REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
QUEZON CITY

**THIRD DIVISION**

IP CONTACT CENTER OUTSOURCING, INC.,
Petitioner,

-versus-

HON. COMMISSIONER KIM S. JACINTO-HENARES, HON. NESTOR S. VALEROSO, Regional Director, Revenue Region No. 8,
Respondents.

CTA CASE NO. 8605

Members:

BAUTISTA, *Chairperson*
FABON-VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

JUL 13 2016
4:07 p.m.

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**RESOLUTION**

***Fabon-Victorino, J.*:**

For resolution are the following incidents:

1) Motion for Partial Reconsideration (of the 18 April 2016 Decision) dated May 12, 2016, filed by petitioner

2) Motion for Reconsideration (of the Decision dated 18 April 2016) dated May 12, 2016, filed by respondent Commissioner of Internal Revenue [CIR]

3) Supplemental Motion for Reconsideration (of the Decision dated 18 April 2016) dated May 20, 2016 filed by respondent CIR.

In their respective motions, both petitioner and respondent CIR pray for the reconsideration of the Decision dated April 18, 2016 which partially granted the Petition for Review resulting in the cancellation of respondents' assessment for deficiency VAT for the year 2008, but affirmed with modifications the assessment for deficiency Income Tax (IT) and Expanded Withholding Tax (EWT) for the same taxable year.

Petitioner anchors its motion on the following grounds: (a) that it is not liable for deficiency IT since the receipts allegedly not subjected to IT have already been accounted for and subjected to tax as shown in the schedule of adjusting entries for the year 2008; and, (b) that it is not liable for deficiency EWT on professional fees as they were payments to general professional partnerships not subject to withholding tax.

Respondents did not file any comment or opposition to petitioner's Motion despite notice.[1]

Respondent CIR's Motion for Reconsideration and its Supplement are hinged on the sole ground that the assessment for receipts not subjected to VAT is valid since petitioner had been informed of the law and the facts upon which the questioned assessment for deficiency VAT was based during their Informal Conference. Allegedly, petitioner even filed a Letter dated September 26, 2011, found in the BIR record although not offered in evidence, disputing the findings of the auditors pertaining to the assessment for deficiency VAT, suggesting that petitioner was aware of the basis of the said assessment.

By way of comment, petitioner points out under Section 228 of the National Internal Revenue Code (NIRC), as amended, and its implementing rules, it is upon respondents and not petitioner as taxpayer, to state the facts, the law and the rules and regulations, as well as jurisprudence, upon which the assessment is based. Petitioner's letter dated September 26, 2011 is therefore insignificant as it does not provide the basis upon which the assessment was made, contrary to respondent CIR's insinuation. Besides, the said letter was not offered in evidence, hence, cannot be used for or against any party litigant. In fine, there was failure on the part of respondents to provide the law and the facts rendering the assessment for VAT null and void. The same holds true with the assessment for VAT on unaccounted rent expense, wherein respondents also failed to inform

[1] Records of Verification dated June 24, 2016 of the Judicial Records Division of the Court

petitioner of the law and the facts surrounding the said assessment.

Finally, the Supplemental Motion is void for having been filed beyond the reglementary period. Admittedly, respondent CIR received the assailed Decision on April 27, 2016. Thus, respondent CIR had fifteen (15) days or until May 12, 2016 to file a motion for reconsideration. However, the Supplemental Motion filed on May 23, 2016, and received by petitioner on May 30, 2016, was undeniably filed out of time, and is deemed a second motion for reconsideration which should not be entertained by the Court.

Evidently, the arguments of the parties are not fresh as they are mere reiteration of their previous which had been amply discussed and addressed in the assailed Decision of April 18, 2016. There being no compelling reason put forward by any of the parties to convince the Court to modify, much less reverse its ruling, the same should be denied.

**WHEREFORE,** petitioner's Motion for Partial Reconsideration (of the 18 April 2016 Decision) dated May 12, 2016, and respondent CIR's Motion for Reconsideration (of the Decision dated 18 April 2016) dated May 12, 2016 and Supplemental Motion for Reconsideration (of the Decision dated 18 April 2016) dated May 20, 2016, are hereby **DENIED**, for lack of merit.

**SO ORDERED.**

ESPERANZA R. FABON-VICTORINO
Associate Justice

*We concur:*

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice