REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

THUNDERBIRD PILIPINAS HOTELS AND RESORTS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8612

Members:

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

Promulgated:

DEC 04 2018 9:13 Am

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RESOLUTION

Submitted for this Court's resolution are the following:

1. petitioner's **Omnibus Motion 1. Motion for Partial Reconsideration (of Amended Decision dated September 6, 2018) 2. Entry of Appearance as Collaborating Counsels,** filed on September 24, 2018, without respondent's comment as per Records Verification dated October 25, 2018; and

2. respondent's **Motion for Reconsideration Re: Amended Decision September 6, 2018**, filed on September 25, 2018, with petitioner's **Comment/Opposition (Re: Respondent's Motion for Reconsideration dated 24 September 2018)**, filed on October 22, 2018.

The parties move for the reconsideration of the Amended Decision promulgated on September 6, 2018 (assailed Decision), the dispositive portion of which reads:

"**WHEREFORE**, premises considered, respondent's Motion for Partial Reconsideration Re: Decision dated February 3, 2017 is hereby **DENIED** for lack of merit. While, petitioner's Motion for Reconsideration (Re: Decision dated 03 February 2017) is **PARTIALLY GRANTED**. Accordingly, the Decision dated February 3, 2017 is hereby amended to read as follows:

'**WHEREFORE**, premises considered, the Petition for Review filed on February 19, 2013, is **PARTIALLY GRANTED**. The deficiency SPRT, FWT and DST assessments issued by respondent against petitioner for taxable year 2008 are **CANCELLED** and **SET ASIDE**. However, the deficiency FT and EWT assessments issued by respondent against petitioner for taxable year 2008 are **AFFIRMED with MODIFICATION**. Accordingly, petitioner is **ORDERED TO PAY** the amount of **₱54,976,106.11**, inclusive of the 25% surcharge imposed under Section 248(3) of the NIRC of 1997, as amended, computed as follows:

	Basic	**Surcharge**	**Total**
Franchise Tax (FT)	43,353,088.40	10,838,272.10	54,191,360.50
Expanded Withholding Tax (EWT)	627,796.60	156,949.01	784,745.61
TOTAL	**₱43,980,885.00**	**₱10,995,221.11**	**₱54,976,106.11**

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

a) Deficiency interest at the rate of 20% per annum on the basic deficiency FT and EWT computed from dates below ***until December 31, 2017*** pursuant to Section 249(B) of the NIRC, 1997, as amended:

Tax Type	**Basic Tax**	**20% deficiency interest computed from**
FT	43,353,088.40	January 20, 2009
EWT	627,796.60	January 15, 2009

b) Delinquency interest at the rate of 20% per annum on the total amount of ₱54,976,106.11 and on the 20% deficiency interest which have accrued as aforestated in (a), computed from September 14, 2012 ***until December 31, 2017***, pursuant to Section 249(C) of the 1997 NIRC, as amended.

c) Delinquency interest at the rate of 12% per annum on the total unpaid franchise tax of ₱131,799,327.52 and expanded withholding tax of ₱1,406,951.16 representing basic tax, surcharge, and deficiency interest, as determined above, ***from January 1, 2018 until the amount is fully paid pursuant to Sec. 249(C) of the NIRC of 1997, in relation to Sec. 249(A) of the same Code, as amended by the TRAIN law***.

SO ORDERED.'

SO ORDERED."

Petitioner's Motion for Partial Reconsideration

In its motion, petitioner mainly argues that the Court erred in affirming the deficiency franchise tax issued by respondent against petitioner for taxable year 2008 on the following grounds: (i) that petitioner is not liable for any deficiency 5% franchise tax on its revenues from gaming, as franchise tax is deemed included in petitioner's licenses fees; and (ii) that as a Poro Point Special Economic and Freeport Zone (PPSEFZ)-Registered Enterprise, petitioner should also be allowed to enjoy the exemption from all taxes, upon payment of the 5% special preferential tax rate (SPRT) on its gross revenue under Republic Act (R.A.) No. 7227.

In addition, petitioner prays for the waiver of surcharges, deficiency interests and delinquency interests on franchise tax imposed by the Court in its Amended Decision dated September 6, 2018 since it already paid in good faith the franchise tax to PAGCOR. Accordingly, it is the PAGCOR's obligation to remit the same to the BIR on behalf of the petitioner.

Likewise, Atty. Janice C. Esparrago-Margate and Atty. Tirso L. Taguibao enter their appearance as collaborating counsels for petitioner and respectfully manifest that copies of all Decisions, Orders, Resolutions, notices and other processes issued by the Court and pleadings filed by the parties be also sent at their address at Unit

1503, 15th Floor Taipan Place, F. Ortigas Jr. Road, Ortigas Center, Pasig City 1605.

Before resolving petitioner's Motion for Partial Reconsideration, the Court **NOTES** the entry of appearance of Atty. Janice C. Esparrago-Margate and Atty. Tirso L. Taguibao, as petitioner's collaborating counsels, as well as their manifestation that their office be provided with copies of all Decisions, Orders, Resolutions, notices and other processes issued by the Court and pleadings filed by the parties.

As to petitioner's Motion for Partial Reconsideration, the Court finds the same bereft of merit.

Petitioner argues that it is not liable for subject deficiency franchise tax since it has been paying PAGCOR in good faith the amount equivalent to 25% of gross gaming revenues, which allegedly includes the 20% license fees and 5% franchise tax. Thus, it was PAGCOR's obligation to remit the same to the BIR.

The Court does not agree.

The foregoing issue had already been resolved by this Court in the February 3, 2017 Decision in this wise:

"The License granted by PAGCOR to petitioner states:

"**9. LICENSE FEE.** As an essential condition for this License issued by PAGCOR to THUNDERBIRD PILIPINAS to establish and operate a casino at the PPSEFZ, THUNDERBIRD PILIPINAS must remit to PAGCOR starting from the date the casino commences operations, the following:

Twenty five percent 25% of the monthly aggregate gross gaming revenue of the FIESTA CASINO excluding junket/chipwashing operations plus 25% of the monthly gross gaming revenue generated from third-party chipwashing and/or junket operations;

-or-

a Monthly Minimum License Fee of UNITED STATES DOLLARS: SEVENTY FIVE THOUSAND (US$75,000.00)

> for the first six (6) months period of operation, whichever is higher. The Monthly Minimum License Fee shall be increased to UNITED STATES DOLLARS: ONE HUNDRED TWENTY FIVE THOUSAND (US$125,000.00) for the next six (6)-month period. The Monthly Minimum License Fee shall be increased by five percent (5%) per year on the start of the second year of operation and every year thereafter."
>
> **The Court does not agree with the petitioner's argument that its payment of 25% includes 20% license fee and 5% franchise tax. The 25% license fee/gross gaming revenue paid by petitioner is different and distinct from the franchise tax to which petitioner is being assessed. As clearly stated in its License, the 25% of the gross gaming revenue is being paid by virtue of the License to establish and operate a casino at the PPSEFZ. Nothing in the terms of the License show that such includes 5% franchise tax from its gaming operations.**
>
> **Further, PAGCOR's Official Receipts and Daily Collection Report do not show any breakdown for the 25% PAGCOR's share remitted daily by petitioner. Neither did petitioner show any proof that PAGCOR remitted the corresponding 5% franchise tax it collected from petitioner.**
>
> **Since there was no substantial evidence nor argument presented by petitioner to bolster the same, the Court shall uphold the assessment of the respondent."** (Emphases supplied)

As to the second issue, petitioner, in claiming that it should also be allowed to enjoy the exemption from all taxes, upon payment of the 5% SPRT on its it gross revenue under R.A. No. 7227, cited the legal opinion issued by then Government Corporate Counsel Alberto C. Agra on May 27, 2008, specifically, Opinion No. 110, series of 2008, in which the latter opined that "Section 12 (c) of R.A. No. 7227, as amended by R.A. No. 9400, should prevail over Section 13 (2) of P.D. No. 1869 (PAGCOR Charter) insofar as the tax exemption privileges of casino operators located within the Special Economic Zone is concerned."

Petitioner erred in relying solely on the said opinion since the Office of the Government Corporate Counsel is bereft of any authority to implement or interpret tax laws.

The Court cannot also grant petitioner's prayer for the waiver of surcharges, deficiency interests and delinquency interests on franchise tax imposed by this Court in our Amended Decision dated September 6, 2018 since the imposition of the same is mandatory under Sections 248 and 249 of the 1997 National Internal Revenue Code, as amended. The intention of the law is to discourage delay in the payment of taxes due the Government. In this sense, the surcharge and interest are not penal but compensatory, for the concomitant use of funds by the taxpayer beyond the date where he is supposed to have paid them to the government.[1]

Respondent's Motion for Reconsideration

In his motion, respondent argues (i) that the Court erred in ruling that petitioner is not liable for SPRT on undeclared gross revenue amounting to ₱90,755,618.00 and misapplied the PAGCOR case in the present case; (ii) that petitioner is liable to pay the assessed Documentary Stamp Tax; (iii) that withholding tax is not an internal revenue tax but is only a system used to collect income tax in advance, thus, the period within which to assess finds no application in the present case; and (iv) that petitioner is liable to pay the assessed deficiency expanded withholding related to the item "give away marketing" in the amount of ₱118,727.60

The Court finds no merit in respondent's motion.

A cursory reading of the foregoing arguments presented by respondent readily reveals that no new matters or issues have been raised and that they deal with the very same issues which have been thoroughly passed upon at length in the Decision[2] dated February 3, 2017, as well as in the assailed Decision dated September 6, 2018. Thus, to discuss them anew is superfluity.

In the case of *Shangri-La International Hotel Management, Ltd., et al. vs. Developers Group of Companies, Inc.*[3], the Supreme

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[1] *Philippine Refining Company vs. Court of Appeals et al.,* G.R. No. 118794, May 8,1996; *Republic vs. Lim Tian Teng Sons & Co., Inc.*, G.R. No. L-21731, March 31, 1966.
[2] Docket, vol. V, pp. 2036-2038.
[3] G.R. No. 159938, January 22, 2007.

denied respondent's Motion for Reconsideration for being a mere reiteration of their previous arguments and for failure to raise matters substantially plausible or compellingly persuasive to warrant the reversal of the assailed Decision, to wit:

> "The bulk of the aforementioned grounds is a mere rehash of movant's previous arguments. While DGCI is correct in stating that a motion for reconsideration, by its very nature, may tend to dwell on issues already resolved in the decision sought to be reconsidered and that this should not be an obstacle for a reconsideration, the hard reality is that movant has failed to raise matters substantially plausible or compellingly persuasive to warrant the desired course of action.
>
> Considering that the grounds presently raised have been sufficiently considered, if not squarely addressed, in the subject Decision, it behooves movant to convince the Court that certain findings or conclusions in the Decision are contrary to law. As it is, however, the instant motion does not raise any new or substantial legitimate ground or reason to justify the reconsideration sought."

WHEREFORE, petitioner's **Motion for Partial Reconsideration (of Amended Decision dated September 6, 2018)** and respondent's **Motion for Reconsideration Re: Amended Decision September 6, 2018** are both **DENIED** for lack of merit.

SO ORDERED.

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

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice