REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB No. 1667
(CTA Case No. 8588)

-versus-

Present:

Del Rosario, *PJ*,
Castañeda, Jr.,
Uy,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, and
Manahan, *JJ*.

MT. BLANC MOTORS, INC.,
Respondent.

Promulgated:

JAN 07 2019
4:25 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

Before the CTA *En Banc* is the petition for review filed by petitioner Commissioner of Internal Revenue ("CIR", respondent in the division case) on June 28, 2017[1] assailing the January 4, 2017 Decision,[2] affirmed in May 24,2017 Resolution,[3] promulgated by the CTA Third Division (now CTA Special Third Division, "CTA Division" for brevity) in the case entitled *"Mt. Blanc Motors, Inc. v. Commissioner of Internal Revenue,"* docketed as CTA Case No. 8588. The CTA Division partially granted then petitioner Mt. Blanc Motor Inc.'s petition for review.

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[1] *Rollo*, pp. 6-17.
[2] *Rollo*, pp. 19-42; Penned by Associate Justice Ma. Belen M. Ringpis-Liban and concurred in by Associate Justice (now Retired) Lovell R. Bautista and Associate Justice Esperanza R. Fabon-Victorino.
[3] *Rollo*, pp. 44-51; *Id.*

The dispositive portion of the January 4, 2017 Decision ("Assailed Decision") reads:

> **WHEREFORE,** premises considered, the instant Petition for Review filed by Mt. Blanc Motors, Inc. is **PARTIALLY GRANTED.** The assessment covering the alleged deficiency income tax for taxable year 2008 in the amount of ₱165,472.01, inclusive of interest, is **CANCELLED AND WITHDRAWN.** However, the assessments for deficiency VAT and withholding tax on compensation for taxable year 2008 shall be **UPHELD** but in the reduced amount of ₱279,700.05, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248 (A)(3) of the NIRC of 1997, as amended. Accordingly, petitioner is **ORDERED TO PAY** the amount of ₱279,700.05, inclusive of surcharge, computed as follows:

Type of Tax	Basic	25% Surcharge	Total
Value-added Tax	₱113,290.81	₱28,322.70	₱141,613.51
Withholding Tax on Compensation	110,469.23	27,617.31	138,086.54
Total Deficiency Taxes	**₱223,760.04**	**₱55,940.01**	**₱279,700.05**

> In addition, petitioner is **ORDERED TO PAY**:
>
> (a) deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency VAT of ₱113,290.81 and on the basic deficiency withholding tax on compensation of ₱110,469.23, computed from January 25, 2009 and January 13, 2009, respectively, until full payment thereof pursuant to Section 249 (B) of the NIRC of 1997, as amended; and
>
> (b) delinquency interest at the rate of 20% per annum on the total amount of ₱279,700.05, and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from November 16, 2012 until full payment thereof pursuant to Section 249 (C) of the NIRC of 1997, as amended.
>
> **SO ORDERED.**

The dispositive portion of the February 13, 2017 Resolution ("Assailed Resolution") reads: ✓

> **WHEREFORE,** premises considered, **Motion for Reconsideration (Decision of 04 January 2017)** is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**

CIR prays that the Decision dated January 4, 2017 be modified and that the deficiency income tax on the alleged additional taxable income of ₱282,515.26; the deficiency income tax assessment arising from respondent's alleged undeclared income from unaccounted source of cash of ₱23,123.55; the deficiency income tax assessment arising from the disallowance of the excess tax credits of ₱292,551.60; and the deficiency VAT arising from the undeclared sales and unaccounted source of cash, should not be cancelled and that the Petition for Review docketed as CTA Case No. 8588 be dismissed for lack of merit.

THE FACTS

The facts of the case as found by the CTA Division, as stated in the Assailed Decision:[4]

> Petitioner [Respondent in the CTA *En Banc* case, "MBMI" for brevity]] Mt. Blanc Motors, Inc. is a corporation duly organized and existing under Philippine laws, with principal office address at No. 721-729 Quezon Avenue, Sto. Domingo, Quezon City. It is primarily engaged in the sale, maintenance, and repair of motor vehicles.
>
> xxx xxx xxx
>
> On June 3, 2011, petitioner received a Notice of Informal Conference dated March 31, 2011 issued by Revenue Officer Ramer D. Narvaez of BIR Revenue District Office (RDO) No. 38.
>
> On November 22, 2011, petitioner received a Preliminary Assessment Notice (PAN) dated November 16, 2011, assessing it of deficiency income tax, VAT, and WTC.

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[4] *Rollo*, pp. 20-23; Petitioner refers to Mt. Blanc Motors, Inc., which is the respondent in the CTA *En Banc* case; Respondent is now petitioner CIR in the CTA *En Banc* case.

On December 7, 2011, petitioner submitted a position paper dated December 5, 2011, refuting the assessment for alleged deficiency income tax, VAT, and WTC for taxable year 2008.

On December 9, 2011, respondent issued a Final Assessment Notice (FAN) and Formal Letter of Demand (FLD), assessing petitioner of deficiency income tax, VAT, and WTC for taxable year 2008.

On March 9, 2012, petitioner received a letter from respondent dated February 23, 2012, informing the former that a FAN has been issued against it and directing petitioner to file a protest within fifteen (15) days from receipt of said notice. Petitioner responded to said letter on March 22, 2012, stating that it has not received any FAN or FLD and as such was not able to reply to the assessment.

Petitioner requested and received a photocopy of the FLD from respondent on March 26, 2012, assessing it of deficiency income tax, VAT, and WTC in the aggregate amount of P1,549,603.83, inclusive of interest as of January 9, 2012.

On April 4, 2012, petitioner filed with respondent its protest addressed to Officer-in-Charge (OIC) Regional Director of Revenue Region No. 7, Quezon City, Mr. Jonas DP. Amora, on the above assessments.

On November 16, 2012, petitioner received respondent's FDDA dated October 22, 2012, denying petitioner's protest.

Accordingly, petitioner filed the instant Petition for Review before the Court on December 17, 2012. The case was raffled to the Third Division, which issued Summons to respondent on December 27, 2012.

In the Answer filed on February 18, 2013, respondent [now petitioner] interposed the following special and affirmative defenses:

> "4. All presumptions are in favor of the correctness of the assessment. In the absence of proof of any irregularities in the performance of duties, an

assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed;

5. Moreover, the assessment was already made and it is upon the Petitioner to prove that such assessment was made on mere assumptions;

6. Furthermore, on the allegation of the Petitioner that the employees listed under Schedules 7.1 and 7.2 are Minimum Wage Earners are not subject to income tax, and subsequently to withholding tax on its compensation income is bereft of any merit at all.

7. Tax exemptions are to be construed *strictissimi juris* against the entity claiming the same. Moreover, statutes in derogation of sovereignty such as those containing exemption from taxation should be strictly construed in favor of the State. In this regard, taxation is the rule and exemption is the exception. The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted."

Petitioner then filed its Reply, pursuant to the Court's Resolution dated March 20, 2013 granting petitioner's Motion for Leave to File Reply filed on March 8, 2013.

In an Order issued on April 5, 2013, the Court transferred the case to the Second Division, pursuant to CTA Administrative Circular No. 01-2013 dated March 26, 2013 that re-organized the three (3) divisions of the Court of Tax Appeals.

Petitioner filed its Pre-Trial Brief on April 15, 2013; while respondent filed his Pre-Trial Brief on May 31, 2013.

On June 5, 2013, the Court again issued an Order transferring the case to the Third Division, pursuant to Section 5 of Rule V of the Internal Rules of the Court of Tax Appeals.

The pre-trial conference was held on July 18, 2013.

On August 2, 2013, the parties filed their Joint Stipulation of Facts and Issues, which was adopted by the Court in its Pre-Trial Order dated August 23, 2013.

During trial, petitioner presented the following witnesses: (1) Ms. Maricar L. Supan, petitioner's Accounting Supervisor; (2) Ms. Marie Ann A. Bejare, petitioner's Accounting Assistant; and [3] Ms. Idessa Fiona A. Marohom, Tax Specialist of Ford Group Philippines, Inc. (FGPI).[5] It formally offered its documentary evidence on April 11, 2014.

The Court issued a Resolution on May 30, 2014, admitting, as petitioner's evidence, Exhibits "P-1", "P-2", "P-3 and submarkings", "P-5", "P-6", "P-7", "P-8 and submarkings", "P-9", "P-10 and submarkings", "P-12", "P-14", "P-17" to "P-17-b", "P-18 series (P-18 to P-18-d)", "P-18[6] series (P-19 to P-19-e)", "P-20" to "P-20-a", "P-21" to "P-21-b", "P-23", "P-24 series (P-24 to P-24-z)", "P-25", "P-25-a", "P-27 and submarkings", "P-28 and submarkings", "P-29 and submarkings", and "P-30". In a Resolution dated April 7, 2015, the Court further admitted Exhibits "P-4 series", "P-11 series (P-11 to P-11-n)", "P-13", "P-15", "P-16", "P-22", "P-22-a", "P-22-b", and "P-22-c".

Respondent presented BIR Group Supervisor Victoria L. Evangelista and Revenue Officer Florencia S. Brocka as his witnesses. He filed his Formal Offer of Evidence on July 24, 2015.

On September 9, 2015, the Court admitted Exhibits "R-1", "R-2", "R-3", "R-4", "R-4-A", "R-5", 'R-6", "R-7", "R-8", "R-8-A", "R-9", "R-10", "R-10-A", "R-11", and "R-11-A" as respondent's evidence.

As directed by the Court, petitioner filed its Memorandum on October 15, 2015. Meanwhile, respondent failed to file a Memorandum. Hence, the case was declared submitted for decision on January 6, 2016. Je

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[5] Mr. Gilbert S. Tan, petitioner's [now respondent] Corporate Secretary, no longer testified. *See* Minutes of Hearing dated October 17, 2013, Docket, p. 510.
[6] Should be "P-19" series.

On January 4, 2017, the CTA Division partially granted the petition for review filed by MBMI.

On May 24, 2017, the CTA Division denied for lack of merit the motion for reconsideration filed by CIR.

On June 28, 2017, within the period of extension granted, CIR filed his Petition for Review.

On September 4, 2017, MBMI filed its Comment (Re: Petition for Review dated 27 June 2017).

Thereafter, MBMI filed its Memorandum. CIR has failed to file Memorandum.

On January 10, 2018, this case was submitted for decision.

ISSUE

The following are the grounds raised in the Petition for Review:[7]

I. The Honorable Court erred in cancelling the deficiency income tax on the alleged additional taxable income of ₱282,515.26.

II. The Honorable Court erred in cancelling the deficiency income tax assessment arising from petitioner's alleged undeclared income from unaccounted source of cash of ₱23,123.55.

III. The Honorable Court erred in cancelling the deficiency income tax assessment arising from the disallowance of the excess tax credits of ₱292,551.60.

IV. The Honorable Court erred in cancelling the deficiency VAT arising from the undeclared sales and unaccounted source of cash.

Based on the foregoing grounds, the issue is whether the CTA Division erred in the partial grant of the Petition for Review filed by Mt. Blanc Motors, Inc.

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[7] *Rollo*, pp. 10-11.

THIS COURT'S RULING

The petition is denied.

We emphasize that the crux of this appeal involves the cancellation of the entire deficiency income tax assessment and the cancellation of the deficiency VAT arising from the alleged undeclared sales and unaccounted source of cash.

After a careful review of the issues and arguments raised by CIR and MBMI, this Court finds that these are mere reiterations of what have been considered and passed upon by the Court Division in the assailed Decision dated January 4, 2017, and Resolution dated May 24, 2017.

Tax assessments by tax examiners are presumed correct and made in good faith, and all presumptions are in favor of the correctness of a tax assessment unless proven otherwise.[8] The *prima facie* correctness of a tax assessment does not apply upon proof that an assessment is utterly without foundation.[9]

The CTA Division did not err in cancelling the deficiency income tax assessment.

CIR alleges that the deficiency income tax on the alleged additional taxable income of ₱282,515.26 should not be cancelled. CIR argues that the alleged discrepancy/under-declared purchase constitutes an undeclared income because the source of the under-declared purchase is an inflow of wealth. The inflow of wealth is considered gain and therefore taxable.

CIR alleges that the deficiency income tax assessment arising from MBMI's alleged undeclared income from unaccounted source of cash of ₱23,123.55 should not be cancelled. CIR argues that the discrepancy/ unaccounted source of case constitutes an undeclared income because the unaccounted source of cash is again an inflow of wealth. The inflow of wealth is considered gain and therefore taxable.

CIR also alleges that the deficiency income tax assessment arising from the disallowance of the excess tax credits of ₱292,551.60 should not be cancelled. CIR states that MBMI should attach the 2007 Annual Income Tax Return (ITR) to prove the carry-over, otherwise, there is no source for the

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[8] *Commissioner of Internal Revenue vs. Gonzalez, et al.*, G.R. No. 177279, October 13, 2010.
[9] *Commissioner of Internal Revenue v. Hantex Trading Co., Inc.*, G.R. No. 136975, March 31, 2005.

credit. CIR further states that all items claimed in the ITR must be supported during the audit, and for failure to substantiate, the disallowance is proper.

In its Comment, MBMI states that CIR's arguments and assignment of errors have already been addressed and disposed by the CTA Division for being without basis in fact and in law and submits that the instant petition must be denied. MBMI argues that: (1) the CTA Division did not err in cancelling the deficiency income tax assessment on the basis of the alleged additional taxable sales of MBMI on account of the discrepancy of ₱5,068,152.52 between the purchases of MBMI from Ford Group Philippines, Inc. ("FGPI") per summary list of purchases *vis-à-vis* third-party information; (2) the CTA Division did not err in cancelling the imposition of deficiency income tax on the alleged unaccounted source of cash in the amount of P23,123.55; and (3) the CTA Division did not err when it held that it was improper for the CIR to have disallowed the excess tax credits of MBMI in the amount of ₱292,551.60.

CIR's allegations are untenable.

We agree with ruling of the CTA Division cancelling the assessment for deficiency income tax, inclusive of interest, for taxable year 2008 in the amount of ₱165,472.01.

In this case, CIR allegedly found a discrepancy of ₱5,068,152.52 on MBMI purchases from FGPI, hence, computed an additional taxable income in the amount of ₱282,515.26, as follows:

Purchases per third-party information- Ford Group Philippines, Inc.	₱324,092,344.43
Purchases from Ford per schedule of purchases	319,024,191.91
Discrepancy in purchases	5,068,152.52
Divided by cost of goods sold rate (P338,768,673.00/P357,655,069.00)	94.72%
Additional taxable sales	5,350,667.78
Multiply by gross profit rate (P18,886,396.00/P357,655,069.00)	5.28%
Additional taxable income	₱282,515.26[10]

The CTA Division found that there is no under-declared purchase that may result in additional taxable income; and that even granting that there was under-declaration of purchase on the part of MBMI, the same is of no consequence. It is not when there is an under-declared purchase, but only when there is an income, and such income was received or realized by the

[10] Details of Discrepancy, Exhibit "P-4-9".

taxpayer, that an imposition or assessment of income tax is proper. We reiterate with approval the discussion in the assailed Decision,[11] as follows:

> Based on the Details of Discrepancy, the amount of ₱5,068,152.52 was arrived at by comparing petitioner's [MBMI] schedule of purchases from FGPI as against third-party information generated by respondent [CIR] through its RELIEF system based on the data submitted by the third-party, FGPI.
>
> However, a perusal of the said third-party information, particularly, the Summary List of Sales (SLS) of FGPI to petitioner [MBMI], reveals that the total sales of the former to the latter is ₱334,764,228.76 and not ₱324,092,344.43, as found by the BIR. Records also show that the purchases from FGPI, in the amount of ₱319,024,191.91, that was used by respondent [CIR] in the comparison, pertain only to petitioner's [respondent's] purchases of unit vehicle and did not include purchases of vehicle parts and accessories from FGPI. This amount approximates (and is even higher than) petitioner's [MBMI] vehicle purchases per record of FGPI in the amount of ₱319,015,294.65, as confirmed by Ms. Idessa Fiona A. Marohom, FGPI's Tax Specialist, in her judicial Affidavit, xxx xxx xxx.
>
> On the other hand, the Summary List of Purchases (SLP) reveals that petitioner's [MBMI] total amount of purchases from FGPI is P335,646,484.09, xxx xxx xxx.
>
> Considering that **petitioner's [MBMI] total amount of purchases from FGPI per SLP of P335,646,484.09 is more than FGPI's total sales to petitioner per SLS of ₱334,764,228.76, there is no under-declared purchase that may result in additional taxable income.**
>
> But even granting that there was under-declaration of purchase on the part of petitioner [MBMI], the same is of no consequence. As held in the case of *Commissioner of Internal Revenue vs. Agrinurture, Inc.*,[12] a finding of under-declaration of purchase does not by itself result in the imposition of income tax and VAT.

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[11] Assailed Decision, pp. 10-12; *Rollo*, pp. 28-30.
[12] CTA EB No. 1054 (CTA Case No. 8345), January 13, 2015.

> The three (3) elements in the imposition of income tax are: (1) there must be gain or profit; (2) the gain or profit is realized or received, actually or constructively; and (3) it is not exempted by law or treaty from income tax.[13] Income tax is assessed on income received from any property, activity or service that produced the income.[14]
>
> Hence, it is not when there is an under-declared purchase, but only when there is an income, and such income was received or realized by the taxpayer, that an imposition or assessment of income tax is proper.
>
> In this case, said elements are not present. Respondent [CIR] merely presumed that the alleged discrepancy/under-declared purchase constitutes an undeclared income. Hence, respondent's [CIR] assessment was not based on undeclared income actually received by petitioner [respondent].
>
> xxx xxx xxx
>
> Therefore, respondent's [CIR] deficiency income tax [assessment] on the alleged additional taxable income of ₱282,515.26 should be cancelled. *(Emphases Supplied).*

Anent the unaccounted source of cash or undeclared income in the amount of ₱23,123.55, the same was cancelled for lack of factual basis. This Court reiterates the findings of the CTA Division,[15] as follows:

> Respondent [CIR] compared petitioner's [MBMI] income payments, as reported in its alphalist, with its expenses, as reported in its ITR and FS. He found that the former was greater than the latter by ₱23,123.55. Based on this difference, respondent [CIR] concluded that, since there are undeclared expenses, there must be an unaccounted source of cash or undeclared income in the same amount. Consequently, he assessed petitioner [MBMI] for the said amount.
>
> Respondent's [CIR] conclusion is untenable. **Apart from the comparison of the alphalist with the ITR and FS, respondent [CIR] has no other basis to support his conclusion that petitioner [MBMI] has an unaccounted source of cash or undeclared income in the amount of ₱23,123.55.** Indeed, the amount claimed by respondent [CIR] as petitioner's [MBMI] undeclared income would be offset by

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[13] *Commissioner of Internal Revenue vs. The Court of Appeals, et al.*, G.R. No. 108576, January 20, 1999.
[14] *Supra.*
[15] Assailed Decision, pp. 14-15; *Rollo*, pp. 32-33.

> deducting the same amount, as it corresponds to income payments reflected in the alphalist. This results in no taxable income.
>
> While it is axiomatic that all presumptions are in favor of the correctness of tax assessments, the assessment itself should not be based on presumptions no matter how logical the presumption might be. In order to stand the test of judicial scrutiny, the assessment must be based on actual facts.
>
> **For lack of factual basis**, the deficiency income tax assessment arising from petitioner's [respondent's] alleged undeclared income from unaccounted source of cash of ₱23,123.55 should be cancelled. *(Emphases Supplied).*

With respect to the excess tax credits of ₱292,551.60 reflected in MBMI's 2008 Annual ITR, this Court reiterates with approval pertinent portions of the assailed Decision:[16]

> Respondent [CIR] disallowed the excess tax credits of ₱292,551.60 reflected in petitioner's [MBMI] 2008 Annual ITR. Respondent [CIR], however, **did not explain the basis for the disallowance of the excess tax credit, thus, pursuant to Section 228 of the NIRC of 1997, as amended, this item of assessment shall be considered void.**
>
> Furthermore, it was improper for respondent [CIR] to disallow the said excess tax credits because any tax benefit derived by petitioner [MBMI] from the carry-over of the said amounts redounds to the succeeding year 2009. Since the tax benefit will be in the succeeding year, at most, petitioner [MBMI] may only be assessed in the said succeeding year. *(Emphases Supplied).*

The CTA Division did not err in cancelling the deficiency VAT arising from the alleged undeclared sales and unaccounted source of cash.

CIR alleges that the deficiency VAT arising from the undeclared sales and unaccounted source of cash should not be cancelled. CIR again argues that there was an inflow of wealth which is considered as gain, which is taxable.

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[16] Assailed Decision, p.33; *Rollo*, p. 15.

MBMI argues that CTA Division did not err when it cancelled the imposition of deficiency VAT arising from the alleged undeclared sales and unaccounted source of cash of respondent.

CIR's allegation is bereft of merit.

As found by the CTA Division, MBMI had no undeclared sales. This Court agrees with the CTA Division as discussed in the assailed Decision, as follows:[17]

> As previously discussed under the deficiency income tax, respondent's [CIR] verification disclosed a discrepancy of ₱5,068,152.52 on petitioner's [MBMI] purchases from FGPI. Additional taxable sales of ₱5,350,667.78 was attributed thereto, as determined below, and was assessed of the corresponding VAT pursuant to Sections 106 and 108 of the NIRC of 1997:
>
> xxx xxx xxx
>
> What is critical to be shown in the imposition or assessment of VAT in the sale of goods or properties is that the taxpayer is paid or ought to be paid in an amount of money or its equivalent, in consideration of such sale, and not when said taxpayer purchases or disburses an amount of money to purchase goods or properties. Simply put, the VAT is imposed when one sells, not when one purchases.
>
> Thus, **considering that petitioner [MBMI] had no undeclared sales, the imputed deficiency VAT thereon should be cancelled.** *(Emphases Supplied).*

Anent the unaccounted source of cash, this Court reiterates the following discussion of the CTA Division,[18] as follows:

> The assessment is bereft of merit as it was based merely on respondent's [CIR] inference that the difference between the expenses reflected per petitioner's [MBMI] alphalist vis-à-vis the amounts reported in its ITR and FS represents petitioner's [MBMI] alleged undeclared income.
>
> Even if these alleged unaccounted expenses/costs are to be treated as unaccounted sources of income, which are subject to output VAT, the same will be offset by recording the

[17] Assailed Decision, p.16; *Rollo*, p. 34.
[18] Assailed Decision, p. 17; *Rollo*, p. 35.

equivalent payments as expenses or purchases from which input tax credits may be claimed. Hence, no additional VAT will result from the said transactions.

In *Republic of the Philippines, represented by the Commissioner of Internal Revenue v. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation),*[19] the Supreme Court ruled that "it is fundamental that the findings of fact by the CTA in Division are not to be disturbed without any showing of grave abuse of discretion considering that the members of the Division are in the best position to analyze the documents presented by the parties."

Based on the foregoing discussions, this Court finds no reversible error to disturb the assailed Decision and Resolution of the CTA Special Third Division.

WHEREFORE, premises considered, the present Petition for Review filed by the Commissioner of Internal Revenue is **DENIED** for lack of merit. Accordingly, the January 4, 2017 Decision and the May 24, 2017 Resolution of the CTA Special Third Division in CTA Case No. 8588 are **AFFIRMED** with **MODIFICATION** in the computation of the deficiency interest and delinquency interests in view of the effectivity of Republic Act No. 10963 (TRAIN Law) on January 1, 2018 and the issuance of Revenue Regulations No. 21-2018 dated September 14, 2018.

The Petition for Review filed by Mt. Blanc Motors, Inc. in CTA Case No. 8588 is **PARTIALLY GRANTED**. The assessment covering the alleged deficiency income tax for taxable year 2008 in the amount of ₱165,472.01, inclusive of interest, is **CANCELLED AND WITHDRAWN.** However, the assessments for deficiency VAT and withholding tax on compensation for taxable year 2008 shall be **UPHELD** but in the adjusted amount of ₱1,142,716.02, inclusive of 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, and deficiency and delinquency interest imposed under Section 249(B) and (C) of the NIRC of 1997, as amended, respectively computed until December 31, 2017, computed as follows:[20]

	VAT	WTC	Total
Basic Deficiency Tax	₱ 113,290.81	₱ 110,469.23	₱ 223,760.04
25% Surcharge	28,322.70	27,617.31	55,940.01
Deficiency Interest			

[19] G.R. No. 188016, January 14, 2015 citing *Sea-Land Service Inc. v. Court of Appeals*, G.R. No. 122605, April 30, 2001, 357 SCRA 441, 445-446.
[20] Section 6 of Revenue Regulations No. 21-2018 dated September 14, 2018.

1/26/2009[21] to 11/16/2012[22] [1,391 days]			
(₱113,290.81 x 20% x 3.8110 yrs.)	86,349.32		171,274.44
1/14/2009[23] to 11/16/2012 [1,403 days]			
(₱110,469.23 x 20% x 3.8438 yrs.)		84,925.11	
Total Amount Due – Nov. 16, 2012	**₱ 227,962.84**	**₱ 223,011.65**	**₱ 450,974.49**
Deficiency Interest			
11/17/2012 to 12/31/2017 [1,871 days]			
(₱113,290.81 x 20% x 5.1260 yrs.)	116,146.36		229,400.02
(₱110,469.23 x 20% x 5.1260 yrs.)		113,253.66	
Delinquency Interest			
11/17/2012 to 12/31/2017 [1,871 days]			
(₱227,962.84 x 20% x 5.1260 yrs.)	233,708.75		462,341.51
(₱223,011.65 x 20% x 5.1260 yrs.)		228,632.77	
Total Amount Due - Dec. 31, 2017	**₱ 577,817.95**	**₱ 564,898.07**	**₱ 1,142,716.02**

In addition, Mt. Blanc Motors, Inc. is liable to pay delinquency interest at the rate of 12%[24] on the total unpaid basic deficiency tax, surcharge and deficiency interest as of November 16, 2012 amounting to ₱227,962.84 for VAT and ₱223,011.65 for WTC, or in the aggregate amount of ₱450,974.49, 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).

SO ORDERED.

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

WE CONCUR:

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

[21] Section 4.114-1(A) of Revenue Regulations No. 16-2005.
[22] Date of Receipt of FDDA, Exhibit "P-6", Docket, Vol. 1, p. 39.
[23] Section 7 of Revenue Regulations No. 9-2001, as amended by Revenue Regulations No. 26-2002.
[24] Section 2 of Revenue Regulations No. 21-2018 dated September 14, 2018.

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
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

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 1667** (CTA Case No. 8588)
	Present: **DEL ROSARIO**, PJ, **CASTAÑEDA**, JR., **UY**, **FABON-VICTORINO**, **MINDARO-GRULLA**, **RINGPIS-LIBAN**, and **MANAHAN**, JJ.
- versus -	
MT. BLANC MOTORS, INC., Respondent.	Promulgated: JAN 07 2019 4:25 p.m.

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CONCURRING AND DISSENTING OPINION

DEL ROSARIO, PJ.:

I concur with the *ponencia* in denying the Petition for Review filed by the Commissioner of Internal Revenue, thereby affirming the assailed Decision dated January 4, 2017 and Resolution dated May 24, 2017 of the Court in Division in CTA Case No. 8588 albeit with modification relative to the imposition of deficiency and delinquency interests on deficiency Value Added Tax (VAT) and Withholding Tax on Compensation (WTC) for taxable year 2008.

In determining respondent's liability for *delinquency interest*, the *ponencia* used **₱227,962.84** as tax base for VAT and **₱223,011.65** as tax base for WTC, including the deficiency interest imposable on respondent from January 10, 2012 to November 16, 2012.[1] With due respect, I submit that the abovementioned computation must be revisited. The tax base must be limited only to the basic deficiency VAT and WTC, surcharge, and deficiency interest from January 26,

[1] The date petitioner received the Final Decision on Disputed Assessment (FDDA) dated October 22, 2012, denying petitioner's protest, Exhibit "P-5".

2009 to January 9, 2012, or **₱208,594.76** for VAT and **₱204,125.95** for WTC, pursuant to Section 249 of the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 10963 (TRAIN Law) vis-à-vis Revenue Regulations No. 21-2018, which states that deficiency interest shall be assessed and collected from date prescribed for its payment **until** full payment thereof, **or until issuance of a notice and demand by the Commissioner of Internal Revenue (CIR)**, whichever comes earlier:

"Sec. 249. *Interest.* –

xxx xxx xxx

(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, or **upon issuance of a notice and demand by the Commissioner of Internal Revenue**, whichever comes earlier.

xxx xxx xxx"

Considering that Assessment Notices No. 038-B211-08 and 038-B211-08 received by respondent indicated January 9, 2012 as the due date for payment (as appearing in the notice and demand by the CIR) of the assessed VAT and WTC, deficiency interest must be **imposed only until such date**.

All told, I **VOTE** to:

(i) **DENY** the Petition for Review filed by the Commissioner of Internal Revenue for lack of merit; and

(ii) **AFFIRM WITH MODIFICATION** the Decision dated January 4, 2017 of the Court in Division and **ORDER** respondent Mt. Blanc Motors, Inc. to **PAY** the Bureau of Internal Revenue the following amount:

	VAT	WTC	TOTAL
Basic Deficiency Tax	₱ 113,290.81	110,469.23	223,760.04
Add: 25% Surcharge	28,322.70	27,617.31	55,940.01

on

Deficiency Interest from 01/26/09 to 01/09/12 (₱113,290.81 x 20% x 1079/365 days)	66,981.25		66,981.25
Deficiency Interest from 01/24/09 to 01/09/12 (₱110,469.23 x 20% x 1091/365 days)		66,039.41	66,039.41
Total Amount Due, January 9, 2012[2]	**₱ 208,594.76**	**₱204,125.95**	**₱412,720.72**
Deficiency Interest			
From 01/10/12 to 12/31/17 (₱113,290.81 x 20% for 2,183/365 days) (₱110,469.23 x 20% for 2,183/365 days)	135,514.43	132,139.36	135,514.43 132,139.36
Delinquency Interest			
From 01/10/12 to 12/31/17 (₱208,594.76 x 20% x 2,183/365 days) (₱204,125.95 x 20% x 2,183/365 days)	249,513.63	244,168.19	249,513.63 244,168.19
Total Amount Due, December 31, 2017	**₱593,622.82**	**₱580,433.50**	**₱1,174,056.33**

In addition, Mt. Blanc Motors, Inc. is liable to pay delinquency interest at the rate of twelve percent (12%) per annum in the total amount of **₱1,174,056.33**, which have accrued as aforestated above, computed from January 1, 2018 until the amount is fully paid.

ROMAN G. DEL ROSARIO
Presiding Justice

[2] Due date for payment per Assessment Notices No. 038-B211-08 and 038-B211-08 found in Exhibits "P-4-4" and "P-4-5", E*n Banc* Docket, pp. 44-45.