



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

ASIAN TRANSMISSION G.R. No. 242489
CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

x ----- x

COMMISSIONER OF INTERNAL G.R. No. 247397
REVENUE,
Petitioner,

- versus -

ASIAN TRANSMISSION
CORPORATION,
Respondent.

Present:

CAGUIOA, *Acting C.J., Chairperson,*
INTING,
GAERLAN,
DIMAAMPAO,
SINGH, *JJ.*

Promulgated:

November 8, 2023

x ----- *Mic Debut* ----- x

DECISION

SINGH, *J.*:

Before the Court are two consolidated Petitions for Review on *Certiorari*¹ (**Petitions**) under Rule 45 of the Rules of Court, dated July 4, 2019, and October 26, 2018, respectively, assailing the Amended Decision,² dated September 24, 2018, and the Resolution,³ dated May 20, 2019, of the Court of Tax Appeals (CTA) *En Banc*, in CTA EB No. 1519. The CTA *En Banc* partially sustained its previous Decision,⁴ dated December 15, 2017, and reduced respondent Asian Transmission Corporation's (ATC) unaccounted compensation from PHP 23,966,941.48 to PHP 16,096,409.13 by using the effective rate of 19.88% in computing ATC's basic deficiency withholding tax on compensation. The Amended Decision likewise cancelled the compromise penalty in the amount of PHP 50,000.00 assessed by petitioner Commissioner of Internal Revenue (CIR) against ATC.

The Facts

The CIR, as represented by the Office of the Solicitor General (OSG), is the duly appointed Commissioner who has the power to decide disputed assessments, refund of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the Bureau of Internal Revenue (BIR). On the other hand, ATC is a corporation duly organized and existing under Philippine laws with business address at Carmelray Industrial Park, Canlubang, Calamba City, Laguna.

This case stemmed from the Letter of Authority (LOA) No. 00002564, dated June 11, 2003, which was received by ATC in June 2003, informing the latter that certain revenue officers from the Large Taxpayers Audit and Investigation Division 1 of the BIR have been authorized to examine its books of accounts and other accounting records for the taxable year 2001.⁵ Thereafter, ATC, through its Vice President for Personnel and Legal Affairs, Roderick M. Tan, executed a Waiver of the Defense of Prescription under the Statute of Limitations of the NIRC,⁶ dated November 20, 2003.

On December 9, 2003, ATC received another LOA, bearing No. 2000-00003516, dated December 1, 2003. The said LOA informed ATC of the continuation of the investigation against it. Thus, ATC executed Waivers of

¹ *Rollo* (G.R. No. 247397), pp. 26–50; *rollo* (G.R. No. 242489), pp. 3–21.

² *Rollo* (G.R. No. 247397), pp. 10–16. Penned by Associate Justice Ma. Belen M. Ringpis-Liban and concurred in by Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Esperanza R. Fabon-Victorino and Catherine T. Manahan, and with Separate Concurring and Dissenting Opinion of Presiding Justice Roman G. Del Rosario.

³ *Id.* at 70–72.

⁴ *Id.* at 73–87. Penned by Associate Justice Ma. Belen M. Ringpis-Liban and concurred in by Associate Justices Juanito Castañeda, Jr., Lovell R. Bautista, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla and Catherine T. Manahan, and with Separate Concurring and Dissenting Opinion of Presiding Justice Roman, joined in by Associate Justice Erlinda P. Uy.

⁵ *Id.* at 95, CTA Decision.

⁶ *Id.*



the Defense of Prescription under the Statute of Limitations of the NIRC,⁷ dated September 8, 2004, March 3, 2005, November 10, 2005, March 21, 2006, November 16, 2006, April 18, 2007, and October 25, 2007, respectively.⁸

Thereafter, the BIR issued an undated Preliminary Assessment Notice (PAN) assessing ATC. On April 25, 2007, the BIR issued the Formal Letter of Demand (FLD), with accompanying Assessment Notices against ATC, assessing the latter deficiency taxes, interests, and compromise penalty.⁹

Thus, on June 14, 2007, ATC filed its protest against the assessments issued by the BIR and requested the cancellation thereof. On July 15, 2008, ATC received a copy of an undated Final Decision on Disputed Assessment¹⁰ (FDDA), containing the decision of the BIR, signed by Olivia O. Lao, Officer-in-Charge, Head Revenue Executive Assistant, which found the Protest and Supplemental Protest of ATC unmeritorious.¹¹ As stated in the FDDA, ATC's tax liabilities are as follow:

Tax Type	Basic Tax	Penalties			Total
		Surcharge	Interests	Compromise	
Withholding Tax on Compensation	7,669,421.27		10,056,387.32	50,000.00	17,775,818.59
Expanded Withholding Tax	749,037.99		982,163.24	20,000.00	1,751,201.23
Total	8,418,459.26		11,039,560.56	70,000.00	19,527,019.82

On July 24, 2008, ATC paid the amount of PHP 1,751,201.23 representing the alleged deficiency withholding tax liability for the year 2001. This payment corresponds to the assessment for the Expanded Withholding Tax.¹²

On August 14, 2008, ATC directly appealed the FDDA to the CIR and requested for the reconsideration and/or cancellation of the deficiency withholding tax on compensation issued against ATC for taxable year 2001.

On July 1, 2011, the CIR denied ATC's request for reconsideration and confirmed ATC's payment of deficiency withholding tax and deemed the latter's liability extinguished. Consequently, the CIR sustained the

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 95–96, CTA Decision.

¹⁰ *Rollo* (G.R. No. 242489), pp. 103–104.

¹¹ *Rollo* (G.R. No. 247397), p. 96, CTA Decision.

¹² *Id.*

assessment of deficiency withholding tax on compensation in the amount of PHP 17,775,818.59.¹³ Thus, -ATC filed a Petition for Review on November 3, 2011 before the CTA.¹⁴

The Ruling of the CTA First Division

In the Decision,¹⁵ dated March 16, 2016, the CTA First Division partially granted the Petition for Review and held ATC liable to pay the amount of PHP 3,999,957.67, representing the basic deficiency withholding tax on compensation plus 25% surcharge. Delinquency interest at the rate of 20% *per annum* on the said total amount was likewise imposed against ATC, computed from July 31, 2011 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997. Likewise, the CTA First Division applied the effective tax rate of only 19.88% in computing the tax liability of ATC. The dispositive portion of the Decision reads:

WHEREFORE, in light of the foregoing considerations, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, petitioner is **ORDERED** to **PAY** respondent the amount of ₱3,999,957.67, representing basic deficiency withholding tax on compensation and the 25% surcharge imposed under Section 248(3) of the NIRC of 1997, broken down as follows:

Basic Deficiency Withholding Tax on Compensation	₱	3,199,966.14
25% Surcharge		799,991.53
Total	₱	3,999,957.67

In addition, petitioner is **ORDERED TO PAY** delinquency interest at the rate of twenty percent (20%) per annum on the said total amount of ₱3,999,957.67, computed from July 31, 2011 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997.

SO ORDERED.¹⁶ (Emphasis in the original)

The CIR moved for reconsideration, but the same was denied by the CTA First Division in the Resolution, dated August 30, 2016.

Aggrieved by the said Decision and Resolution, the CIR elevated the case to the CTA *En Banc*.

Ruling of the CTA En Banc

¹³ *Rollo* (G.R. No. 242489), p. 6.

¹⁴ *Rollo* (G.R. No. 247397), p. 97.

¹⁵ *Id.* at 94–129.

¹⁶ *Id.* at 128–129.

On December 15, 2017, the CTA *En Banc* partially granted the appeal of the CIR and modified the March 16, 2016 Decision of the CTA First Division. The CTA *En Banc* held that the unaccounted compensation of ATC in the amount PHP 16,096,409.13 should be subjected to withholding tax on compensation based on the effective tax rate computed based on the total withholding tax on compensation paid by ATC divided by the total amount of taxable gross compensation reported during the taxable year 2001. Furthermore, the CTA *En Banc* declared that the compromise penalty imposed by the CIR against ATC for the deficiency withholding tax in the amount of PHP 50,000.00 must be cancelled. The dispositive portion of the said CTA *En Banc* Decision reads:

WHEREFORE, the Petition for Review is hereby **PARTIALLY GRANTED**. The Decision dated March 16, 2016 and Resolution dated August 30, 2016 are hereby **AFFIRMED**, with modifications.

Accordingly, ATC is **ORDERED TO PAY** deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency Expanded Withholding Tax on Compensation computed from January 15, 2002 until payment thereof, pursuant to Section 249(B) of the NIRC of 1997, as amended.

SO ORDERED.¹⁷ (Emphasis in the original)

Thus, both the CIR and ATC moved for partial reconsideration, but the same were denied by the CTA *En Banc* in an Amended Decision, dated September 24, 2018, which affirmed with modification its December 15, 2017 Decision. The dispositive portion of the said Amended Decision reads:

WHEREFORE, in view of the foregoing considerations, the petitioner's "Motion for Partial Reconsideration Re: Decision dated December 15, 2017" and the respondent's "Partial Motion for Reconsideration (of the Decision dated 15 December 2017)" are **DENIED** for lack of merit. The assailed Decision dated December 15, 2017 is **AFFIRMED with MODIFICATION**.

Accordingly, respondent Asian Transmission Corporation is **ORDERED TO PAY** petitioner Commissioner of Internal Revenue the amount of ₱3,999,957.67 representing basic deficiency Withholding Tax on Compensation and the 25% surcharge under Section 248(3) of the NIRC of 1997, broken down as follows:

Basic Deficiency Withholding Tax on Compensation	₱	3,199,966.14
25% Surcharge		799,991.53
Total	₱	3,999,957.67

In addition, respondent is ordered to pay:

¹⁷ *Id.* at 86.



- (a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency Withholding Tax on Compensation of P3,199,966,14, computed from January 15, 2002 **until December 31, 2017** pursuant to Section 249(B) of the NIRC of 1997, as amended.
- (b) Delinquency interest at the rate of 20% per annum in the total amount of P3,999,957.67, and on the 20% deficiency interest which have accrued as aforesaid in (a), computed from July 31, 2011 **until December 31, 2017** pursuant to Section 249(c) of the NIRC of 1997, as amended.
- (c) **Delinquency interest at the rate of 12% on the unpaid amount (basic tax plus surcharge from January 1, 2018 until the amount is fully paid pursuant to the relevant provisions of the TRAIN LAW.**

SO ORDERED.¹⁸ (Emphasis in the original)

Undeterred, both the CIR and ATC went up to the Court to assail the Amended Resolution and Decision of the CTA *En Banc* via Petitions for Review on *Certiorari*, dated July 4, 2019 and January 31, 2019, respectively.

The CIR's arguments

The CIR argues that the Petition for Review on *Certiorari* it filed on July 4, 2019 falls under the recognized exceptions to the rule that only questions of law may be raised in Rule 45 petitions, thus, the Court must take cognizance of the same.¹⁹ The CIR further avers that the CTA *En Banc* erred in ruling that ATC's unaccounted compensation only amounts to PHP 16,096,409.13 for using an effective tax rate of only 19.88% instead of the maximum rate of 32%,²⁰ and for cancelling the compromise penalty in the amount of PHP 50,000.00.

ATC's arguments

ATC argues that it cannot be held liable for deficiency interest on the alleged deficiency expanded withholding tax on compensation²¹ considering that deficiency withholding tax is not covered by Section 249(b) of the NIRC, as amended, thus, the deficiency interest at the rate of 20% *per annum* on the basic deficiency withholding tax on compensation should not be computed against it.²² Accordingly, ATC posits that the simultaneous imposition of 20% deficiency interest and 20% delinquency interest *per annum* is illegal for

¹⁸ *Id.* at 65–66.

¹⁹ *Id.* at 38–40. Petition for Review on *Certiorari*.

²⁰ *Id.* at 40, Petition for Review on *Certiorari*.

²¹ *Rollo* (G.R. No. 242489), p. 10, Petition for Review on *Certiorari*.

²² *Id.* at 12, Petition for Review on *Certiorari*.



being confiscatory and unconscionable.²³ ATC claims that the imposition of deficiency interest on top of the delinquency interest already imposed at the rate of 20% *per annum* effectively makes it liable to pay interest at the rate of 40% *per annum*, in addition to the 25% surcharge.²⁴

In a Notice,²⁵ dated July 17, 2019, the Court's Second Division ordered the consolidation of G.R. No. 247397 and G.R. No. 242489.

The Issue

Did the CTA *En Banc* commit any reversible error with regard to its findings as to ATC's tax liability?

The Ruling of the Court

Well settled is the rule that questions of fact are proscribed in Rule 45 petitions.²⁶ The Rules of Court further require that only questions of law should be raised in petitions filed under Rule 45 since factual questions are not the proper subject of an appeal by *certiorari*. It is not the Court's function to once again analyze or weigh evidence that has already been considered in the lower courts²⁷ as this Court is not a trier of facts.²⁸

A question of law exists when doubt or difference arises as to what is the applicable law given a certain set of facts. On the other hand, there is a question of fact when doubt arises as to the truth or falsity of the alleged facts.²⁹

While Rule 45, Section 1 is not absolute, none of the recognized exceptions,³⁰ which allow the Court to review factual issues, is present here. In the present case, the CIR invites the Court to re-evaluate the findings of the CTA First Division and the CTA *En Banc*. However, the CIR failed to show in its Petition that it falls under the recognized exceptions.

The CIR's bare assertion that the "instant petition falls under the recognized exceptions to the general that only questions of law may be raised

²³ *Id.*

²⁴ *Id.* at 12–13.

²⁵ *Rollo* (G.R. No. 247397), p. 23.

²⁶ *Philippine National Police-Criminal Investigation and Detection Group v. P/Supt. Villafrerte*, 840 Phil. 243, 253 (2018) [Per J. Caguioa, *En Banc*].

²⁷ *Sps. Miano, Jr. v. Manila Electric Company*, 800 Phil. 118, 122 (2016) [Per J. Leonen, Second Division].

²⁸ *Microsoft Corporation, et al. v. Farajallah, et al.*, 742 Phil. 775, 785 (2014) [Per Acting C.J. Carpio, Second Division].

²⁹ *Reyes v. Court of Appeals*, 328 Phil. 171, 179 (1996) [Per J. Romero, Second Division].

³⁰ *Lopez v. Saludo*, G.R. No. 233775, September 15, 2021 [Per J. Hernando, Second Division].



in a petition for review on *certiorari* as the findings made by the CTA *En Banc* are contrary to the findings made by the internal revenue officers” deserves scant consideration. The Court, in *Pascual v. Burgos*,³¹ is instructive that parties must demonstrate by convincing evidence that the case clearly falls under the exceptions to the rule:

Parties praying that this court review the factual findings of the Court of Appeals must demonstrate and prove that the case clearly falls under the exceptions to the rule. They have the burden of proving to this court that a review of the factual findings is necessary. Mere assertion and claim that the case falls under the exceptions do not suffice.³²

Thus, for failure of either of the parties, in particular the CIR, to show that the present case falls under any of the recognized exceptions, these Petitions must fail.

In any event, even assuming the Court entertains these Petitions, the same will still fail.

The CTA First Division, as affirmed by the CTA En Banc, is correct in using the effective tax rate of 19.88% tax rate

The CIR argues that the CTA First Division, as affirmed by *En Banc*, erred in ruling that ATC’s unaccounted compensation only amounts to PHP 16,096,409.13. Further, the CIR posits that the CTA First Division should have applied the maximum rate of 32% instead of the effective tax rate of only 19.88% in computing the tax liability of ATC.³³

The Court disagrees. The argument of the CIR has no basis to stand on.

The maximum rate of 32% cannot be simply applied considering the employees who received the compensation include rank and file to top managerial employees, whose graduated tax rates range from 5% to 32%.³⁴ To emphasize, the CIR failed to individually identify the tax rates of the employees of ATC. As aptly explained by the CTA First Division:

³¹ 776 Phil. 167 (2016) [Per J. Leonen, Second Division].

³² *Id.* at 184.

³³ *Rollo* (G.R. No. 247397), p. 40, Petition for Review on *Certiorari*.

³⁴ *Id.* at 122–127, Petition for Review on *Certiorari*.



[The] unaccounted compensation of ₱16,096,409.13 should be subjected to withholding tax on compensation based on the graduated tax rates of 5% to 32%. We note, however, that the BIR used the highest tax rate of 32%, in computing the deficiency withholding tax on compensation. Since the employees to whom the compensation pertained were not individually identified, the appropriate tax rate to be used should be the effective rate computed based on the total withholding tax on compensation paid divided by the total amount of taxable gross compensation reported during the year of 2001, as shown below:

Total Withholding Tax on Compensation	₱ 34,803,195.66
Total Taxable Gross Compensation	+ ₱ 175,094,802.20
Effective Tax Rate	19.88% ³⁵

The Court, in *Commissioner of Internal Revenue v. Liquigaz Philippines Corp.*³⁶ (*Liquigaz*), already recognized the use of effective tax rate when computing for withholding tax on compensation. In *Liquigaz*, the basis for computing the withholding tax on compensation is the total withholding tax on compensation paid and the total taxable compensation income for the taxable year 2005. Thus:

As highlighted by the CTA, the basis for the assessment was the same for the FLD and the FDDA, where the salaries reflected in the ITR and the alphalist were compared resulting in a discrepancy of ₱9,318,255.84. The change in the amount of assessed deficiency withholding taxes on compensation merely arose from the modification of the tax rates used — 32% in the FLD and the effective tax rate of 25.40% in the FDDA. The Court notes it was *Liquigaz* itself which proposed the rate of 25.40% as a more appropriate tax rate as it represented the effective tax on compensation paid for taxable year 2005 . . .³⁷ (Underscoring supplied)

Applying the foregoing in the present case, the CTA First Division properly used the effective tax rate of 19.88% in computing the tax liability of ATC considering the employees, to whom the compensation pertained, were not individually identified. Based on records, the compensation expenses of ATC include payments of benefits covered under the collective bargaining agreement (**CBA**) for non-supervisory labor union to regular managerial and supervisory employees of ATC, as well as other staff not covered in the CBA.³⁸ Logically, therefore, the maximum graduated rate of 32% cannot be simply applied to all unaccounted compensation considering that non-supervisory employees, or rank and file employees, of ATC are not getting that same rate of compensation as compared to regular managerial and supervisory employees.

³⁵ *Id.* at 127–129, CTA First Division Decision.

³⁶ 784 Phil. 874 (2016) [Per J. Mendoza, Second Division].

³⁷ *Id.* at 898–899.

³⁸ *Rollo* (G.R. No. 247397), p. 122, CTA First Division Decision.

Further, to the mind of the Court, the use of effective tax rate is sounder instead of the maximum tax rate of 32%. To emphasize, the present case was tried *de novo* before the CTÁ First Division. Thus, the parties must prove every aspect of their case. However, nothing in the records would show that the employees of ATC were individually identified and that they all belong to the 32% tax bracket. Thus, it is incumbent upon the CIR to prove that the tax courts erred in using the effective tax rate of 19.88%. The CIR did not offer evidence to support its claim that the maximum tax rate of 32% should be applied instead. Such failure to present evidence is fatal to the CIR's cause. In *Dizon v. Court of Tax Appeals*,³⁹ the Court ruled that:

[T]he presentation of the BIR's evidence is not a mere procedural technicality which may be disregarded considering that it is the only means by which the CTA may ascertain and verify the truth of BIR's claims⁴⁰

*ATC is not liable for the
compromise penalty in the
amount of PHP 50,000.00*

The CIR likewise assails the CTA *En Banc*'s finding that ATC should not be accountable for the compromise penalty in the amount of PHP 50,000.00. The CIR argues that the imposition of compromise penalty is sanctioned under Section 250 of the NIRC of 1997 for failure of the withholding agent to file an information or tax return.⁴¹

The CIR's argument is bereft of merit.

In *San Miguel Corp. v. Commissioner of Internal Revenue*⁴² (*San Miguel*), the Court clarified that a compromise penalty should not be imposed if the taxpayer does not agree to a compromise considering that a compromise, by its very nature, must be mutual. Further, the Court explained that since compromise penalties are amounts suggested in the settlement of criminal tax liability, there must first be an imposition of criminal tax liabilities. Otherwise, a compromise penalty should not be imposed and collected. Thus:

[T]he compromise penalty should not be imposed on SMC, as compromise is, by its nature, mutual in essence. The records do not show that SMC agreed to the compromise penalty. This is bolstered by the fact that SMC disputed the assessment made by the CIR. It must also be noted that compromise penalty are amounts suggested in the settlement of criminal tax liability. Since SMC's case does not involve criminal tax

³⁹ 576 Phil. 110 (2008) [Per J. Nachura, Third Division].

⁴⁰ *Id.* at 131.

⁴¹ *Rollo* (G.R. No. 247397), pp. 47–48, Petition for Review on *Certiorari*.

⁴² G.R. Nos. 257697 & 259446, April 12, 2023 [Per J. Singh, Third Division].



liabilities, the compromise penalty should not have been imposed and collected.⁴³

Similar to *San Miguel*,⁴³ the compromise penalty should not be imposed against ATC. The records are bereft of any details as to whether ATC agreed to any compromise agreement. In fact, ATC even contested the assessments made by the BIR and requested for the reconsideration and/or cancellation of the deficiency withholding tax on compensation made by the BIR. Moreover, upon receipt of the Decision of the CIR, ATC immediately filed a Petition for Review before the CTA First Division to assail the Decision of the former. Evidently, these actions that were taken by ATC indicate that no compromise was ever agreed upon. Further, based on record, the present case does not involve criminal tax liabilities. Clearly, considering that the present case does not involve settlement of criminal tax liability by way of compromise, the imposition of a compromise penalty is improper.

The simultaneous imposition of 20% deficiency interest and 20% delinquency interest is in accordance with the prevailing jurisprudence

ATC argues that the CTA *En Banc* erred in the simultaneous imposition of 20% deficiency and 20% delinquency interests as the same is illegal for being confiscatory and unconscionable.⁴⁴

The Court disagrees.

The Court already settled in *Aces Philippines Cellular Satellite Corp. v. Commissioner of Internal Revenue*⁴⁵ the propriety of the simultaneous imposition of both deficiency and delinquency interests. The Court held:

The Court rejects Aces Philippines' theory that the imposition of deficiency interest and delinquency interest, simultaneously, was not the intent of the law. In *Takenaka Corporation Philippine Branch v. Commissioner of Internal Revenue*, the Court explained:

The law is clear. The imposition of deficiency interest and delinquency interest is simultaneous, pursuant to Section 249 (A) (B) (C) of the NIRC, as amended, to wit:

SEC. 249. Interest. —

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ G.R. No. 226680, August 30, 2022 [Per J. Inting, *En Banc*].



(A) In General. — There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) *per annum*, or such higher rate as may be prescribed by rules and regulations, from the date prescribed for payment until the amount is fully paid.

(B) Deficiency Interest. — Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.

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

....

(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.

A cardinal rule in statutory construction is that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application. As the statute is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This is what is known as the plain-meaning rule or *verba legis*. It is expressed in the maxim, *index animi sermo*, or “speech is the index of intention.” Furthermore, there is the maxim *verba legis non est recedendum*, or “from the words of a statute there should be no departure.”

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 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.

Significantly, Congress has since enacted RA 10963, otherwise known as the Tax Reform for Acceleration and Inclusion (TRAIN) Law, which amended the 1997 Tax Code’s interest provision to read:

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 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: Provided, That in no case shall the deficiency and delinquency interest prescribed under Subsections (B) and (C) hereof, be imposed simultaneously.

In brief, the TRAIN Law bars the simultaneous imposition of deficiency and delinquency interests. Instead, interest equal to the prevailing legal rate as set by the Bangko Sentral ng Pilipinas shall accrue on any amount of unpaid tax until it is fully paid.

As pointed out by Associate Justice Japar B. Dimaampao, the Secretary of Finance issued Revenue Regulations No. 21-2018 to implement the above-cited amendments. The issuance instructs:

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%

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.

Associate Justice Samuel H. Gaerlan adds that the Court has since had the occasion to deal with the matter of imposition of deficiency and/or delinquency interest in light of the recent statutory developments. In this regard, the Court's Resolution in *E.E. Black Ltd.-Philippine Branch v. Commissioner of Internal Revenue (E.E. Black Ltd.-Philippine Branch)* is instructive inasmuch as it is consistent with the above-discussed amendments and implementing rules.⁴⁶

Clearly, contrary to ATC's claims, the simultaneous imposition of deficiency and delinquency interests at the rate of 20% *per annum* each until

⁴⁶ *Id.*

December 31, 2017, and the subsequent imposition of delinquency interest at the rate of 12% *per annum* from January 1, 2018 until full payment, is proper.

Accordingly, ATC's claim that it already paid the amount of PHP 7,331,429.28 on October 14, 2016 in compliance with the March 16, 2016 Decision of the CTA First Division cannot be appreciated by the Court as this assertion of payment requires an evaluation of facts and evidence.⁴⁷ As held in *Gios-Samar v. DOTC*,⁴⁸ the Court is not equipped in a Rule 45 Petition, either by structure or rule, to receive and evaluate evidence in the first instance. Thus, the Court cannot simply review the factual claims of ATC without running afoul of its recognized jurisdiction. To reiterate, the Court is not a trier of facts, and it is beyond its function to make its own findings of certain vital facts different from those of the lower court, especially on the basis of the conflicting claims of the parties and without the evidence being properly presented before it.⁴⁹

In any event, even assuming the Court entertains this assertion of payment made by ATC, the claim of payment was merely supported by BIR Form No. 0605⁵⁰ and the screenshot of the BIR eFPS payment confirmation⁵¹ attached to the Petition. The Court, however, notes that BIR Form. No. 0605⁵² is used for various purposes such as for taxes and fees, penalties for income tax, deficiency tax, delinquency tax, registration fees, penalties, advance payments, deposits, installment payments, etc. No original copy nor certified true copy of the receipt evidencing the payment can be found in the records of the present case pertaining to the alleged payment of the liability of ATC pursuant to the March 16, 2016 Decision of the CTA First Division.

Notwithstanding the foregoing, in view of ATC's claim of payment amounting to PHP 7,331,429.28 on October 14, 2016, the Court deems it proper to remand the case to the CTA First Division for reception of evidence for purposes of determining the remaining outstanding tax liabilities of ATC after ascertaining the veracity of the alleged payment made by ATC amounting to PHP 7,331,429.28.

WHEREFORE, the Petition for Review on *Certiorari* in G.R. No. 247397 is **DENIED**, while the Petition for Review on *Certiorari* in G.R. No. 242489 is **PARTLY GRANTED**. The Amended Decision, dated September 24, 2018, and the Resolution, dated May 20, 2019, of the Court of Tax Appeals *En Banc*, in CTA EB No. 1519, are **AFFIRMED WITH**

⁴⁷ *Rollo* (G.R. No. 242489), p. 8, Petition for Review on *Certiorari*.

⁴⁸ 849 Phil. 120 (2019) [Per J. Jardeleza, *En Banc*].

⁴⁹ *Id.* at 162.

⁵⁰ *Rollo* (G.R. No. 242849), p. 203.

⁵¹ *Id.* at 204.

⁵² BUREAU OF INTERNAL REVENUE, at <https://www.bir.gov.ph/images/bit_files/old_files/pdf/1220605.pdf> (last accessed on August 14, 2023).



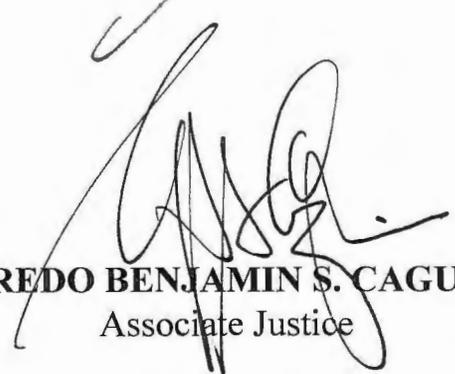
MODIFICATION. The case is **REMANDED** to the Court of Tax Appeals for reception of evidence for purposes of determining the remaining outstanding tax liabilities of Asian Transmission Corporation after ascertaining its alleged payment of PHP 7,331,429.28. The Court of Tax Appeals is directed to dispose of the said case with dispatch.

SO ORDERED.



MARIA FILOMENA D. SINGH
Associate Justice

WE CONCUR:



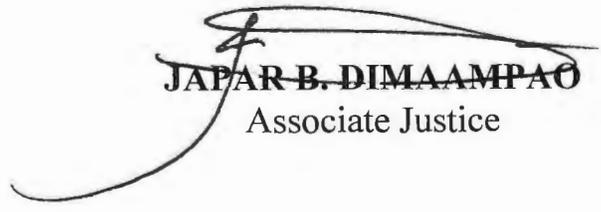
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



HENRI JEAN PAUL B. INTING
Associate Justice



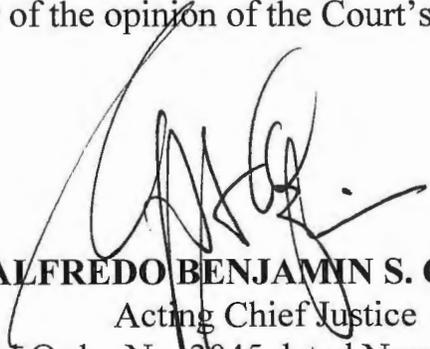
SAMUEL H. GAERLAN
Associate Justice



JAPAR B. DIMAAMPAO
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.



ALFREDO BENJAMIN S. CAGUIOA
Acting Chief Justice

Per Special Order No. 3045 dated November 3, 2023

