REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

ACE/SAATCHI & SAATCHI ADVERTISING, INC., Petitioner,	**CTA CASE NO. 8439**
	Members:
- versus -	**DEL ROSARIO,** *Chairperson,* **UY,** *and* **MINDARO-GRULLA,** *JJ.*
THE HONORABLE COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: DEC 09 2015, 4:00 p.m.

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AMENDED DECISION

DEL ROSARIO, PJ.:

Submitted for the Court's resolution are:

1. Petitioner's "**Motion for Partial Reconsideration**" filed on May 22, 2015, without respondent's comment per Records Verification dated July 8, 2015;

2. Respondent's "**Motion for Partial Reconsideration (Of the Decision Promulgated on 30 April 2015)**" filed through registered mail on May 26, 2015 and received by the Court on June 4, 2015, with petitioner's "**Comment (To Respondent's Motion for Partial Reconsideration dated 29 May 2015)**" filed on June 18, 2015; and,

3. Petitioner's "**Manifestation**" filed on July 15, 2015.

Both petitioner and respondent seek partial reconsideration of the Decision dated April 30, 2015, the dispositive portion of which reads:

"**WHEREFORE**, premises considered, the Petition for Review is **PARTIALLY GRANTED**. Accordingly, the assessment pertaining to the imposition of compromise penalties for basic deficiency creditable withholding VAT, basic deficiency withholding tax – compensation, basic deficiency withholding tax – expanded, final withholding tax, and the fringe benefits tax due are hereby **CANCELLED**. However, petitioner is **ORDERED TO PAY** respondent the modified amount of **₱199,496,841.52** representing basic deficiency final withholding tax, withholding tax on compensation, expanded withholding tax, income tax, and value-added tax, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, and the amount of **₱99,036.74** representing 25% surcharge and 20% deficiency and delinquency interests on the partial deficiency tax payments of ₱2,368,539.33 or in the aggregate sum of **₱199,595,878.26**, computed as follows:

Tax Type	Basic Tax	25% Surcharge	Total Amount
Final Withholding Tax	₱ 788,517.77	₱ 197,129.44	₱ 985,647.21
Withholding Tax on Compensation	1,999,558.50	499,889.63	2,499,448.13
Expanded Withholding Tax	3,747,081.07	936,770.27	4,683,851.34
Income Tax	35,294,683.08	8,823,670.77	44,118,353.85
Value-Added Tax	117,767,632.79	29,441,908.20	147,209,540.99
Subtotal	**₱ 159,597,473.21**	**₱ 39,899,368.31**	**₱ 199,496,841.52**
25% Surcharge, 20% deficiency and delinquency interest on the partial deficiency tax payments made by petitioner on March 2 and 7, 2012 totaling ₱ 2,368,539.33			
			Amount
Final Withholding on VAT			₱ (3,959.59)
Fringe Benefits Tax			90,021.24
Withholding Tax – Compensation			4,472.54
Expanded Withholding Tax			15,035.26
Income Tax			(21,716.78)
Value-Added Tax			15,184.07
Subtotal			**₱ 99,036.74**
Total			**₱ 199,595,878.26**

In addition, petitioner is **ORDERED TO PAY** the following:

a) Deficiency interest at the rate of 20°/o per annum on the basic deficiency final withholding tax, withholding tax on compensation, expanded withholding tax, income tax, and value-added tax computed from the dates indicated below until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended:

	Basic Tax	20% Deficiency Interest Computed from
Final Withholding Tax	₱ 788,517.77	January 20, 2007
Withholding Tax on Compensation	1,999,558.50	January 20, 2007
Expanded Withholding Tax	3,747,081.07	January 20, 2007
Income Tax	35,294,683.08	April 15, 2007
Value-Added Tax	117,767,632.79	January 25, 2007

a'

b) Delinquency interest at the rate of 20% per annum on the total amount of P199,496,841.52 and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from February 7, 2012 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED."

On October 20, 2015, the members of the First Division deliberated on the parties' motions for reconsideration wherein Justice Cielito N. Mindaro-Grulla voted to deny the said motions while Presiding Justice Roman G. Del Rosario and Justice Erlinda P. Uy voted to partially grant petitioner's Motion for Partial Reconsideration. On November 9, 2015, the case was re-raffled and assigned to Presiding Justice Roman G. Del Rosario. Hence, this amended decision.

In assailing the aforementioned Decision, petitioner anchors its arguments on the following grounds:

1. Petitioner is not liable for income tax on amounts received from client-advertisers in trust for payment of media suppliers on the ground that such amounts are not part of petitioner's gross sales or receipts. Respondent cannot disallow these deductions not claimed by petitioner.

2. Petitioner is not liable for value-added tax (VAT) on the pass-through costs or amounts received from client advertisers in trust for payment of media suppliers because such amounts are not part of petitioner's gross receipts.

3. The Smart Certification constitutes credible and sufficient evidence to prove that Smart Communications already withheld the appropriate amounts corresponding to taxes due from media suppliers; and,

4. The deficiency withholding tax on compensation (WTC) assessment is arbitrary and must be cancelled even without evidence from petitioner. The basis of the assessment lacks foundation and defies logic. This cannot be cured by the presumption of the validity of assessments.

Respondent, on the other hand, questions the assailed Decision merely with respect to the amount of petitioner's tax liability.

Deficiency Income Tax

Petitioner contends that it had no unreported revenues of ₱236,733,706.49. It alleges that the presumption of correctness of assessments cannot rest on another presumption. But the assessment involved in the present case is not based on mere presumption; it is based on "actual facts" which is the essence for its validity. To be sure, respondent assessed petitioner for under-declaration of income in the amount of ₱236,733,706.49, which arose from sales based on the Creditable Withholding Tax (CWT) Certificates as compared with the amount of ₱127,559,000.61 in the schedules of sales submitted as VAT Return attachments.

According to petitioner, the CWT Certificates cannot be used as basis for respondent's assessment on deficiency income tax because the amounts reflected therein include pass-through costs. Petitioner insists that it sufficiently rebutted the presumption of correctness of the said assessment by substantial and credible evidence such as the testimony of petitioner's Finance Director, Mr. Felipe M. Barcelon, Jr., the Schedule of Collections and the invoices which were audited and verified by the ICPA. Petitioner further argues that it did not recognize pass-through costs either as income or costs consistent with settled jurisprudence that the same are not part of the recipient's gross receipts.

The Court reiterates its finding that since the paying client-advertiser had remitted 100% of the bill to petitioner together with the corresponding CWT Certificates (which were all under the name of petitioner), the petitioner is the income recipient of the whole amount collected.[1]

While it is true that aside from the aforesaid CWT Certificates, petitioner presented invoices to support its allegations of the pass-through cost; however, it is worthy to emphasize that some of those invoices were denied admission by the Court in its Resolution dated June 5, 2013.[2] As to those invoices admitted, the same are found insufficient to prove petitioner's allegations considering that the Court cannot verify which part of the collections pertains to the media-supplier and which portion pertains to petitioner's commission. In other words, the invoices are insufficient to establish the fact that the alleged pass-through cost of the collection was not actually received as income by petitioner.

Moreover, the fact that petitioner claimed as tax credits the pass-through component of the tax withheld by its client-advertisers[3] further

[1] Decision dated April 30, 2015, *CTA Division Docket*, vol. III, p. 1635.
[2] *CTA Division Docket*, vol. III, pp. 1228 to 1254.
[3] Decision dated April 30, 2015, *CTA Division Docket*, vol. III, p. 1642.

supports the Court's ruling that the alleged pass-through cost should be considered as part of petitioner's income.

As found by the Court in the assailed Decision, out of the ₱11,166,214.66 representing the creditable taxes withheld by petitioner's customer for taxable year 2006, only ₱7,791,522.39 was reported by petitioner in its Annual Income Tax Return. Further, the amount of ₱7,791,522.39 included not only the revenue component but also the pass-through component, and the same was claimed by petitioner as tax credits, as reflected in the aforesaid Annual Income Tax Return.

Respondent, on the other hand, avers that the computation of gross profit margin rate should include all sources of income even the Non-operating and Taxable Other Income. As such, the gross profit margin rate should be 40.49%, to yield a taxable gross profit of ₱95,853,477.76.

In petitioner's Comment, it alleges that assuming *arguendo* that the assessment is valid, the Court is correct in excluding the non-operating income in computing the applicable gross profit margin rate.

Respondent's argument is untenable.

As expounded in the assailed Decision, the Non-operating and Taxable Other Income does not affect the actual operations; hence, the same should be excluded in the computation of gross profit margin rate, *viz*:

> "It was observed that the respondent's imputation of 40.49% gross profit margin on the undeclared/unreported income amounting to ₱96,131,551.27, which was subjected to income tax at 35%, was obtained from the Total Gross Income under Item 19C in the Annual Income Tax Return amounting to ₱89,932,420.00 divided by the Sales/Revenues/Receipts/Fees of ₱222,110,442.00 under Item 15C.
>
> The Court finds this overstated. The computation of gross profit margin rate by the respondent includes the Non-operating & Taxable Other Income. This should not be the case as this type of income is merely incidental to the operations of an entity and does not, in any way, affect the actual operations. Based on the Court's recomputation, the gross profit margin rate to be used should be 39.4498495% based on Gross Income from Operations (Item No. 17C) in the amount of ₱87,622,235.00 divided by the Sales/Revenues/Receipts/Fees amounting to ₱222,110,442.00."[4]

[4] Decision dated April 30, 2015, *CTA Division Docket*, vol. III, p. 1645.

Deficiency VAT

Petitioner claims that under Revenue Memorandum Circular (RMC) No. 04-96, there is no requirement to issue separate official receipts for commissions and pass-through costs. Petitioner posits that it should be allowed to claim input VAT on pass-through costs in accordance with RMC No. 04-96 and the ruling of this Court in *Jimenez Basic Advertising Inc. vs. Commissioner of Internal Revenue*[5] (*Jimenez case*). Petitioner argues that even if there is no official receipt issued, petitioner's alleged invoices and supporting documents should be considered by the Court. Hence, petitioner concludes that it is not liable for VAT on the output tax billed and collected in the amount of ₱88,845,615.66.

The Court does not agree.

It must be clarified that the Court based its findings as regards the issuance of separate official receipts from commissions and pass-through costs on petitioner's own claim that only fifteen percent (15%) of the total amount billed to client-advertiser is usually received by petitioner as its commission and the eighty five percent (85%) is the total cost of production and placement billed by media suppliers.

As held by the Court, petitioner's case falls under Assumption 1 of RMC No. 04-96 based on the alleged manner of the recording of its sale transactions:

> "Further, it must be noticed from the statements of the Independent CPA and the schedule of ORs presented by petitioner that only one (1) OR was issued for the collection of pass-through costs and commission. This documentation is not in compliance with Revenue Memorandum Circular (RMC) No. 04-96 issued on January 15, 1996, which clarifies issues affecting Media under Republic Act No. 7716, otherwise known as the "Expanded VAT Law". Pertinent provisions of the RMC No. 04-96 are as follows:
>
> Q-4 What is the basis of computing VAT in the case of media?
>
> A-4 The basis for computing VAT payable on transactions of media shall be the gross receipts.
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> To illustrate: Assume that an advertiser pays an advertising agency the amount of P100,000 to create a commercial and run the same on print and/or broadcast media with the advertising agency getting 15% of such amount as commission/service fee.

[5] CTA Case No. 7240, February 19, 2009.

Assumption 1:

(a) **The advertising agency issues a VAT official receipt to the advertiser** for P15,000 **and a provisional receipt** for the P85,000 **as share of the Media**. The VAT payable by the advertising agency shall be computed as follows:

Commission/Service Fee(15% x P100,000)	P15,000.00
Output VAT (1/11 of P15,000)	P 1,363.63
Less: Applicable Input VAT Credits	(x x x)
VAT Payable	P x x x

(b) The print/broadcast media issues a VAT official receipt to the advertiser for P85,000. The VAT shall be computed as follows:

Amount received for Advertising Space, Radio/TV Spots/Airtime (85% x P100,000)	P85,000.00
Output VAT (1/11 of P85,000)	P 7,727.27
Less: Applicable Input VAT Credits	(x x x)
VAT Payable	P x x x

(Emphasis Supplied.)

Based on the alleged manner of the recording of its sale transactions, petitioner's case falls under Assumption 1 of the said RMC. Thus, petitioner should have issued two (2) types of receipt upon collection from the client-advertisers – one (1) VAT official receipt for the commission and one (1) provisional receipt for the pass-through cost."[6]

Imposition of Deficiency Interest pursuant to Section 249(B) of the NIRC of 1997, as amended

The imposition of 20% deficiency interests is governed by Section 249(B) of the NIRC of 1997, as amended, which states:

"**Section 249.** *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." (*Emphasis supplied*)

As the provision is worded, deficiency interest may be imposed only when there is deficiency in the tax due as the term is defined in the Code. A review of the Code, however, disclosed that it defines "deficiency in the tax due" only in three (3) types of taxes, <u>first</u> in income tax (Section 56); <u>second</u> in estate tax (Section 93); and <u>third</u>, in donor's tax (Section 104).

[6] Decision dated April 30, 2015, *CTA Division Docket*, vol. III, pp. 1637 to 1639.

Prescinding from the foregoing, deficiency interest may not properly be imposed on the deficiency FWT, deficiency WTC, deficiency EWT, and deficiency VAT assessed against petitioner.

The Court is not unaware of the *Paper Industries Corporation of the Philippines vs. Court of Appeals, et al.* (*PICOP case*).[7] A reading of the *PICOP case* reveals that it did not, however, resolve the issue on whether the deficiency interest provided for in Section 249 (B) may be imposed on tax other than donor's, estate, and income Taxes. Not being an issue submitted for resolution before the Supreme Court, the *PICOP case* cannot be relied upon as doctrine on the matter, *viz:*

> "The legal maxim "*stare decisis et non quieta movere*" (follow past precedents and do not disturb what has been settled) states that where the same questions relating to the same event have been put forward by parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same issue.
>
> xxx xxx xxx
>
> **Thus, where the issue involved was not raised nor presented to the court and not passed upon by the court in the previous case, the decision in the previous case is not *stare decisis* of the question presented.**" (*Citations omitted and emphasis supplied*)

Sections 247 (a) and 249 (A) of the NIRC of 1997, as amended, are admittedly provisions that impose "addition" to the tax and "interest" thereon. But these provisions, general in their context, must necessarily be **subject to the relevant and specific provision of Section 249 (B) with respect to the imposition of "deficiency" interest as they all fall within the same Chapter 1 of Title X of the NIRC of 1997, as amended.**

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

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[7] *Paper Industries Corporation of the Philippines (PICOP) vs. Court of Appeals, Commissioner of Internal Revenue; Court of Tax Appeals,* G.R. Nos 106949-50, December 1, 1995.

> **"It will be seen that Section 51 (c) (1) and (e) (1) and (3), of the 1977 Tax Code, authorize the imposition of surcharge and interest only in respect of a *"tax imposed by this Title,"* that is to say, *Title II on "Income Tax."*** It will also be seen that Section 72 of the 1977 Tax Code imposes a surcharge only in case of failure to file a return or list *"required by this Title,"* that is, *Title II on "Income Tax."* **The thirty-five percent (35%) transaction tax is, however, imposed in the 1977 Tax Code by *Section 210 (b) thereof which Section is embraced in Title V on "Taxes on Business"* of that Code.** Thus, while the thirty-five percent (35%) transaction tax is in truth a *tax imposed on* interest *income* earned by lenders or creditors purchasing commercial paper on the money market, the relevant provisions, *i.e.*, Section 210 (b), were *not* inserted in Title II of the 1977 Tax Code. The end result is that the thirty-five percent (35%) transaction tax is *not* one of the taxes in respect of which Section 51 (e) authorized the imposition of surcharge and interest and Section 72 the imposition of a fraud surcharge.[8]" (*Emphases supplied*)

True, the Court in the *PICOP case* declared that the present provision of the NIRC mentions that additions and interest on tax applies to all taxes yet, such general provision must necessarily be confined to those specifically subject to such coverage. The present Section 249 (B) of the NIRC is explicit with respect to deficiency interest as afore-cited.

In view of the foregoing, the Court will now proceed to re-compute the tax liability of petitioner. For reference, the computation for basic deficiency FWT, WTC, EWT, income tax, and VAT, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, is lifted from the assailed Decision promulgated on April 30, 2015 and quoted below:

Tax Type	Basic Tax	25% Surcharge	Total Amount
Final Withholding Tax	₱ 788,517.77	₱ 197,129.44	₱ 985,647.21
Withholding Tax on Compensation	1,999,558.50	499,889.63	2,499,448.13
Expanded Withholding Tax	3,747,081.07	936,770.27	4,683,851.34
Income Tax	35,294,683.08	8,823,670.77	44,118,353.85
Value-Added Tax	117,767,632.79	29,441,908.20	147,209,540.99
Total	**₱ 159,597,473.21**	**₱ 39,899,368.31**	**₱ 199,496,841.52**

On March 2 and 7, 2012, petitioner paid basic deficiency taxes in the amount of ₱1,047,431.84 plus interest of ₱1,231,850.57, surcharge of ₱35,756.91 and compromise penalty of ₱53,500.00, totaling ₱2,368,539.33, as shown below:[9]

[8] Id.
[9]Exhibit "F", *CTA Division Docket*, pp. 891 to 919.

Date Paid	Tax Type	Assessment	Interest	Surcharge	Compromise Penalty	Total
3/2/2012	FBT	₱ 672,597.59	₱ 788,433.83		₱ 20,000.00	₱1,481,031.42
3/7/2012	VT	123,110.42	146,021.27			269,131.69
3/7/2012	CWTV	33,467.15	39,695.38	₱ 8,366.79	8,500.00	90,029.33
3/2/2012	WC	34,124.54	40,001.54			74,126.08
3/2/2012	EWT	34,310.62	40,219.67			74,530.29
3/2/2012	IT	16,171.05	18,956.06			35,127.11
3/7/2012	IT	54,780.23	64,974.83	27,390.12		147,145.18
3/7/2012	EWT	78,870.24	93,547.99			172,418.23
3/7/2012					25,000.00	25,000.00
Total		**₱1,047,431.84**	**₱1,231,850.57**	**₱35,756.91**	**₱53,500.00**	**₱2,368,539.33**

Considering that deficiency interest is only imposable on income, donor and estate tax, petitioner's partial tax payments resulted to excess payments of ₱916,433.87, re-computed as follows:

	Final Withholding on VAT	Fringe Benefits Tax	Withholding Tax Compensation	Expanded Withholding Tax	Income Tax	Value-Added Tax	Total
Basic Deficiency Tax	₱ 33,467.15	₱ 672,597.59	₱ 34,124.54	₱ 113,180.86	₱ 70,951.28	₱ 123,110.42	₱1,047,431.84
Add: Compromise penalty	₱ 8,500.00	₱ 20,000.00	₱ -	₱ -	₱ -	₱ -	28,500.00
25% Surcharge	8,366.79	168,149.40	8,531.13	28,295.22	17,737.82	30,777.61	261,857.97
20% Deficiency Interest	-	-	-	-	69,468.51	-	69,468.51
20% Delinquency Interest on basic and surcharge	664.76	11,056.40	560.95	2,721.78	1,353.93	2,445.34	18,803.16
20% Delinquency Interest on deficiency interest	-	-	-	-	1,043.97	-	1,043.97
Subtotal	₱ 17,531.55	₱ 199,205.80	₱ 9,092.08	₱ 31,017.00	₱ 89,604.23	₱ 33,222.95	₱ 379,673.61
Total Amount Due	₱ 50,998.70	₱ 871,803.39	₱ 43,216.62	₱ 144,197.86	₱ 160,555.51	₱ 156,333.37	₱1,427,105.45
Less: Payment made on	7-Mar-12	2-Mar-12	2-Mar-12	7-Mar-12	2-Mar-12	7-Mar-12	
Basic Tax	₱ 33,467.15	₱ 672,597.59	₱ 34,124.54	₱ 113,180.86	₱ 70,951.28	₱ 123,110.42	₱1,047,431.84
25% Surcharge	8,366.79	-	-	-	-	-	8,366.79
50% Surcharge	-	-	-	-	27,390.12	-	27,390.12
20% Interest	39,695.38	-	-	-	-	-	39,695.38
Interest	-	788,433.83	40,001.54	133,767.66	83,930.89	146,021.27	1,192,155.19
Compromise Penalty	8,500.00	20,000.00	-	-		-	28,500.00
Total Payment	₱ 90,029.32	₱ 1,481,031.42	₱ 74,126.08	₱ 246,948.52	₱ 182,272.29	₱ 269,131.69	₱2,343,539.32
Amount Still Due	**₱(39,030.62)**	**₱ (609,228.03)**	**₱ (30,909.46)**	**₱ (102,750.66)**	**₱ (21,716.78)**	**₱ (112,798.32)**	**₱(916,433.87)**

In sum, petitioner is liable to pay ₱199,496,841.52 representing basic deficiency taxes plus 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended. Consequently, the amount of ₱916,433.87 shall be appropriately deducted.

As regards petitioner's *Manifestation*, it states that being a responsible taxpaying corporate citizen, it paid the deficiency taxes in the amount of ₱3,045,569.88 pertaining to deficiency final withholding tax and surcharge and interest on partial payments made in March 2012. Petitioner avers that it also paid the total amount of ₱9,388,848.05, representing deficiency VAT in the amount of ₱1,870,877.07; deficiency income tax (disallowed expenses for deficiency expanded withholding tax) in the amount of ₱6,617,087.96; and, deficiency and delinquency interest on the deficiency final withholding tax in the amount of ₱900,883.02. The copies of the Payment Form, the eFPS Payment Confirmation Slip and the computation of the said payment are attached therein.

The Court observes and notes that all of the aforementioned attachments may not be given probative value for being mere photocopies, aside from the fact that they have not been properly identified and offered during trial.

The other arguments and issues raised by the parties are mere reiterations and amplifications of matters brought forth and duly considered by the Court which do not justify modification nay reversal of the assailed decision.

WHEREFORE, in light of the foregoing:

1. Respondent's "**Motion for Partial Reconsideration (Of the Decision Promulgated on 30 April 2015)**" is hereby **DENIED** for lack of merit.

2. Petitioner's "**Motion for Partial Reconsideration**" is hereby **PARTIALLY GRANTED**. Accordingly, the dispositive portion of the Decision promulgated on April 30, 2015 is hereby **AMENDED** to read, as follows:

> "**WHEREFORE**, premises considered, the Petition for Review is **PARTIALLY GRANTED**. Accordingly, the assessment pertaining to the imposition of compromise penalties for basic deficiency creditable withholding VAT, basic deficiency withholding tax – compensation, basic deficiency withholding tax – expanded, final withholding tax, and the fringe benefits tax due are hereby **CANCELLED**. However, petitioner is **ORDERED TO PAY** respondent the amount of **₱199,496,841.52** representing basic deficiency final withholding tax, withholding tax on compensation, expanded withholding tax, income tax, and value-added tax, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended.
>
> In addition, petitioner is **ORDERED TO PAY** the following:
>
> a) Deficiency interest at the rate of 20% per annum on the basic deficiency income tax of **₱35,294,683.08** computed from April 15, 2007 until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended;

b) Delinquency interest at the rate of 20% per annum on the total amount of **₱199,496,841.52** and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from February 7, 2012 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

In the settlement of the foregoing deficiency taxes, the amount of **₱916,433.87** representing excess payments on the partial deficiency tax payments shall be deducted.

SO ORDERED."

3. Petitioner's "**Manifestation**" is hereby **NOTED**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

(With Concurring and Dissenting Opinion)
CIELITO N. MINDARO-GRULLA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusion 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

FIRST DIVISION

ACE/SAATCHI ADVERTISING, INC.,
Petitioner,

-versus-

THE HONORABLE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8439

Members:
DEL ROSARIO, PJ, *Chairperson*
UY, and
MINDARO-GRULLA, JJ.

Promulgated:
DEC 09 2015 4:00p.m.

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CONCURRING and DISSENTING OPINION

With due respect, I concur with the result and disquisition on "Deficiency Income Tax and Deficiency VAT but dissent from the majority's opinion on the non-imposition of deficiency interest on deficiency Final Withholding Tax (FWT), deficiency Withholding Tax on Compensation (WTC) , deficiency Expanded Withholding Tax (EWT) and deficiency Value Added Tax (VAT).

It is the opinion of the majority that deficiency interest may be imposed only on "deficiency in the tax due" as defined in the Code on these types of taxes- (a) income tax (Section 56), (b) estate tax (Section 56) and (c) donor's tax (Section 104). Thus, the conclusion that deficiency interest may not be properly imposed to deficiency FWT, WTC, EWT and VAT.

I disagree. We must bear in mind that Final Withholding Tax (FWT), Withholding Tax on Compensation (WTC), Expanded Withholding Tax (EWT) are taxes on income under the withholding tax system are likewise covered by "TITLE II – Tax on Income" of the National Internal Revenue Code, as amended. Nonetheless, I reiterate my position that the imposition of deficiency interest under Section 249(B) of the NIRC of 1997, as amended, clearly applies to all internal revenue taxes imposed by the present Tax Code in accordance with the Court's En banc Decision dated September 4, 2012 in the case of Takenaka Corporation Philippine Branch vs. Commissioner of Internal Revenue, CTA EB Case No. 745. Thus, I maintain my opinion in the Court's Decision dated April 30, 2015 and vote to deny petitioner and respondent's respective "Motion for Partial Reconsideration".

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