Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 1498** (CTA Case No. 8545)
- versus -	
ENJAY HOTELS, INC., Respondent.	

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ENJAY HOTELS, INC., Petitioner,	**CTA EB No. 1500** (CTA Case No. 8545)
	Present:
-versus -	**DEL ROSARIO,** *PJ,* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** *and* **MANAHAN,** ***JJ***
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** MAY 22 2018 3:31 p.m.

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DECISION

CASANOVA, *J.*:

These are consolidated appeals, *via* Petitions for Review, respectively filed, through registered mail, on September 5, 2016 by the

Commissioner of Internal Revenue[1] and by Enjay Hotels, Inc.[2] on September 2, 2016, pursuant to Section 2 (a)(1)[3] Rule 4 of the Revised Rules of the Court of Tax Appeals[4] (RRCTA). Both Petitions for Review seek partial reconsideration of the Decision[5] dated January 28, 2016, and Resolution[6] dated August 2, 2016, rendered by the First Division of the Court of Tax Appeals (CTA), which ordered Enjay Hotels, Inc. to pay the amount of ₱5,553,132.53, excluding interests, representing its deficiency income tax for calendar year (CY) 2008.

The Commissioner of Internal Revenue (CIR) is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), vested with the authority to act as such, including, inter alia, the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the tax laws. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On the other hand, Enjay Hotels, Inc. ("EHI" for brevity) is a domestic corporation organized and existing under Philippine laws, with office address at 19th Floor, Tower One & Exchange Plaza, Ayala Triangle, Ayala Avenue, Makati City. It is primarily engaged in the general business of a hotel, resort, apartment, and doing business under the name "InterContinental Manila". It is also a duly registered taxpayer with the BIR as evidenced by its BIR Certificate of Registration with TIN No. 000-158-109-000.

On March 5, 2007, the Board of Investments (BOI), as per Certificate of Registration No. 2007-033, approved EHI's application as an Operator of Tourist Accommodation Facilities under the BOI's Modernization Program. As such, EHI was given both fiscal and non-fiscal incentives for the project, such as an Income Tax Holiday (ITH)

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[1] CTA *En Banc* Rollo (CTA EB No. 1498), pp. 8-22.
[2] CTA *En Banc* Rollo (CTA EB No. 1500), pp. 102-141.
[3] "**SEC. 2.** *Cases within the jurisdiction of the Court en banc.* – The Court en banc shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:

(1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;".

[4] Administrative Matter No. 05-11-07-CTA, November 22, 2005.
[5] Division Docket, Vol. II (CTA Case No. 8545), pp. 763-793.
[6] *Ibid.*, pp. 852-857.

benefit for three (3) years pursuant to its being a BOI-registered enterprise.

Thereafter, pursuant to a Memorandum of Assignment No. ITH-125-2011 dated July 13, 2011, the BIR's Revenue Officer Malik D. Dimakuta was authorized to conduct an audit/verification of EHI's ITH incentive for taxable year 2008.

As such, on September 7, 2011, the BIR issued a Notice of Informal Conference informing EHI that as per result of their income tax audit for CY 2008, EHI's deficiency income amounts to ₱5,013,015.97.

Then, a Preliminary Assessment Notice (PAN) dated January 11, 2012, was issued by the BIR assessing EHI for deficiency income tax in the total amount of ₱7,797,650.22.

On January 31, 2012, EHI filed a letter with the BIR contesting the said PAN.

On May 28, 2012, EHI received a Formal Letter of Demand (FLD) with Details of Discrepancies and Audit Result/Assessment Notice No. LTRAD2-IT-2008-0017 dated May 23, 2012 from the BIR Large Taxpayers Service. EHI was assessed of deficiency income tax in the amount of ₱8,211,369.54 for CY 2008.

On June 26, 2012, EHI filed a protest letter, impugning the validity of the deficiency income tax assessment issued against it.

The BIR then issued on August 23, 2012 a Final Decision on Disputed Assessment (FDDA), which EHI received on even date, denying the protest letter. The FDDA computed EHI's deficiency income tax as follows:

	ITH Rate	**Regular Rate**	**Total**
Adjusted Taxable Income	₱58,230,648.45	₱60,386,007.05	₱118,616,691.50
INCOME TAX DUE			
Tax Due (regular rate of 35%)	20,380,739.56	21,135,102.47	41,515,842.03
Less ITH rate (24.4401%)	4,981,073.13	-	4,981,073.13
Basic Income Tax Due	₱15,399,666.43	₱21,135,102.47	₱36,534,768.90

Less: Total Income Tax Credits			31,534,518.84
Basic Deficiency Income Tax Due			₱ 5,000,250.06
Add: Interest			3,422,088.94
INCOME TAX STILL DUE			**₱8,422,339.00**

On September 26, 2012, EHI filed a Petition for Review with the CTA-Division praying that the foregoing FDDA be declared null for being premature and defective.

On January 2, 2013, EHI filed with the CTA-Division a Manifestation and Omnibus Motion with a prayer for the suspension of the proceedings of the present case. EHI reasons that it has a pending motion for reconsideration with the BOI over its previously denied income as part of its ITH incentive. However, the same was denied by the court as per hearing dated January 17, 2013.

Meanwhile, in a letter-decision dated February 28, 2013, the BOI determined that, in addition to its previously allowed registered activities, the following were also considered part of EHI's ITH entitlement, *viz.* – broadband services; in-house video; and, hotel guest's parking fees, including valet services.

Consequently, EHI wrote a letter to the BIR on March 7, 2013, requesting for a re-computation of its deficiency tax assessments and further proposed a partial settlement thereof but, excluding the items that were still being contested before the BOI, *to wit:* rental income, handling fee, income from broadband services, parking fee, and in-house video.

In his letter-reply dated June 27, 2013, the CIR declined EHI's proposal since the matter is already pending with the CTA-Division. However, the CIR informed EHI that it may voluntarily settle any undisputed tax assessments to stop the running of interest penalty.

Hence, on August 5, 2013, EHI sent a letter to the CIR informing him of its partial payment of the deficiency income tax assessment in the amount of ₱3,442,704.64.

Thereafter, trial ensued.

On January 28, 2016, the CTA-Division promulgated its Decision[7], partially granting EHI's Petition for Review. The dispositive portion of the said Decision reads as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is hereby **PARTIALLY GRANTED**.
>
> Accordingly, [*EHI*] is **ORDERED TO PAY** [*CIR*] the amount of **₱5,553,132.53**, representing the amount still due after [*EHI*]'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, [*EHI*] is **ORDERED TO PAY** 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 full payment thereof, pursuant to Section 249(C) of the NIRC of 1997.

[7] *Supra* No. 5.

SO ORDERED."

On February 12, 2016, EHI filed a Motion for Partial Reconsideration[8]. The CIR, on his part, filed on February 15, 2016 a Motion for Partial Reconsideration[9].

On August 2, 2016, the CTA-Division rendered the assailed Resolution [10] which denied both parties' Motions for Partial Reconsideration for lack of merit.

Undaunted, both parties elevated the matter to the Court *En Banc via* the instant Petitions for Review. On September 2, 2016, EHI filed its Petition for Review which was docketed as CTA EB No. 1500, while the CIR filed his Petition for Review, through registered mail, on September 5, 2016 and was docketed as CTA EB No. 1498.

In a Resolution[11] dated October 3, 2016, the Court *En Banc* ordered the CIR to file his comment on EHI's Petition for Review within ten (10) days from receipt of said Resolution. While, on the other hand, in a Resolution[12] dated October 21, 2016, EHI was likewise ordered by the Court *En Banc* to file its comment on the CIR's Petition for Review.

Thereafter, on October 27, 2016, the Court *En Banc* issued a Minute Resolution[13] resolving to consolidate CTA EB No. 1500 with CTA EB No. 1498, the case bearing the lower docket number, pursuant to Section 1[14], Rule 31of the Revised Rules of Court.

On December 15, 2016, EHI filed a Motion to Admit Comment[15] praying that the Court *En Banc* admit the comment attached in its

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[8] Division Docket, Vol. II (CTA Case No. 8545), pp. 794-814.
[9] *Ibid.*, pp. 815-820.
[10] *Supra* No. 6.
[11] CTA *En Banc* Rollo (CTA EB No. 1500), pp. 143-144.
[12] CTA *En Banc* Rollo (CTA EB No. 1498), pp. 69-70.
[13] *Ibid.*, p. 71.
[14] **SECTION 1.** *Consolidation.* — When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.
[15] CTA *En Banc* Rollo (CTA EB No. 1498), pp. 80-89.

Motion. The CIR, on the other hand, failed to file his comment as per Records Verification[16] dated December 27, 2016.

Then, on January 25, 2017, the Court *En Banc* issued a Resolution[17] admitting EHI's comment as part of the records of the case. The Court *En Banc* also gave due course to the Petitions for Review and further granted a period of thirty (30) days within which the parties may file their respective memoranda.

In compliance, EHI filed its Memorandum[18] on April 17, 2017 while, the CIR failed to file his as per Records Verification[19] dated April 19, 2017. Consequently, in a Resolution[20] dated May 22, 2017, the Court *En Banc* deemed the consolidated cases submitted for decision.

Meanwhile, on June 22, 2017, the CIR filed a Motion to Admit Attached Memorandum with Entry of Appearance[21]. The CIR claims that his failure to comply with the court's directive was due to mere inadvertence. As such, he, therefore, begs the indulgence of the Court to admit his Memorandum and, also, enter the appearance of his special counsel.

Accordingly, in a Resolution[22] dated July 24, 2017, the Court *En Banc* noted the entry of appearance of the CIR's special counsel, Atty. Niña Suzette M. Mendoza. However, his Motion to Admit Attached Memorandum was denied for lack of merit.

In its Petition for Review (CTA EB No. 1500), EHI respectfully assigns the following errors[23] allegedly committed by the CTA-Division, *viz.:*

I.

THE HONORABLE COURT'S FIRST DIVISION COMMITTED AN ERROR IN FINDING THAT IT HAS JURISDICTION TO RULE ON THE DISALLOWED RENTAL INCOME DESPITE THE FACT THAT

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[16] *Ibid.,* p. 90.
[17] *Id.,* pp. 92-94.
[18] *Id.,* 99-134.
[19] *Id.,* p. 135.
[20] *Id.,* pp. 137-138.
[21] *Id.,* pp. 139-152.
[22] *Id.,* pp. 154-157.
[23] Assignment of Errors, Petition for Review, CTA *En Banc* Rollo (CTA EB No. 1500), p. 110.

THE SAME ISSUE IS ON APPEAL WITH THE OFFICE OF THE PRESIDENT.

II.

ASSUMING FOR THE SAKE OF ARGUMENT THAT THE HONORABLE COURT'S FIRST DIVISION HAS JURISDICTION TO RULE ON THE DISALLOWED RENTAL INCOME, STILL THE HONORABLE COURT'S FIRST DIVISION COMMITTED AN ERROR IN NOT CANCELLING THE DEFICIENCY INCOME TAX ASSESSMENT ON DISALLOWED RENTAL INCOME FOR LACK OF FACTUAL AND LEGAL BASIS *[sic]*.

III.

THE HONORABLE COURT'S FIRST DIVISION COMMITTED AN ERROR IN FINDING THAT [*EHI*]'S RIGHT TO DUE PROCESS WAS NOT VIOLATED WHEN [*CIR*] ISSUED THE FINAL DECISION ON DISPUTED ASSESSMENT ON AUGUST 23, 2012.

IV.

THE HONORABLE COURT'S FIRST DIVISION COMMITTED AN ERROR IN NOT ORDERING THE CANCELLATION OF THE DEFICIENCY INCOME TAX ASSESSMENT ISSUED AGAINST THE [*EHI*] FOR CALENDAR YEAR 2008.

Conversely, the CIR raised the following issues[24] in his Petition, *viz.*:

1. WHETHER THE BOI LETTERS WERE DULY AUTHENTICATED IN THE PROCEEDINGS BEFORE THE HONORABLE COURT-IN DIVISION;

2. WHETHER [*EHI*] IS LIABLE TO PAY THE REGULAR CORPORATE INCOME TAX ON ITS INCOME FROM HANDLING FEE, BROADBAND SERVICES AND IN-HOUSE VIDEO.

In support of its assertions, EHI claims that, contrary to the pronouncement in the assailed Decision, it is in fact the BOI that has exclusive jurisdiction to rule on whether a particular source of revenues is part of the registered activity entitled to ITH incentive. EHI cites Article 7 No. 4 of Executive Order (EO) No. 226[25], as amended, in

[24] Issue, Petition for Review, CTA *En Banc* Rollo (CTA EB No. 1498), pp. 12-13.
[25] "THE OMNIBUS INVESTMENT CODE OF 1987", dated July 16, 1987.

relation to Administrative Order (AO) No. 22[26] which provides that the power to implement and interpret investment plans is exclusively lodged with the BOI. More so, since the authority to implement and regulate investment plans, such as ITH, is exclusively given to the BOI and not to the BIR, the latter's authority is limited to collection of taxes. It, therefore, follows that the validity and factual bases of any deficiency income tax assessment on disallowed rental income, which is part of the ITH, rests primarily with the BOI. With regard to the allegation that the CIR violated its right to due process, EHI claims that the FDDA dated August 23, 2012 was invalid for being issued with incomplete material facts because, at the time of its issuance, there is still a pending matter before the BOI regarding issues which would make a tax assessment enforceable. As such, for prematurely issuing the FDDA, the CIR failed to observe EHI's right to due process enunciated under Revenue Regulations (RR) No. 12-99[27], as amended. Lastly, EHI insists that the CTA-Division committed an error in not giving evidentiary weight to the notarized certification issued by the Area Director for Finance & Business Support of InterContinental Manila which would have cancelled EHI's revenues from parking fee in the amount of ₱491,299.36.

On the other hand, the CIR mainly argues that EHI's income from handling fee, broadband services, and in-house video must be subjected to regular corporate income tax. He continues that, since the BOI letter-decisions dated October 18, 2012[28] and February 28, 2013[29], respectively, were not sufficiently authenticated in accordance with Section 19, in relation to Section 23, of Rule 132 of the Rules of Court, such failure therefore immediately bars any attempt to explore the contents of the said documents.

Accordingly, the foregoing issues can essentially be summarized into two main issues, viz.: *WHETHER THIS CTA-DIVISION HAS JURISDICTION TO ENTERTAIN THE PRESENT CASE;* and, *WHETHER EHI IS LIABLE FOR DEFICIENCY INCOME TAX FOR CALENDAR YEAR 2008.*

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[26] "PRESCRIBING RULES AND REGULATIONS GOVERNING APPEALS TO THE OFFICE OF THE PRESIDENT OF THE PHILIPPINES", dated October 11, 2011.
[27] "IMPLEMENTING THE PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE OF 1997 GOVERNING THE RULES ON ASSESSMENT OF NATIONAL INTERNAL REVENUE TAXES, CIVIL PENALTIES AND INTEREST AND THE EXTRA-JUDICIAL SETTLEMENT OF A TAXPAYER'S CRIMINAL VIOLATION OF THE CODE THROUGH PAYMENT OF A SUGGESTED COMPROMISE PENALTY", dated September 6, 1999.
[28] Exhibit "P-13".
[29] Exhibit "P-15".

Accordingly, after careful review of the records of the present consolidated cases, *We* find no merit in both Petitions for Review.

THE CTA HAS JURISDICTION TO ENTERTAIN THE PRESENT CASE.

Verily, jurisdiction refers to the power of a court to hear and determine a case - to ascertain whether or not a court has jurisdiction, the provisions of the law should be inquired into. The CTA, being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction.[30] Section 7(a)(1) of Republic Act (RA) No. 1125[31], as further amended by RA No. 9282, provides that:

> "**Sec. 7. Jurisdiction.** — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;" *(Emphasis Ours)*

Evidently, it is the CIR's decision, or inaction as the case maybe, involving disputed assessments that is cognizable by this Court. In the present consolidated cases, since EHI timely appealed the CIR's final decision involving a disputed assessment to the CTA, this Court validly exercised its appellate jurisdiction to review by appeal the present consolidated cases.

- ***Authority to rule on EHI's disallowed rental income***

While submitting to this Court's jurisdiction, EHI, nonetheless, questions this Court's authority to rule on the issue of the disallowed rental income in the amount of ₱18,959,856.00. EHI argues that the authority to rule on whether the lease rental income is part of its ITH

[30] Allied Banking Corporation vs. CIR, G.R. No. 175097, February 5, 2010.
[31] "An Act Creating the Court of Tax Appeals".

incentive exclusively belongs to the BOI and, now, to the Office of the President by way of appeal.

However, *We* are not convinced.

Unfortunately, EHI's reliance on Article 7 (4) of EO No. 226, in relation to AO No. 22, in giving BOI the exclusive power to decide on the propriety of an item being subjected to assessment as a fiscal incentive matter to the exclusion of the CIR, is misplaced.

In the first place, there is no conflict between EO No. 226, otherwise known as "The Omnibus Investments Code of 1987", as amended, in relation to AO No. 22 which is entitled "Prescribing Rules and Regulations Governing Appeals to the Office of the President of the Philippines", and that of Republic Act (RA) No. 8424, otherwise known as "An Act Amending the National Internal Revenue Code, as amended, and for Other Purposes" or the Tax Reform Act of 1997, as amended. The relevant provisions of EO No. 226 and RA No. 8424 on the issue at hand are quoted hereafter, as follows:

Article 7 (4) of EO No. 226

"**ARTICLE 7.** *Powers and Duties of the Board. — x x x*

(4) After due hearing, **decide controversies concerning the implementation of the relevant books of this Code that may arise between registered enterprises or investors therein and government agencies**, within thirty (30) days after the controversy has been submitted for decision: Provided, That the investor or the registered enterprise may appeal the decision of the Board within thirty (30) days from receipt thereof to the President;" *(Emphasis Ours)*

Section 4 of RA No. 8424

"**SEC. 4.** *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases* — The power to **interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner**, subject to review by the Secretary of Finance.

> The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals." *(Emphasis Ours)*

Secondly, though both are government agencies, each has its own mandate. The BOI, under the Department of Trade and Industry (DTI), is an agency mandated to promote and generate investments and improves the image of the Philippines as a viable investment destination. It pursues a planned, economically feasible, and practicable dispersal of globally competitive industries.[32] On the other hand, the BIR, under the Department of Finance (DOF), is mandated to assess and collect all national internal revenue taxes, fees and charges. It administers supervisory and police powers conferred by NIRC, as amended, or other laws.[33]

While the BOI has the power to decide controversies, such, however, is limited to those concerning the **implementation** of EO No. 226 between registered enterprises or investors and government agencies. But with regard to the **assessment and collection** of the taxes, fees and charges, it is the BIR who was exclusively vested with said directive.

Notwithstanding their independent mandate, both perform analogous functions. In fact, in the BOI decisions dated July 28, 2010 and October 18, 2012, it was categorically stated therein that the amount granted for EHI's income tax exemption is subject to adjustment, if any, by the BIR. Such statement is a recognition of the BIR's authority over tax assessment and collection. The relevant portions are quoted hereafter as follows, *viz.*:

BOI letter-decision dated July 28, 2010:

> "This approval covers your claim of income tax exemption in your 2008 Income Tax Return (ITR) in the amount of ₱7,226,905.59 representing 24.4401% of the normal income

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[32] http://www.boi.gov.ph/index.php/en/news/transparency/
[33] https://www.dof.gov.ph/index.php/about/cluster-agencies/

> tax due on your activity as operator of tourist accommodation facilities which was registered with the Board on March 5, 2007 per C.R. No. 2007-033. **However, said amount is subject to adjustment, if any, after the completion of the audit of the Bureau of Internal Revenue (BIR)** *x x x."* [34] *(Emphasis Ours)*

BOI letter-decision dated October 18, 2012:

> "The approximate amount of your income tax exemption is amended from ₱7,226,905.59 to ₱7,244,034.62 representing 24.4401% of the normal income tax due on your registered activity. **However, said amount is subject to adjustment, if any, after the completion of the audit by the Bureau of Internal Revenue (BIR)** *x x x."*[35] *(Emphasis Ours)*

It is clear from the foregoing that the BOI recognizes the BIR's authority to conduct its own evaluation and audit of EHI's income tax liability. Howbeit, on its part, the BIR gives special consideration on the findings made by the BOI, such as the application of ITH, like the scenario here in the present consolidated appeals.

Lastly, it naturally follows that a request for reconsideration of an adverse decision of one do not automatically suspend the proceedings of the other. A taxpayer claimant must prove the veracity of its claim independently in the proceedings before the BOI and the BIR because, again, while both offices perform analogous functions the mandate of their respective offices are distinct from one another.

Accordingly, by appealing the decision of the BOI to the Office of the President, the matter affected by the appeal is the findings made by the BOI. The said appeal does not stay or suspend the conclusions reached by the BIR in its own proceedings, more so, oust this Court of jurisdiction. In fact, by filing a Petition for Review with the CTA-Division, EHI recognizes the CTA's jurisdiction over the present consolidated cases including all matters raised in its Petition such as the disallowed rental income. And, considering that the Court of Tax Appeals, being a Court of record,[36] is required to conduct a formal trial (*trial de novo*)

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[34] Exhibit "P-11".
[35] *Supra* No. 28.
[36] Section 8, RA No. 1125, as amended.

where the parties must present their evidence accordingly if they desire this Court to take such evidence into consideration.[37]

- ***EHI's right to due process was not violated***

Parenthetically, one of the most basic and fundamental precepts of law enshrined in the Constitution is that no person shall be deprived of his property without due process of law.[38] In our jurisdiction, due process refers to the right of the taxpayer to be informed of the legal and factual bases of the deficiency taxes issued against it and the reasonable opportunity to be heard and submit any evidence that it may have in support of its defense. As aptly stated by the Supreme Court in the case of *RIZAL COMMERCIAL BANKING CORPORATION vs. COMMISSIONER OF INTERNAL REVENUE*[39], "[i]t is basic that as long as a party is given the opportunity to defend his interests in due course, he would have no reason to complain, for it is this opportunity to be heard that makes up the essence of due process. *x x x*"

Notably, in the present consolidated cases, the issue of EHI's right to due process was only raised in its Motion for Partial Reconsideration[40], filed on February 12, 2016. Now, in its Petition for Review with the Court *En Banc*, EHI claims that the FDDA dated August 23, 2012 is null and void since it failed to provide complete and material facts; it was issued prematurely since there were still remaining issues to be resolved by the BOI; and, cannot be considered as a "final decision" which is cognizable by the CTA due to the following reasons, viz.:

a. The CIR was properly informed by EHI that there is still a pending case involving the same issues with the BOI and later on with the Office of the President;

b. EHI was not given the chance to submit the necessary supporting documents within the sixty (60) day period as required under Section 3.1.5 of RR No. 12-99;

[37] Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, G.R. No. 145526, March 16, 2007.
[38] Section 1, Article III of the 1987 Philippine Constitution.
[39] G.R. No. 168498, June 16, 2006, *citing* Estares vs. Court of Appeals, G.R. No. 144755, June 8, 2005.
[40] *Supra* No. 8.

c. When EHI elevated the FDDA to the Office of the President, it again informed the CIR about the pending case with the BOI which would clearly affect *[his]* decision; and,

d. EHI presented sufficient evidence to prove that there was a pending case with the BOI involving the same issues.

Unfortunately, however, *We* are not swayed.

Perusal of the foregoing arguments reveals that they are reiterations of the arguments raised by EHI in its Motion for Partial Reconsideration with the CTA-Division which were already addressed in the assailed Resolution[41], *to wit*:

> "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.
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> 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.*, 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 reconsideration of the action or ruling complained of. Any seeming defect in its observance is cured by the filing of a motion for reconsideration,**

[41] *Supra* No. 6.

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. 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."[42] *(Citations Omitted)*

EHI IS LIABLE FOR DEFICIENCY INCOME TAX FOR CALENDAR YEAR 2008.

Over and over again, *We*, bear emphasis that cases filed in the CTA are litigated *de novo*. Mere allegation is not proof.[43] Petitioner should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA.[44]

- ***The BOI Letters are admissible as evidence***

The CIR assails that the BOI letters dated October 18, 2012[45] and February 28, 2013[46], respectively, were not sufficiently authenticated in accordance with the Rules of Court. Such failure, therefore, gives the documents no probative value whatsoever and immediately bars any attempt to explore the contents of the said documents. The CIR cited the

[42] Pages 4-5 of the August 2, 2016 Resolution, Division Docket, Vol. II (CTA Case No. 8545), pp. 855-856.
[43] Malayan Insurance vs. Philippines First Insurance, G.R. No. 184300, July 11, 2012.
[44] Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, G.R. No. 145526, March 16, 2007.
[45] *Supra* No. 28.
[46] *Supra* No. 29.

case of *Philippine National Bank vs. Court of Appeals, Capitol City Development Bank, Philippine Bank of Communications, and F. Abante Marketing*[47] *("PNB case")*, wherein the Supreme Court declared that in order to prove the truth of the contents of the certificate in issue, the very author who prepared and signed the same should be presented in court for proper authentication.

Unfortunately, *We* find no merit in the CIR's argument.

Remarkably, the issue of authentication of the assailed exhibits has already been addressed by the CTA-Division in the Resolution[48] dated September 22, 2014. The relevant potion is quoted hereafter as follows:

> "The Court finds the Motion unmeritorious.
>
> Relevant hereto is Section 19 of Rule 132 of the Rules of Court, as amended, which states that:
>
> 'SEC. 19. *Classes of documents.* — For the purpose of their presentation in evidence, documents are either public or private.
>
> Public documents are:
>
> (a) The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;
>
> (b) Documents acknowledged before a notary public except last wills and testaments; and
>
> (c) Public records, kept in the Philippines, of private documents required by law to be entered therein.
>
> All other writings are private.'
>
> In relation thereto, Section 23 of Rule, provides:

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[47] G.R. No. 107508, April 25, 1996.
[48] Division Docket, Vol. II (CTA Case No. 8545), pp. 695-697.

> 'SEC. 23. *Public documents as evidence.* — Documents consisting of entries in public records made in the performance of a duty by a public officer are prima facie evidence of the facts therein stated. All other public documents are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter.'

On the other hand, Section 20 of the said Rule requires that before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either: by anyone who saw the document executed or written; or by evidence of the genuineness of the signature or handwriting of the maker.

Indeed, before a private document offered as authentic be received in evidence, its due execution and authenticity must first be proved. However, **it must be remembered that this requirement of authentication only pertains to private documents and 'does not apply to public documents, these being admissible without further proof of their due execution or genuineness**. Two reasons may be advanced in support of this rule, namely: said documents have been executed in the proper registry and are presumed to be valid and genuine until the contrary is shown by clear and convincing proof; and, second, because public documents are authenticated by the official signature and seals which they bear and of which seals, courts may take judicial notice.' Hence, in the presentation of public documents as evidence, due execution and authenticity thereof are already presumed.

In the case at bar, a perusal of the records show that Exhibits **'P-13' to 'P-15'** are written official acts of Director Erlinda F. Arcellana of the Incentives Department of the Board of Investments (BOI). The Philippine Board of Investments (BOI), an attached agency of the Department of Trade and Industry (DTI), is the lead government agency responsible for the promotion of investments in the Philippines. Also, Exhibit 'P-16' is a document acknowledged before a notary public. Records likewise reveals that the originals of the said exhibits were presented during the Commissioner's Hearing on April 8, 2014 for marking and comparison; thus, the same were marked as faithful reproductions of the originals.

Apparently, the aforesaid exhibits are all public documents in accordance with the Rules of Court, as amended. Being such, the proof of their authenticity and genuineness are not necessary but already presumed." *(Citation omitted)*

Incidentally, for purposes of presentation in evidence, documents are classified as either public or private.[49] However, authentication only pertains to private documents.[50] Based on the above-quoted discussion, BOI letters dated October 18, 2012 and February 28, 2013 are classified as public documents. As such, proof of their authenticity and genuineness are not necessary but already presumed.

With regard to the CIR's assertion that the ruling made in the *PNB case* is applicable in the instant case, *We* find the same as misplaced.

In the *PNB case*, the document in question was a certification issued by a Cashier III of the Ministry of Education and Culture (now Department of Education) stating that a PNB check was not issued by the Ministry nor released to the payee concerned. The Court did not give probative value to the same since the author thereof was not presented to identify it and to be cross-examined thereon. In other words, the subject certification was construed as a private document since it was not established whether the supposed signatory was officially authorized to issue the same on behalf of the Ministry; nor was the certification acknowledged before a notary public; and, whether the certification is of public records, kept in the Philippines, and required by law to be entered therein.

Having settled the admissibility of the BOI letters dated October 18, 2012 and February 28, 2013, *We*, therefore, find the statements therein enlightening on the issue of EHI's income from handling fee, broadband services and in-house video, *viz.*:

"We are pleased to inform you that the Board, in its meeting of October 16, 2012 granted your request to include Other Income from **Handling Fee** as part of your income from registered activity. *x x x*"[51]

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[49] Sec. 19, Rule 132 of the Rules of Court.
[50] Sec. 20, *Ibid.*
[51] BOI letter dated October 18, 2012, *Supra* No. 28.

x x x

"With respect to your second request, the Board confirmed that the following revenues are considered part of your ITH entitlement for the abovementioned registered activity:

1. **Broadband Services;**
2. **In-House Video**; and
3. Parking Fee & Valet Services for as long as the fees are charged to the hotel's guests and not outside clients utilizing the hotel's parking facilities."[52]

It cannot get any clearer than that what was already stated in the BOI letters. The BOI ruled and considered EHI's income from handling fee, broadband services and in-house video as part of its ITH privilege. Considering that, as discussed earlier, the BIR gives paramount consideration in the BOI's determination of what income falls under the ITH, the income from said activities shall enjoy ITH benefit and will no longer be subject to corporate income tax.

- ***Imposition of interests under the Tax Reform for Acceleration and Inclusion***

Considering that no additional evidence, documentary or testimonial, were presented by EHI to warrant modification of the income tax deficiency as computed by the CTA-Division, *We* shall uphold the computation of the same.

However, in view of the advent of Republic Act (RA) No. R.A. 10963[53] or the *"TAX REFORM FOR ACCELERATION AND INCLUSION (TRAIN)"* law, which amended certain provisions of the NIRC of 1997, the interest rate of 20 percent (20%) per annum under Section 249 of the NIRC were amended to "double the legal interest rate for loans or

[52] BOI letter dated February 28, 2013, *Supra* No. 29.
[53] "AN ACT AMENDING SECTIONS 5, 6, 24, 25, 27, 31, 32, 33, 34, 51, 52, 56, 57, 58, 74, 79, 84, 86, 90, 91, 97, 99, 100, 101, 106, 107, 108, 109, 110, 112, 114, 116, 127, 128, 129, 145, 148, 149, 151, 155, 171, 174, 175, 177, 178, 179, 180, 181, 182, 183, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 232, 236, 237, 249, 254, 264, 269, AND 288; CREATING NEW SECTIONS 51-A, 148-A, 150-A, 150-B, 237-A, 264-A, 264-B, AND 265-A; AND REPEALING SECTIONS 35, 62, AND 89; ALL UNDER REPUBLIC ACT NO. 8424, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENU CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES", approved on December 19, 2017.

forebearance of any money in the absence of an express stipulation as set by the Bangko Sentral ng Pilipinas (BSP)."[54]

As such, *We* shall adjust the imposition of delinquency interest accordingly.

WHEREFORE, the Petitions for Review are hereby **DENIED** for lack of merit. Accordingly, the Decision dated January 28, 2016 of the CTA-Division is hereby **AFFIRMED WITH MODIFICATION,** to read as follows:

> "**WHEREFORE,** in light of the foregoing considerations, the instant Petition for Review is hereby **DENIED.**
>
> Accordingly, [*EHI*] is **ORDERED TO PAY** [*CIR*] the amount of **₱5,553,132.53,** representing the amount still due after [*EHI*]'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 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, [*EHI*] is **ORDERED TO PAY** to pay the following:

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[54] *See* Section 75.

a) Deficiency interest on the amount of ₱5,553,132.53 at the rate of 20% per annum from August 1, 2013 ***until December 31, 2017***, pursuant to Section 249(B) of the NIRC pf 1997;

b) Delinquency interest on the same amount of ₱5,553,132.53 at the rate of 20% per annum from August 1, 2013 ***until December 31, 2017***, pursuant to Section 249(C) of the NIRC of 1997; and

c) Delinquency interest at the rate of 12% per annum on the unpaid amount (basic tax plus surcharge only) ***from January 1, 2018 until the amount is fully paid pursuant to the relevant provisions of the TRAIN law***.

SO ORDERED."

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

With Concurring and Dissenting Opinion
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

(I join the Concurring and Dissenting Opinion of PJ Del Rosario)
CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation with the members of the Court *En banc* before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

ENJAY HOTELS, INC.,
Respondent.

CTA EB No. 1498
(CTA Case No. 8545)

x- x

ENJAY HOTELS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1500
(CTA Case No. 8545)

Present:

DEL ROSARIO, ***P.J.,***
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, ***JJ.***

Promulgated:

MAY 22 2018 3:31 p.m.

x- x

CONCURRING AND DISSENTING OPINION

***DEL ROSARIO, P.J.*:**

I concur in the denial of the Petition for Review filed by the Commissioner of Internal Revenue (CIR), docketed as CTA EB No. 1498, solely for lack of merit.

Anent the denial of the Petition for Review filed by Enjay Hotels Inc. (Enjay), docketed as CTA EB No. 1500, I am constrained to withhold my assent thereto.

While I concurred with the assailed Decision in the Court in Division level, after re-assessment and taking into consideration the pronouncement of the Supreme Court in ***Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.***[1] *(Lancaster)* and in ***Medicard Philippines Inc. vs. Commissioner of Internal Revenue***[2] *(Medicard)*, both of which were rendered after the promulgation of the assailed Decision and Resolution, I reconsider the position I have previously taken. I submit that in the absence of a Letter of Authority (LOA), the Final Decision on Disputed Assessment dated August 23, 2012, the Formal Letter of Demand dated May 23, 2012, with Details of Discrepancies, and Assessment Notice No. ITRAD2-IT-2008-0017 dated May 23, 2012, issued against Enjay are void *ab initio*.

The requirement to issue a Letter of Authority (LOA) for the examination of taxpayers or to recommend the assessment of any deficiency tax due is stated in Section 13 of the National Internal Revenue Code (NIRC) of 1997, as amended, to wit:

> SEC. 13. *Authority of a Revenue Officer*. - subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a Revenue Officer assigned to perform assessment functions in any district may, **pursuant to a Letter of Authority issued** by the Revenue Regional Director, **examine taxpayers** within the jurisdiction of the district in order to collect the correct amount of tax, **or** to **recommend the assessment of any deficiency tax due** in the same manner that the said acts could have been performed by the Revenue Regional Director himself. (Boldfacing supplied)

The importance of an LOA to the validity of an assessment cannot be over emphasized. Truth to tell, an LOA is absolutely necessary notwithstanding that none of the financial books and records of the taxpayer were examined in coming up with the assessment as so declared by the Supreme Court in ***Medicard***:

"The absence of an LOA violated MEDICARD's right to due process

[1] G.R. No. 183408, July 12, 2017.
[2] G.R. No. 222743, April 5, 2017.

An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. **An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives.** Section 6 of the NIRC clearly provides as follows:

xxx xxx xxx

Based on the afore-quoted provision, it is clear that unless authorized by the CIR himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken. The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. **Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority**.

xxx xxx xxx

In this case, there is no dispute that no LOA was issued prior to the issuance of a PAN and FAN against MEDICARD. Therefore no LOA was also served on MEDICARD. The LN that was issued earlier was also not converted into an LOA contrary to the above quoted provision. Surprisingly, the CIR did not even dispute the applicability of the above provision of RMO 32-2005 in the present case which is clear and unequivocal on the necessity of an LOA for the assessment proceeding to be valid. xxx xxx xxx.

In the case of *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*, the Court said that:

> Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. **In the absence of such an authority, the assessment or examination is a nullity.** (Emphasis and underscoring ours)

xxx xxx xxx

Contrary to the ruling of the CTA *en banc*, **an LOA cannot be dispensed with just because none of the financial books or records being physically kept by MEDICARD was examined**. To begin with, Section 6 of the NIRC requires an authority from the CIR or from his duly authorized representatives before an examination "of

> a taxpayer" may be made. **<u>The requirement of authorization is therefore not dependent on whether the taxpayer may be required to physically open his books and financial records but only on whether a taxpayer is being subject to examination</u>.**
>
> xxx xxx xxx
>
> **That the BIR officials herein were not shown to have acted unreasonably is beside the point <u>because the issue of their lack of authority was only brought up during the trial of the case</u>. What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives. <u>Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void</u>.**" *(Citations omitted; boldfacing and underscoring supplied)*

In the aforequoted case, the Supreme Court declared as void the disputed assessment for lack of an LOA as it violates the taxpayer's right to due process.

In *Lancaster*, the Supreme Court confirmed the CTA's power and jurisdiction to resolve the issue on the authority of the Revenue Officer (RO) to conduct an audit, although the same was not raised by the parties in their pleadings or memoranda, *viz.*:

> "On whether the CTA can resolve an issue which was not raised by the parties, we rule in the **affirmative**.
>
> xxx xxx xxx
>
> xxx xxx xxx, **the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda.** The CTA *En Banc* was likewise correct in sustaining the CTA Division's view concerning such matter." (Boldfacing supplied)

For want of a valid LOA, ***Lancaster*** ultimately resolved to declare the assessment void.

The issuance of an LOA prior to the conduct of an examination of a taxpayer's books and other accounting records by any revenue officer or issuance of an assessment is indispensable. ***Commissioner of Internal Revenue vs. Sony Philippines, Inc.***[3] declares:

> "Clearly, **there must be a grant of authority before any revenue officer can conduct an examination or assessment.** Equally important is that the revenue officer so authorized must not go beyond the authority given. **In the absence of such an authority, the assessment or examination is a nullity."** (Boldfacing supplied)

Unless and until modified by the Supreme Court *En Banc*, the doctrines laid down in *Medicard, Lancaster* and *Sony* should be applied in determining the validity of assessments issued against taxpayers *sans* any LOA. Indeed, the Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is; it is the final arbiter of any justiciable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.

The crux of the controversy as stipulated by the parties before the Court in Division revolves around whether Enjay is liable for deficiency income tax assessment.[4] **The issue about the Revenue Officer's (RO) authority to conduct audit necessarily relates thereto as its absence makes the assessment a nullity.** The importance of RO's authority to conduct the audit cannot be over-emphasized as it goes into the issue of the validity of the assessment.

The assessment involved in this case was triggered by the evaluation made by the Board of Investments (BOI) on Enjay's application for the availment of Income Tax Holiday (ITH) incentive. The BOI forwarded the result of its evaluation to the Assistant Commissioner, Assessment Service of the Bureau of Internal Revenue (BIR). The BIR Assessment Servuce eventually made a finding that the income tax which may still be due from Enjay was in the amount of P24,422,683.18, plus increments. The docket of the case was then forwarded to the Assistant Commissioner, Large Taxpayers (LT) Service; thereafter, Edwin T. Guzman, OIC-Chief, LT Regular Audit Division 2, issued Memorandum of Assignment with Reference No. ITH-125-2011-02 dated July 13, 2011 to RO Malik D. Dimakuta and Group Supervisor (GS) Oscar A. Sable, authorizing the audit/verification of the ITH case of Enjay.[5] **While Formal Letter of Demand dated May 23, 2012, with Details of Discrepancies, and**

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[3] G.R. No. 178697, November 17, 2010.
[4] CTA Case No. 8545 Docket, p. 422.
[5] Exhibit R-1, BIR Records, p. 87.

Assessment Notice No. ITAD2-IT-2008-0017 dated May 23, 2012, were ultimately issued against Enjay, there is nothing in the records which would show the authority of the RO and GS to conduct an audit investigation pursuant to an LOA.

RO Dimakuta admitted in his Judicial Affidavit[6] that he conducted audit investigation against Enjay pursuant to Memorandum of Assignment No. ITH-125-2011 dated 13 July 2011, to wit:

> "9 Q: **Why are you familiar with the subject matter?**
>
> A: I am the Revenue examiner assigned to conduct the investigation/examination for the income tax liabilities of Enjay Hotels, Inc. for the period January 1, 2008 to December 31, 2008.
>
> 10 Q: **What was your authority to conduct investigation and examination for the income tax liabilities of Enjay Hotels, Inc. for calendar year 2008?**
>
> A: A Memorandum of Assignment No. ITH-125-011 dated 13 July 2011 authorizing the examination of the books of accounts and other accounting records of Enjay Hotels, Inc. for the audit/verification of the Income Tax Holiday (ITH) Case of petitioner.
>
> 11 Q: **I have here a copy of the Memorandum of Assignment marked as Exhibit 'R-1' for the respondent. What relation does this document have to the Memorandum of Assignment you mentioned?**
>
> A: This is the Memorandum of Assignment that I am referring to earlier.
>
> 12 Q: **What happened after the Memorandum of Assignment was issued?**
>
> A: I studied the docket and conducted my audit investigation."

Indeed, RO Dimakuta never confirmed the issuance of an LOA in his favor as basis to audit Enjay. The infirmity of the audit must perforce result in the nullification of the assessment issued pursuant thereto.

All told, I **VOTE** to: (i) **DENY** the Petition for Review filed by the Commissioner of Internal Revenue in CTA EB No. 1498 for lack of merit; (ii) **GRANT** the Petition for Review filed by Enjay Hotels, Inc. in

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[6] Exhibit 11; CTA Case No. 8545 Docket, pp. 667-674.

CTA EB No. 1500; (iii) **REVERSE and SET ASIDE** the January 28, 2016 Decision and August 2, 2016 Resolution of the First Division; and (iv) **CANCEL and SET ASIDE** the Final Decision on Disputed Assessment dated August 23, 2012, the Formal Letter of Demand dated May 23, 2012, with Details of Discrepancies, and Assessment Notice No. ITRAD2-IT-2008-0017 dated May 23, 2012, issued against Enjay Hotels, Inc., for being void *ab initio*.

ROMAN G. DEL ROSARIO
Presiding Justice