REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
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ENJAY HOTELS, INC., Petitioner,	**CTA Case No. 8545**
	Members:
- versus -	**DEL ROSARIO,** P.J., **UY,** and **MINDARO-GRULLA,** JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** AUG 02 2016; 1:41 p.m.

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RESOLUTION

UY, J.:

For resolution are the following Motions:

1. Petitioner's **"MOTION FOR PARTIAL RECONSDERATION"** filed on February 12, 2016, without respondent's comment thereto, despite due notice; and

2. Respondent's **"MOTION FOR PARTIAL RECONSDERATION"** filed on February 15, 2016, with petitioner's **"COMMENT"** filed on April 21, 2016.

Both Motions seek the partial reconsideration of this Court's Decision dated January 28, 2016, the dispositive portion of which reads:

> "**WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is hereby **PARTIALLY GRANTED**.
>
> Accordingly, petitioner is **ORDERED TO PAY** respondent the amount of **₱5,553,132.53**, representing

the amount still due after petitioner's partial payment of its income tax liability on August 1, 2013, including surcharges and interests imposed under Section 248(A)(3) and Section 249(B) and (C), respectively, both of the NIRC of 1997, computed as follows:

Basic deficiency income tax for CY 2008		₱ 3,502,146.74
Add: 25% Surcharge	₱ 875,536.69	
20% Deficiency interest from April 15, 2009 to August 1, 2013 (₱3,502,146.74 x 20% x 1,569/365)	3,010,886.70	
20% Delinquency interest from June 30, 2012 to August 1, 2013 [(₱3,502,146.74+₱875,536.69+ ₱3,010,886.70) x 20% x 397/365]	1,607,267.04	5,493,690.43
Total amount due		₱ 8,995,837.17
Less: Partial Payment on August 1, 2013		3,442,704.64
Amount Still Due After the Payment made on August 1, 2013		**₱ 5,553,132.53**

In addition to the said amount, petitioner is **ORDERED TO PAY** the following:

1. Deficiency interest on the amount of ₱5,553,132.53 at the rate of 20% *per annum* from August 1, 2013 until the full payment thereof, pursuant to Section 249(B) of the NIRC of 1997.

2. Delinquency interest on the same amount of ₱5,553,132.53 at the rate of 20% *per annum* from August 1, 2013 until the full payment thereof, pursuant to Section 249(C) of the NIRC of 1997.

SO ORDERED."

Petitioner invokes the following grounds in its Motion, to wit:

"I.

THIS HONORABLE COURT ERRED IN NOT FINDING THAT PETITIONER'S RIGHT TO DUE PROCESS WAS VIOLATED WHEN THE RESPONDENT ISSUED FINAL DECISION ON AUGUST 23, 2012.

II.

THIS HONORABLE COURT ERRED IN NOT FINDING THAT RESPONDENT'S FINAL DECISION LACKS FACTUAL AND LEGAL BASIS AND THEREFORE NULL AND VOID.

III

THIS HONORABLE COURT ERRED IN NOT ORDERING THE CANCELLATION OF THE DEFICIENCY INCOME TAX ASSESSMENT ISSUED AGAINST THE PETITIONER FOR CALENDAR YEAR 2008."[1]

In this connection, petitioner argues that its right to due process was violated; that this Court has no jurisdiction to rule on the issue of Disallowed Rental Income; and that revenues from parking fees are part of the registered activity and entitled to Income Tax Holiday incentive.

Upon the other hand, respondent, in his Motion, contends that petitioner has not established the authenticity of the letters dated October 19, 2012 and February 28, 2013 of the Board of Investments, marked as Exhibits "P-13" and "P-15", respectively. Thus, according to respondent, they have no probative value in the determination of the propriety of the assessment against petitioner.

THE COURT'S RULING

Both Motions lack merit.

Petitioner failed to present any argument, in its Motion, to convince this Court to modify the assailed Decision. Except for the allegation that petitioner's right to due process was violated when respondent issued the Final Decision on Disputed Assessment (FDDA) on August 23, 2012, a cursory reading of petitioner's Motion Partial for Reconsideration shows that the arguments raised therein have already been sufficiently passed upon and exhaustively discussed in the assailed Decision.

To reiterate, the Court held and has sufficiently discussed, in the assailed Decision, that:

[1] Docket – Vol. II, pp. 794 to 795.

1. This Court has jurisdiction to rule on the issue of the disallowed rental income; and

2. The parking fees are correctly classified by the Bureau of Internal Revenue (BIR).

In any event, the contention of petitioner that its right to due process of law was violated deserves scant consideration.

Petitioner argues that its right to due process was violated by the premature issuance of the FDDA dated August 23, 2012. According to petitioner, the following are the justifications to show petitioner's right to due process was violated and that the issuance of the FDDA is null and void, to wit:

1. Respondent was properly informed by petitioner that there is still a pending case involving the same issues with the Board of Investments (BOI) and later on with the Office of the President (OP);
2. Petitioner was not given the opportunity to submit the necessary supporting documents within the sixty (60)-day period as required under Section 3.1.5 of Revenue Regulations (RR) No. 12-99;
3. When petitioner elevated the FDDA to the Office of respondent through a Request for Reconsideration, petitioner again informed respondent about the pending case within BOI which would clearly affect her decision; and
4. Petitioner presented sufficient evidence to prove that there was a pending case with the BOI involving the same issues.

It is noteworthy that the first, third and fourth supposed justifications are apparently premised on the assumption that the final ruling of the BOI and OP must be awaited before the BIR can issue its ruling on the matter. As already pointed out in the assailed Decision, under Section 4 of the National Internal Revenue Code of 1997, the power to decide disputed assessments is vested in the Commissioner of Internal Revenue (CIR) alone, subject only to the exclusive appellate jurisdiction of this Court. Thus, petitioner cannot find solace on the said supposed justifications.

As for the second alleged justification formulated by petitioner that it was not given the opportunity to submit the necessary supporting documents within the sixty (60)-day period as required under Section 3.1.5 of RR No. 12-99, the same is likewise untenable.

In *Securities and Exchange Commission vs. Universal Rightfield Property Holdings, Inc.*,[2] the Supreme Court held:

> "The Court has consistently held that **the essence of due process is simply an opportunity to be heard**, **or as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of. Any seeming defect in its observance is cured by the filing of a motion for reconsideration, and denial of due process cannot be successfully invoked by a party who has had the opportunity to be heard on such motion.** What the law prohibits is not the absence of previous notice, but the absolute absence thereof and the lack of opportunity to be heard." *(Emphases supplied)*

In this case, it is without question that the FDDA dated August 23, 2012 was issued within sixty (60) days from the time petitioner filed the protest thereto on June 26, 2012, and before it could submit all relevant supporting documents to the protest, *i.e.*, on August 24, 2012. However, such seeming defect is cured by petitioner's filing of a Request for Reconsideration of the said FDDA on September 24, 2012 before the respondent CIR.[3] Correspondingly, petitioner was given the opportunity to be heard on such Request for Reconsideration. Thus, there was no violation of petitioner's right to due process.

As regards the arguments of respondent in his Motion, the same have likewise been addressed and laid to rest in this Court's Resolution dated September 22, 2014.[4]

WHEREFORE, in light of the foregoing considerations, petitioner's Motion for Partial Reconsideration and respondent's Motion for Partial Reconsideration are both **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

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[2] G.R. No. 181381, July 20, 2015.
[3] Refer to Exhibit "P-5", Docket-Vol. I, p. 480.
[4] Docket-Vol. II, pp. 695 to 697.

WE CONCUR:

ON LEAVE	Cielito N. Mindaro-Grulla
ROMAN G. DEL ROSARIO	**CIELITO N. MINDARO-GRULLA**
Presiding Justice	Associate Justice