have been discussed and addressed by the Court in Division in the assailed Decision and Resolution.

Prescription

Petitioner argues that there was falsity in the cost of goods sold declared per respondent's tax returns justifying the application of the ten-year prescriptive period. Petitioner also states that with respect to the DST, no DST returns were filed and no stamp taxes were paid. Petitioner further argues that the Waiver of the Defense of Prescription (Waiver) executed by respondent on April 19, 2013, extending the period within which to issue an assessment until December 31, 2014 is effective, valid and binding. In the alternative, petitioner also argues that the withholding tax assessment cannot prescribe, being in the nature of a mere penalty for a withholding agent's failure to withhold and/or remit funds to the government.

We reiterate the Court in Division's ruling that at the time the Waiver was executed, certain taxes have already prescribed, to wit:

> Records disclose that [Parity] executed a Waiver of the Defense of Prescription on April 19, 2013 which was accepted by the [CIR] on May 2, 2013.

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[15] *Rollo*, p. 5.

> We note that [the CIR]'s right to assess deficiency VAT for the first quarter of 2010 was only until April 25, 2013, while that of deficiency EWT for January to March 2010 was only until April 14, 2013. Thus, when the said Waiver became effective on May 2, 2013, [the CIR]'s right to assess [Parity] of deficiency VAT for the first quarter of 2010 and deficiency EWT for the months of January to March 2010 had already prescribed.[16]

Petitioner also did not present any evidence to prove the falsity of respondent's tax returns in order to justify the application of the ten-year prescriptive period.[17]

With respect to DST, petitioner argues that Parity failed to file any DST return or pay any stamp tax and that the assessment for DST has not prescribed.

However, contrary to petitioner's argument, the Court in Division actually agreed that the DST assessments have not prescribed on the ground that Parity did not file any DST return.[18]

Thus, petitioner did not raise any cogent reason for the Court *En Banc* to reverse the Court in Division's findings on prescription.

Assessments for deficiency income tax, VAT, EWT, and DST

The CIR argues that the items giving rise to the deficiency income tax have not been rebutted by Parity. Further, the CIR states that the Court in Division upheld certain items of assessment and yet the entire deficiency income tax assessment was cancelled.

The CIR also contested the reduction of the assessments for VAT, EWT, and DST.

Upon review of petitioner's arguments, the Court *En Banc* finds that said arguments are lifted from the CIR's Motion for Reconsideration before the Court in Division, and points to no specific errors committed by the Court in Division in arriving at the assailed Decision.

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[16] *Rollo*, Decision dated September 19, 2017, pp. 54.
[17] *Rollo*, Resolution dated January 22, 2018, p. 89.
[18] *Rollo*, Resolution dated January 22, 2018, p. 92.

The CIR discussed the following items:

(1) Undeclared sales to Fortune Tobacco Corporation (FTC)

The CIR states that there remains income from FTC in the amount of Php2,251,218.07 which was not declared in Parity's income tax return, giving rise to a deficiency income tax assessment thereon.

However, the Court in Division was able to trace the said income amounts to Parity's service income reported in the months of January and February 2010.

Thus, we affirm the Court in Division's findings.

(2) Undeclared income from PMFTC, Inc.

With respect to this item, the CIR alleges that the service income of Php785,765.10 relating to Official Receipt (OR) No. 33 was not declared.

However, it was sufficiently proven by Parity that the said OR No. 33 was cancelled, when Parity presented the complete set of said OR No. 33,[19] with the word "cancelled" on its face. Hence, this item of assessment must be cancelled.

(3) Undeclared income from unreceipted collections from Tanduay Distillers, Inc.

The assessments for deficiency income tax and VAT arising from this item were upheld by the Court in Division.

However, despite this item being upheld, the assessment for deficiency income tax must still be cancelled upon recomputation.

(4) Gross profit on undeclared/unaccounted purchases
(5) Gross profit on undeclared/unaccounted cost of goods sold

These two items were cancelled by the Court in Division on the ground that "in the imposition or assessment of income tax, it must be clear that there was an income, and such

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[19] Docket, Vol. II, Exhibits "P-25", and "P-25-a" to "P-25-c", pp. 1068-1071.

income was received by the taxpayer, not when there is an underdeclaration of purchases/cost of goods sold.

The Court *En Banc* agrees with the conclusion of the Court in Division, thus, the assessment for deficiency income tax on these items must be cancelled. Likewise, the assessment for deficiency VAT arising from these items must also be cancelled.

(6) Unsupported compensation/direct labor

The assessment on this item was upheld by the Court in Division due to Parity's failure to reconcile and prove its allegation that the discrepancy of Php163,924.27 pertains to separation pay paid in 2010.

(7) Disallowed expenses for failure to subject to withholding tax

The assessment on this item was partially upheld by the Court in Division. Parity failed to sufficiently reconcile and explain why the remaining income payments of Php1,176,936.10 were not subjected to EWT.

(8) Gain on disposal/transfer of real property

The Court in Division found that the involved disposal/transfer of real property, in exchange for shares, qualified as a tax-free exchange pursuant to Section 40(C)(2), and thereby cancelled the assessments thereon. The CIR's argument that Parity was not able to secure a favorable ruling confirming that the transfers are tax-free exchanges were sufficiently addressed by the assailed Decision, as follows:

> There is nothing in the law which requires that the absence of a confirmatory ruling would result in a deficiency income tax assessment. Thus, there can be no merit in [the CIR]'s argument to the effect that considering that [Parity] was not able to secure a favorable ruling from the BIR that the subject transfers or exchanges are tax-free, [Parity]'s income tax liability must be maintained.
>
> Furthermore, based on the aforequoted Section 40, the requisites for the non-recognition of gain or loss

are: (a) the transferee is a corporation; (b) the transferee exchanges its shares of stock for property/ies of the transferor; (c) the transfer is made by a person, acting alone or together with others, not exceeding four (4) persons; and (d) as a result of the exchange, the transferor, alone or together with others, not exceeding four (4), gains control of the transferee.[20]

(9) Disallowed creditable withholding taxes

The disallowance of the Php30,547.20 as creditable withholding tax was upheld by the Court in Division due to Parity's failure to prove that the same formed part of prior years' excess credits.

(10) Excess income tax credit carried forward

The assessment on this item of Php27,468,608.88 was cancelled for failure to provide the legal and factual bases of the assessment.

Considering the foregoing factual findings of the Court in Division and with no new arguments or specific errors or evidence to the contrary pointed out by the CIR, the Court *En Banc* affirms the Court in Division's recomputation of Parity's deficiency income tax and VAT liabilities as follows:

Taxable income per return		Php 9,475,017.79
Add: Adjustments		
Undeclared income from unreceipted collections from Tanduay Distillers, Inc.		4,059,135.17
Unsupported compensation/direct labor		163,924.27
Disallowed expenses for failure to subject to EWT		1,176,936.10
Total sales/income per audit		Php14,875,013.33
Income tax due per audit		Php 4,462,504.00
Less: Credits/payments		
Prior years' excess credits	Php28,638,577.20	
Add: Allowable CWT	1,641,989.82	30,280,567.02
Basic Deficiency Income Tax		(Php25,818,063.02)

As can be seen from the foregoing, despite items of assessment having been upheld, the recomputation of the assessment does not result to a deficiency income tax liability.

[20] *Rollo*, Decision dated September 19, 2017, p. 72.

On the other hand, the recomputation of the VAT assessment, results to deficiency VAT of Php707,893.93, computed as follows:

Vatable receipts per return		Php59,659,130.74
Add: Undeclared income from unreceipted collections from TDI		4,059,135.17
Total sales/receipts per audit		Php63,718,265.91
Output VAT due per audit		Php 7,646,191.91
Less: Credits/payments		
Importation of goods other than capital goods	Php 2,116,800.08	
Local Purchases	363,008.48	
Payments made for 2010	4,458,489.42	6,938,297.97
Basic Deficiency Value-Added Tax		Php 707,893.93

With respect to deficiency EWT, the CIR again argued that the said assessment has not prescribed. However, as discussed above, the assessment for deficiency EWT has prescribed for the months of January to March 2010. Once again, the CIR does not point to a specific error made by the Court in Division in the computation of the remaining EWT assessment. Thus, the deficiency EWT as computed by the Court in Division is affirmed, as follows:

Security services not subjected to EWT per assessment	Php 4,634,685.00
Less: Supported by certifications	3,457,650.00
Prescribed transactions	668,848.83
Security services not subjected to EWT per audt	508,186.17
EWT rate	2%
Basic Deficiency Expanded Withholding Tax	Php 10,163.72

Finally, the Court in Division's discussion on the remaining deficiency DST assessment against Parity is quoted with approval, as follows:

> As stated earlier, the need to secure a prior BIR ruling is not a condition to the availment of tax exemption. Section 199 of the NIRC of 1997, as amended by Section 9 of Republic Act (RA) No. 9243, explicitly exempts from DST transfers of properties by virtue of tax-free exchanges under Section 40(C)(2) of the NIRC of 1997, to wit:
>
> "SEC. 199. *Documents and Papers Not Subject to Stamp Tax.* – The provisions of Section 173 to the contrary notwithstanding, the following

> instruments, documents and papers shall be exempt from the documentary stamp tax:
>
> xxx xxx xxx
>
> (m) Transfer of property pursuant to Section 40(C)(2) of the National Internal Revenue Code of 1997, as amended."

The exemption on transfer of property pursuant to Section 40(C)(2) referred to above pertains to the DST due on the deed transferring the property.

Moreover, the original issuance of shares of stocks in exchange of the said property is subject to the DST pursuant to Section 174 of the NIRC of 1997, as amended, by RA No. 9243, to wit:

> "SEC. 174. *Stamp Tax on Original Issue of Shares of Stock.* – On every original issue, whether on organization, reorganization or for any lawful purpose, of shares of stock by any association, company or corporation, there shall be collected a documentary stamp tax of One peso (P1.00) on each Two Hundred pesos (P200), or fractional part thereof, of the par value, of such shares of stock: *Provided*, That in the case of the original issue of shares of stock without par value, the amount of the documentary stamp tax herein prescribed shall be based upon the actual consideration for the issuance of such shares of stock: *Provided, further*, That in the case of stock dividends, on the actual value represented by each share."

However, Revenue Memorandum Ruling No. 01-01 clearly provides that it is the transferee corporations, i.e. FLRI and PMFTC, Inc., which are liable to pay the DST, and not the transferor-petitioner, to wit:

> II. TAX CONSEQUENCE.
>
> xxx xxx xxx
>
> 4. *Documentary Stamp Tax.* – The documentary stamp tax consequences of the transfer are as follows:
>
> xxx xxx xxx
>
> 4.2 The transferee is subject to documentary stamp tax on the original issuance of its shares (Section 175, Tax Code of 1997), at the following rate, depending on

> whether such shares are par or no-par shares: xxx"

Accordingly, petitioner is not liable to pay DST on the disposal of properties and on the original issuance of shares.

As regards the assignment of shares in FLRI to PMFTC, Inc., petitioner did not controvert the assessment. In this connection, it is a well-settled rule that the determination of respondent is presumed correct and it behooves the taxpayers to rebut such presumption. Thus, the deficiency DST assessment on the assignment of shares must be upheld.

In sum, petitioner is liable to pay deficiency DST in the amount of P11,070.75, as computed below:

Assignment of shares in FLRI to PMFTC, Inc.	
(29,522 shares @ P100 par value)	P 2,952,200.00
DST rate	P 0.75/200.00
Basic Deficiency DST	P 11,070.75

Based on the foregoing, the Court *En Banc* finds no compelling reason to modify nor reverse the findings of the Court in Division.

WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit. The Decision and Resolution, dated September 19, 2017 and January 22, 2018, respectively are affirmed with respect to the cancellation of deficiency income tax and the upholding of the basic deficiency taxes for VAT, EWT, and DST.

However, in view of the issuance of Revenue Regulations No. 21-2018 with respect to the computation of deficiency and delinquency interest, the assailed Decision is **MODIFIED** with respect to interests, as follows:

> **WHEREFORE**, in light of the foregoing considerations, the instant *Amended Petition for Review* is **PARTIALLY GRANTED**.
>
> Accordingly, the subject deficiency income tax assessment is hereby **CANCELLED** and **SET ASIDE**.

However, petitioner is **ORDERED TO PAY** the aggregate amount of **Php2,942,655.58** for taxable year 2010, inclusive of the 25% surcharge, 20% deficiency interest and 20% delinquency interest imposed under Sections 248(A)(3), 249(B) and (C) of the NIRC, computed until December 31, 2017, as follows:

	VAT	**EWT**	**DST**	**Total**
Basic Tax	₱ 707,893.93	₱ 10,163.72	₱ 11,070.75	₱ 729,128.40
Add: 25% Surcharge	176,973.48	2,540.93	2,767.69	182,282.10
20% Deficiency Interest from January 26, 2011 to April 30, 2014 *[₱707,893.93 x 20% x 1191/365 days]*	461,973.52			461,973.52
20% Deficiency Interest from January 15, 2011 to April 30, 2014 [₱10,163.72 x 20% x 1202/365 days]		6,694.13		6,694.13
20% Deficiency Interest from January 6, 2011 to April 30, 2014 [₱11,070.75 x 20% x 1211/365 days]			7,346.13	7,346.13
Total Amount Due as of April 30, 2014	**₱1,346,840.93**	**₱19,398.78**	**₱21,184.56**	**₱1,387,424.28**
Add: 20% Deficiency Interest from May 1, 2014 to December 31, 2017 [₱707,893.93 x 20% x 1341/365 days]	520,156.58			520,156.58
[₱10,163.72 x 20% x 1341/365 days]		7,468.25		7,468.25
[₱11,070.75 x 20% x 1341/365 days]			8,134.73	8,134.73
20% Deficiency Interest from May 1, 2011 to December 31, 2017 [₱1,346,840.93 x 20% x 1341/365 days]	989,651.34			989,651.34
[₱19,398.78 x 20% x 1341/365 days]		14,254.12		14,254.12
[₱21,184.56 x 20% x 1341/365 days]			15,566.30	15,566.30
Total Amount Due as of December 31, 2017	**₱2,856,648.85**	**₱41,121.15**	**₱44,885.59**	**₱2,942,655.58**

In addition, petitioner is **ORDERED TO PAY** respondent the delinquency interest at the rate of twelve percent (12%) on the total amount of Php1,387,424.28 as of April 30, 2014, as determined above, computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN), and implemented by Revenue Regulations No. 21-2018.

SO ORDERED.

CATHERINE T. MANAHAN
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

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

Ma. Belen R. - L.
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 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

cmn

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB No. 1783** *(CTA Case No. 8825)*
	Present:
- versus -	Del Rosario, *P.J.*, Castañeda, Jr., Uy, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, and Manahan, *JJ.*
PARITY PACKAGING CORPORATION, *Respondent.*	Promulgated: MAR 05 2019

x- 8:12 p.m. -x

CONCURRING AND DISSENTING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* in denying the Petition for Review filed by Parity Packaging Corporation on February 23, 2018 thereby affirming the assailed September 19, 2017 Decision and January 22, 2018 Resolution of the Court in Division albeit with *modification* in the computation of deficiency and delinquency interests in view of the effectivity of Republic Act No. 10963, otherwise known as the Tax Reform for Acceleration and Inclusion (TRAIN) Law, and as implemented by Revenue Regulations (RR) No. 21-2018.

With due respect, however, I differ in the computation of the deficiency and delinquency interests. Applying the amendments under the TRAIN Law, as implemented by RR No. 21-2018, I submit that the 20% deficiency interest (which shall in turn be subjected to 20% delinquency interest) shall be computed from the date prescribed for payment until January 10, 2014, the due date for payment as indicated in Assessment Notice Nos. VT-116-LOA-0000016-10-13-225, WE-116-LOA-0000016-10-13-226, and DS-116-

LOA-0000016-10-13-227, all issued on November 26, 2013, not until April 30, 2014, which is the due date as appearing in Assessment Notice No. VT-116-LOA-0000016-10-14-357, attached to the Final Decision on Disputed Assessment dated April 25, 2014.

All told, I **VOTE** to:

(i) **DENY** the Petition for Review filed by the Commissioner of Internal Revenue on February 23, 2018 for lack of merit;

(ii) **AFFIRM** with **MODIFICATION** the Decision of the Court in Division; and,

(iii) **ORDER** Parity Packaging Corporation to **PAY** the Bureau of Internal Revenue the amount of **₱2,991,339.91** representing deficiency value-added tax (VAT), expanded withholding tax (EWT), and documentary stamp tax (DST), computed as follows:

		VAT	EWT	DST	Total
Basic Deficiency Tax	₱	707,893.93	10,163.72	11,070.75	729,128.40
Add: 25% Surcharge		176,973.48	2,540.93	2,767.69	182,282.10
Deficiency Interest from 01/26/2011 to 01/10/2014 (₱707,893.93 x 20% x 1,081/365 days)		419,305.94			419,305.94
Deficiency Interest from 01/15/2011 to 01/10/2014 (₱10,163.72 x 20% x 1,092/365 days)			6,081.52		6,081.52
Deficiency Interest from 01/06/2011 to 01/10/2014 (₱11,070.75 x 20% x 1,101/365 days)				6,678.85	6,678.85
Total Amount Due, January 10, 2014	**₱**	**1,304,173.35**	**18,786.17**	**20,517.28**	**1,343,476.81**
Deficiency Interest From 1/11/2014 to 12/31/2017 (₱707,893.93 x 20% for 1,451/365 days)	₱	562,824.16			562,824.16
(₱10,163.72 x 20% for 1,451/365 days)			8,080.85		8,080.85
(₱11,070.75 x 20% for 1,451/365 days)				8,802.00	8,802.00
Delinquency Interest From 1/11/14 to 12/31/17 (₱1,304,173.35 x 20% x 1,451/365 days)	₱	1,036,907.14			1,036,907.14
(₱18,786.17 x 20% x 1,451/365 days)			14,936.30		14,936.30
(₱20,517.28 x 20% x 1,451/365 days)				16,312.65	16,312.65
Total Amount Due, December 31, 2017	**₱**	**2,903,904.65**	**41,803.32**	**45,631.94**	**2,991,339.91**

In addition, Parity Packaging Corporation is **ORDERED** to **PAY** the delinquency interest at the rate of twelve percent (12%), which is double the legal interest rates for loans and forbearance of any money, on the total amount due as of **January 10, 2014** in the amount of **₱1,343,476.81** as determined above, computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the National Internal Revenue Code of 1997, as amended by the TRAIN Law and as implemented by RR No. 21-2018.

ROMAN G. DEL ROSARIO
Presiding Justice