REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

GREAT HOLIDAY ENTERTAINMENT SERVICES, INC. (NOW MERGED WITH NEW COAST HOTEL, INC.),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8864

Members:

DEL ROSARIO, *P.J., Chairperson,*
UY, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:

APR 02 2018 : 1:08 p.m.

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RESOLUTION

MINDARO-GRULLA, *J.*:

This addresses respondent's **Motion for Reconsideration (Re: Decision dated September 13, 2017)**, filed through registered mail on October 3, 2017 and received by this Court on October 11, 2017, with petitioner's **Comment (Re: Motion for Reconsideration dated October 2, 2017)**, filed on January 9, 2018.

Respondent seeks reconsideration of the Court's Decision dated September 13, 2017, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the Petition for Review filed by petitioner Great Holiday Entertainment Services, Inc. is hereby **GRANTED**. Accordingly, the deficiency income tax assessment dated March 30, 2011

issued by respondent against petitioner for taxable year 2007 is declared **NULL and VOID**.

SO ORDERED."

In assailing the aforesaid Decision, respondent anchors his arguments on the sole ground that his assessment against petitioner has legal and factual basis, hence, a valid assessment.

According to respondent, the validity of the tax investigation of petitioner for taxable year (TY) 2007 pursuant to Tax Verification Notice (TVN) No. 2003 00105014 dated July 21, 2008 was not put in issue in this case. Respondent insists that the said TVN was valid as the same served as the authority of Revenue Officer (RO) Teresita P. Reyes and Group Supervisor (GS) Carolyn B. Labao to verify the pertinent records of petitioner for TY 2007.

Respondent likewise contends that the assessment was valid and correct, and it was the petitioner who had the burden of proof to impugn the validity of the said assessment. Allegedly, respondent found out during the re-investigation that petitioner has overstated its pre-operating expenses resulting in the deficiency income tax assessment of ₱183,251.87 even though petitioner claimed that it has no revenue for TY 2007. Respondent alleges that petitioner was assessed for deficiency income tax due to unsupported or unsubstantiated pre-operating expenses.

On the other hand, petitioner claims that respondent's assessment is null and void because the revenue officers who caused the issuance of the assessment did not have the authority to examine petitioner's books of accounts for TY 2007. Petitioner points out that the absence of the Letter of Authority (LOA) is intimately connected to the main issue stipulated by the parties - whether or not the deficiency income tax assessment against petitioner for TY 2007 amounting to ₱183,251.87 is valid. Allegedly, although the validity of the investigation was not put in issue, it does not prevent this Court from ruling upon the same pursuant to the Revised Rules of the Court of Tax Appeals (RRCTA).

Petitioner further avers that even assuming for the sake of argument that the assessment was validly issued, the deficiency income tax assessment should be cancelled for lack of basis because petitioner did not derive any gain or profit in TY 2007. Petitioner insists that since it did not derive any gain, it would not incur any income tax liability regardless of whether it has any deductible expenses for the year. Petitioner also states that the net operating loss resulting from the deduction of the subject pre-operating expenses is beyond the scope of the present assessment as it can only be the subject of assessment in the taxable year when it is claimed as a deduction.

A thorough scrutiny and evaluation of respondent's arguments shows that the same are mere rehash of the same facts and issues which have already been passed upon extensively in the assailed Decision.

It is worthy to reiterate the ruling of this Court, to wit:

> "In the recent case of *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*, the Supreme Court held that the absence of a LOA would violate the taxpayer's right to due process, to wit:
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> > '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
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> The Supreme Court has further ruled in the afore-mentioned case that the LOA cannot be dispensed with even if the financial books or records of the taxpayer have not been examined, *viz*:
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> > 'xxx, 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. 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.'

The TVN dated July 21, 2008 has authorized Revenue Officer Teresita P. Reyes to verify the supporting documents of petitioner relative to its internal revenue taxes for calendar year 2007. However, since there is no LOA, the authority given pursuant to the TVN does not extend to the examination of petitioner's books of accounts and other accounting records.

Applying the Supreme Court's ruling in the *Medicard* case to the present case, the TVN issued to Revenue Officer Reyes cannot be converted into the LOA required under the law even if the same was issued by respondent. As a consequence, the revenue officer has no authority to examine petitioner's financial books and records. Even if respondent or the revenue officer did not examine the accounting books and records of petitioner, they still had no authority to examine or investigate petitioner in relation to its alleged tax deficiency as the TVN is confined only to the verification of petitioner's supporting documents. Thus, the assessment that was issued against petitioner is void.

Assuming for argument's sake that the assessment is valid, the Court still finds that petitioner is not liable for any deficiency income tax.

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A perusal of petitioner's Annual and Quarterly Income Tax Returns and Audited Financial Statements for calendar year 2007 clearly shows that petitioner did not earn any revenues for the year. As disclosed therein, petitioner had not yet started commercial operations as of December 31, 2007.

In the case of *Commissioner of Internal Revenue vs. Court of Appeals, et al.,* the Supreme Court ruled that the three elements in the imposition of income tax are: (1) there must be gain or profit, (2) the gain or profit is realized or received, actually or constructively, and (3) it is not exempted by law or treaty from income tax.

Absence of any of the afore-mentioned elements, no income tax may be imposed upon the petitioner. It is settled that the determining factor for the imposition of income tax is whether any gain or profit was derived from a transaction. To repeat, petitioner did not derive any gain or profit in the subject taxable year.

In relation thereto, assuming the disallowance of pre-operating expenses is proper, no income tax may result therefrom. Following the computation, respondent added back the disallowed

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> expenses to the taxable income. Since petitioner had no taxable income, only the disallowed expenses necessarily formed part of the adjusted taxable income. However, it should be noted that, in the first place, petitioner did not even benefit from the deduction of the disallowed expenses. Hence, respondent erred in translating and subjecting the disallowed expenses to income tax."

Considering that respondent failed to raise any new matter in his Motion for Reconsideration, there is no cogent reason to disturb the ruling in the assailed Decision.

WHEREFORE, premises considered, respondent's **Motion for Reconsideration (Re: Decision dated September 13, 2017)** is **DENIED** for lack of merit.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice