REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

TRINITY FRANCHISING AND MANAGEMENT CORPORATION,
Petitioner,

- versus -

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9177

Members:

CASTAÑEDA, JR., *Chairperson, and*
MANAHAN, *JJ.*

Promulgated:

OCT 29 2018

9:30 a.m.

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AMENDED DECISION

CASTAÑEDA, JR., *J.*:

For the Court's resolution are the following:

1. respondent's **Motion for Partial Reconsideration [Decision dated 13 June 2018]**, filed on June 28, 2018, with petitioner's **Comment (To Motion for Reconsideration dated 28 June 2018)**, filed on July 20, 2018; and

2. petitioner's **Motion for Partial Reconsideration (of Decision promulgated on June 13, 2018)**, filed on June 29, 2018, without respondent's comment per Records Verification dated August 6, 2018.

Both parties move for the reconsideration of the Decision dated June 13, 2018 (assailed Decision), the dispositive portion of which reads:

"**WHEREFORE**, premises considered, the Petition for Review is **PARTIALLY GRANTED**. Accordingly, the assessments issued by respondent against petitioner for taxable year 2011 covering deficiency income tax, deficiency final withholding tax, deficiency fringe benefits tax, deficiency documentary stamp tax, and compromise penalties are hereby **CANCELLED** and **WITHDRAWN**. On the other hand, the assessments covering deficiency value-added tax, deficiency expanded withholding tax, and deficiency withholding tax on compensation are hereby **AFFIRMED** but with modifications. Petitioner is **ORDERED TO PAY FIVE MILLION ONE HUNDRED NINETY-FIVE THOUSAND SEVENTY-ONE PESOS AND 15/100 (₱5,195,071.15)** for taxable year 2011, inclusive of the total basic deficiency taxes, twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, and twenty percent (20%) deficiency interest and 20% delinquency interest imposed under Section 249(B) and (C), respectively, computed until December 31, 2017, which is prior to its amendment under Republic Act No. 10963, otherwise known as the "Tax Reform for Acceleration and Inclusion (TRAIN) Law", computed as follows:

	VAT	EWT	WTC	Total
Basic	₱ 639,700.13	₱ 158,114.02	₱ 670,395.18	₱ 1,468,209.33
Surcharge (25%)	159,925.03	39,528.51	167,598.80	367,052.33
Subtotal	**₱ 799,625.16**	**₱ 197,642.53**	**₱ 837,993.98**	**₱1,835,261.66**
Deficiency Interest (20%)				
VAT - 1/25/12 to 12/31/17 (₱639,700.13 x 20% x 5.9370yrs)	₱ 759,579.93			1,747,891.99
EWT - 1/15/12 to 12/31/17 (₱158,114.02 x 20% x 5.9644yrs)		₱ 188,611.05		
WTC - 1/15/12 to 12/31/17 (₱670,395.18 x 20% x 5.9644yrs)			₱ 799,701.00	
Subtotal	**₱1,559,205.10**	**₱ 386,253.58**	**₱1,637,694.98**	**₱3,583,153.65**
Delinquency Interest (20%)				
VAT - 10/2/15 to 12/31/17 (₱1,559,203.34 x 20% x 2.2493yrs)	₱ 701,424.00			1,611,917.50
EWT - 10/2/15 to 12/31/17 (₱386,253.06 x 20% x 2.2493yrs)		₱ 173,760.03		
WTC - 10/2/15 to 12/31/17 (₱1,637,692.77 x 20% x 2.2493yrs)			₱ 736,733.46	
TOTAL	**₱2,260,629.10**	**₱ 560,013.61**	**₱2,374,428.44**	**₱5,195,071.15**

In addition, petitioner is hereby **ORDERED to PAY** delinquency interest at the rate of twelve percent (12%), which is double the legal interest rate for loans or forbearance of any money, on the unpaid amount in the sum of ₱3,583,153.65 (sum of basic tax, surcharge and deficiency interest computed above) from January 1, 2018 until full payment thereof pursuant to the relevant provision of the TRAIN law.

SO ORDERED."

Respondent's Motion

In his motion, respondent argued as follows: (1) the Court's jurisdiction is appellate in nature considering that respondent rendered a Final Decision on Disputed Assessment (FDDA), citing the case of *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*[1]; (2) petitioner is liable for deficiency income tax in the aggregate amount of ₱102,399,191.53; (3) petitioner is liable for the assessed deficiency expanded withholding tax in the aggregate amount of ₱1,110,928.04; (4) petitioner is liable for the assessed deficiency compensation withholding tax, final tax, fringe benefit tax and documentary stamp tax liabilities; (8) the Court erred in cancelling the compromise penalty; and (9) the provisions of the Tax Reform for Acceleration and Inclusion (TRAIN) Law cannot be applied retroactively.

On the other hand, petitioner avers that: (1) respondent's reliance on *Pilipinas Total Gas* is misplaced, since the said case relates to the submission of supporting documents in connection with a claim for refund or credit of unutilized input taxes; (2) respondent did not cite any legal basis, nor presented evidence, to support several of its arguments; (3) several of respondent's allegations were already addressed by the Court; and (4) there was no retroactive application of the TRAIN Law.

After thorough evaluation of respondent's motion, the Court notes that respondent's arguments are mere reiterations of matters which have already been considered, weighed and resolved in the assailed Decision, save for his invocation of the case of *Pilipinas Total*

[1] G.R. No. 207112, December 8, 2015.

Gas and his argument that the TRAIN Law was retroactively applied by this Court.

The Court, however, finds both arguments bereft of merit.

Respondent contends that since the FDDA was rendered in this case, the jurisdiction of the Court shifts from a trial court to a court exercising judicial review, and hence, it was allegedly erroneous for the Court to rule on matters that were not substantiated in the administrative level, citing the *Pilipinas Total Gas* case.

Respondent's argument is patently misplaced. *Pilipinas Total Gas* pertains to a claim for refund or credit of unutilized input taxes, wherein the Supreme Court ruled that when a judicial claim for refund or tax credit is an appeal of an unsuccessful administrative claim, it becomes imperative for the taxpayer to show that he satisfied all the documentary and evidentiary requirements for an administrative claim. Clearly, this is inapplicable in the case at bar which involves a protest to a deficiency tax assessment under Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended.

Moreover, in the case of *Philippine Airlines, Inc. (PAL) vs. Commissioner of Internal Revenue*[2], the Supreme Court clearly ruled that the Court of Tax Appeals is not limited by the evidence presented in the administrative claim in the Bureau of Internal Revenue (BIR). The claimant may present new and additional evidence to the Court of Tax Appeals to support its case for tax refund.

As to respondent's last argument, he contends that there is no declaration in the TRAIN Law that gives retroactive effect to its provisions. Hence, respondent asserts that the provisions of the NIRC of 1997, as amended, on interest shall prevail and be imposed on the unpaid assessment until the same is fully paid.

On January 1, 2018, the TRAIN Law has come into effect. Thus, Section 249 (A) and (B) of the NIRC of 1997, as amended by the TRAIN law, now reads as follows:

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[2] G.R. Nos. 206079-80 & 206309, January 17, 2018.

"**SECTION 249. Interest. –**

(A) In General. – There shall be assessed and collected on any unpaid amount of legal interest at the rate of double the legal interest for loans or forbearance of any money in the absence of any express stipulation as set by the Bangko Sentral ng Pilipinas, from the date prescribed for payment until the amount is fully paid: *Provided,* That in no case shall the deficiency and delinquency interest prescribed under Subsections (B) and (C) hereof, be imposed simultaneously.

(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 full payment thereof, or upon issuance of a notice and demand by the commissioner of internal revenue, whichever comes earlier."

To implement the same, Revenue Regulations (RR) No. 21-2018[3] was issued on September 14, 2018. Section 6 thereof provides as follows:

"**SEC. 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%

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

[3] Subject: 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)".

the date prescribed for payment until December 31, 2017." (*Emphasis ours*)

As can be gleaned from the above-quoted provision, the BIR itself declares that the 12% deficiency and/or delinquency interest shall be applied for the period January 1, 2018 until full payment of the tax liability. Clearly, there is no retroactive application to speak of in the present case.

Petitioner's motion

On the other hand, petitioner raised the following arguments in its motion: (1) petitioner is not *in pari delicto* with respondent as the infirmities in the waivers were solely caused by and attributable to respondent; (2) the case of *Commissioner of Internal Revenue v. Next Mobile, Inc. (formerly Nextel Communications Phils., Inc.)*[4] is not applicable to the instant case; (3) estoppel cannot be used to preclude petitioner from invoking the statute of limitations on the assessment of taxes considering that there is a detailed procedure for the proper execution of the waiver, which respondent himself had issued and perforce, must strictly follow; (4) a waiver of the statute of limitations is a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations and thus, it must be carefully and strictly construed; (5) in computing the deficiency WTC a reasonable income tax rate should be applied; otherwise, petitioner, which is merely a withholding agent, would be made to pay a higher income tax than what is due from the employees.

The Court finds that except for its last contention, the arguments raised by petitioner in its motion are a mere rehash of its Petition for Review and Memorandum, which the Court has already sufficiently evaluated and discussed in the assailed Decision.

The Court explained in the assailed Decision that it was petitioner who prepared the two waivers wherein the phrase "All Internal Tax Liabilities for the calendar year ending 2011" was indicated, instead of specifying the kind and amount of tax due as required by Revenue Memorandum Order (RMO) No. 20-09. Even assuming that it was the BIR who provided the template of the waiver as alleged by petitioner, it still behooves petitioner to examine

[4] G.R. No. 212825, December 7, 2015.

the contents of the document it will execute to determine whether it complies with applicable rules and regulations.

Considering that a waiver of statute of limitations is, in law and in fact, a bilateral agreement between the CIR and the taxpayer, both of them should thus be held responsible in ensuring that their agreement faithfully complies with the law. Failing which, they should both suffer the consequences.[5]

In the assailed Decision, the Court computed for the basic deficiency WTC in the amount of ₱670,342.95 as follows:[6]

Particulars	Upheld Disallowances
Service awards	₱ 1,867,048.00
Medical and hospitalization	100,738.81
Employee welfare	127,034.92
Disallowance due to non-withholding on salaries and wages	₱ 2,094,821.73
Rate	32%
Basic Deficiency WTC	**₱ 670,342.95**

Petitioner claims that the amount of the disallowed service awards expense should be reduced to ₱259,566.00 since only the service awards paid on December 2, 2011 under Check Voucher Nos. 34083-34090, as listed below, are the ones not barred by prescription:

CV No.	Amount
34083	₱ 7,357.00
34084	7,357.00
34085	80,746.00
34086	48,444.00
34087	7,357.00
34088	20,202.00
34089	7,357.00
34090	80,746.00
Total	**₱ 259,566.00**

The Court finds no reason to further discuss this issue as the Court has already made it clear that prescription has not set in for respondent's assessments. *jc*

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[5] *Hon. Commissioner Kim S. Jacinto-Henares, Hon. Ricardo B. Espiritu, Revenue District Officer, Revenue District Office No. 50 vs. IP Contact Center Outsourcing, Inc.*, CTA EB No. 1415 (CTA Case No. 8537), June 5, 2017.
[6] Docket, vol. III, p. 1561.

Petitioner likewise asserts that a reasonable income tax rate which is the effective income tax rate of the employees (or 20%) and not the 32% maximum income tax rate should be applied to compute the deficiency WTC.

To support its argument, petitioner cited the testimony of its witness that based on the Alphalist, only 53 out of the 385 employees of petitioner had net taxable income above ₱500,000 while most of the rest of the employees belong to the bracket of over ₱140,000 where the tax rates is ₱8,500 plus 20% of the excess over ₱70,000.

The Court finds petitioner's argument impressed with merit. However, since the employees to whom the subject compensation pertained to were not individually identified, the Court cannot ascertain the exact income tax rate that should be imposed. Hence, it is only fair to use the average income tax rate based on total withholding tax due and net taxable compensation income reflected per petitioner's Alphalist of Employees, computed as follows:

Alphalist of Employees	**Tax Due (A)**	**Net Taxable Compensation (B)**	**Average Income Tax Rate (A)÷(B)**
Terminated before December 31[7]	₱ 1,596,755.35	₱ 7,274,361.85	
Without Previous Employer[8]	22,640,332.63	99,410,725.12	
Terminated before December 31[9]	959,805.72	3,216,923.41	
Total	**₱25,196,893.70**	**₱109,902,010.38**	**22.9266904%**

Thus, the adjusted basic deficiency WTC amounts to ₱480,273.29, computed as follows:

Service awards	₱1,867,048.00
Medical and hospitalization	100,738.81
Employee welfare	127,034.92
Disallowance due to non-withholding on salaries and wages	₱2,094,821.73
Average Income Tax rate	**22.9266904%**
Adjusted Basic Deficiency WTC	**₱ 480,273.29**

[7] Exhibit "P-1-18", docket, vol. I, pp. 439-443.
[8] Exhibit "P-1-18", docket, vol. I, pp. 446-467.
[9] Exhibit "P-1-18", docket, vol. I, p. 469.

Accordingly, the dispositive portion of the assailed Decision should be modified to reflect the foregoing adjustment and to apply RR No. 21-2018.

WHEREFORE, premises considered, respondent's **Motion for Partial Reconsideration [Decision dated 13 June 2018]** is **DENIED** for lack of merit, while petitioner's **Motion for Partial Reconsideration (of Decision promulgated on June 13, 2018)** is **PARTIALLY GRANTED**. Accordingly, the Decision dated June 13, 2018 is **AMENDED** to read as follows:

> "**WHEREFORE**, premises considered, the Petition for Review is **PARTIALLY GRANTED**. Accordingly, the assessments issued by respondent against petitioner for taxable year 2011 covering deficiency income tax, deficiency final withholding tax, deficiency fringe benefits tax, deficiency documentary stamp tax, and compromise penalties are hereby **CANCELLED** and **WITHDRAWN**. On the other hand, assessments covering deficiency value-added tax, deficiency expanded withholding tax, and deficiency withholding tax on compensation are hereby **AFFIRMED** but with modifications. Petitioner is **ORDERED TO PAY** respondent the amount of **FOUR MILLION TWO HUNDRED SIXTY-THREE THOUSAND THIRTY-NINE PESOS AND SIXTY-TWO CENTAVOS (₱4,263,039.62)** representing the basic deficiency taxes for the taxable year 2011, 25% surcharge, 20% deficiency interest, and 20% delinquency interest imposed under Sections 248(A)(3) and 249(B) and (C) of the NIRC of 1997, as amended, respectively, computed until December 31, 2017, as follows:

	VAT	EWT	WTC	Total
Basic tax	₱ 639,700.13	₱ 158,114.02	₱ 480,273.29	₱ 1,278,087.44
25% Surcharge	159,925.03	39,528.51	120,068.32	319,521.86
Deficiency Interest				
VAT - 1/26/2012 to 10/2/2015[10] [1,346 days] (₱639,700.13 x 20% x 3.6876712 yrs.)	471,800.75			946,131.26
EWT- 1/16/2012 to 10/2/2015 [1,356 days] (₱158,114.02 x 20% x 3.71506849 yrs.)		117,480.88		
WTC- 1/16/2012 to 10/2/2015 [1,356 days] (₱480,273.29 x 20% x 3.71506849 yrs.)			356,849.63	

[10] Par. 5, Stipulation of Facts, Joint Stipulation of Facts and Issues, docket, vol. II, p. 542. Deficiency tax liability is payable immediately upon receipt of FDDA; Exhibit "P-1-15", docket, vol. I, pp. 384-386.

Total Amount Due as of October 2, 2015	**₱1,271,425.91**	**₱315,123.41**	**₱ 957,191.24**	**₱2,543,740.56**
Deficiency Interest				
VAT - 10/3/2015 to 12/31/2017 [821 days] (₱639,700.13 x 20% x 2.24931506 yrs.)	₱ 287,777.43			
EWT - 10/3/2015 to 12/31/2017 [821 days] (₱158,114.02 x 20% x 2.24931506 yrs.)		71,129.65		574,964.27
WTC - 10/3/2015 to 12/31/2017 [821 days] (₱480,273.29 x 20% x 2.24931506 yrs.)			216,057.19	
Delinquency Interest				
VAT - 10/3/2015 to 12/31/2017 [821 days] (₱1,271,425.91 x 20% x 2.24931506 yrs.)	571,967.49			
EWT - 10/3/2015 to 12/31/2017 [821 days] (₱315,123.41 x 20% x 2.24931506 yrs.)		141,762.37		1,144,334.79
WTC - 10/3/2015 to 12/31/2017 [821 days] (₱957,191.24 x 20% x 2.24931506 yrs.)			430,604.93	
Total Amount Due as of December 31, 2017	**₱2,131,170.83**	**₱528,015.43**	**₱1,603,853.36**	**₱4,263,039.62**

In addition, petitioner is liable to pay delinquency interest at the rate of twelve percent (12%) on the total unpaid basic deficiency tax, surcharge and deficiency interest as of October 2, 2015 amounting to ₱1,271,425.91 for VAT, ₱315,123.41 for EWT and ₱957,191.24 for WTC, or in the aggregate amount of ₱2,543,740.56, computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN), as implemented by RR No. 21-2018.

SO ORDERED."

SO ORDERED.

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

I CONCUR:

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice