REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB No. 1218
(CTA Case No. 7991)

- versus –

PHILIPPINE TOBACCO FLUE-CURING AND REDRYING CORPORATION,
Respondent.

x--x

PHILIPPINE TOBACCO FLUE-CURING AND REDRYING CORPORATION,
Petitioner,

CTA EB No. 1220
(CTA Case No. 7991)

Present:

Del Rosario, P.J.
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, and
Ringpis-Liban, JJ.

- versus –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

APR 11 2016 3:15 p.m.

x--x

DECISION

CASTAÑEDA, JR., *J.*:

THE CASE

This is a consolidation of respective appeals of both parties filed by way of verified Petitions for Review,[1] assailing the Decision dated March 26, 2014[2] and the Resolution dated August 28, 2014,[3] both promulgated by the First Division of this Court ("Court in Division") in CTA Case No. 7991.

The respective dispositive portions of the assailed Decision and Resolution are quoted hereunder:

Assailed Decision:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. The compromise penalties of P90,200.00 are cancelled there being no mutual agreement between the parties. However, the assessments for deficiency income tax, value-added tax, withholding tax on compensation, expanded withholding tax, documentary stamp tax, and inspection fees issued by respondent against petitioner for fiscal year ending August 31, 2005 are hereby **AFFIRMED** with some **MODIFICATIONS**. Accordingly, petitioner is hereby **ORDERED TO PAY** respondent in the reduced amount of P2,633,847.20, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, broken down as follows:

TAX TYPE	BASIC DEFICIENCY TAX	25% SURCHARGE	TOTAL
Income Tax	₱ 1,789,857.55	₱ 447,464.39	₱ 2,237,321.94
Value-added Tax	1,675.00	418.75	2,093.75
Withholding Tax on Compensation	248,364.86	62,091.22	310,456.08
Expanded Withholding Tax	23,324.87	5,831.22	29,156.09
Documentary Stamp Tax	30,280.48	7,570.12	37,850.60
Inspection Fees	13,575.00	3,393.75	16,968.75
Total	**₱ 2,107,077.76**	**₱ 526,769.44**	**₱ 2,633,847.20**

[1] Petition for Review, CTA EB No. 1218 Docket, pp. 6-21; Petition for Review, CTA EB No. 1220 Docket, pp. 21-41.
[2] CTA EB No. 1218 Docket, pp. 22-56.
[3] *Ibid.*, pp. 57-64.

In addition, petitioner is hereby **ORDERED TO PAY**:

(a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income tax, VAT, withholding tax on compensation, EWT, DST, and inspection fees computed from the dates indicated below until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended:

TAX TYPE	DEFICIENCY INTEREST COMPUTED FROM
Income Tax	December 15, 2005
Value-added Tax	September 25, 2005
Withholding Tax on Compensation	September 14, 2005
Expanded Withholding Tax	September 14, 2005
Documentary Stamp Tax	August 31, 2005
Inspection Fees	August 31, 2005

(b) Delinquency interest at the rate of 20% per annum on the total amount of P2,633,847.20 and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from November 6, 2009 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED."

<u>Assailed Resolution</u>:

"**WHEREFORE**, premises considered, respondent's **"MOTION FOR PARTIAL RECONSIDERATION"** and petitioner's **"MOTION FOR RECONSIDERATION (of the 29 April 2014 Order)"** and **"MOTION FOR SUSPENSION OF ACTION"** are hereby **DENIED** for lack of merit."

SO ORDERED."

THE PARTIES

Philippine Tobacco Flue-curing and Redrying Corporation (hereinafter referred to as "PTFC") is a corporation duly organized and existing under Philippine laws, with principal office located at 802 A. 9c

Bonifacio Street, Balintawak, Quezon City. It is primarily engaged in the leasing of real property.[4]

Commissioner of Internal Revenue (hereinafter referred to as "CIR") is the duly appointed public official vested with authority to exercise the functions of said office, including, *inter alia*, the power to abate or cancel tax liability. CIR holds office at the Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.[5]

THE FACTS

As found by the Court in Division in the assailed Decision, the facts of the case and the proceedings conducted thereon are as follows:[6]

> "On November 7, 2008, petitioner (PTFC) received an undated Preliminary Assessment Notice (PAN) from the Large Taxpayers Audit and Investigation Division II (LTAID II) of the BIR regarding its income tax return for the fiscal year ending August 31, 2005. Petitioner was initially assessed its deficiency tax amounting to ₱27,221,724.14.
>
> On November 21, 2008, petitioner filed its protest letter to the PAN and the supporting documents to the BIR-LTAID II.
>
> On December 3, 2008, petitioner received from the BIR-LTAID II a Formal Letter of Demand (FLD) dated November 26, 2008 with attached Audit Results/Assessment Notices all dated December 2, 2008, which alleged that petitioner had deficiency taxes for FY ending August 31, 2005, in the total amount of ₱26,124,490.16, broken down as follows:

Income Tax	₱ 24,612,198.05
Value-added Tax	789,632.65
Withholding Tax on Compensation	426,497.44
Expanded Withholding Tax	122,926.53
Final Withholding Tax	89,098.49
Documentary Stamp Tax	58,632.36
Inspection Fees	25,504.64
TOTAL	₱ 26,124,490.16

---

[4] *Id.*, p. 23.
[5] *Id.*
[6] *Id.*, pp. 24-31.

On December 23, 2008, petitioner filed a protest letter to the FLD with all its supporting documents addressed to respondent (CIR), through Olivia O. Lao, OIC-Head Revenue Executive Assistant, Large Taxpayers Service-Excise of the BIR National Office.

On February 4, 2009, petitioner received a Tax Verification Notice (TVN) dated January 14, 2009, indicating that the BIR-LTAID II would reinvestigate the matter.

On June 29, 2009, petitioner, through counsel, filed its Supplement to the Protest Letter.

On October 7, 2009, petitioner received the Final Decision on Disputed Assessment dated September 11, 2009, together with Details of Discrepancies, Audit Result/Assessment Notices, and Computation of Deficiency Taxes issued by respondent. In the said FDDA and Assessment Notice, respondent found petitioner liable for deficiency taxes for FY ending August 31, 2005, in the aggregate amount of ₱10,842,528.74, inclusive of interest and compromise penalties, computed as follows:

TAX TYPE	BASIC	INTEREST	COMPROMISE	TOTAL
Income Tax	P5,788,354.84	P4,389,309.48	P50,000.00	P10,227,664.32
VAT	1,675.00	1,344.69	700.00	3,719.69
Withholding Tax-Compensation	248,364.86	201,448.74	16,000.00	465,813.60
Withholding Tax-Expanded	23,324.87	18,918.80	12,000.00	54,243.67
Documentary Stamp Tax	30,280.48	24,645.28	8,500.00	63,425.76
Inspection Fees	13,575.00	11,086.70	3,000.00	27,661.70
TOTAL	**P6,105,575.05**	**P4,646,753.69**	**P90,200.00**	**P10,842,528.74**

Hence, on November 6, 2009, petitioner filed the instant Petition for Review.

On January 11, 2010, respondent filed her Answer alleging the following defenses:

'11. The assessment for fiscal year 2005 deficiency Income Tax, Value Added Tax, Withholding Tax, Documentary Stamp Tax and Inspection Fees in the aggregate amount of P10,842,528.74 was issued in accordance with law and jurisprudence.

12. As far as the assessment for deficiency Income Tax, the same was derived from petitioner's own documents such as its Income Tax Return, Financial Statements, Monthly Remittance Return of Income Taxes Withheld on Compensation and Official Registry Book. The Details of Discrepancies of the Assessment reveal the following:

INCOME TAX

1. **Income payments not subjected to expanded withholding tax-P1,157,005.72**

Verification of income payments per FS/ITR showed that there were income payments amounting to P1,157,005.72 which were not subjected to expanded withholding tax as prescribed under Section 57(B) of the Tax Code, as amended, and implemented by Revenue Regulations No. 2-98; hence, disallowed as deductible expense and assessed pursuant to Section 34(K) of the NIRC as amended.

2. **Salaries not subjected to withholding tax P776,140.20**

Comparison of the Summary of Salaries & Wages claimed per Monthly Remittance Return of Income Taxes Withheld on Compensation (P5,458,879.07) against taxable Salaries & Wages per ITR/FS (P6,235,019.27) disclosed that the compensation amounting to P776,140.20 was not subjected to withholding tax, hence, disallowed as deductible expense and assessed pursuant to Section 34(K) of the Tax Code, as amended, and Section 2.78.1 of Revenue Regulations No. 2-98.

3. **Undeclared Gross Profit on Undeclared Sale of Leaf Tobacco-P16,102,024.50**

Verification from the taxpayer's Official Registry Book (ORB) disclosed that it processed leaf tobacco in which the total stocks handled was (sic) 1,412,500 kilos. Bases (sic) on the submitted export documents, taxpayer has undeclared its export sales of leaf tobacco in the amount of P40,781,137.92. Using the maximum industry gross profit rate (GPR) of 39.484%, the corresponding undeclared income of P16,102,024.50 is assessed pursuant to Section 32 of the Tax Code, as amended.

4. **Unsupported Tax Credits-P17,100.31**

Verification of creditable withholding taxes claimed revealed that the amount of P17,100.31 was unsupported; hence, disallowed pursuant to Section 58(B) of the Tax Code, as amended.

13. As far as the assessment for deficiency Value Added Tax[,] verification from the BIR's Integrated Tax Systems disclosed that some of the petitioner's suppliers were registered as non-vat taxpayers while others have invalid TINs which were not found in the data base. Thus, the input taxes claimed by the taxpayer from these suppliers amounting to P1,675.00 were disallowed pursuant to Sections 110 and 113 of the Tax Code, as amended.

14. As far as the assessment for deficiency Withholding Tax, the same was derived from petitioner's own documents such as its Income Tax Return, Financial Statements and Monthly Remittance Return of Income Taxes Withheld on Compensation. The Details of Discrepancies of the Assessment reveal the following:

WITHHOLDING TAX ON COMPENSATION

1. **Salaries not subjected to withholding tax- P776,140.00**

Comparison of the Summary of Salaries & Wages claimed per Monthly Remittance Return of Income Taxes Withheld on Compensation (P5,458,879.07) against taxable Salaries & Wages per ITR/FS (P6,235,019.27) disclosed that the compensation amounting to P776,140.20 was not subjected to withholding tax, hence, assessed pursuant to Section 57(B) of the Tax Code, as amended, and Sec. 2.57.2 of Revenue Regulations No. 2-98.

WITHHOLDING TAX - EXPANDED

1. **Income payments not subjected to withholding tax – P1,157,005.92**

Comparison of income payments per FS/ITR as against the annual information of taxes withheld at source disclosed amounts not yet subjected to withholding tax aggregating to P1,157,005.72; hence, assessed pursuant to Section 57(B) of the Tax Code, as amended, and Sec. 2.57.2 of Revenue Regulations No. 2-98.

15. As far as the assessment for deficiency Documentary Stamp Tax[,] verification of petitioner's lease contracts with its lessees showed that petitioner underpaid the tax due in the amount of P30,280.48. Thus, petitioner was assessed the same pursuant to Section 194 of the Tax Code as amended.

16. As far as the assessment for deficiency Inspection Fees, the same was derived from petitioner's own documents such as its Official Registry Book and its returns. The Details of Discrepancies of the Assessment reveal the following:

<u>INSPECTION FEES – P13,575.00</u>

<u>Under-payment of inspection fees-P13,575.00</u>

Verification from the taxpayer's official registry book (ORB) disclosed that it processes leaf tobacco in which the total stocks handled was 1,412,500 kilos. Based on returns submitted[,] it was disclosed that it paid inspection fees of P28,800.00 only; hence, the assessed unpaid amount of P13,575.00 pursuant to Section 146 of the Tax Code, as amended.

17. For reasons more than obvious, there is no denying the validity and correctness of the assessments. Failure to present proof of error in the assessment will justify judicial affirmation of said assessment. *(Delta Motors Co. vs. Commissioner, CTA Case No. 3782, 21 May 1986; Commissioner of Internal Revenue vs. Court of Appeals, et. al., G.R. Nos. 104151 and 105563, 10 March 1995).*'

During trial, petitioner presented as its witness Ignacio Luis Tan, its Vice-President. Thereafter, petitioner filed its Formal Offer of Evidence on February 23, 2012, submitting Exhibits "A" to "Y", inclusive of sub-markings; which this Court admitted with the exception of Exhibits "Q", "R", "S", "X", and "Y", in the Resolutions dated May 8, 2012 and July 16, 2012.

The documentary evidence formally offered and admitted are as follows:

Exhibit	**Description**
A	Final Decision on Disputed Assessment and attachments dated September 11, 2009
B	Details of Discrepancies
C	Audit Result/Assessment Notice
D	Audit Result/Assessment Notice
E	Audit Result/Assessment Notice

ДЛ

F	Audit Result/Assessment Notice
G	Audit Result/Assessment Notice
H	Audit Result/Assessment Notice
I	Computation of Deficiency Taxes-August 31, 2005
J	Annual Income Tax Return (BIR Form No. 1702)
K	Preliminary Assessment Notice dated November 2008
L	Protest Letter with attachments dated November 21, 2008
M	Formal Letter of Demand dated November 26, 2008
N	Protest Letter with attachments dated December 23, 2008
O	Tax Verification Notice (TVN) dated February 04, 2009
P	Supplement to the Protest Letter dated June 29, 2009
T	Reply-Letter of Mr. George Vinluan, former Assistant Head, Excise Tax, Regions 1, 2 and 3 with attachments
U	Judicial Affidavit of Mr. Ignacio Luis Tan
V	Petition for Review filed on November 06, 2009
W	Manifestation and Motion to Suspend/Defer Time to File Formal Offer of Evidence

On the other hand, during the July 11, 2013 hearing, counsel for respondent manifested that she would not be presenting evidence on the ground that only legal issues are involved in this case. Upon motion of the parties, both parties were granted a period of thirty (30) days from July 11, 2013 to file their memoranda. 9r

> On October 2, 2013, this case was submitted for decision, considering petitioner's Memorandum filed on August 15, 2013 and respondent's Memorandum filed on September 9, 2013."

On March 26, 2014, the Court in Division rendered the assailed Decision. Consequently, PTFC filed a Motion for Reconsideration on April 22, 2014 while CIR filed a Motion for Partial Reconsideration via registered mail on April 23, 2014.

On April 29, 2014, the Court in Division issued an Order (April 29, 2014 Order) considering PTFC's Motion for Reconsideration filed on April 22, 2014 a mere scrap of paper for failure to specify the time and date of hearing as required under Section 5, Rule 15 of the Rules of Court. Thus, on May 12, 2014, PTFC filed a Motion for Reconsideration (of the 29 April 2014 Order). In the said Motion, PTFC sought the understanding of the Court and averred that its failure to set its Motion for Reconsideration for hearing was due to inadvertence, excusable negligence and unfamiliarity of its counsel with the procedural rules of the Court of Tax Appeals. It added that while a notice of hearing is an essential part of the Motion to prevent surprise and to afford the adverse party a chance to be heard before the Motion is resolved, the evil sought to be avoided in requiring a notice of hearing does not exist in this case considering that CIR was furnished with a copy of its Motion and that the latter also filed its own Motion for Partial Reconsideration. On the other hand, CIR, in her Comment, stated that PTFC's Motion for Reconsideration of the assailed Decision should indeed be considered a mere scrap of paper for failure to comply with the notice of hearing requirements. CIR also posited that the filing of PTFC's Motion for Reconsideration of the assailed Decision lapsed on April 22, 2014 as the latter received a copy of the assailed Decision on April 7, 2014. On the other hand, the Motion for Reconsideration assailing the April 29, 2014 Order was filed on May 12, 2014. Accordingly, the CIR contended that any reconsideration on the merits of the assailed Decision, incorporated by PTFC in its Motion for Reconsideration of the April 29, 2014 Order, was already filed out of time.

On June 16, 2014, PTFC filed a Motion for Suspension of Action dated June 11, 2014 wherein it requested the Court in Division to suspend any further action on the case for a period of ninety (90) days to enable the parties to resolve amicably any pending issues between them. CIR, in her Comment, opposed the suspension of action on the case arguing that the assailed Decision, with respect to PTFC, had already become final and executory due to the failure of the latter to file a valid Motion for Reconsideration of the assailed Decision within the reglementary period. Hence, it is illogical for PTFC to file said Motion after finality of the assailed Decision.

In a Resolution dated August 28, 2014, the Court in Division denied PTFC's Motion for Reconsideration (of the 29 April 2014 Order) as well as the Motion for Suspension of Action. The Court in Division held that PTFC's Motion for Reconsideration filed on April 22, 2014 is fatally defective for failure to contain the required Notice of Hearing. Since such defective Motion for Reconsideration did not toll the running of the period to appeal the assailed Decision which ended on April 22, 2014, the assailed Decision, with respect to PTFC, had already become final executory. In the same Resolution, the Court in Division likewise denied CIR's Motion for Partial Reconsideration.

Hence, both parties filed their respective Petitions for Review.

THE ISSUES

On October 7, 2014, CIR filed her Petition for Review, docketed as CTA EB No. 1218, raising the following issues:

I.

WHETHER RESPONDENT (PTFC) IS LIABLE TO PAY THE TOTAL AMOUNT OF P10,842,528.74 REPRESENTING DEFICIENCY INCOME TAX, VALUE ADDED TAX (VAT), WITHHOLDING TAX ON COMPENSATION, EXPANDED WITHHOLDING TAX, DOCUMENTARY STAMP TAX AND INSPECTION FEES INCLUSIVE OF PENALTIES AND INTEREST FOR THE FISCAL YEAR ENDING AUGUST 31, 2005.

II.

WHETHER RESPONDENT IS LIABLE TO PAY THE AMOUNT OF P5,788,354.84 REPRESENTING BASIC DEFICIENCY INCOME TAX FOR THE FISCAL YEAR ENDING AUGUST 31, 2005 SINCE IT FAILED TO REFUTE THE DISALLOWED EXCESS CREDITS CARRIED OVER NEXT YEAR.

On October 7, 2014, PTFC also filed its Petition for Review, docketed as CTA EB No. 1220, raising the following grounds: *ge*

I. <u>PROCEDURAL</u>

A.

PETITIONER, IN NOT SETTING ITS MOTION FOR RECONSIDERATION [FOR HEARING], DID NOT MEAN TO DISRESPECT OR VIOLATE THE COURT'S RULES OF PROCEDURE, BUT IS SOLELY DUE TO INADVERTENCE WHICH DID NOT RESULT TO UNDUE PREJUDICE TO RESPONDENT CONSIDERING THAT RESPONDENT LIKEWISE FILED A MOTION FOR RECONSIDERATION OF THE COURT'S DECISION.

B.

THUS, WHILE RESPONDENT'S MOTION FOR RECONSIDERATION WAS SET FOR HEARING, A COPY OF THE MOTION WAS RECEIVED THREE (3) DAYS AFTER THE DATE SET, WHICH DID NOT SERVE THE PURPOSE OF THE NOTICE OF HEARING. THE MOTION FOR RECONSIDERATION RAISES SUBSTANTIAL ISSUES ANCHORED ON AN ACTUAL PAYMENT MADE BY PETITIONER IN 2010 OF AN AMOUNT MORE THAN THAT FOUND BY THE HONORABLE COURT AS BASIC DEFICIENCY AMOUNT.

II. <u>SUBSTANTIAL</u>

C.

ASSUMING THAT PETITIONER IS LIABLE FOR DEFICIENCY TAX, SUCH DEFICIENCY TAX OF PHP1,789,857.55 SHOULD BE DEEMED PAID WHEN PETITIONER PAID A COMPROMISE OFFER OF PHP2,442,230.02 IN MARCH 2010.

i.

AS FOUND BY THIS HONORABLE COURT, BUT SUBJECT TO THIS MOTION FOR RECONSIDERATION, PETITIONER IS LIABLE FOR BASIC DEFICIENCY TAX OF PHP1,789,857.55 AS OPPOSED TO THE AMOUNT ASSESSED BY RESPONDENT. HAD THE CIR PROPERLY ASSESSED PETITIONER IN 2009, THE COMPROMISE

OFFER PAID IN THE AMOUNT OF PHP2,442,230.02 IS MORE THAN SUFFICIENT TO COVER THE BASIC DEFICIENCY TAX AS FOUND BY THIS HONORABLE COURT. THUS, THE HIGHER INTEREST OF SUBSTANTIAL JUSTICE DICTATES THAT THE PAYMENT MADE IN 2010 BE DEEMED TO HAVE COVERED THE BASIC DEFICIENCY TAX, AND THAT SURCHARGES AND INTEREST, DEFICIENCY OR DELINQUENT, IF ANY, SHOULD BE IMPOSED FROM 2005 UP TO 2010 ONLY.

D.

THE FIRST DIVISION ERRED IN SUSTAINING THE FINDINGS OF THE RESPONDENT THAT PETITIONER IS LIABLE FOR EXPANDED WITHHOLDING TAX ON INCOME PAYMENTS IN THE AMOUNT OF PHP1,157,005.72.

E.

THE FIRST DIVISION ERRED IN FINDING THAT PETITIONER HAS UNDECLARED GROSS PROFIT ON SALE OF LEAF TOBACCO.

THE COURT *EN BANC*'S RULING

The Court in Division did not err in taking cognizance of the issue on the disallowance of PTFC's excess tax credits in the amount of ₱3,998,497.29 carried over to FY 2006.

In her Petition, CIR asserts that the income tax assessment based on the FDDA should be upheld *in toto*. She posits that the burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the CIR is wrong but the taxpayer is right.[7] Otherwise, the presumption of correctness of tax assessment stands.

[7] *Id.*, p. 14.

The CIR also maintains that the disallowance of PTFC's excess credit carried over the following year (2006) amounting to ₱3,998,497.29 was not specifically refuted by PTFC. She added that based on the testimonial and documentary evidence presented, PTFC was only able to prove that it was assessed by CIR for the deficiency tax in question. Thus, in the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed.

On the other hand, PTFC avers that the issue on the propriety of the assessments in the amount of ₱10,842,528.74 includes the propriety of disallowance of PTFC's excess credits. It added that the Court cannot resolve the main issue [of correctness of the deficiency assessment] without verifying the manner by which CIR came up with the disputed assessment.[8] Moreover, PTFC posits that, assuming that the disallowance of tax credits is not covered by the main issue, it is a rule that courts are allowed to rule on other issues which are essential and indispensable for the just resolution of the case.[9]

The Court *En Banc* agrees with PTFC's position.

Appellate courts have inherent authority to review unassigned errors (1) which are closely related to an error properly raised, or (2) upon which the determination of the error properly assigned is dependent, or (3) where the court finds that consideration of the same is necessary in arriving at a just decision of the case.[10]

In *Commissioner of Internal Revenue v. Hon. Court of Appeals et. al.*,[11] the Supreme Court declared that:

> "xxx Where the issues already raised also rest on other issues not specifically presented, as long as the latter issues bear relevance and close relation to the former and as long as they arise from matters on record, the Court has the authority to include them in its discussion of the controversy as well as to pass upon them."

In the present case, PTFC properly argues that the issue on the correctness of the deficiency tax assessments in the total amount of ₱10,842,528.74 covers the issue on the propriety of the disallowance of the

[8] *Id.*, p. 128.
[9] *Id.*
[10] *Sesbreño v. Central Board of Assessment Appeals et. al.*, G.R. No. 106588, March 24, 1997, 270 SCRA 360, 370; *Adelfa Demafelis v. Court of Appeals and Fernando Condez*, G.R. No. 152164, November 23, 2007, 538 SCRA 305, 311.
[11] G.R. No. 106913, May 10, 1994, 232 SCRA 321, 328 citing *Insular Life Assurance Co., Ltd. Employees Association v. Insular Life Assurance Co., Ltd.*, No. L-25291, March 10, 1977, 76 SCRA 50.

excess tax credits carried over to FY 2006 in the amount of ₱3,998,497.29. These two aforementioned issues are closely related since the disallowance by the CIR of the excess tax credits carried over to FY 2006 is one of the reasons why the deficiency income tax assessment against PTFC arose. Moreover, these matters are borne by the records of the case. Hence, the Court in Division has the authority to pass upon the issue of disallowance of the excess tax credits.

Lack of notice of hearing of PTFC's Motion for Reconsideration of the assailed Decision is not fatal.

In its Petition, PTFC begs the understanding of the Court and states that its failure to include a notice of hearing in its Motion for Reconsideration of the assailed Decision was due to inadvertence of its counsel. PTFC contends that, while a notice of hearing is an essential part of the Motion, the evil sought to be avoided in requiring a notice of hearing does not exist in this case considering that CIR was furnished with a copy of its Motion and both parties have raised substantial points in seeking reconsideration of the assailed Decision.[12]

On the other hand, CIR counter-argues that PTFC's Motion for Reconsideration is fatally defective for lack of notice of hearing as mandated by Sections 4 and 5, Rule 15 of the Rules of Court.[13] For failure to file a valid Motion for Reconsideration within the reglementary period, the assailed Decision, as far as PTFC is concerned, already became final and executory.[14] CIR insists that negligence is not an excuse to perfect an appeal and that relief cannot be granted on the basis of counsel's negligence.[15]

The Court *En Banc* finds merit in PTFC's contention.

Sections 4 and 5, Rule 15 of the Rules of Court provide that:

> "*Section 4. Hearing of motion.* — Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.
>
> Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before

[12] CTA EB No. 1220 Docket, p. 28.
[13] CTA EB No. 1218 Docket, p. 88.
[14] *Ibid.*, p. 94.
[15] *Id.*, p. 89.

> the date of hearing, unless the court for good cause sets the hearing on shorter notice.
>
> *Section 5. Notice of hearing.* — The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion."

In a number of cases,[16] the Supreme Court has ruled that a motion which does not meet the requirements of Sections 4 and 5 of Rule 15 of the Rules of Court is considered a worthless piece of paper which the clerk has no right to receive and the court has no authority to act upon. Service of copy of a motion containing notice of the time and place of hearing of said motion is a mandatory requirement and the failure of the movant to comply with said requirements renders his motion fatally defective.[17]

Like all other procedural rules, however, the said requirement regarding the inclusion of a valid notice of hearing in a motion admits of various exceptions. In *Vlason Enterprises Corporation v. Court of Appeals et. al.*,[18] the Supreme Court enumerated these exceptions as follows:

> "... Liberal application of this rule has been allowed by this Court in cases (1) where a rigid application will result in a manifest failure or miscarriage of justice; especially if a party successfully shows that the alleged defect in the questioned final and executory judgment is not apparent on its face or from the recitals contained therein; (2) where the interest of substantial justice will be served; (3) where the resolution of the motion is addressed solely to the sound and judicious discretion of the court; and (4) where the injustice to the adverse party is not commensurate to the degree of his thoughtlessness in not complying with the procedure prescribed."

Thus, in *Jehan Shipping Corporation v. National Food Authority*,[19] the Supreme Court held that despite lack of notice of hearing in a Motion for Reconsideration, there was substantial compliance therein with the requirements of due process where the adverse party actually had the opportunity to be heard and had filed pleadings in opposition to the motion, to wit: *gu*

---

[16] *Marylou Cabrera v. Felix Ng*, G.R. No. 201601, March 12, 2014; *Pallada et. al. v. Regional Trial Court of Kalibo, Aklan, Branch 1 et. al.*, G.R. No. 129442, March 10, 1999; *Pojas v. Gozo-Dadole et. al.*, G.R. No. 76519, December 21, 1990, 192 SCRA 575; *Manila Electric Company v. La Campana Food Products, Inc., et al.*, G.R. No. 97535, August 4, 1995; *Vda. De Azarias v. Hon. Manolo L. Maddela et. al.*, G.R. No. L-25932, March 19, 1971.
[17] *Annie Tan v. Court of Appeals, et. al.*, G.R. No. 130314, September 22, 1998.
[18] G.R. Nos. 121662-64, July 6, 1999.
[19] G.R. No. 159750, December 14, 2005, 477 SCRA 781.

"This Court has indeed held time and again, that under Sections 4 and 5 of Rule 15 of the Rules of Court, mandatory is the notice requirement in a motion, which is rendered defective by failure to comply with the requirement. As a rule, a motion without notice of hearing is considered *pro forma* and does not affect the reglementary period for the appeal of the requisite pleading.

As an integral component of procedural due process, the three-day notice required by the Rules is not intended for the benefit of the movant. Rather, the requirement is for the purpose of avoiding surprises that may be sprung upon the adverse party, who must be given time to study and meet the arguments in the motion before a resolution by the court. Principles of natural justice demand that the right of a party should not be affected without giving it an opportunity to be heard.

The test is the presence of opportunity to be heard as well as to have time to study the motion and meaningfully oppose or controvert the grounds upon which it is based." *(Emphasis supplied.)*

Also, in the case of *Goldloop Properties, Inc. v. Court of Appeals et. al.*,[20] the Supreme Court allowed the case to proceed despite the absence of notice of hearing in respondents' motion for reconsideration. The Supreme Court held that:

"Admittedly, the filing of respondent-spouses' motion for reconsideration did not stop the running of the period of appeal because of the absence of a notice of hearing required in Secs. 3, 4 and 5, Rule 15, of the Rules of Court. And we have repeatedly held, a motion that does not contain a notice of hearing is a mere scrap of paper; it presents no question which merits the attention of the court. Being a mere scrap of paper, the trial court had no alternative but to disregard it. Such being the case, it was as if no motion for reconsideration was filed and, therefore, the reglementary period within which respondent-spouses should have filed an appeal expired on 23 November 1989.

But, where a rigid application of that rule will result in a manifest failure or miscarriage of justice, then the rule may be relaxed, especially if a party successfully shows that the alleged

[20] G.R. No. 99431, August 11, 1992.

> defect in the questioned final and executory judgment is not apparent on its face or from recitals contained therein. Technicalities may thus be disregarded in order to resolve the case. After all, no party can ever claim a vested right in technicalities. Litigations should, as much as possible, be decided on the merits and not on technicalities.
>
> Hence, this Court should not easily allow a party to lose title and ownership over a property worth P4,000,000.00 for a measly P650,000.00 without affording him ample opportunity to prove his claim that the transaction entered into was not in fact an absolute sale but one of mortgage. Such grave injustice must not be permitted to prevail on the anvil of technicalities."

And finally, in *National Commercial Bank of Saudi Arabia v. Court of Appeals and Philippine Banking Corporation,*[21] the Supreme Court likewise allowed the liberal application of the rule on notice of hearing taking into account the fact that the parties involved therein belong to the banking industry over which the government has a vital interest as well as the fact that the prejudice likely to be suffered by the private respondent in the said case is not commensurate to its negligence in not complying with the notice of hearing requirement.

Based on the records, the CIR was served with a copy of PTFC's Motion for Reconsideration through registered mail on April 22, 2014, on the same day PTFC filed it in court. Considering thereto, it does not appear that CIR's right to procedural due process was unduly hampered as she was apprised of the filing as well as the contents of the said Motion. On the other hand, the prejudice likely to be suffered by PTFC should the Court *En Banc* insists on the strict application of the rule on notice of hearing is not commensurate to its negligence in not complying with the said procedural rule. Accordingly, the Court *En Banc* holds that the strict application of Sections 4 and 5 of Rule 15 of the Rules of Court may be relaxed in the present case.

In resolving the above issue, the Court *En Banc* is also guided by Supreme Court's pronouncement in *KKK Foundation, Inc. v. Hon. Adelina Calderon-Bargas et. al.*,[22] wherein it was stated that:

> "The notice requirement is not a ritual to be followed blindly. Procedural due process is not based solely on a mechanical and literal application that renders any deviation inexorably fatal. Instead, procedural rules are liberally

---

[21] G.R. No. 124267, August 18, 2004.
[22] G.R. No. 163785, December 27, 2007.

construed to promote their objective and to assist in obtaining a just, speedy and inexpensive determination of any action and proceeding."

CIR's Motion for Reconsideration of the assailed Decision is not *pro forma.*

PTFC claims that while CIR's Motion for Partial Consideration of the assailed Decision contains a notice of hearing, the same was allegedly received by PTFC three (3) days after the date set for hearing. Consequently, PTFC was not able to attend the hearing set by CIR for the Motion for Partial Reconsideration on May 2, 2014.[23] Alleging that it was not timely notified about the hearing, PTFC argues that the CIR's Motion shall be deemed defective and *pro forma* and did not toll the running of the period to file the same.[24]

PTFC's argument lacks merit.

It bears pointing out that in a Resolution dated May 19, 2014,[25] the Court in Division directed PTFC to file its Comment on CIR's Motion for Partial Reconsideration dated April 23, 2014. Notably, the directive for filing of PTFC's Comment is <u>in lieu of</u> conducting an actual hearing on the Motion. In compliance with the said directive, PTFC thus filed its Comment (on Motion for Partial Reconsideration) dated June 3, 2014[26] wherein it refuted the arguments raised by CIR. Clearly then, PTFC was given ample time to study the Motion and an opportunity to be heard before the Court made any resolution thereon. As the Supreme Court stated in *Fausto R. Preysler, Jr. v. Manila Southcoast Development Corporation,*[27] in determining compliance with procedural due process with respect to motions, "the test is the presence of opportunity to be heard, as well as to have time to study the motion and meaningfully oppose or controvert the grounds upon which it is based. x x x"

In sum, the Court *En Banc* holds that CIR's Motion for Partial Reconsideration of the assailed Decision is not *pro forma.*

---

[23] CTA EB No. 1220 Docket, pp. 28-29.
[24] *Ibid.*
[25] Division Docket (CTA Case No. 7991), Vol. II, p. 960.
[26] *Ibid.*, pp. 965-969.
[27] G.R. No. 171872, June 28, 2010, 621 SCRA 636, 643 citing *Jehan Shipping Corporation v. National Food Authority*, G.R. No. 159750, December 14, 2005, 477 SCRA 781.

PTFC's alleged payment of compromise offer cannot be given credence.

In its Petition for Review, PTFC alleges that on March 22, 2010, it paid to the BIR the amount of ₱2,442,230.02 representing 40% of the basic deficiency tax of Php6,105,575.05.[28] The said payment was allegedly in support of PTFC's application for compromise settlement of its above deficiency tax liabilities.[29] According to PTFC, had the CIR properly assessed it in 2009, the payment in support of its compromise offer amounting to ₱2,442,230.02 would have been more than sufficient to cover the basic deficiency tax in the amount of P1,789,857.55.[30] Thus, PTFC argues that the basic deficiency tax amounting to ₱1,789,857.55 should be deemed paid in view of its alleged compromise payment.[31]

PTFC's argument deserves scant consideration.

The Court *En Banc* notes that PTFC raised the issue regarding the alleged compromise payment only in its Motion for Reconsideration filed before the Court in Division. Notably, the said issue was never brought up nor considered for review during the trial of the case. It is a settled rule that points of law, theories, issues and arguments not adequately brought to the attention of the lower court need not be considered by the reviewing court as they cannot be raised for the first time on appeal because to allow the same would be offensive to the basic rules of fair play, justice and due process.[32]

Moreover, PTFC failed to present any evidence to prove such allegation. While the Court *En Banc* is aware that PTFC attached to its Motion for Reconsideration a photocopy of its Application for Compromise Settlement of Internal Revenue Tax Liabilities (BIR Form No. 2107),[33] the said document, however, was not formally offered as evidence. Under Section 34, Rule 132 of the Rules of Court, only evidence marked and formally offered in evidence may be admitted and considered by the court in the resolution of a case. Evidence which were not formally offered cannot in any manner be treated as evidence.[34]A formal offer of evidence is necessary, since judges are required to base their findings of fact and their judgment

---

[28] CTA EB No. 1220 Docket, p. 31.
[29] *Ibid.*
[30] The total basic deficiency tax as found by the Court in Division is actually **₱2,107,077.76.**
[31] CTA EB No. 1220 Docket, p. 31-33.
[32] *British American Tobacco v. Jose Isidro N. Camacho et. al.*, G.R. No. 163583, April 15, 2009; *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*, (Resolution) G.R. No. 168498, April 24, 2007, 522 SCRA 144; *Filipinas Textile Mills, Inc. v. Court of Appeals*, G.R. No. 119800, November 12, 2003; *Philippine Ports Authority v. City of Iloilo*, G.R. No. 109791, July 14, 2003.
[33] Division Docket (CTA Case No. 7991) Vol. II, p. 904.
[34] *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014; *Rafael Arsenio Dizon v. Court of Tax Appeals et. al.*, G.R. No. 140944, April 30, 2008; *Far East Bank & Trust Company v. Commissioner of Internal Revenue*, G.R. No. 149589, September 15, 2006; *Jose Tabuena v. Court of Appeals and Emiliano Tabernilla, Jr.*, G.R. No. 85423, May 6, 1991.

solely and strictly upon the evidence offered by the parties at the trial.[35] To allow litigants to simply attach any document to their pleadings hoping that they will be considered as evidence by the court without the required formal offer and admission will create disorder in court proceedings and may draw unwarranted consequences.

At any rate, the Court *En Banc* finds the said BIR Form 2107 bereft of probative value because, on its face, it does not appear that the alleged compromise offer made by PTFC concerning its deficiency tax liabilities has been approved by the concerned Evaluation Board of the BIR, as required under Section 204 (A) of the National Internal Revenue Code of 1997, as amended (1997 NIRC). The document merely shows that it was received by the Large Taxpayer Collection and Enforcement Division of the BIR on August 6, 2010. There is also no indication whatsoever that the amount stated therein had already been paid. Section 204 (A) of the 1997 NIRC provides as follows:

> "*SEC. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may —
>
> (A) Compromise the payment of any internal revenue tax, when:
>
> (1) A reasonable doubt as to the validity of the claim against the taxpayer exists; or
>
> (2) The financial position of the taxpayer demonstrates a clear inability to pay the assessed tax.
>
> The compromise settlement of any tax liability shall be subject to the following minimum amounts:
>
> (a) For cases of financial incapacity, a minimum compromise rate equivalent to ten percent (10%) of the basic assessed tax; and
>
> (b) For other cases, a minimum compromise rate equivalent to forty percent (40%) of the basic assessed tax.
>
> **Where the basic tax involved exceeds One million pesos (P1,000,000) or where the settlement offered is less than the prescribed minimum rates, <u>the compromise shall be subject to the approval of the Evaluation Board which shall be</u>**

[35] *Spouses Ong v. Court of Appeals et. al.*, G.R. No. 117103, January 21, 1999.

composed of the Commissioner and the four (4) Deputy Commissioners." *(Emphasis and underscoring supplied.)*

The Court in Division did not err in sustaining the findings of the CIR holding PTFC liable for EWT on income payments amounting to ₱1,157,005.72.

PTFC asserts that the Court in Division erred in sustaining the findings of the CIR holding PTFC liable for EWT on income payments amounting to ₱1,157,005.72.[36] It avers that the Court in Division should have given probative value to the schedules of income payments because PTFC would not have presented the same if they were not accurate.[37]

The Court *En Banc* is not persuaded.

As found by the Court in Division, PTFC merely presented the schedule of income payments without the corresponding source documents such as invoices and official receipts. The presentation of these documents is required as the same would have allowed the Court in Division to verify the actual nature and accuracy of these income payments. Thus, for failure of PTFC to present such source documents, the Court in Division correctly sustained CIR's findings.

PTFC failed to prove that it did not benefit from the exportation and sale of the leaf tobacco.

PTFC reiterates its contention before the Court in Division that it never earned any revenue from the sale of leaf tobacco as it acted only as a lessor of its tobacco processing facilities in Candon, Ilocos Sur to Victoria Trading Center (VTC), pursuant to a Contract of Lease between them.[38] PTFC added that its revenue pertains only to the lease of its tobacco processing facilities to VTC and not to the tobacco processed by the latter.[39]

The Court *En Banc* agrees with the Court in Division finding that PTFC, considering the evidence it had presented, failed to establish that the exported leaf tobacco belongs to VTC and that it did not benefit from the exportation and sale thereof. The Court *En Banc* quotes with approval the disquisition of the Court in Division on the matter, to wit:

---

[36] CTA EB No. 1220 Docket, p. 33.
[37] *Ibid.*
[38] *Id.*, p. 33-34.
[39] *Id.*

> 'In order to support its claim, petitioner presented its Contract of Lease with VTC, export sales invoices with the indication "AND ON BEHALF OF VICTORIA TRADING CENTER", Phytosanitary Certificate, Certificate of Fumigation, Export Declaration with the indication "AND ON BEHALF OF VICTORIA TRADING CENTER", Certificates of Origin, Bills of Lading with the indication "AND ON BEHALF OF VICTORIA TRADING CENTER", Container List, Weight List, reply-letter of Mr. George Vinluan, Head-Excise Tax for Regions 1, 2 and 3 with attachments, and Judicial Affidavit of Mr. Ignacio Luis Tan.
>
> While it was indicated in the export sales invoices, export declarations and bills of lading that petitioner exported the leaf tobacco on behalf of Victoria Trading Center, petitioner failed to prove that the export proceeds were remitted to VTC. Inasmuch as petitioner failed to establish that the exported leaf tobacco belongs to VTC and it did not benefit from the exportation thereof, respondent's deficiency income tax assessment on petitioner's undeclared gross profit on undeclared sale of leaf tobacco in the amount of ₱16,102,024.50 should be upheld.' *(Citations omitted.)*

The Court *En Banc* sees no reason to deviate from the aforequoted findings.

Computation of deficiency and delinquency interests

Concerning the computation of deficiency and delinquency interests, the dispositive portion of the assailed Decision states:

> "In addition, petitioner is hereby **ORDERED TO PAY**:
>
> a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income tax, VAT, withholding tax on compensation, EWT, DST, and inspection fees computed from the dates indicated below until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended: *9z*

TAX TYPE	DEFICIENCY INTEREST COMPUTED FROM
Income Tax	December 15, 2005
Value-added Tax	September 25, 2005
Withholding Tax on Compensation	September 14, 2005
Expanded Withholding Tax	September 14, 2005
Documentary Stamp Tax	August 31, 2005
Inspection Fees	August 31, 2005

b) Delinquency interest at the rate of 20% per annum on the total amount of P2,633,847.20 and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from November 6, 2009 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED."

While the issue on the computation of deficiency and delinquency interests by the Court in Division in the assailed Decision was not raised by the parties, the Court *En Banc* deems it proper to discuss the same for the just and complete determination of the present controversy. In connection with the above judgment, it bears reiterating that:

1. Section 247(a) in relation to Section 249(B) of the 1997 NIRC sanctions the imposition of deficiency interest on all deficiency taxes;

2. Sections 249(B) and (C) of the 1997 NIRC authorize the simultaneous imposition of deficiency interest and delinquency interest; and

3. The legislative history of the relevant provisions of the 1997 NIRC supports the simultaneous imposition of deficiency interest and delinquency interest.

Section 247(a) in relation to Section 249(B) of the 1997 NIRC authorizes the imposition of deficiency interest on all taxes under the NIRC.

The law is clear. There is no room left for interpretation.

Section 247(a) of the 1997 NIRC provides: *gr*

"TITLE X
STATUTORY OFFENSES AND PENALTIES

CHAPTER I
ADDITIONS TO THE TAX

SECTION 247. General Provisions. —

(a) The additions to the tax or deficiency tax prescribed in this Chapter shall apply to **all taxes**, fees and charges **imposed in this Code**. The amount so added to the tax shall be collected at the same time, in the same manner and as part of the tax." *(Emphasis and underscoring supplied)*

The text of Section 247(a) states without any doubt that the additions under Chapter I, Title X are applicable to *all taxes* imposed under the code, *i.e.*, the 1997 NIRC. The authority to impose additions under that provision clearly extends to *all taxes* regardless of the title under which they are classified.

Therefore, the law does *not* limit these additions *only* to the three (3) types of internal revenue taxes, namely, income (Title II), estate (Title III) and donor's tax (Title III). Their imposition applies with equal force and effect to the other taxes under the 1997 NIRC such as the value-added tax (Title IV), other percentage taxes (Title V), excise tax (Title VI) and documentary stamp tax (Title VII).

Accordingly, the additions to the tax or deficiency tax such as, among others, *Civil Penalties or Surcharges* under Section 248, *Deficiency Interest* under Section 249(B), *Delinquency Interest* under Section 249(C), and *Interest on Extended Payment* under Section 249(D) are applicable to the deficiency income tax, value-added tax, withholding tax on compensation, expanded withholding tax, documentary stamp tax, and inspection fees of PTFC.

It may be argued that because there are no definitions for *deficiency* withholding tax, value-added tax, percentage tax, excise tax or documentary stamp tax unlike those provided for *income tax* in Section 56(B), for *estate tax* in Section 93 and for *donor's tax* in Section 104 then no deficiency interest can be imposed on other kinds of taxes provided under the 1997 NIRC. The *lacuna* or the missing definition was precisely addressed by

Section 247(a) when this provision was first legislated as a revision[40] to the *1977 NIRC* and then subsequently reenacted in the 1997 NIRC.

The Supreme Court discussed the history of this provision in *Paper Industries Corporation of the Philippines (PICOP) v. Court of Appeals, et al.*[41]

In that case, the Supreme Court held that PICOP was *not* liable for interest and surcharge on the unpaid transaction tax because the 1977 Tax Code applicable at that time authorized the imposition of interest and surcharge *only* on taxes within Title II of the Code (Income Tax). Therefore, since transaction tax was embraced under a *different* title, Title V (Taxes on Business), the Court concluded that said transaction tax was not one of the taxes on which interest and surcharge could be imposed. *Nonetheless, it further expounded that this inadvertence in the 1977 NIRC was cured subsequently by legislative fiat.* Thus:

> "The CIR, both in its petition before the Court of Appeals and its Petition in the instant case, points to Section 51(e) of the 1977 Tax Code as its source of authority for assessing a surcharge and penalty interest in respect of the thirty-five percent (35%) transaction tax due from Picop.
>
> x x x x x x x x x
>
> 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.

---

[40] Presidential Decree No. 1994. Please refer to the subsequent discussions in the opinion.
[41] G.R. No. 106949-50, December 1, 1995 consolidated with *Commissioner of Internal Revenue v. Paper Industries Corporation of the Philippines (PICOP), et al.*, G.R. No. 106984-85, December 1, 1995.

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

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

Title X
Statutory Offenses and Penalties

Chapter I
Additions to the Tax

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

SECTION 248. *Civil Penalties.* — (a) There shall be imposed, *in addition to the tax required to be paid, penalty equivalent to twenty-five percent (25%) of the amount due*, in the following cases:

xxx xxx xxx

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

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

In fact, this Court *En Banc*, through the *ponencia* of J. Mindaro-Grulla in *Takenaka Corporation Philippine Branch v. CIR*,[42] relied upon the same *PICOP* holding. To stress its point, the Court cited *PICOP* and stated that the deficiency interest imposed under Section 249(B) of the 1997 NIRC does *not* apply merely to deficiency income, deficiency estate and deficiency donor's tax *by virtue* of Section 247(a) of the same law. It reads:

"Anent the issue on the applicability of deficiency interest under Section 249(B) of the NIRC of 1997, as amended, only to deficiency income tax, deficiency estate tax, and deficiency donor's tax, as held by the Court a quo, petitioner asseverates that such an interpretation would result to absurd conclusions as it would mean triple imposition of 20% interest under Sections 249(A), 249(B), and 249(C) of the NIRC of 1997, simultaneously, effectively giving rise to at least 60% interest *per annum*.

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

We agree with petitioner.

The issue is no longer novel as the same was sufficiently discussed by the Supreme Court in *Paper Industries Corporation of the Philippines (PICOP) v. Court of Appeals, et al.* The Supreme Court held that Section 247(a) of the NIRC of 1977, as amended [**now Section 247(a) of the NIRC of 1997, as amended**], very clearly embraces failure to pay **all taxes imposed in the Tax Code**, without any regard to the Title of the Code where provisions imposing particular taxes are textually located." (emphases and underscoring supplied; citations omitted)

In sum, PTFC's deficiency income tax, VAT, withholding tax on compensation, EWT, DST, and inspection fees were properly subjected to deficiency interest pursuant to Section 249 of the 1997 NIRC.

Sections 249(B) and (C) of the 1997 NIRC authorize the simultaneous imposition of deficiency interest and delinquency interest.

This Court *En Banc* has consistently held that the plain reading of Section 249 of the 1997 NIRC justifies the simultaneous imposition of deficiency interest and delinquency interest. Section 249 (B) and (C) are clear that the imposition of both the deficiency interest and delinquency interest are to be reckoned from the date prescribed for their payment and until the full payment thereof. Sections 249 (B) and (C) of the 1997 NIRC reads:

"SECTION 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.**

(C) Delinquency Interest. — In case of failure to pay:

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

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

(3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof **until the amount is fully paid, which interest shall form part of the tax.**" *(Emphasis and underscoring supplied)*

The Supreme Court recently upheld this interpretation in a Resolution dated November 10, 2014 in *Republic Cement [as surviving corporation in a merger involving FR Cement Corporation] v. Commissioner of Internal Revenue*:[43]

"After a careful perusal of the records, the Court resolves to **DENY** the instant petition and **AFFIRM** the July 18, 2012 Decision and November 21, 2012 Resolution of the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 821 for failure of Republic Cement Corporation (petitioner) to show that the CTA *En Banc* committed any reversible error in assessing it for deficiency *creditable withholding value-added tax* (CWVAT) for taxable year 1999 in the amount of ₱10,044,824.64, inclusive of 25% surcharge, and in imposing *deficiency interest* of 20% *per annum* on the basic deficiency CWVAT of ₱8,035,859.71 from January 25, 2000 until full payment thereof, as well as *delinquency interest* of 20% *per annum* on the total deficiency taxes of ₱10,044,824.64 and on the 20% *deficiency interest* that have accrued from January 31, 2005 until full payment thereof.

As correctly ruled by the CTA *En Banc*, the simultaneous imposition of *deficiency* and *delinquency interests* are sanctioned under Section 249 of the National Internal Revenue Code (NIRC), which explicitly provides that *deficiency interest* shall be reckoned from the date prescribed for payment of the deficiency tax until full payment thereof while *delinquency interest* shall also be collected computed from the due date prescribed under the Assessment Notice until full payment thereof.

[43] G.R. No. 204715.

> **SO ORDERED.**" *(Underscoring and emphases supplied)*

In *Medicard Philippines, Inc. v. CIR*,[44] we also held that there is no legal obstacle for the Court in Division to simultaneously impose the deficiency interest and the delinquency interest:

> "In the case of *Philippine Aerospace Development Corporation v. Commissioner of Internal Revenue*, this Court exhaustively discussed the propriety of the simultaneous imposition of deficiency and delinquency interest, in this wise:
>
> > 'The propriety of the simultaneous imposition of deficiency and delinquency interests was more definitively resolved in April 2013. This was in *First Lepanto Taisho Insurance Corporation v. Commissioner of Internal Revenue*, where the Supreme Court upheld a 2011 decision of this Court affirming the imposition of delinquency interest under Section 249(c)(3) of the 1997 NIRC. The Supreme Court ruled this imposition 'to be proper, because failure to pay the deficiency tax assessed within the time prescribed for its payment justifies the imposition of interest at the rate of twenty percent (20%) per annum, which interest shall be assessed and collected from the date prescribed for its payment until full payment is made.'
> >
> > Earlier in 2011, the Supreme Court sustained the 2005 rulings of this Court imposing 20% delinquency tax on deficiency taxes, inclusive of deficiency interest, in *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*.
> >
> > In 2006, the Supreme Court also upheld a 2004 Court of Appeals decision where the latter imposed delinquency interest at 20% per annum in addition to the interest on deficiency VAT and deficiency documentary stamp tax, in *Michel J. Lhuiller Pawnshop, Inc. v. Commissioner of Internal Revenue*, although without discussion of the propriety of multiple simultaneous interests. *gr*

[44] CTA EB No. 1224, September 2, 2015.

> And even earlier, in 2000, the Supreme Court likewise upheld the imposition of 20% annual delinquency interest on deficiency amusement tax, inclusive of 20% deficiency interest, in *Philippine Basketball Association v. Court of Appeals, Court of Tax Appeals, and Commissioner of Internal Revenue.*
>
> Actually, double interests have been sustained by the Supreme Court at least as early as 1971, in *Commissioner of Internal Revenue v. Connel Bros. (Phil.) and Court of Tax Appeals.* Under the tax law at the time, R.A. No. 2343 of 1959, these were the 'interest on deficiency' and what may be referred to as 'additional interest' (in case of non-payment within the prescribed period), at the rates of 6% per annum and 1% per month, respectively.
>
> It is abundantly clear, from the foregoing discussion of the law and jurisprudence, that under the circumstance laid down by Section 249(c)(3) of the Tax Reform Act of 1997 — *i.e.*, in case of failure to pay a deficiency tax, or any surcharge or interest on such deficiency tax — delinquency interest of 20% per annum shall be assessed and collected.
>
> The petitioner asked whether or not simultaneous deficiency and delinquency interests 'are allowed by law and equity.' The answer is in the law itself, which does not merely allow but prescribes simultaneous imposition under the aforecited circumstance. As this is undoubtedly proper under the law — and petitioner has not assailed the validity of the law itself — there is neither need nor duty for this Court to expand the discussion to the realm of equity, for 'equity is applied only in the absence of, and never against, statutory law, and the rule is that 'equity follows the law.''

Verily, We explained in the *Philippine Aerospace* case that, following the various and consistent rulings of the Supreme Court, there is nothing repugnant with the simultaneous imposition of deficiency and delinquency interests. Thus, the Court in Division is correct in imposing the aforesaid civil penalties in the instant case." *gr*

In the same vein, *Avon Products Manufacturing, Inc. v. CIR*[45] discussed the legal bases for the Court's position on this point, thus:

> "Petitioner submits that the Court in Division seriously erred in its simultaneous imposition of the deficiency interest and the delinquency interest upon the amounts payable by petitioner. The latter argues that deficiency interest and delinquency interest provided under Section 249 (B) and 249 (C) of the NIRC are not intended to be imposed simultaneously. Otherwise, it will amount to an interest that is excessive, iniquitous, unconscionable and exorbitant.
>
> We do not agree with petitioner.
>
> Section 249 of the NIRC of 1997 provides:
>
> 'SEC. 249. *Interest.* —
>
> (A) *In General.* — There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed by rules and regulations, from the date prescribed for payment until the amount is fully paid.
>
> (B) *Deficiency Interest.* — Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.
>
> (C) *Delinquency Interest.* — In case of failure to pay:
>
> (1) The amount of the tax due on any return required to be filed, or
>
> (2) The amount of the tax due for which no return is required, or

[45] CTA EB No. 1062, March 16, 2015.

> (3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax.
>
> xxx xxx xxx.'

Interest is imposed to *compensate* the State for the delay in paying the tax and for the concomitant use by the taxpayer of funds that rightfully should be in the government's hands. It is imposable upon failure of the taxpayer to pay the tax on the date fixed in the law for its payment.

In this case, by its own argumentation, petitioner stresses that the deficiency interest under subsection (B) of Section 249 is applicable where the taxpayer is found to have a tax deficiency. Since We find in this Decision that petitioner is liable to the deficiency excise tax assessed by respondent, there can be no doubt that petitioner is likewise liable to the deficiency interest imposed by the Court in Division.

Furthermore, We see no legal obstacle for the Court in Division to simultaneously impose the deficiency interest and the delinquency interest.

Nowhere in Section 249 does it state that if subsection (B) is applicable, subsection (C) would be rendered inapplicable, or *vice versa*. Furthermore, there is no indication in the same Section 249 that the beginning of the imposition of delinquency interest under subsection (C) would end upon the imposition of deficiency interest under subsection (B). Especially so that both subsection (B) and subsection (C) provide that the interests shall respectively accrue until full payment thereof.

It is a cardinal rule in statutory construction that no word, clause, sentence, provision or part of a statute shall be considered surplusage or superfluous, meaningless, void and insignificant. To this end, a construction which renders every word operative is preferred over that which makes some words idle and nugatory. This principle is expressed in the maxim *Ut magis valeat quam pereat*, that is, we choose the interpretation which gives effect to the whole of the statute — its every word.

Thus, every word of Section 249 should be given effect." *(Underscoring supplied; citations omitted)*

The legislative history of the relevant provisions of the 1997 NIRC supports the simultaneous imposition of deficiency interest and delinquency interest.

The legislative intent to impose deficiency interest *concurrently* with delinquency interest is underscored especially when viewed in the light of the revisions of the germane provisions of the 1977 NIRC[46] and the enactment of substantially the same revisions in the 1997 NIRC. The relevant provisions are quoted in the table below to facilitate reference:

1977 NIRC as amended by Presidential Decree No. (P.D.) 1705, Section 14.	**1977 NIRC** as amended/revised by P.D. 1994, Section 40	**1997 NIRC**
	TITLE XI - Additions to the Tax and General Penal Provisions **CHAPTER I - Additions to the Tax**	**TITLE X - Statutory Offenses and Penalties** **CHAPTER I - Additions to the Tax**
	Sec. 281. General provisions. - (a) The additions to the tax or deficiency tax prescribed in this Chapter shall apply to all taxes, fees and charges imposed in this Code. The amount so added to the tax shall be collected at the time, in the same manner and as part of the tax. XXXX	**Sec. 247.** *General Provisions. -* (a) The additions to the tax or deficiency tax prescribed in this Chapter shall apply to all taxes, fees and charges imposed in this Code. The amount so added to the tax shall be collected at the same time, in the same manner and as part of the tax. XXXX
Sec. 88. Civil penalties. — **(a) Individuals.** XXXX. **(b) Corporations. –** **(1) Deficiency, defined. —** XXXX. **(2) (i) Interest. —** Interest upon the amount determined as a deficiency shall be assessed at the same time as the deficiency; and shall be paid upon notice and demand from the Commissioner of Internal Revenue; and shall be	**Sec. 282. Civil Penalties.** – XXXX. **Sec. 283. Interest. –** (a) *In general.* -There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed by regulations, from the date prescribed for payment until the amount is fully paid. (b) *Deficiency interest.* - Any	**Sec. 248.** *Civil Penalties.* – XXXX. **Sec. 249.** *Interest. –* (A) In General. — There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed by rules and regulations, from the date prescribed for payment until the amount is fully paid. (B) *Deficiency Interest.* - Any

Jr

[46] Presidential Decree No. 1994 which took effect on January 1, 1986 made substantial revisions to the 1977 NIRC.

1977 NIRC as amended by Presidential Decree No. (P.D.) 1705, Section 14.	**1977 NIRC** as amended/revised by P.D. 1994, Section 40	**1997 NIRC**
collected as part of the tax at the rate of twenty per centum per annum from the date prescribed for the payment of the tax to the date the deficiency is assessed: **Provided, That the maximum amount that may be collected as interest on deficiency shall in no case exceed the amount corresponding to a period not later than the fifteenth day of April or the fifteenth day of fourth month following the close of the taxable year**: Provided, further, That no interest on deficiency quarterly income tax shall be assessed at any time after assessment of the actual income tax due for the taxable year.	deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in paragraph (a) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.	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.
(ii) Addition to estimated tax in case of nonpayment. – (1) Tax shown on the quarterly return. — Where the amount shown by the taxpayer as tax on its quarterly return or part of such amount, is not paid on or before the date prescribed for its payment, there shall be collected, as part of the tax interest upon such unpaid amount at the rate of twenty per centum per annum from the date prescribed for its payment until it is paid but not later than the fifteenth day of April or the fifteenth day of the fourth month following the close of the taxable year.		
(2) Deficiency. — Where the deficiency, or interest on deficiency, assessed under subsection (a) of this Section, or part thereof, is not paid in full within thirty days from the date of receipt by the taxpayer of the notice and demand from the Commissioner of Internal Revenue, **there shall be collected upon such unpaid amount, as part of the tax, interest at the rate of twenty per centum per annum from the date of receipt by the taxpayer of such notice and demand until it is paid not later than the fifteenth day of April or the fifteenth day of the fourth month following the close of the taxable year**. (emphases and underscoring supplied)	(c) *Delinquency interest.* - In case of failure to pay: (1) The amount of the tax due on any return required to be filed, or (2) The amount of the tax due for which no return is required, or (3) A deficiency tax, or any surcharge or interest thereon, on the due date appearing in the notice and demand of the Commissioner, **there shall be assessed and collected, on the unpaid amount, interest at the rate prescribed in paragraph (a) hereof until the amount is fully paid**, which interest shall form part of the tax. (emphases and underscoring supplied)	(C) *Delinquency Interest.* - In case of failure to pay: (1) The amount of the tax due on any return required to be filed, or (2) The amount of the tax due for which no return is required, or (3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, **there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid**, which interest shall form part of the tax. (emphases and underscoring supplied)

By comparing the above-cited codal provisions, it can be seen from their texts that:

1. With respect to *deficiency* interest, when P.D. 1994 deleted the limiting clause "*Provided, That the maximum amount that may be collected as interest on deficiency shall in no case exceed the amount corresponding to a period not later than the fifteenth day of April or the fifteenth day of fourth month following the close of the taxable year:*" the legislature clearly intended to let the interest period run without a ceiling. Therefore:

   a. *Before the revisions under P.D. 1994*, deficiency interest was computed at 20% *per annum* from the date prescribed for the payment of tax to the date the deficiency tax is assessed. But the amount of deficiency interest cannot exceed the limit imposed by the clause which, it is submitted, can be difficult to calculate due to the construction of the text.

   b. *After the revisions under P.D. 1994 and even subsequently under the 1997 NIRC*, deficiency interest is still computed at 20% *per annum* but the interest period is now allowed to run without the cap. Thus, interest is computed at 20% *per annum* from the date prescribed for the payment of tax, to the date the deficiency tax is assessed and, *even extending beyond*, until the date of full payment.

2. With respect to *delinquency* interest, it must be noted that:

   a. *Even before the revision under P.D. 1994*, Section 88(b)(2)(ii)(2) of the 1977 NIRC *already* imposed 20% interest[47] on "*interest on deficiency.*"

      However, the *delinquency* interest period was computed from the taxpayer's receipt of notice and demand until paid *but again, with the limiting clause*, "there shall be collected upon such unpaid amount, as part of the tax, interest at the rate of twenty per centum per annum from the date of receipt by the taxpayer of such notice and demand until it is paid not later than the fifteenth day of April or the fifteenth day of the fourth month following the close of the taxable year."

   b. *After the revisions under P.D. 1994 and even subsequently under the 1997 NIRC*, delinquency interest is still computed at 20% *per*

---

[47] The term used by the 1977 NIRC, as amended by P.D. 1705, is "deficiency."

annum but the interest period is now allowed to run without the ceiling. Thus, interest is computed at 20% *per annum* from the due date appearing in the notice and demand of the Commissioner until the date of full payment.

3. There is a *legislated overlap* in the imposition of the deficiency and of the delinquency interest. Specifically, both deficiency and delinquency interests toll concurrently *from* the due date appearing in the notice and demand of the Commissioner *until* the full payment.

WHEREFORE, in view of the foregoing, the Petition for Review filed by the Commissioner of Internal Revenue docketed as CTA EB No. 1218 is hereby **DENIED** for lack of merit.

On the other hand, the Petition for Review filed by PTFC docketed as CTA EB No. 1220 is hereby **PARTIALLY GRANTED**. The Resolution dated August 28, 2014 promulgated by the First Division of this Court in CTA Case No. 7991 is hereby **REVERSED AND SET ASIDE** insofar as it declared PTFC's Motion for Reconsideration filed on April 22, 2014 as a mere scrap of paper, and that the assailed Decision dated March 26, 2014, with respect to PTFC, as final and executory.

Accordingly, the assailed Decision dated March 26, 2014 of the First Division of this Court in CTA Case No. 7991 is hereby **AFFIRMED**.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

with concurring & dissenting opinion

I JOIN CONCURRING AND DISSENTING OPINION OF PJ DEL ROSARIO.

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* 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,

- versus -

PHILIPPINE TOBACCO FLUE-CURING AND REDRYING CORPORATION,
Respondent.

CTA EB NO. 1218
(CTA Case No. 7991)

x- -x

PHILIPPINE TOBACCO FLUE-CURING AND REDRYING CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1220
(CTA Case No. 7991)

Present:

Del Rosario, P.J.,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, *and*
Ringpis-Liban, JJ.

Promulgated:
APR 11 2016 3:15 p.m.

x- -x

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 for lack of merit, and in partially granting the Petition for Review filed by Philippine Tobacco

Flue-curing and Redrying Corporation (PTFRC) insofar as it relates to the treatment of PTFRC's motion for reconsideration before the Court in Division is concerned.

Nonetheless, upon review of the case records, it appears that 20% deficiency interest was imposed on the assessed basic value-added tax (VAT), withholding tax on compensation (WTC), expanded withholding tax (EWT), documentary stamp tax (DST), and inspection fees. While this particular issue was not raised, I deemed it appropriate to address the same if only to provide a just determination of the controversy.

Although cognizant of that fact that I concurred in the assailed decision of the Court *a quo*, I quote below the recent position I have taken in the consolidated cases of *Commissioner of Internal Revenue vs. ESS Manufacturing Company Inc., and ESS Manufacturing Company Inc. vs. Commissioner of Internal Revenue*[1] on the imposition of deficiency interest:

> "xxx I am not unaware of *Paper Industries Corporation of the Philippines vs. Court of Appeals, Commissioner of Internal Revenue, and Court of Tax Appeals (PICOP)*,[2] which somehow made mention of deficiency interest under the NIRC of 1977. I must stress, however, that *PICOP* cannot be relied upon to justify the imposition of deficiency interest on petitioner's excise tax liability. *PICOP* did not state nor resolve the issue whether or not the deficiency interest provided for in Section 249 (B) of the NIRC of 1997, as amended, may be imposed on tax other than donor's, estate, and income taxes. Thus, not having been resolved therein, *PICOP* cannot be considered as a doctrine on the matter. The case of *Office of the Ombudsman vs. Honorable Court of Appeals and Former Deputy Ombudsman for the Visayas Arturo C. Mojica*,[3] is instructive:
>
>> "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 relitigate the same issues.
>>
>> xxx xxx xxx

---

[1] CTA EB Nos. 1169 and 1175, March 30, 2016.
[2] G.R. Nos. 106949-50, December 1, 1995.
[3] G.R. No. 146486, March 4, 2005.

> **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.**" (Emphasis supplied)

If *PICOP* 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 provision of the NIRC of 1977**. Thus, the Court in *PICOP*, 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 the significant provisions of the NIRC of 1977: ***first*, it is Section 51 (c)(1), (e)(1), and (3) which impose deficiency interest; *second*, Section 51 (c) (1) confines such deficiency interest on taxes covered by TITLE II; and, *third*, that transaction tax does not fall within TITLE II.** Thus:

> **"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." (Emphases supplied)

True, the Supreme Court in *PICOP* declared that the present provision of the NIRC mentions that **additions** on tax applies to all taxes. While such pronouncement may not be construed beyond the context in which it was made, *PICOP* simply confirmed that *in general*, certain penalties and charges are applicable to all types of tax or deficiency tax; **PICOP, however, did not categorically construe the provision of Section 249 (B) that deals with "deficiency interest" on the type of tax "as defined in [the]**

> **Code."** Note that the present NIRC is explicit with respect to the type of tax on which deficiency interest may be imposed, viz:
>
> > 'Section 249.Interest-
> >
> > (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)
>
> **Section 249 (B) cannot be any clearer: the deficiency interest must refer only to 'deficiency in the tax due, <u>as the term is defined in [the] Code</u>.'**
>
> Verily, as the law stands, only donor's, estate, and income taxes carry a provision on deficiency tax; they are the types of taxes on which such deficiency interest may be imposed.
>
> Finally, Sections 247 (a) and 249 (A) are **general provisions** that impose "additions" to the tax and "interest" thereon. Both sections may not be read in isolation from the relevant and **specific provision** of Section 249 (B) with respect to the imposition of "deficiency" interest, more so as all these provisions fall within the same Chapter I of Title X of the NIRC of 1997, as amended."

Otherwise stated, Sections 247 (a) and 249 (A) must reasonably be read and construed subject to the provision of Section 249 (B) - - all these provisions being covered by the **same** Chapter I of Title X of the NIRC of 1997, as amended.

In sum, deficiency interest may be imposed only on tax specifically covered by the relevant provisions of the NIRC, *i.e., income tax, donor's tax and estate tax*; **conversely, deficiency interest may not properly be imposed on the basic VAT, WTC, EWT, DST, and inspection fees assessed against petitioner PTFRC**.

Also apt is my discussion in my Concurring and Dissenting Opinion in *Philippine Aerospace Development Corporation vs. Commissioner of Internal Revenue*[4] which I quote below:

> Settled is the rule that laws imposing tax is construed strictly against the government and liberally in favor of the taxpayer. **Unless clearly imposed by pertinent provision of law,**

[4] CTA EB No. 1035, February 9, 2016.

nM

> **deficiency interest as an additional tax burden should not simply be presumed. Thus, the obligation to pay deficiency interest may not be applied to taxes other than income tax, donor's tax and estate tax, irrespective of whether an assessment is issued or not. After all, the deficiency tax assessed is still subject to the delinquency interest rate of 20% per annum until fully paid. Truth be told, the delinquency interest rate of 20% is way more than the legal interest of 12% per annum.**

All told, I vote to deny the Petition for Review of the Commissioner of Internal Revenue for lack of merit, to partially grant the Petition for Review of PTFRC insofar as it relates to the treatment of PTFRC's motion for reconsideration before the Court in Division is concerned, and to affirm the judgment of the Court in Division with modification relating to the imposition of 20% deficiency interest on the assessed basic VAT, WTC, EWT, DST, and inspection fees, which should appropriately be cancelled and set aside.

ROMAN G. DEL ROSARIO
Presiding Justice