REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

SOLID VIDEO CORPORATION, *Petitioner,*	**CTA *EB* NO. 2195** *(CTA Case No. 9051)*
-versus-	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	

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COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 2207** *(CTA Case No. 9051)*
	Present: **DEL ROSARIO, P.J.,** **CASTAÑEDA, JR.,** **UY,** **RINGPIS-LIBAN,**
-versus-	**MANAHAN,** **BACORRO-VILLENA,** **MODESTO-SAN PEDRO,** **REYES-FAJARDO,** *and* **CUI-DAVID,** *JJ.*
	Promulgated:
SOLID VIDEO CORPORATION, *Respondent.*	MAR 01 2022 2:53 pm

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

For resolution are the consolidated ***Petitions for Review***, respectively, filed by Solid Video Corporation (hereinafter referred to as "SVC") on 23 December 2019[1] and posted by the Commissioner of Internal Revenue ("CIR") on 20 December 2019,[2] pursuant to ***Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals ("RRCTA")***.[3]

Both parties pray for the reversal and setting aside of the Amended Decision, promulgated on 2 May 2019,[4] and Resolution, dated 14 November 2019,[5] rendered by the Court of Tax Appeals ("CTA") Special Third Division ("Court in Division").

The assailed pronouncements found the deficiency income tax and value-added tax ("VAT") assessments issued against SVC for calendar year 2010 partially valid.

Consequently, the Court in Division ordered SVC to pay the Bureau of Internal Revenue ("BIR") the aggregate amount of ₱2,505,683.69, inclusive of surcharge and interests computed until 31 December 2017, plus 12% delinquency interest based on the total amount of ₱1,407,187.97 computed from 1 January 2018 until full payment.

The Parties

SVC is a domestic corporation with principal office address at Units 6 and 7, La Fuerza Plaza 2, Don Chino Roces Avenue cor. Sabio Street, Makati City. It is a registered taxpayer of the BIR, Revenue Region No. 8, Revenue District Office ("RDO") No. 48, as shown in its Certificate of Registration issued on 6 May 2014. It is assigned with the Taxpayer Identification Number ("TIN") 000-344-537-000.

The CIR is the chief of the BIR who is vested, among others, with the authority to administer and enforce the ***National Internal Revenue Code, as amended*** (hereinafter referred to as the "***Tax Code***"), and other tax laws. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

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1 SVC's Petition for Review, *EB* No. 2195 Records, pp. 7-59, with annexes.
2 CIR's Petition for Review, *EB* No. 2207 Records, pp. 5-94 with annexes.
3 A.M. No. 05-11-07-CTA, 22 November 2005.
4 Amended Decision, Annex "A" of SVC's Petition for Review, *EB* No. 2195 Records, pp. 29-48; Amended Decision, Annex "A" of the CIR's Compliance, *id.*, pp. 73-92.
5 Resolution, dated 14 November 2019, Annex "B" of SVC's Petition for Review, *EB* No. 2195 Records, pp. 50-59; Resolution dated 14 November 2019, Annex "C" of the CIR's Petition for Review, *EB* No. 2207 Records, pp. 78-87.

The Facts

On 26 October 2011, SVC received Letter of Authority ("LOA") No. 048-2011-00000445, dated 24 October 2011. The LOA authorized Revenue Officer Nonito SR Divino and Group Supervisor Arthur Benjamin Padilla of RDO No. 48-West Makati to examine SVC's books of accounts and other accounting records for all internal revenue taxes for calendar year 2010.[6]

On 1 March 2013, SVC received the Preliminary Assessment Notice ("PAN"), dated 28 February 2013. In the said issuance, SVC was found liable for deficiency income tax and VAT in the total amount of ₱17,704,653.20.[7]

On 3 April 2013, it received the Formal Assessment Notice ("FAN") with attached Details of Discrepancies, dated 2 April 2013. In the FAN, the BIR affirmed SVC's tax liability in the PAN with the total amount ballooning to ₱18,093,355.21.[8]

Aggrieved, SVC filed its administrative protest to the FAN on 2 May 2013, requesting the cancellation of the deficiency tax assessments for lack of factual or legal basis. Thereafter, it submitted the supporting documents of its protest to the BIR on 1 July 2013.[9]

On 17 April 2015, SVC received the Final Decision on Disputed Assessment ("FDDA"), dated 15 April 2015, with attached Details of Discrepancy denying SVC's protest. The assessments now totaled ₱23,021,541.46[10] computed, as follows:

I. Income Tax		
Taxable Income		₱18,265,923.00
Add: Adjustment/Disallowance		
a. Disallowed Purchases/Expenses	₱13,203,372.22	
b. Undeclared Service Income	17,970,985.52	31,174,357.74
Total		₱49,440,280.74
Tax Due (30%)		₱14,832,084.22
Less: Payments/Credits		
Tax Paid per Return	₱ 4,302,734.00	
Creditable Withholding Tax ("CWT")	1,177,043.00	
Total	5,479,777.00	
Less: Disallowed CWT	196,507.31	5,283,269.69
Basic Tax Due		**₱ 9,548,814.53**

[6] Decision, Annex "A" of the CIR's Petition for Review, *EB* No. 2207 Records, pp. 23-55.
[7] *Ibid.*
[8] *Ibid.*
[9] *Ibid.*
[10] *Ibid.*

Add: Interest (04.16.11 to 04.27.15)		7,701,838.35
TOTAL AMOUNT DUE		**₱17,250,652.88**

II. VAT		
Vatable Sale		₱116,874,744.09
Add: Undeclared sales/receipts		12,370,985.52
Total		₱129,245,729.61
Output Tax (12%)		15,509,487.55
Less: Creditable Input Tax		
Input Tax Carry-over	₱ 2,291,168.83	
Creditable VAT withheld	73,148.14	
Input Tax claimed per return	11,259,943.75	
Total	₱13,624,260.72	
Less: Disallowed Input Tax	1,584,404.67	
Overclaimed Input Tax Credit	119,568.11	
Input Tax on Sale to Gov't	60,415.38	
Unsupported Creditable VAT Withheld	24,832.20	11,835,040.36
VAT Payable		₱ 3,674,447.19
Less: VAT Payments		555,740.75
Basic Tax Due		₱ 3,118,706.44
Add: Interest (1.26.11 to 4.27.15)		2,652,182.14
TOTAL AMOUNT DUE		**₱ 5,770,888.58**

The basis of the foregoing assessments as discussed in the FDDA[11] are, as follows:

	Assessment	BIR's Findings
Income Tax		
1	Disallowed Purchases/Expenses ₱13,203,372.22	The BIR alleged that SVC overstated its purchases/cost of sales consequently yielding a lower gross profit. The amount was computed as the difference per SVC's declared "Goods purchased" in its Income Tax Return ("ITR")-₱92,039,941.00 and purchases (net of goods not for sale per protest) declared in the VAT Returns-₱78,836,568.78.
2	Undeclared Service Income ₱17,970,985.52	The BIR alleged that SVC failed to declare a portion of its Service Income. The amount was computed as the difference between the amount declared in SVC's Certificate of Creditable Tax Withheld at Source (hereinafter referred to as "BIR Forms No. 2307") (including service income and commission income from Solid Trading Limited ("STL")-₱29,348,827.52 and the Service Income declared in the ITR-₱11,377,842.00.

[11] Exhibit "P-8", Court in Division Docket Vol. 2, pp. 847-850.

3.	Disallowed CWT ₱196,507.31	The BIR alleged that the CWT claimed by SVC in its ITR should be disallowed. It explained that the amount of ₱1,930.24, which was income received from Leyte Normal University, was claimed twice. As for the rest, the BIR allegedly found these transactions were not supported by BIR Forms 2307.
VAT		
1.	Undeclared sales/receipts ₱12,370,985.52	The VAT Exposure of SVC's Undeclared Service Income assessment-₱17,970,985.52 less commission income-₱5,600,000.00 which is exempt from VAT. (See Income Tax Assessment No. 2 BIR Findings).
2.	Disallowed Input Tax ₱1,584,404.67	The VAT Exposure of SVC's Disallowed Purchases/Expenses assessment-₱13,203,372.22. (See Income Tax Assessment No. 1 BIR Findings).
3	Overclaimed Input Tax Credit ₱119,568.11	The BIR alleged that SVC overdeclared its "Excess Input-Tax Carry-Over". Per its investigation, SVC carried over in its VAT Returns for succeeding periods the amount of ₱1,839,115.09 which should have been ₱1,719,546.84.
4.	Input Tax on Sale to Gov't ₱60,415.38	The BIR alleged that the amount assessed should have been closed to SVC's expense account which SVC allegedly did not do.
5.	Unsupported Creditable VAT Withheld ₱24,832.20	SVC allegedly failed to present the transaction's corresponding Certificate of Final Tax Withheld at Source (hereinafter referred to as "BIR Forms No. 2306") and, thus, should be disallowed.

Not agreeing with the above findings, SVC filed the original Petition for Review before the Court in Division on 15 May 2015.[12]

On 25 October 2018, the Court in Division issued a Decision partially granting SVC's original Petition for Review. The said Court found SVC liable for total deficiency taxes in the amount of ₱13,277,485.27 plus 12% interest based on ₱7,456,466.84 computed from 1 January 2018 until full payment.[13] The findings of the Court in Division are summarized as follows:

A. Income Tax

a. Disallowed Purchases/Expenses ₱13,203,372.22

The Court in Division ruled that this finding is without factual basis. It explained that SVC's total purchases per VAT will never be equal to its total expenses per ITR since SVC employs the accrual method of accounting. It elaborated that under this accounting method, cost of sales per ITR are declared only when the corresponding income has already been earned.

[12] Decision, Annex "A" of the CIR's Petition for Review, *EB* No. 2207 Records, pp. 23-55.
[13] *Ibid.*

b. Undeclared Service Income ₱17,970,985.52

This assessment item was further broken down by SVC and ruled on by the Court in Division, as follows:

b.1. Sales of goods erroneously considered by SVC's customer as sales of services ₱8,547,346.30 — The Court in Division retained this finding.

It explained that, although SVC was able to prove that the sales it rendered to the Far Eastern University ("FEU") constitute goods and not services, the Court in Division could not ascertain if these sales are indeed part of the BIR's total Undeclared Service Income assessment (since the breakdown was only provided by SVC). The Court contended that SVC should have presented the related invoices and official receipts issued to FEU in order to prove its claim.

b.2. Advances from customer received in 2010 for services rendered in 2011 ₱6,732,890.31 — The Court in Division cancelled this finding. It found that the amount pertained to advances paid by Ateneo de Manila University to SVC for goods and services that were delivered and completed in 2011.

b.3. Sales of goods erroneously considered as sales of services by the BIR ₱1,967,312.89 — The ICPA reported that ₱1,651,156.49 out of the total ₱1,967,312.89 refers to sales of goods and the rest are sales of services. However, after further scrutiny, the Court in Division only considered the amount of ₱325,004.35 as SVC's valid sales of goods.

For this reason, the Court in Division reduced the assessment to ₱1,642,308.54.

b.4. Service income without details included in the BIR's computation ₱996,159.03 — The Court in Division adopted the findings of the ICPA that ₱934,439.62 out of total assessment pertains to sales of goods and not services. Hence, this finding was reduced to ₱61,719.41.

b.5. Double posting by BIR of Service Income-Leyte National University ₱96,512.00 — The Court in Division adopted the findings of the ICPA that the said transactions pertain to sales of goods for 2011 and, thus, were properly excluded by SVC in its 2010 Service Income. Hence, this finding was invalidated.

b.6. Difference between actual commission income from STL ₱10,050.39 — The Court in Division found that this assessment is without basis and is only due to the rounding-off difference between SVC's commission income per its general ledger and its Financial Statements. Hence, the Court in Division invalidated this finding.

b.7. Other Service Income without BIR Form No. 2307 ₱379,285.79 — The ICPA ascertained that these transactions were already reported by SVC in its 2010 ITR. Hence, the said amount was deducted from the total Undeclared Service Income assessment.

c. Disallowed CWT ₱196,507.31

The Court in Division found that only the amount of ₱193,468.84 were not properly supported by BIR Forms No. 2307. Hence, it lowered the assessment to said amount.

B. VAT

a. Undeclared sales/receipts ₱12,370,985.52

Considering the reduction of the Undeclared Service Income assessment, the Court in Division also reduced the assessment base herein to ₱4,282,139.22[14] computed as ₱9,872,088.83 less ₱5,589,949.61 Commission Income, which is not subject to VAT.

b. Disallowed input tax ₱1,584,404.67

The Court in Division found the assessment without merit. It noted that the foregoing disallowed amount was not claimed by SVC as input tax in its VAT Returns for calendar year 2010.

c. Overclaimed Input Tax Credit ₱119,568.11 and
d. Input Tax on Sale to Gov't ₱60,415.38

The Court in Division was able to verify that SVC made a mistake in the computation of its "Input Tax on Sale to Government closed to Expense" which caused SVC to overclaim its input tax credit. Hence, the said Court upheld the assessment in the reduced amounts of ₱79,207.50 and ₱1,444.29.

[14] Difference due to rounding-off

e. Unsupported Creditable VAT Withheld ₱24,832.20

The Court in Division upheld the findings in the amount of ₱3,382.61 for not being properly supported with the requisite BIR Forms No. 2306.

To summarize, SVC's remaining deficiency tax liabilities are as follows:

Income Tax Assessment per Court in Division Decision		
Taxable Income per ITR		₱ 18,265,923.00
Add: Undeclared Service Income		
Sales of goods erroneously considered by customer as sales of services	₱ 8,547,346.30	
Sales of goods erroneously considered as sales of services by the BIR	1,642,308.54	
Service income without details included in the BIR's computation	61,719.41	
Other Service Income without BIR Form No. 2307	(379,285.79)	9,872,088.46
SHOULD BE TAXABLE INCOME PER COURT		**₱ 28,138,011.46**
TAX DUE (30%)		₱ 8,441,403.44
Less: Payments and Credits	5,479,777.00	
Disallowed Creditable Withholding Tax	(193,468.84)	5,286,308.16
BASIC DEFICIENCY INCOME TAX STILL DUE		**₱ 3,155,095.28**[15]

VAT Assessment per Court in Division Decision		
Vatable Sales/Receipts per VAT Returns		116,874,744.09
ADD: *Undeclared Service Income (see Income Tax Assessment)*		4,282,139.22
TOTAL		**₱ 121,156,883.31**
OUTPUT TAX (12%)		**₱ 14,538,826.00**
TOTAL INPUT TAX	₱ 13,624,260.72	
LESS: *Overclaimed Input Tax Credit*	(79,207.50)	
Input Tax on Sale to Government	(1,444.29)	
Unsupported Creditable VAT Withheld	(3,382.61)	13,540,226.32
Net VAT Payable		₱ 998,599.68
Less: VAT Payments		555,678.43
BASIC DEFICIENCY VAT STILL DUE		**₱ 442,921.25**

[15] Difference due to rounding-off

Undaunted, SVC posted its Motion for Partial Reconsideration (Re: Decision dated October 25, 2018) on 15 November 2018 *sans* comment from the CIR.[16] The CIR did not file a Motion for Reconsideration.

In its Motion for Partial Reconsideration,[17] SVC asked for the reconsideration of the following issues:

a. Undeclared Service Income arising from sales of goods erroneously considered by customer as sales of services in the amount of ₱8,547,346.30;

b. Undeclared Service Income arising from sales of goods erroneously considered as sales of services by the BIR in the amount of ₱1,642,308.54;

c. VAT Imposition on the Undeclared Service Income in the amount of ₱4,282,139.22; and

d. Imposition of deficiency and delinquency interests and surcharge.

Finding merit in SVC's Motion for Partial Reconsideration, the Court in Division issued an Amended Decision on 2 May 2019, lowering the Company's total deficiency tax liabilities to ₱2,505,683.69 plus 12% interest based on ₱1,407,187.97 computed from 1 January 2018 until full payment.[18] The dispositive portion of the said Decision is hereby quoted, to wit:

> "**WHEREFORE**, premises considered, petitioner's **Motion for Partial Reconsideration (Re: Decision dated October 25, 2018)** is **PARTIALLY GRANTED**. Accordingly, the Decision dated October 25, 2018, is hereby amended to read as follows:
>
> > "**WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. The assessments issued by respondent against petitioner covering deficiency income tax and VAT for CY 2010 are **AFFIRMED WITH MODIFICATIONS**. Accordingly, petitioner is **ORDERED TO PAY** respondent the aggregate amount of **TWO MILLION FIVE HUNDRED FIVE THOUSAND SIX HUNDRED EIGHTY-THREE PESOS AND SIXTY-NINE CENTAVOS (₱2,505,683.69)**, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248 (A) (3) of the NIRC of 1997, as amended, and deficiency and delinquency interests imposed under Sections 249(B) and

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[16] Amended Decision, Annex "A" of SVC's Petition for Review, *EB* No. 2195 Records, pp. 29-48; Amended Decision, Annex "A" of the CIR's Compliance, *id.*, pp. 73-92.

[17] Motion for Partial Reconsideration (Re: Decision dated October 25, 2018); Division Docket Vol. 3, pp. 1055-1131.

[18] *Ibid.*

(C) of the same Code, until December 31, 2017, computed as follows:

	Income Tax	VAT	Total
Basic Tax Due	₱590,891.50	₱88,033.64	₱678,925.14
Add: 25% Surcharge	147,722.87	22,008.41	169,731.28
20% Deficiency Interest from April 16, 2011 to May 15, 2015 *[₱590,891.50 x 20% x 1,491/365 days]*	482,750.26		482,750.26
20% Deficiency Interest from Jan. 26, 2011 to May 15, 2015 *[₱88,033.64 x 20% x 1,571/365 days]*		75,781.29	75,781.29
Total Amount Due, May 15, 2015	**₱1,221,364.63**	**₱185,823.34**	**₱1,407,187.97**
Add: 20% Deficiency Interest from May 16, 2015 to Dec. 31, 2017 *[₱590,891.50 x 20% x 961/365 days]*	311,148.89		311,148.89
[₱88,033.64 x 20% x 961/365 days]		46,356.34	46,356.34
20% Delinquency Interest from May 6, 2015 to Dec. 31, 2017 *[₱1,221,364.63 x 20% x 961/365 days]*	643,140.50		643,140.50
[₱185,823.34 x 20% x 961/365 days]		97,849.99	97,849.99
Total Amount Due, December 31, 2017	**₱2,175,654.02**	**₱330,029.67**	**₱2,505,683.69**

In addition, petitioner is **ORDERED TO PAY** respondent delinquency interest at the rate of twelve percent (12%) on the total amount due as of May 15, 2015 in the amount of **₱1,407,187.97** as determined above, computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act (RA) No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN), as implemented by RR No. 21-2018.

SO ORDERED.”

SO ORDERED.”

In granting SVC's Motion for Partial Reconsideration, the Court in Division rendered the following findings:[19]

[19] Amended Decision, Annex "A" of SVC's Petition for Review, *EB* No. 2195 Records, pp. 29-48; Amended Decision, Annex "A" of the CIR's Compliance, *id.*, pp. 73-92.

For Income Tax

b. Undeclared Service Income

b.1. Sales of goods erroneously considered by customer as sales of services ₱8,547,346.30 — The Court in Division found that SVC was able to submit the sales invoices/official receipts in relation to the sales it made to FEU. Hence, SVC was able to prove that the total amount of ₱8,547,346.30 were indeed reported in its ITR and also formed part of the Undeclared Service Income assessment. Accordingly, the Court in Division cancelled this assessment.

b.3. Sales of goods erroneously considered as sales of services by the BIR ₱1,967,312.89 reduced to ₱1,642,308.64 — The Court in Division found SVC's explanation unmeritorious that the amount of ₱1,642,308.64 pertains to sales of goods and not of services. It ruled that its sales declared per BIR Forms No. 2307 do not match its sales per its general ledger. Although, it recognized that timing difference due to the different accounting methods employed by SVC and its customers could be the reason for the discrepancy, the Court, however, noted that SVC failed to support its argument with competent evidence.

For VAT

a. Undeclared sales/receipts

Considering the additional reduction in the Undeclared Service Income assessment, the Court in Division also brought down the VAT assessment base to ₱1,324,742.53.

Lastly, the Court in Division upheld the simultaneous imposition of the 20% deficiency and 20% delinquency interests, and of the 25% surcharge.

Afterwards, the parties filed their respective Motions for Reconsideration on 24 May 2019.[20] The said Motions were denied by the Court in Division through the assailed Resolution for lack of merit.[21] This was received by SVC on 22 November 2019 and by the CIR on 20 November 2019.

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[20] Resolution dated 14 November 2019, Annex "B" of SVC's Petition for Review, *EB* No. 2195 Records, pp. 50-59; Resolution dated 14 November 2019, Annex "C" of the CIR's Petition for Review, *EB* No. 2207 Records, pp. 78-87.

[21] *Ibid.*

The CIR and SVC then posted/filed their Motions for Extension of Time to File Petition for Review with the Court *En Banc* on 4 December 2019[22] and on 6 December 2019.[23] Both parties asked for an additional period of fifteen (15) days to file their Petitions for Review.

The Court *En Banc* granted the Motions and allowed SVC until 22 December 2019[24] and the CIR until 20 December 2019[25] to file their Petitions for Review.

The CIR posted his Petition for Review on 20 December 2019.[26] Meanwhile, SVC filed its Petition for Review on 23 December 2019, as 22 December 2019 fell on a Sunday.[27]

Considering that the above-mentioned Petitions question or appeal the same Amended Decision, the Court *En Banc* ordered the consolidation of the cases on 7 January 2020.[28]

After finding that the Amended Decision attached to the CIR's Petition for Review is not an original or a certified true copy and that SVC had failed to attach the original or certified true copy of its Secretary's Certificate and Affidavit of Service to its Petition for Review, the Court issued a Resolution on 27 January 2020, ordering the parties to submit the correct documents.[29] SVC and the CIR complied with the Resolution on 5 February 2020[30] and 7 February 2020,[31] respectively.

Thereafter, SVC filed its Comment (Re: CIR's Petition for Review dated 20 December 2019) on 30 June 2020.[32] The CIR posted his Comment (To Petition for Review) on 1 July 2020.[33] Both submissions were filed within the extended period granted by the Court *En Banc*.[34]

On 21 July 2020, the Court *En Banc* referred the case to the Philippine Mediation Center-CTA for mediation pursuant to ***Section II of the Interim Guidelines for Implementing Mediation in the Court of Tax Appeals.***[35]

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[22] Motion for Extension of Time to File Petition for Review, *EB* No. 2207 Records, pp. 1-5.
[23] *Id.*, *EB* No. 2195 Records, pp. 1-5.
[24] Minute Resolution dated 9 December 2019, *EB* No. 2195 Records, p. 6.
[25] Minute Resolution dated 2 January 2020, *EB* No. 2207 Records, p. 4.
[26] CIR's Petition for Review, *EB* No. 2207 Records, pp. 5-94 with annexes.
[27] SVC's Petition for Review, *EB* No. 2195 Records, pp. 7-59, with annexes.
[28] Minute Resolution dated 7 January 2020, *id.*, p. 60.
[29] Resolution dated 27 January 2020, *id.*, pp. 62-64.
[30] Compliance; *id.*, pp. 65-69.
[31] *Id.*, pp. 70-92.
[32] Comment (Re: CIR's Petition for Review dated December 20, 2019); *id.*, pp. 105-125.
[33] Comment (To Petition for Review); *id.*, pp. 126-135.
[34] Minute Resolution dated 1 June 2020; *id.*, p. 99; Minute Resolution dated 4 June 2020; *id.*, p. 104.
[35] Resolution dated 21 July 2020; *id.*, pp. 137-138; A.M. No. 11-1-5-SC-PHILJA; 18 January 2011.

On 28 October 2020, the Philippine Mediation Center-CTA filed a request to extend the mediation proceedings on the ground that the parties were exploring the possibility of reaching an amicable settlement.[36] The Court *En Banc* granted the same and gave the parties a final non-extendable period of thirty (30) days until 11 December 2020.[37]

On 11 December 2020, the parties filed a Joint Manifestation and Motion for Extension of Mediation Proceedings requesting the Court *En Banc* to extend the mediation proceedings for another thirty (30) days.[38] This was followed by their Second Joint Manifestation and Motion for Extension of Mediation Proceedings filed via electronic mail on 11 January 2021, asking anew to extend the mediation proceedings for 30 days until 9 February 2021.[39]

Having found the parties to have already consumed the maximum period allowed under ***The Interim Guidelines for Implementing Mediation in the Court of Tax Appeals*** to undergo mediation proceedings, the Court *En Banc* denied the Joint Motions and submitted the herein cases for decision.[40] Hence, this Decision.

The Issues

SVC raised the following issues[41] for the Court *En Banc*'s resolution:

> WHETHER THE COURT IN DIVISION ERRED IN ITS CONCLUSION THAT SVC HAD "UNDECLARED SERVICE INCOME" IN THE AMOUNT OF ₱1,324,742.53 FOR CALENDAR YEAR 2010; AND
>
> EVEN ASSUMING FOR SAKE OF ARGUMENT THAT SVC IS LIABLE FOR DEFICIENCY INCOME TAX AND VAT FOR CALENDAR YEAR 2010, THE COURT IN DIVISION ERRED IN ITS COMPUTATION OF THE APPLICABLE DEFICIENCY INTEREST AND DELINQUENCY INTEREST, AND IN REQUIRING IT TO PAY 25% SURCHARGE ON THE FOREGOING DEFICIENCY TAXES.

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[36] Request for Extension; *id.*, p. 139.
[37] Resolution dated 20 November 2020; *id.*, pp. 141-142.
[38] Joint Manifestation and Motion for Extension of Mediation Proceedings; *id.*, pp. 143-145.
[39] Second Joint Manifestation and Motion for Extension of Mediation Proceedings; *id.*, pp. 150-157.
[40] Resolution dated 27 January 2021; *id.*, pp. 159-161.
[41] Assignment of Errors and Summary of Arguments in Support of the Petition for Review, SVC's Petition for Review, p. 7; *id.*, p. 13.

Meanwhile, the CIR advanced the following issues:[42]

> WHETHER THE COURT IN DIVISION ERRED IN GRANTING SVC'S PETITION FOR REVIEW;
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> WHETHER THE COURT IN DIVISION ERRED IN GIVING PROBATIVE VALUE ON THE STATEMENTS OF SVC'S WITNESS MS. IRENEA CAISIP-TORRES; AND
>
> WHETHER THE COURT IN DIVISION ERRED IN DECLARING THE ASSESSMENT MADE BY THE BIR INVALID.

Arguments of the Parties

SVC's Arguments[43]

SVC argues that the Court in Division erred in ruling that it has "Undeclared Service Income" in the amount of ₱1,642,402.08 during calendar year 2010. It reiterates that this amount corresponds to sales of goods that were incorrectly considered by the BIR as sales of services.

SVC contends that its argument is supported by the relevant BIR Forms No. 2307 which the ICPA was able to match/reconcile with its sales of goods recorded in its general ledger.

SVC reasoned that although there are discrepancies between the sales reflected on the BIR Forms No. 2307 as compared to those declared in its general ledger, these are due to timing differences caused by differing accounting methods employed by SVC and its customers.

Notwithstanding the foregoing, SVC contends that the ICPA was able to verify that it has no undeclared income for Calendar Year 2010 since all its revenues per its general ledger were properly reported in its ITR and correspondingly were subjected to income tax. Hence, it asks the Court *En Banc* to declare this assessment invalid.

Based on the same reasons mentioned, SVC also argues that its VAT assessment, which arose from the same "Undeclared Service Income" assessment, must also be struck down for lack of factual or legal basis.

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[42] Issues, CIR's Petition for Review; *id.*, p. 12.
[43] SVC's Petition for Review, *EB* No. 2195 Records, pp. 7-59, with annexes.

However, assuming, it is liable for the said deficiency tax assessments, SVC questions the simultaneous imposition of the delinquency and deficiency interests until 31 December 2017. It opines that subjecting its tax liabilities to both rates is penal, grossly excessive, unconscionable, and contrary to the mandates of the ***Tax Code*** and ***Revenue Memorandum Circular No. 46-99***.[44]

SVC also objects to the imposition of the 25% surcharge on its deficiency tax assessments. It contends that the FDDA did not impose this penalty and, thus, concludes that the Court in Division is also not empowered to charge the same. It states that requiring it to pay the surcharge constitutes a violation of its rights to due process.

CIR's Counter-Arguments[45]

The CIR reiterates the discussions in the assailed Amended Decision. He states that SVC failed to substantiate that its Undeclared Service Income in the amount of ₱1,642,402.08 are actually sales of goods that were already subjected to income tax and VAT.

He contends that SVC failed to prove that the discrepancies between its sales per its general ledger as compared to those declared in its BIR Forms No. 2307 are due to timing differences. Moreover, the CIR notes that SVC also did not prove that these transactions correspond to the remaining Undeclared Service Income assessment.

He opines that the imposition of both delinquency and deficiency interests prior to 1 January 2018 is sanctioned under the ***Tax Code*** and ***Revenue Regulation ("RR") No. 21-18***,[46] which the Courts are duty-bound to implement.

Finally, the CIR points out that the Court in Division is correct in imposing the 25% surcharge. He explains that under ***Section 248 of the Tax Code***, a taxpayer who failed to settle its deficiency taxes on time is legally liable to pay the said penalty. In this case, since it failed to pay the deficiency income tax and VAT within the stated due date on the FDDA, then it follows that it is liable for the 25% surcharge.

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[44] Computation of the Civil Penalties, Consisting of Surcharge and Interest, Incident to Deficiency or Delinquency Internal Revenue Taxes, Pursuant to Section 248 and 249 of the National Internal Revenue Code, as Amended by R.A. No. 8424; and Suggested Compromise Penalty in Extra-Judicial Settlement of a Taxpayer's Criminal Liability Incident to his Violation of Certain Provision of the Code, or any of its Implementing Revenue Regulations, Pursuant to Section 204 thereof, 18 June 1999.

[45] Comment (To Petition for Review); *EB* No. 2195 Records, pp. 126-135.

[46] Regulations Implementing Section 249 (Interest) of the National Internal Revenue Code (NIRC) of 1997, as amended under Section 75 of the Republic Act (RA) No. 10963 or the "Tax Reform for Acceleration and Inclusion (TRAIN Law)", 14 September 2018.

CIR's Arguments[47]

The CIR argues that the Court in Division should have not given any probative value to the tax returns presented by SVC since its witness has no firsthand knowledge as to the documents' preparation. The CIR avers that SVC's witness, Ms. Irenea Caisip-Torres (Finance & Admin. Manager of SVC), is not competent to identify the said returns since she was not the one who prepared them.

He insists that the assessments issued against SVC are valid. He raises that the Disallowed Purchases/Expenses assessment should be upheld considering that SVC failed to disprove its findings.

As for the "Undeclared Service Income" arising from sales of goods erroneously considered by its customer as sales of services, he explains that SVC failed to show evidence that the amount pertains to sales of goods and not services. He raises that the amounts per invoices or receipts do not tally with the amounts declared per BIR Forms No. 2307. Hence, he argues that the assessment must be upheld.

As for the "Undeclared Service Income" arising from (1) advances from customer received in 2010 for services rendered in 2011; (2) Service income without details included in the BIR's computation; and (3) Double posting by BIR of Service Income-Leyte National University, he states that claims for tax credit shall only be given due course when it is shown that the income payment has been declared as part of the gross income and that the taxpayer was able to provide a copy of the BIR Form No. 2307 in support of the transaction.

As for the "Undeclared Service Income" arising from sales of goods erroneously considered as sales of services by the BIR, disallowed creditable withholding tax, and the deficiency VAT assessments arising from overclaimed input tax credit and unsupported creditable VAT withheld, he reiterates the findings of the Court in Division and asks the Court *En Banc* to uphold the same.

Finally, he insists that SVC failed to overcome the presumption of regularity on the issuance of the assessments. He asks the Court *En Banc* to uphold the validity of the assessments against SVC.

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[47] CIR's Petition for Review, *EB* No. 2207 Records, pp. 5-94 with annexes.

SVC's Counter-Arguments[48]

SVC belies that its tax returns are inadmissible. SVC avers that its witness had a hand in the preparation of the tax returns, since as Finance and Admin. Manager, she supervises the preparation of the said documents. It argues that the witness was even able to verify the signatures appearing on the ITR. At any rate, it explains that it is too late for the CIR to question the admissibility of the said returns since he should have done the same after it had filed its Formal Offer of Evidence and when the case was still on trial.

It also points out that the CIR failed to establish how the tax returns' alleged inadmissibility erroneously affected the Court in Division's findings in the assailed Amended Decision.

SVC opines that the CIR's Petition for Review deserves scant consideration. It observes that the CIR failed to cite any error on the assailed Amended Decision, nor cite any legal or factual basis in support of his argument. It posits that the presumption of regularity on the issuance of the assessment does not hold in this case since it was able to present competent evidence to disprove the BIR's findings.

The Ruling of the Court

After a careful review of the foregoing arguments, the Court *En Banc* finds both Petitions bereft of merit. In resolving the cases, this Court will first discuss the procedural issues raised by the CIR.

SVC's Tax Returns are admissible in evidence

The CIR argues that the tax returns presented by SVC are inadmissible in evidence. He explains that the documents were identified by a certain Ms. Irenea Caisip-Torres who neither has the personal knowledge nor any hand in the preparation of the documents.

The contention of the CIR lacks merit.

Under the ***Revised Rules on Evidence***, documentary evidence can be classified as either public or private. To be admissible, private documents as opposed to public documents, generally, need to be authenticated.[49]

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[48] Comment (Re: CIR's Petition for Review dated December 20, 2019); *EB* No. 2195 Records, pp. 105-125.

[49] Heirs of Jose Marcial K. Ochoa v. G&S Transport Corporation, G.R. Nos. 170071 & 170125, 16 July 2012.

Meanwhile, the former ***Section 19, Rule 132 of the Revised Rules on Evidence***,[50] which was the rule effective during the time the herein cases were on trial, differentiates these two types of documents, to wit:

> "Section 19. Classes of Documents. — For the purpose of their presentation in evidence, documents are either public or private.
>
> Public documents are:
>
> (a) The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;
>
> (b) Documents acknowledge before a notary public except last wills and testaments; and
>
> (c) Public records, kept in the Philippines, of private documents required by law to be entered therein.
>
> **All other writings are private.**"
> (Emphasis supplied).

As discussed, anything excluded from the above enumeration is considered private documents.

In this case, the tax returns presented by SVC are faithful reproductions of the originals that were not certified by the BIR. As such, these documents fall under the purview of private documents.

Concomitantly, ***Section 20, Rule 132 of the Revised Rules on Evidence***[51] governs the manner on how private documents are authenticated:

> "Section 20. Proof of private document. — **Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either**:
>
> (a) **By anyone who saw the document executed or written**; or
>
> (b) **By evidence of the genuineness of the signature or handwriting of the maker**.
>
> Any other private document need only be identified as that which it is claimed to be."
> (Emphasis supplied).

Based on the foregoing provision, a private document may be authenticated by a person who either (a) has witnessed the execution of the documentary evidence or (b) can attest to the genuineness of the handwriting or signature of the maker. Aside from this, the courts may also compare the

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[50] As amended per Resolution adopted on 14 March 1989.
[51] *Ibid.*

evidence to another document which had been duly proven to be genuinely written or signed by the same maker.[52]

Guided by the said Rules, the Court *En Banc* finds Ms. Irenea Caisip-Torres to be a competent witness with the requisite personal knowledge to identify SVC's tax returns.

Based on her testimony, not only was she able to establish that she had a hand in the preparation of the returns but she was also able to identify the genuineness of the signature of the signatories of the ITR. These facts are evident in the said witness' Judicial Affidavit,[53] the relevant portions of which are quoted, as follows:

> "Q3. What are your duties and responsibilities as Finance & Admin. Manager of the Company?
>
> A: As Finance & Admin. Manager, I am responsible for the entire administrative, finance and accounting operations of the Company, including the tax compliance aspect of the business. In this regard, I oversee the proper recording of transactions in the Company's books of accounts. **I also supervise the preparation of the Company's financial reports and tax returns, and review the same before filing with government agencies such as the Bureau of Internal Revenue (BIR)** and the Securities and Exchange Commission (SEC). Furthermore, **I have custody of, and am responsible for the safekeeping of, the Company's tax and accounting records, including copies of the Company's tax returns**.
>
> xxx xxx xxx
>
> ***III. Tax Returns***
>
> **Q31. Ms. Torres, you earlier mentioned that you have custody of the Company's tax and accounting records, including copies of the Company's tax returns. Is that correct?**
>
> A: **Yes, that is correct**.
>
> Q32. In this regard, will you be able to identify the tax returns of the Company for CY 2010?
>
> A: Yes.
>
> **Q33. Ms. Torres, I am showing you a document captioned as Annual Income Tax Return (ITR) marked as Exhibit "P-9". with sub-markings "P-9-1" and "P-9-2". Can you please identify this document?**

[52] Section 22, Rule 132 of the Revised Rules on Evidence.
[53] Exhibit "P-14", pp. 1 and 8 to 9; Division Docket Vol. 1, pp. 366 and 373 to 374.

A: Exhibit "P-9" is the Company's Annual ITR [BIR Form No. 1702) for CY 2010, which was filed with the BIR through the Electronic Filing and Payment System [EFPS] on April 15, 2011, with Filing Reference No. 121100004691949.

Exhibit "P-9-1" is the Company's manually-filed Annual ITR (BIR Form No. 1702) for CY 2010, stamped as received by the BIR on April 29, 2011.

Exhibit "P-9-2" is the Company's audited financial statements for CY 2010, stamped as received by the BIR on April 29, 2011.

Q34. On page 2 of the manually-filed Annual ITR (Exhibit "P-9-1") appears two signatures above the printed names Vincent S. Lim and Ma. Cecilia C. Mison. Can you please identify these signatures?

A: **Yes. The signature on the left hand side belongs to the Company's SVP-Chief Financing Officer, Mr. Vincent Lim, while the signature on the right hand side belongs to the Company's General Manager, Ms. Ma. Cecilia C. Mison.**

Q35. How did you become familiar with the signatures of Mr. Lim and Ms. Mison?

A: **I became familiar with Mr. Lim's and Ms. Mison's signatures because I often see them sign documents**.

Q36. If shown copies of the Company's Quarterly VAT Returns for CY 2010, would you be able to identify the same?

A: Yes.

Q37. Ms. Torres, I am showing you four documents which were pre-marked as **Exhibits "P-10" "P-11" "P-12" and "P13"**. What is the relation of these documents to your earlier statement?

A: **These are the Quarterly VAT Returns of the Company for CY 2010, particularly** xxx"

(Emphasis and underscoring supplied).

However, even assuming that the Court gives premium to the CIR's argument that Ms. Irenea Caisip-Torres is not a competent witness to identify the tax returns, the Court *En Banc* may no longer rule on the admissibility of the said documents without violating SVC's rights to due process.

It is already too late in the game for the CIR to raise any objection as to the supposed lack of personal knowledge on the part of Ms. Irenea Caisip-Torres. The CIR should have objected to the admissibility of said documents at the time these were formally offered. The Supreme Court explains this point in ***Macasiray v. People***,[54] to wit:

[54] G.R. No. 94736, 26 June 1998.

> "**Objection to evidence must be made after the evidence is formally offered. In the case of documentary evidence, offer is made after all the witnesses of the party making the offer have testified, specifying the purpose for which the evidence is being offered. It is only at this time, and not at any other, that objection to the documentary evidence may be made.**"
> (Emphasis and underscoring supplied).

Case records disclosed that the CIR only questioned the admissibility of the tax returns during his Motion for Reconsideration on the Amended Decision.[55] He never raised any question as to the admissibility of the said documents during trial. He did not even file his comment to SVC's Formal Offer of Evidence.[56] Hence, for having failed to timely interpose his objections, the CIR is deemed to have waived his right to question the alleged procedural error or defect.[57]

The Court *En Banc* can no longer rule on issues which were not timely appealed by the parties.

The CIR also asks the Court *En Banc* to uphold the validity of the assessments, specifically:

(a) The validity of the BIR's Disallowed Purchases/Expenses assessment in the amount of ₱13,203,372.22;

(b) The validity of the BIR's Undeclared Service Income assessment pertaining to the sales of goods erroneously considered by SVC's customer as sales of services in the amount of ₱8,547,346.30;

(c) The validity of the BIR's Undeclared Service Income assessment pertaining to advances from SVC's customers received in 2010 for services rendered in 2011 amounting to ₱6,732,890.31;

(d) The validity of the BIR's Undeclared Service Income assessment pertaining to transactions without details which are included in the BIR Computation in the amount of ₱996,159.03; and

(e) The validity of the BIR's Undeclared Service Income assessment arising from double posting by the BIR of Service Income from Leyte National University in the amount of ₱96,512.00.

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[55] Motion for Reconsideration, Division Docket Vol. 3, pp. 1246-1250.
[56] Records Verification Report, Division Docket Vol. 2, p. 943.
[57] *Ibid.*

In addition, he also prays for the Court *En Banc* to affirm the findings of the Court in Division on the following issues: (1) BIR's Undeclared Service Income assessment which SVC alleged to be sales of goods considered by the BIR to be sales of service; (2) Disallowed Creditable Withholding Tax Assessment; and (3) VAT assessments arising from disallowed input VAT claims and unsupported creditable VAT claims.

Unfortunately, the Court *En Banc* can no longer rule on the issues raised by the CIR, except for those matters tackled in the Amended Decision. This is so, considering that the CIR, upon his receipt of the Court in Division's Decision on 5 November 2018, failed to file the necessary Motion for Reconsideration. It was only SVC which sought reconsideration of the original Decision, but only as to the issues touched upon in the Amended Decision.

Hence, to the mind of the Court *En Banc*, other than the issues threshed out in the Amended Decision, the CIR can no longer belatedly question the ruling of the Court in Division in the Decision. His failure to file a timely Motion for Reconsideration rendered the unappealed portions of the Court in Division's Decision final based on the Doctrine of Finality of Judgment as discussed in ***Taningco v. Fernandez,***[58] to wit:

> "**A decision or order becomes final and executory if the aggrieved party fails to appeal or move for a reconsideration within 15 days from his or her receipt of tbe court's decision or order disposing of the action or proceeding. Thus, under the doctrine of immutability of judgment, a decision or order that has attained finality can no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law and whether it be made by the court that rendered it or by the Highest Court of the land**.
>
> The doctrine is grounded on public policy and sound practice which must not simply be ignored. It is adhered to by the courts to end litigations albeit the presence of errors.
>
> In *Mocorro, Jr. v. Ramirez,* the Court has exhaustively discussed the principle of the finality of judgment as follows:
>
>> A **definitive final judgment**, however erroneous, is **no longer subject to change or revision.**
>>
>> **A decision that has acquired finality becomes immutable and unalterable.** This quality of immutability **precludes the modification of a final judgment, even if the modification is meant to correct erroneous conclusions of fact and law.** And this postulate holds true whether the modification is made by the court that rendered it or by the highest court in the land. The orderly administration of justice requires that, at the risk of occasional errors, the judgments/resolutions of a court must reach a point of finality set by the law. The noble purpose is

[58] G.R. No. 215615, 9 December 2020.

> to write finis to dispute once and for all. This is a fundamental principle in our justice system, without which there would be no end to litigations. Utmost respect and adherence to this principle must always be maintained by those who exercise the power of adjudication. Any act, which violates such principle, must immediately be struck down. Indeed, the principle of conclusiveness of prior adjudications is not confined in its operation to the judgments of what are ordinarily known as courts, but extends to all bodies upon which judicial powers had been conferred.
>
> The only exceptions to the rule on the immutability of final judgments are (1) the correction of clerical errors, (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party, and (3) void judgments.

Petitioners received a copy of the February 28, 2013 Decision of the appellate court on April 8, 2013. **Despite receipt thereof, they failed to file a motion for reconsideration within the 15-day reglementary period. Therefore, the appellate court's Decision became final and can no longer be assailed by then for being immutable and unalterable.**"
(Emphasis and underscoring supplied).

Hence, for the Court *En Banc* to rule on the issues belatedly raised by the CIR will not only resurrect an already final decision but will also adversely trample on SVC's rights that had already accrued from the unappealed portion of the Decision.[59]

Notwithstanding the abovementioned reasons, even if this Court applies liberality and rule on the unappealed issues raised by the CIR, the Court *En Banc* still finds the same bereft of merit.

The CIR's arguments in his Petition for Review are either off-tangent to the rulings of the Court, not supported by evidence or by law, and/or couched in general terms which are not allowed under the Rules of Court and jurisprudence, as ruled in ***De Liano et al. v. Hon. Court of Appeals***,[60] to wit:

> "It has been held that a **general assignment of errors is unacceptable under the rules**. Thus, a statement of the following tenor: that "the Court of First Instance of this City incurred error in rendering the judgment appealed from, for it is contrary to law and the weight of the evidence," was deemed insufficient. **The appellant has to specify in what aspect of the law or the facts that the trial court erred.** The conclusion, therefore, is that the appellant must carefully formulate his assignment of errors. xxx"
> (Emphasis and underscoring supplied).

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[59] See Cojuangco, Jr. v. Court of Appeals, G.R. No. 119398, 2 July 1999.
[60] G.R. No. 142316, 22 November 2001.

To expound, the CIR argues that its Disallowed Purchases/Expenses assessment should be upheld on the ground of SVC's supposed failure to contest or explain the discrepancy between its purchases declared per ITR and its VAT returns. His argument is not in point.

This assessment item was invalidated after the Court in Division found the method employed by the BIR in computing the assessment invalid. The Court in Division discussed that the discrepancy in SVC's purchases per VAT and ITR is inevitable considering that it follows the accrual method of accounting. The Court in Division ruled that the BIR should have focused on SVC's cost of goods sold during the period in order for the BIR to determine whether indeed it had overdeclared purchases.

As for the unappealed portions of the Undeclared Services Income assessment, the CIR merely cited parts of ***RR No. 2-98***[61] but did not specify how these provisions apply to the assessment or how these were violated by SVC or the Court in Division, precluding the Court *En Banc* to make a definite ruling on the contentions raised.

Having resolved the foregoing issues, the Court *En Banc* will now discuss the following contentions raised in the Amended Decision reproduced as follows:

(a) Undeclared Service Income arising from sales of goods erroneously considered by SVC's customer as sales of services in the amount of ₱8,547,346.30, later on, declared invalid by the Court in Division;

(b) Undeclared Service Income arising from sales of goods erroneously considered as sales of services by the BIR in the amount of ₱1,967,312.89 reduced to ₱1,642,308.64;

(c) VAT Imposition on the Undeclared Service Income in the amount of ₱12,370,985.52 reduced to ₱1,324,742.53; and

(d) Imposition of deficiency and delinquency interests and surcharge.

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[61] Implementing Republic Act No. 8424, "An Act Amending the National Internal Revenue Code, as Amended" Relative to the Withholding on Income Subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes, 17 April 1998.

The Court in Division correctly cancelled the Undeclared Service Income assessment arising from sales of goods erroneously considered by SVC's customer as sales of services in the amount of ₱8,547,346.30.

The CIR contends that the Court in Division should have retained the assessment. He states that SVC failed to show proof that these transactions actually cover sales of goods and not of services since it was not able to reconcile the corresponding invoices/receipts with the BIR Forms No. 2307.

The CIR is mistaken.

To recall, the BIR computed the assessment by getting the difference between (a) the total amount of sales of service declared per BIR Forms No. 2307 and (b) the services income declared by SVC in its ITR.

For this particular assessment, SVC explained that out of the total Undeclared Service Income assessment, ₱8,547,346.30 corresponds to sales of goods to FEU which were erroneously subjected to 2% expanded withholding tax and consequently declared by the said customer as sales of services in the BIR Forms No. 2307.

In order to prove its assertion, SVC presented invoices it had issued to FEU broken down as follows:

Exhibit No.	SI No.	Sales of Goods	Sales of Services	Total Sales (Net of VAT)
P-31-1	19694	₱ 7,034,223.85	₱ 3,453,624.44	₱ 10,487,848.29
P-31-2	19634	2,455,130.72	1,294,869.28	3,750,000.00
Total sales per SI for 2010		**₱ 9,489,354.57**	**₱ 4,748,493.72**	**₱ 14,237,848.29**
Advance payment for 2011 sales	19837	106,776.00	-	106,776.00
TOTAL		**₱ 9,596,130.57**	**₱ 4,748,493.72**	**₱ 14,344,624.29**

Out of the total amount of ₱14,344,624.29 invoiced by SVC, only the amount of ₱13,295,840.00 was paid by FEU during Calendar Year 2010 and, consequently, subjected to CWT and declared in the BIR Forms No. 2307.

The difference of ₱1,048,784.29 corresponds to the retention fee on its sales covered by SI 19694 which was paid by FEU in Calendar Year 2011. SVC reconciled the foregoing invoices with the BIR Forms No. 2307, as follows:

Per BIR Records	Amount per BIR Forms No. 2307	Corresponding Sales Invoice
p. 92	₱ 1,875,000.00	50% of SI 19634
p. 91	5,243,924.00	50% of SI 19694
p. 90	6,176,916.00	50% of SI 19634 ₱1,875,000.00 40% of SI 19694 ₱4,195,140.00 SI 19837 Adv. Payment for 2011 sales ₱106,776.00
TOTAL BIR FORM 2307	**₱ 13,295,840.00**	
TOTAL PER SI	**14,344,624.29**	
DIFFERENCE	**₱ 1,048,784.29**	Retention fee on Sales covered by SI 19694 (paid already in 2011)

Hence, based on the data provided, FEU mistakenly declared all sales transactions with SVC as sales of services in the amount of ₱13,295,840.00 in the BIR Forms No. 2307 when it should have declared only ₱4,748,493.72 (sales of goods per invoice). The remaining amount of ₱8,547,346.28, which was flagged by the BIR as part of the Undeclared Service Income assessment, is actually sales of goods that were already reported by SVC in its ITR.

To be sure, the Court *En Banc* reconciles the amount of ₱8,547,346.28 with the total sales of goods per invoice amounting to ₱9,489,354.57, as follows:

Sales of Goods per SVC's Invoices for Calendar Year 2010	₱ 9,489,354.57
Retention fee of FEU paid in 2011	(1,048,784.21)
Advance Payment for sales in 2011 paid by FEU in 2010	106,776.00
TOTAL	**₱ 8,547,346.36**
SHOULD BE SALES OF GOODS PER BIR FORMS NO. 2307/ASSESSMENT OF BIR	**₱ 8,547,346.30**
DIFFERENCE DUE TO ROUNDING OFF	0.06

On this note, the Court *En Banc* affirms the cancellation of the Undeclared Service Income in the amount of ₱8,547,346.30.

The Court in Division correctly affirmed the Income Tax and VAT assessments in relation to SVC's Undeclared Service Income arising from sales of goods erroneously considered as sales of services by the BIR in the amount of ₱1,642,308.54.

SVC explains that a portion of the BIR's Undeclared Service Income findings in the amount of ₱1,967,312.89 actually pertains to sales of goods that were erroneously considered by the BIR as sales of services. It contends that these transactions were already declared in its ITR rendering the assessment invalid and without basis.

In the Decision and Amended Decision, the Court in Division took note of the findings of the ICPA confirming that only the amount of ₱1,651,156.49 out of the ₱1,967,312.89 was ascertained to be sales of goods.

Thereafter, the Court in Division conducted its independent validation of the ₱1,651,156.49. The said Court traced and matched the sales declared per BIR Forms No. 2307 and the sales per SVC's general ledger, as shown below:

Name of Customer	Per Assessment (BIR Forms No. 2307)	Per ICPA (Exh. P-34)		Amounts not ascertained as part of BIR Forms No. 2307	Sales of goods erroneously considered as service
		Total Sales of Goods and Services	Sales of Goods		
ABS-CBN Broadcasting	₱1,472,763.84	₱1,146,084.04	₱939,476.92	₱939,476.92	
Breakthrough & Miles	76,371.00	152,741.96	152,741.96	152,741.96	
Cardinal Santos Medical Center	-	34,791.61	31,577.32	(no BIR Form No. 2307)	
De La Salle University	60,290.18	60,291.97	34,577.68		₱34,577.68
Engine Room, Inc.	29,099.12	64,001.79	58,198.21	58,198.21	
Metropolitan Manila Dev't. Authority	6,399.11	6,399.11	595.54		595.54
Office of Press Secretary	8,433.00	7,529.46	3,958.03	3,958.03	
PhilHealth Care	18,996.92	18,996.92	16,496.92		16,496.92
Philippine Multi Media Systems, Inc.	96,610.17	15,074.91	11,503.46	11,503.46	
Science & Tech Infor	9,952.00	8,885.71	3,082.14	3,082.14	
Telesuccess Production	470,742.03	434,581.34	386,724.21	113,390.00	273,334.21
The Associated Press	28,341.43	18,027.67	12,224.10	12,224.10	
Total	**₱2,277,998.80**	**₱1,967,406.49**	**₱1,651,156.49**	**₱1,294,574.82**	**₱325,004.35**

As can be gleaned above, the Court in Division only considered those transactions where SVC's sales per general ledger matched the sales declared per BIR Forms No. 2307 (hereinafter referred to as "matched transactions").

Resultantly, it found that out of the ₱1,651,156.49 sales transactions considered by the ICPA as sales of goods, only the amount of ₱325,004.35 was verified by the Court in Division to have been erroneously included in the Undeclared Service Income assessment. On this point, the Court in Division reduced the amount of the assessment to ₱1,642,308.54.

SVC now contends that the Court in Division erred in only considering the matched transactions. It explains that the amount of sales per its general ledger and BIR Forms No. 2307 will not always match due to timing differences caused by the differing accounting methods employed by SVC and its customers.

At any rate, it emphasizes that the ICPA was able to verify the foregoing transactions and was able to ascertain that the entire amount of ₱1,967,312.89 was already reported in its ITR and was already subjected to regular corporate income tax. Hence, it averred that upholding the assessment will unjustly require it to pay income tax on the same transaction twice.

Based on these reasons it insists that it has no Undeclared Service Income and, thus, should not be made liable for Income Tax and VAT.

SVC's contentions lack merit.

The Court *En Banc* points out that the issue herein is not only limited to the nature or the type of sales transaction the ₱1,651,156.49 corresponds to but also on whether the sales recorded in SVC's general ledger pertains to the exact same transactions declared by SVC's customers in the BIR Forms No. 2307.

In order to prove this, SVC should have reconciled and provided all the invoices/receipts comprising the sales declared in the BIR Forms No. 2307 in order for the Court to ascertain that the transactions recorded in the general ledger are the actual sales declared per BIR Forms No. 2307.

The Court *En Banc* cannot just rely on its argument that the discrepancies in its sales per BIR Forms No. 2307 and general ledger are due to timing differences without any supporting proof or evidence.

Hence, even if the ICPA has already proven that the sales transactions per its general ledger were already subjected to corporate income tax, this fact is not enough to disprove the assessment since SVC failed to establish that the sales per general ledger correspond to the transactions declared per BIR Forms No. 2307. On this ground, the Court *En Banc* finds no error in the ruling made by the Court in Division.

Given the same, the Court *En Banc* affirms that SVC has an Undeclared Service Income of ₱1,324,742.16. Correspondingly, it is liable for deficiency Income Tax and VAT computed as follows:

Income Tax Assessment per Court in Division Decision		
Taxable Income per ITR		₱ 18,265,923.00
Add: Undeclared Service Income		
Sales of goods erroneously considered as sales of services	₱ 1,642,308.54	
Service income without details included in the BIR's computation	61,719.41	
Other Service Income without BIR Form No. 2307	(379,285.79)	1,324,742.16
SHOULD BE TAXABLE INCOME PER COURT		**₱ 19,590,665.16**
TAX DUE (30%)		₱5,877,199.55
Less: Payments and Credits	5,479,777.00	
Disallowed Creditable Withholding Tax	(193,468.84)	5,286,308.16
BASIC DEFICIENCY INCOME TAX STILL DUE		**₱ 590,891.39**[62]

VAT Assessment per Court in Division Decision		
Vatable Sales/Receipts per VAT Returns		116,874,744.09
ADD: *Undeclared Service Income (see Income Tax Assessment)*		1,324,742.16
TOTAL		**₱ 118,199,486.25**
OUTPUT TAX (12%)		**₱ 14,183,938.35**
TOTAL INPUT TAX	₱ 13,624,260.72	
LESS: *Overclaimed Input Tax Credit*	(79,207.50)	
Input Tax on Sale to Government	(1,444.29)	
Unsupported Creditable VAT Withheld	(3,382.61)	13,540,226.32
Net VAT Payable		₱ 643,712.03
Less: VAT Payments		555,678.43
BASIC DEFICIENCY VAT STILL DUE		**₱ 88,033.60**[63]

[62] Difference due to rounding-off.
[63] Difference due to rounding-off.

<u>The Court in Division correctly imposed deficiency and delinquency interests on SVC's unpaid tax liabilities until 31 December 2017.</u>

Having sustained the assessment against SVC, the Court *En Banc* finds no merit in its argument that it is not liable for both deficiency and delinquency interests.

Clearly, the FDDA provides for the deadline or the period until when SVC is supposed to pay its deficiency tax liability, which, in this case, is 15 May 2015. Consequently, during the said date, the law in effect was ***Section 249 of the Tax Code***, which states:

> "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 **<u>the date prescribed for its payment until the full payment thereof.</u>**
>
> (C) *Delinquency Interest.* — In case of failure to pay:
> (1) The amount of the tax due on any return to be filed, or
> (2) The amount of the tax due for which no return is required, or
> **<u>(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</u>**."
> (Emphasis and underscoring supplied).

The said provision was interpreted by the Supreme Court in ***Takenaka Corporation Philippine Branch v. CIR.*, (hereinafter referred to as "*Takenaka Case")*,**[64] to wit:

> "The law is clear. **<u>The imposition of deficiency interest and delinquency interest is simultaneous</u>**, pursuant to Section 249 (A) (B) (C) of the NIRC, as amended. xxx
>
> xxx xxx xxx
>
> The NIRC is clear. It imposes **deficiency interest at the rate of 20% per annum on any deficiency in the tax due from the date prescribed for its payment under the relevant tax law until full payment thereof.** In addition, the NIRC imposes delinquency interest at the rate of 20% per annum on any deficiency tax, or any surcharge or

[64] G.R. No. 211589, 12 March 2018.

> interest thereon from its due date, **appearing in the notice and demand of respondent, until the amount is fully paid**. Failure to pay the deficiency tax assessed, including any surcharge or interest thereon, within the time prescribed for its payment justifies the imposition of delinquency interest." (Emphasis and underscoring supplied).

As discussed in the ***Takenaka Case***, the simultaneous imposition of deficiency and delinquency interests is allowed under ***Section 249 of the Tax Code***, considering that these interests serve different purposes. Deficiency interest is imposed on deficiency taxes due from the date prescribed for its payment until full payment thereof, while delinquency interest is imposed on any deficiency tax or any surcharge or interest thereon from its due date, appearing in the notice and demand of the taxpayer, until the deficiency amount is fully paid.

Coincidingly, the foregoing rule was subsequently amended under the ***TRAIN Law***,[65] which took effect on 1 January 2018, to wit:

> "SEC. 249. Interest. -
>
> (A) In General. - There shall be assessed and collected on any unpaid amount of tax, **interest at the rate of double the legal interest for loans or forbearance of any money in the absence of an express stipulation as set by the Banko Sentral ng Pilipinas** from date prescribed for payment until the amount is fully paid: Provided, **<u>That in no case shall the deficiency and delinquency interest prescribed under Sections (B) and (C) hereof, be imposed simultaneously.</u>**
>
> (B) Deficiency Interest. - Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, **which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof, or upon issuance of a notice and demand by the Commissioner of Internal Revenue, whichever comes earlier.**
>
> (C) Delinquency Interest. - In case of failure to pay:
>
> (1) The amount of the tax due on any return 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).

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[65] Tax Reform for Acceleration and Inclusion (TRAIN) Law, Republic Act No. 10963, 1 January 2018.

In order to avoid confusion and explain the effect of the amendments introduced by the ***TRAIN Law*** in the imposition of interest on tax liabilities, the Secretary of Finance issued ***RR No. 21-18***,[66] which states:

> "SECTION 2. Rate of Interest. — There shall be assessed and collected on any unpaid amount of tax, interest at the rate of double the effective legal interest rate for loans or forbearance of any money in the absence of an express stipulation as set by the Bangko Sentral ng Pilipinas (BSP) from the date prescribed for payment until the amount is fully paid.
>
> The rate of interest per BSP Circular No. 799 series of 2013 n for loans or forbearance of any money in the absence of an express stipulation is six percent (6%). Thus, the rate of legal interest imposable under Section 249 of the Tax Code, as amended, shall be twelve percent (12%). A Circular shall be issued by the Commissioner in case BSP prescribes new rate of interest.
>
> SECTION 3. Deficiency Interest. — Interest imposed on any deficiency tax due, which interest shall be assessed and collected from the date prescribed for its payment until: (a) full payment thereof, or (2) upon issuance of a notice and demand by the Commissioner or his authorized representative, whichever comes first.
>
> SECTION 4. Delinquency Interest. — Interest imposed on the failure to pay:
>
> (1) The amount of the tax due on any return 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 or his authorized representative until the amount is fully paid, which interest shall form part of the tax.
>
> SECTION 5. No Double Imposition of Interest. — **Upon the effectivity of the TRAIN Law, in no case shall the deficiency and delinquency interest prescribed herein be imposed simultaneously**.
>
> xxx xxx xxx
>
> SECTION 6. *Transitory Provision.* — **In cases where the tax liability/ies or deficiency tax/es became due before the effectivity of the TRAIN Law on January 1, 2018, and where the full payment thereof will only be accomplished after the said effectivity date, the interest rates shall be applied as follows:**

Period	***Applicable Interest Type and Rate***
For the period up to December 31, 2017	**Deficiency and/or delinquency interest at 20%**
For the period January 1, 2018 until full payment of the tax liability	**Deficiency and/or delinquency interest at 12%**

[66] Regulations Implementing Section 249 (Interest) of the NIRC of 1997, as Amended under Section 75 of the TRAIN Law, 14 September 2018.

> **The double imposition of both deficiency and delinquency interest under Section 249 prior to its amendment will still apply in so far as the period between the date prescribed for payment until December 31, 2017**."
> (Emphasis and underscoring supplied)

RR No. 21-18 is clear and admits no exception: for deficiency tax liabilities falling due prior to the effectivity of ***TRAIN Law*** but remained unpaid after the said date, the taxpayer is still liable to pay both deficiency and delinquency interests at the rate of 20% on its unpaid tax liabilities until 31 December 2017. The lower rate of 12% and the prohibition on the double imposition of interests shall only take effect starting 1 January 2018.

Accordingly, the Court in Division is correct in its computation of SVC's interest.

The Court in Division correctly imposed 25% surcharge on SVC's unpaid tax liabilities.

Finally, SVC argues that the imposition of the 25% surcharge on its deficiency tax liabilities constitutes a violation of its right to due process considering that the FDDA did not include the said penalty in its assessment. Hence, it argues that there is no basis for the Court in Division to impose the 25% surcharge.

SVC's contention lacks merit.

Section 248 of the Tax Code is the law which prescribes the imposition of the 25% surcharge, to wit:

> "Section 248. Civil Penalties. -
>
> (A) There shall be **imposed**, in addition to the tax required to be paid, a penalty equivalent **to twenty-five percent (25%) of the amount d**ue, in the following cases:
>
> xxx xxx xxx
>
> **(3) Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment**; xxx"
> (Emphasis and underscoring supplied).

As can be gleaned above and contrary to SVC's claim, the ***Tax Code*** did not require the inclusion of the 25% surcharge in the assessment before the imposition could be considered valid. In fact, in ***Commissioner of Internal Revenue v. South Premiere Power Corp.***,[67] the Supreme Court ruled that the

[67] G.R. Nos. 252627 & 252630, 16 June 2021.

mere delay in the payment of any deficiency taxes justifies the immediate imposition of the 25% surcharge.

This is so since the aim of the law in imposing surcharges is to promote the efficient enforcement or collection of taxes, as discussed in ***Aguinaldo Industries Corp. v. Commissioner of Internal Revenue***,[68] to wit:

> "Strong reasons of policy support a strict observance of this rule. **Tax laws imposing penalties for delinquencies are clearly intended to hasten tax payments or to punish evasion or neglect of duty in respect thereof. If delays in tax payments are to be condoned for light reasons, the law imposing penalties for delinquencies would be rendered nugatory, and the maintenance of the government and its multifarious activities would be as precarious as taxpayers are willing or unwilling to pay their obligations to the state in time. Imperatives of public welfare will not approve of this result.**"
> (Emphasis and underscoring supplied).

Here, there is no question that SVC had not paid the remaining deficiency income tax and VAT within 15 May 2015 or the due date indicated in the FDDA. Hence, the Court in Division's imposition of the 25% surcharge on SVC unpaid tax liabilities is only proper.

WHEREFORE, premises considered, the instant Petitions for Review are hereby **DENIED** for lack of merit. Accordingly, the Court in Division's Amended Decision promulgated on 2 May 2019, and Resolution, dated 14 November 2019, are both **AFFIRMED**.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

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[68] G.R. No. L-29790, 25 February 1982.

ERLINDA P. UY
Associate Justice

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

C E R T I F I C A T I O N

Pursuant to *Article VIII, Section 13 of the Constitution*, it is hereby certified that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice