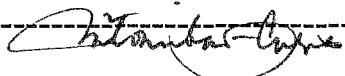


EN BANC

G.R. No. 226680 – ACES PHILIPPINES CELLULAR SATELLITE CORPORATION, *petitioner*, v. THE COMMISSIONER OF INTERNAL REVENUE, *respondent*.

Promulgated:

August 30, 2022

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CONCURRING AND DISSENTING OPINION

LEONEN, J.:

I concur with the *ponencia* that the airtime fees received by Aces Bermuda, a nonresident foreign corporation, constitute income within the Philippines, subject to income taxes. However, I dissent to the simultaneous imposition of the deficiency and delinquency interest on the deficiency final withholding tax assessment.

I

Section 42 of the National Internal Revenue Code of 1997 provides the rules in determining whether a particular income is derived from sources “within” or “without” the Philippines. Under this provision, income from service is considered sourced within the Philippines when the service is performed in the Philippines.

Aces Philippines contends that the air time fees came from sources outside the Philippines because the act of transmission, “the receipt and beaming of satellite signals” takes place abroad, so their *situs* lies outside the Philippines.

Aces Philippines is mistaken. Under the Civil Code, there is performance when “the thing or service in which the obligation consists has been completely delivered or rendered, as the case may be.”<sup>1</sup> Here, from the express terms of the parties’ agreement, service is completely rendered upon the actual connection of calls to or from the Philippines.

Under the Air Time Purchase Agreement, Aces Indonesia/Aces Bermuda grants PLDT/Aces Philippines the exclusive right to sell the Aces services to end-users or subscribers in the Philippines. PLDT/Aces

<sup>1</sup> Civil Code, Article 1233.



Philippines shall pay Aces Indonesia/Aces Bermuda airtime fees for satellite communications time used, "excluding satellite utilization time for all set-up, unanswered calls, and incomplete calls."<sup>2</sup>

In other words, Aces Philippines will be charged/billed only for the successful connection of calls to and from Philippine subscribers. Aces Bermuda will earn income only when the service is completed, i.e. the routed call is received.

The provision of telecommunications services in the country is subject to franchise and licensing requirements.<sup>3</sup> Through Aces Philippines' international gateway facility, Aces Bermuda is able to provide its satellite communication services to end users or subscribers in the Philippines. Aces Bermuda's income source is the business generated by Aces Philippines for the use of Aces communications services. Aces Bermuda benefited from the infrastructures put in place and regulated in the country. Therefore, its income is deemed sourced within the Philippines and is subject to income tax.

## II

The imposition of deficiency and delinquency interest is provided under Section 249 of the National Internal Revenue Code of 1997, as amended:

SECTION 249. *Interest.*—

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

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

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

- (1) The amount of the tax due on any return required to be filed, or
- (2) The amount of the tax due for which no return is required, or
- (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

<sup>2</sup> Ponencia, p. 6.

<sup>3</sup> CONST, art. XII, sec. 11. See also Commonwealth Act No. 146, Section 13(b).

(A) hereof *until the amount is fully paid*, which interest shall form part of the tax[.]

Section 249(B) imposes a 20% per annum deficiency interest for any deficiency tax due, which is computed starting from the date prescribed for its payment *until the full payment thereof*.

Section 249(C), on the other hand, imposes a 20% per annum delinquency interest on the following: (1) when a taxpayer filed a return but failed to pay the tax due thereon; (2) when a taxpayer failed to pay the tax due for which no return is required; or (3) when the Bureau of Internal Revenue issued a notice and demand for the collection of unpaid tax (deficiency tax plus surcharge or interest thereon). Delinquency interest is computed starting from the date indicated in the notice *until the full payment thereof*.

In the old Tax Code,<sup>4</sup> deficiency interest is computed from the date prescribed for payment *until the date the deficiency tax is assessed or upon notice and demand*. Delinquency interest, on the other hand, is collected, from the date of notice and demand until full payment.

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<sup>4</sup> Presidential Decree No. 1158, sec. 51(d), National Internal Revenue Code of 1977 provides:  
SECTION 51. *Payment and Assessment of Income Tax* — . . .

. . . .  
(d) *Interest on deficiency*. — Interest upon the amount determined as a deficiency shall be assessed at the same time as the deficiency and shall be paid upon notice and demand from the Commissioner and shall be *collected* as a part of the tax at the rate of fourteen *per centum per annum* from the date prescribed for the payment of the tax (or, if the tax is paid in installments, from the date prescribed for the payment of the first installment) *to the date the deficiency is assessed*: *Provided*, That the maximum amount that may be collected as interest on deficiency shall in no case exceed the amount corresponding to a period of three years, the present provisions regarding prescription to the contrary notwithstanding.

(e) *Additions to the tax in case of nonpayment*. — (1) *Tax shown on the return*. — Where the amount determined by the taxpayer as the tax imposed by this Title or any installment thereof, or any part of such amount or installment, is not paid on or before the date prescribed for its payment, there shall be collected as a part of the tax, interest upon such unpaid amount at the rate of fourteen *per centum per annum* from the date prescribed for its payment until it is paid: *Provided*, That the maximum amount that may be collected as interest on deficiency shall in no case exceed the amount corresponding to a period of three years, the present provisions regarding prescription to the contrary notwithstanding.

(2) *Deficiency*. — Where a deficiency, or any interest assessed in connection therewith under paragraph (d) of this section, or any addition to the taxes provided for in Section seventy-two of this Code is not paid in full within thirty days from the date of notice and demand from the Commissioner of Internal Revenue, there shall be collected upon the unpaid amount, as part of the tax, interest at the rate of fourteen *per centum per annum* from the date of such notice and demand until it is paid: *Provided*, That the maximum amount that may be collected as interest on deficiency shall in no case exceed the amount corresponding to a period of three years, the present provisions regarding prescription to the contrary notwithstanding.

Commonwealth Act No. 466, sec.51(d), National Internal Revenue Code of 1939, as amended by Republic Act No. 2343 (1959) contains the same provision except for the rate of interest imposed, thus:  
SECTION 51. *Assessment and Payment of Income Tax*. — . . .

. . . .  
(d) *Interest on deficiency*. — Interest upon the amount determined as a deficiency shall be assessed at the same time as the deficiency and shall be paid upon notice and demand from the Commissioner of Internal Revenue; and shall be collected as a part of the tax, at the rate of six *per centum per annum* from the date prescribed for the payment of the tax (or, if the tax is paid in installments, from the date prescribed for the payment of the first installment) to the date the deficiency is assessed: *Provided*, That the maximum amount that may be collected as interest on deficiency shall in no case exceeded the amount corresponding to a period of three years, the present provisions regarding prescription to the contrary notwithstanding.

Because of the way Section 249(B) of the National Internal Revenue Code of 1997 is worded, it may happen that both deficiency and delinquency interest are imposed simultaneously against an erring taxpayer.

To illustrate:

Let us assume that in March 2020, the Bureau of Internal Revenue issued a final notice to X Co. demanding payment of deficiency income tax of ₱100,000.00 for the taxable year 2018. The notice indicates that the deficiency tax, including penalties and interest, must be paid on or before April 15, 2020, and X Co. paid the deficiency tax only on April 15, 2022.

Applying Section 249(B), X Co. is required to pay deficiency interest of 20% computed from April 15, 2019 until April 15, 2022, or a total of ₱60,000.00.

Moreover, since X Co. failed to pay on the due date specified in the final notice, applying Section 249(C), it is required to pay delinquency interest at the rate of 20% computed from April 15, 2020 until April 15, 2022 or a total of ₱48,000.00.<sup>5</sup>

Thus, the deficiency tax of ₱100,000.00 is simultaneously subject to deficiency interest and delinquency interest, in the total amount of ₱100,000.00 (₱60,000.00 + ₱40,000.00). The total amount of interest is, in effect, equal to the basic deficiency tax due. Thus, the amount of deficiency tax assessment could double in just three years because of the overlapping imposition of deficiency and delinquency interest.

Interests are imposed to encourage taxpayers to pay the correct amount of taxes in a timely manner, as well as to compensate the government for the time value of money lost due to delays in the payment of taxes.<sup>6</sup> The collection of interests is not penal but compensatory in nature.<sup>7</sup>

From the example given, the manner of imposition of deficiency interest and delinquency interest under the National Internal Revenue Code of 1997 was confiscatory and oppressive.

In 2018, the Republic Act No. 10963, or the Tax Reform for Acceleration and Inclusion (TRAIN) Law, took effect, which among others, amended Section 249 of the National Internal Revenue Code of 1997:

<sup>5</sup>  $[0.20 \times (P100,000 + P20,000)] \times 2 \text{ years}$ .

<sup>6</sup> *Republic v. Philippine Bank of Commerce*, 145 Phil. 81, 89 (1970) [Per J. Dizon, *En Banc*]. See also *Central Azucarera Don Pedro v. Court of Tax Appeals*, 126 Phil. 685 (1967) [Per J. Reyes, J.B.L., *En Banc*].

<sup>7</sup> *Id.*

SECTION 75. Section 249 of the NIRC, as amended, is hereby further amended to read as follows:

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 from the date prescribed for payment until the amount is fully paid: *Provided, That in no case shall the deficiency and the 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 the full payment thereof, or upon issuance of a notice and demand by the Commissioner of Internal Revenue, whichever comes earlier.* (Emphasis supplied)

Section 75 of the TRAIN Law reverts to the computation of deficiency interest under the old Tax Code.

A comparison of Section 249 under the National Internal Revenue Code of 1997 and the TRAIN Law is shown below:

<b>Interest</b>	<b>NIRC</b>	<b>TRAIN</b>
Rate	20%	Twice the legal rate (6% per BSP Circular No. 799)
Deficiency interest (on the basic deficiency tax due)	From the date prescribed for the payment of the deficiency tax <i>until full payment</i>	From the date prescribed for the payment of the deficiency tax <i>until full payment or upon notice and demand by the Commissioner, whichever comes earlier.</i>
Delinquency interest (on the basic deficiency tax due + penalties and interest)	From the date indicated in the notice and demand until the full payment thereof.	From the date indicated in the notice and demand until the full payment thereof.

Section 75 of the TRAIN Law contains words of positive prohibition – “that in no case shall the deficiency and the delinquency interest . . . be

*imposed simultaneously,*” which is mandatory. The provision is curative<sup>8</sup> in nature. It cures the defect in the wording of Section 249 of the National Internal Revenue Code of 1997 by curbing the oppressive effect of a simultaneous imposition of deficiency and delinquency interest, and hence, should operate retroactively to pending proceedings like this case. “Tax laws must be construed in favor of the taxpayer and strictly against the government.”<sup>9</sup>


Applying retroactively the *proviso* in the amendatory provision will not adversely affect any vested right. It is more in keeping with “right and justice”<sup>10</sup> and the policy<sup>11</sup> of the TRAIN Law to provide equitable relief to taxpayers.

**ACCORDINGLY**, I vote to **PARTIALLY GRANT** the Petition.



**MARVIC M.V.F. LEONEN**  
Senior Associate Justice

**CERTIFIED TRUE COPY**



**MARIA LUISA M. SANTILLA**  
Deputy Clerk of Court and  
Executive Officer  
OCC-En Banc, Supreme Court

<sup>8</sup> *Emcor, Inc. v. Sienes*, 615 Phil. 33, 46 (2009) [Per J. Peralta, Third Division], citing *Narzoles v. NLRC*, 395 Phil. 758 (2000) [Per J. Kapunan, First Division]:

Curative statutes are enacted to cure defects in a prior law or to validate legal proceedings which would otherwise be void for want of conformity with certain legal requirements. They are intended to supply defects, abridge superfluities and curb certain evils. They are intended to enable persons to carry into effect that which they have designed or intended, but has failed of expected legal consequence by reason of some statutory disability or irregularity in their own action. They make valid that which, before the enactment of the statute was invalid. Their purpose is to give validity to acts done that would have been invalid under existing laws, as if existing laws have been complied with. Curative statutes, therefore, by their very essence, are retroactive.

<sup>9</sup> *Commissioner of Internal Revenue v. SM Prime Holdings, Inc.*, 627 Phil. 581, 605 (2010) [Per J. Del Castillo, Second Division]. See also *Michel J. Lhuillier Pawnshop, Inc. v. Commissioner of Internal Revenue*, 522 Phil. 693 (2006) [Per J. Ynares-Santiago, First Division]; *Commissioner of Internal Revenue v. Philippine American Accident Insurance Co., Inc.*, 493 Phil. 785 (2005) [Per J. Carpio, First Division]; *Collector of Internal Revenue v. De Los Angeles*, 101 Phil. 1026 (1957) [Per J. Reyes A., *En Banc*].

<sup>10</sup> CIVIL CODE, art. 10 provides:

Article 10. In case of doubt in the interpretation or application of laws, it is presumed that the lawmaking body intended right and justice to prevail.

<sup>11</sup> Republic Act No. 10963, sec. 2, Tax Reform for Acceleration and Inclusion Law (TRAIN).