REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
****

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:*** JAN 28 2016; 3:08 p.m.

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DECISION

UY, J.:

This Petition for Review filed on September 26, 2012 by Enjay Hotels, Inc. seeks the cancellation of the deficiency income tax assessment issued by the Commissioner of Internal Revenue in the amount of ₱8,422,339.00, including interest, for calendar year (CY) 2008.

THE FACTS

Petitioner Enjay Hotels, Inc. is a domestic corporation duly organized and existing under Philippine laws, with office address at 19th Floor, Tower One & Exchange Plaza, Ayala Triangle, Ayala Avenue, Makati City.[1] It is primarily engaged in the general business of a hotel, resort, apartment, and doing business under the name and style of "InterContinental Manila". Petitioner is duly registered with the Bureau of Internal Revenue (BIR) with TIN 000-158-109-000 per

[1] Par. 1, Joint Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 420.

its BIR Certificate of Registration.[2]

Respondent is the duly appointed Commissioner of Internal Revenue with exclusive and original jurisdiction: (1) to interpret the provisions of Republic Act No. 8424, otherwise known as the "Tax Reform Act of 1997", as amended (Tax Code), and other tax laws subject to review of the Secretary of Finance; and (2) to decide disputed assessments and claim for refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the Tax Code and other laws administered by the BIR subject to the exclusive appellate jurisdiction of this Court.[3]

On March 5, 2007, the Board of Investments (BOI) approved the application of petitioner as an Operator of Tourist Accommodation Facilities under the Modernization Program as per Certificate of Registration No. 2007-033. As a BOI-registered enterprise, petitioner was given fiscal and non-fiscal incentives for the project, such as Income Tax Holiday (ITH) benefit for three (3) years pursuant to its BOI Certificate of Registration.[4]

On July 28, 2010, the BOI approved petitioner's application for ITH, which covers its income tax exemption in its 2008 Income Tax Return in the amount of ₱7,226,905.59, representing 24.4401% of the normal income tax due on petitioner's registered activity as operator of tourist accommodation facilities. However, the said amount is subject to adjustment, if any, after the completion of the audit of the BIR. The BOI emphasized that the difference between the amounts petitioner claimed and that approved by BOI is due to the disallowance of other income (lease rental, MERALCO refund, dividend income, etc.) from petitioner's taxable income from registered activity.[5] This information was communicated to the BIR Assistant Commissioner, Erlinda A. Simple, in the letter dated July 28, 2010 issued by the BOI.[6]

Subsequently, respondent issued the Notice for Informal Conference on September 7, 2011, informing petitioner of the recomputation of the latter's income tax due for CY 2008 in the amount of ₱5,013,015.97 applying the rate of exemption granted by

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[2] Par. 3, Joint Stipulation of Facts, JSFI, Docket, p. 421.
[3] Par. 2, Joint Stipulation of Facts, JSFI, Docket, p. 420.
[4] Par. 4, Joint Stipulation of Facts, JSFI, Docket, p. 421.
[5] Exhibit "P-11", Docket, p. 594; Exhibit "R-10", BIR Records, p. 76.
[6] Exhibit "P-12", Docket, p. 595; Exhibit "R-9", BIR Records, p. 77.

the BOI.[7]

Meanwhile, in the letter dated December 26, 2011 addressed to the BOI, petitioner sought the reconsideration of the BOI's decision by allowing the lease rental income in the amount of ₱18,959,856.00, MERALCO refund in the amount of ₱14,451,044.00, and handling fee in the amount of ₱200,245.03, as part of petitioner's income from registered activity. In the same letter, petitioner informed the BOI that it is under audit by the BIR for taxable year 2008; and that the bulk of the discrepancy mainly lies on the exclusion of petitioner's income lodged under lease rental and other income.[8]

Subsequently, respondent issued the Preliminary Assessment Notice (PAN) dated January 11, 2012, assessing petitioner for deficiency income tax as follows:[9]

	PAN Per BIR/BOI		
	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: Penalty Interest			2,797,400.17
INCOME TAX STILL DUE			**₱ 7,797,650.22**

On January 31, 2012, the BIR received petitioner's letter dated January 30, 2012, wherein petitioner contested the computation of the income tax still due as indicated in the said PAN.[10]

Thereafter, petitioner received, on May 28, 2012, the Formal Letter of Demand (FLD) dated May 23, 2012, with Details of Discrepancies and Audit Result/Assessment Notice No. LTRAD2-IT-2008-0017,[11] from the BIR Large Taxpayers Service, assessing petitioner of deficiency income tax amounting to ₱8,211,369.54 for CY 2008.[12]

[7] Exhibit "R-4", BIR Records, p. 94.
[8] Exhibits "P-6", Docket, pp. 490 to 492.
[9] Exhibit "R-5", BIR Records, pp. 112 to 116.
[10] BIR Records, pp. 117-121.
[11] Exhibit "P-3", Docket, pp. 481 to 486; Exhibits "R-6", "R-6-1", and "R-6-2", BIR Records, pp. 130 to 140.
[12] Par. 5, Joint Stipulation of Facts, JSFI, Docket, p. 421.

Consequently, on June 26, 2012, petitioner filed the Protest Letter, contesting the validity of the deficiency income tax assessment.[13]

On August 23, 2012, petitioner received the Final Decision on Disputed Assessment (FDDA) dated August 23, 2012 issued by the BIR Large Taxpayers Service,[14] denying petitioner's protest against the deficiency income tax assessment. The FDDA computed petitioner's deficiency income tax, as follows:[15]

	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**

Thus, petitioner filed the instant Petition for Review on September 26, 2012, praying that judgment be rendered as follows:

> "1. Declaring the Final Decision as premature and defective, therefore, null and void;
>
> 2. Finding the Petitioner not liable for deficiency IT in the amount of ₱8,422,339.00, inclusive of interest, covering CY 2008.
>
> Petitioner further prays that deficiency IT assessment for CY 2008 be cancelled, and the Respondent be ordered to withdraw the same."[16]

After the filing of the Petition for Review, the BOI partially granted the request for reconsideration of petitioner of its ITH for CY 2008, to include the handling fee as part of petitioner's income from registered activity. The BOI ruled, however, that the income from lease rental and Meralco refund did not arise from petitioner's registered activity.[17]

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[13] Par. 6, Joint Stipulation of Facts, JSFI, Docket, p. 421.
[14] Exhibit "P-4", Docket, pp. 487 to 488; Exhibit "R-7", BIR Records, pp. 207 to 208.
[15] Par. 7, Joint Stipulation of Facts, JSFI, Docket, p. 421.
[16] Petition for Review, Docket, pp. 7-24, at p. 23
[17] Exhibits "P-13" and "P-13-1", Docket, p. 600.

On November 5, 2012, petitioner filed with the BOI a Supplemental Position Paper,[18] for the following purposes:

1. To correct the oversight of the BOI Incentives Department in disallowing some portions of petitioner EHI's income in CY 2008 on the ground that they were not part of registered activity; and

2. To have a confirmation that petitioner's revenues generated from broadband services, in house video, parking fee and valet services, were part of the registered activity entitled to ITH incentive.

Petitioner also filed the letter dated November 22, 2012,[19] having the same purposes, but the said second purpose, is now for the BIR's reference.

It likewise sent a follow-up letter dated December 10, 2012 before the BOI, requesting for CONFIRMATION that its Request for Reconsideration is still under study by the BOI and that its Supplemental Position Paper dated November 05, 2012 and Memorandum dated November 22, 2012 is still being deliberated for appropriate actions by the BOI. The purpose thereof is to inform the BIR about the status of its case pending before the BOI.[20] On December 17, 2012, the BOI acknowledged the receipt of said follow-up letter, informing petitioner that the case is still under study.[21]

On December 3, 2012, respondent denied petitioner's request for reconsideration of the FDDA.[22]

Respondent filed her Answer[23] on December 4, 2012, interposing the following special and affirmative defenses:

> "4. Respondent hereby reiterates and re-pleads the preceding paragraphs of this Answer as part of her Special and Affirmative Defenses
>
> **<u>A R G U M E N T S AND D I S C U S S I O N S</u>**

[18] Exhibits "P-8", Docket, pp. 526 to 530.
[19] Exhibit "P-9", Docket, pp. 584 to 591.
[20] Exhibit "P-10", Docket, p. 592.
[21] Exhibit "P-14", Docket, p. 601.
[22] Exhibit "P-5", Docket, p. 489.
[23] Docket, pp. 28 to 44.

Due Process was observed in assessing petitioner of its Income Tax deficiencies for the taxable year 2008.

5. It is most courteously advanced that petitioner's averment that respondent failed to comply with Due Process Requirements under the National Internal Revenue Code and Revenue Regulation No. 12-99 is *non sequitur*, as herein-after be discussed.

6. At the onset, petitioner has been afforded the rudimentary requirements of fair play. This is verified by the fact that petitioner was constantly advised of the current assessment against it in accordance with the policy of the BIR to give taxpayers every opportunity to present their side of the case.

7. The deficiency assessments issued against petitioner have factual and legal bases.

8. The Preliminary Assessment Notice (PAN), Formal Letter of Demand (FLOD), Final Assessment Notice (FAN), Final Decision on Disputed Assessment (FDDA) and Final Decision were issued in accordance with law, rules and jurisprudence.

9. On 13 July 2011, Memorandum of Assignment No. ITH-125-2011 was issued, authorizing the revenue examiners named therein to examine the books of accounts and other accounting records of petitioner for the audit/verification of the Income Tax Holiday (ITH) Case of petitioner pursuant to Memorandum of ACIR – Assessment Service Erlinda A. Simple dated 1 July 2011.

10. Various request for presentation of records were issued and duly received by petitioner. A Notice of Informal Conference was received by petitioner on 9 September 2011 informing the same of respondent's findings and giving the former the opportunity to offer its explanation, present objections and submit documentary evidence/s to refute the said findings.

11. The following is a summary of the findings of the examiner as a result of the investigation conducted by virtue of Memorandum of Assignment No. ITH-125-

2011 as stated in Preliminary Assessment Notice dated 11 January 2012 and received by petitioner on 16 January 2012:

Deficiency Income Tax:	PAN Per BIR/BOI		
	ITH Rate	Regular Rate	Total
Adjusted Taxable Income	58,230,684.45	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	0.00	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: Penalty Interest			2,797,400.17
INCOME TAX STILL DUE			**7,797,650.22**

Please note that the interest and the total amount due will have to be adjusted if paid beyond 01-31-2012

12. A Formal Letter of Demand dated 23 May 2012 was subsequently issued after finding the reply to the PAN to be without merit. This was received by petitioner on 28 May 2012.

Deficiency Income Tax:	PAN Per BIR/BOI		
	ITH Rate	Regular Rate	Total
Adjusted Taxable Income	58,230,684.45	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	0.00	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: Penalty Interest			3,211,119.49
INCOME TAX STILL DUE			**8,211,369.54**

13. Under Revenue Regulations No. 12-99 a valid assessment is accomplished following the stages of Notice of Informal Conference, PAN and FAN. The procedures prescribed under RR No. 12-99 have been complied with by respondent as can be deduced from the afore-mentioned narration of facts.

14. Based on the foregoing, the finding of deficiency tax liabilities against petitioner is proper in all respects. Worthy of note, are the words of the Supreme Court in the case of *Commissioner of Internal Revenue vs. Bank of Philippine Islands*':

> *'Tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in*

> *the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments.'*

15. It is a well-settled rule in taxation that the burden of proof is on the taxpayer to present evidence to show the incorrectness of the assessment.

16. The assessment in the amount of P8,422.339.00 as deficiency income tax for taxable year 2008, plus 25% surcharge and 20% deficiency and delinquency interest for late payment was issued in accordance with law and regulations.

17. Well-settled is the rule that tax assessments are entitled to the presumption of correctness and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner, and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments *(Sy Po vs. Court of tax Appeals, 164 SCRA 524)*. Dereliction on the part of petitioner to satisfactorily overcome the presumption of regularity and correctness of the assessment will justify the judicial upholding of said assessment notices.

18. It bears stressing that petitioner was given every opportunity to dispute the assessments presented during the assessment period. This the petitioner did by filing protests on the Informal Conference, PAN and the FAN filed 7 October 2011, 31 January 2012 and 27 June 2012 respectively.

19. ***The essence of due process lies in the reasonable opportunity afforded a party to be heard and to submit evidence in support of its defense.***

20. Moreover, the sixty (60) day period as argued by petitioner is mandatory, not on the respondent, but on the part of the taxpayer. Section 228 of the National Internal Revenue Code of 1997, as amended, provides:

> ***Section 228. Protesting of Assessment.*** *–*
> *xxx*
>
> *Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations.*
>
> ***Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.***
>
> *If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred (180)-day period; otherwise, the decision shall become final, executory and demandable.*

21. Apparently, nowhere in the Tax Code does it provide for the mandatory nature of the sixty (60) day period on the respondent CIR. Nor does the Tax Code state that the CIR has to wait for the expiration of the sixty (60) day period before acting on an assessment at hand.

22. It must also to be remembered that due process starts from the initial notice of an assessment to the concerned taxpayer until its final determination in the form of an FDDA. During such time, both the taxpayer and the BIR are involved in the assessment process. Submission of documents from the taxpayer is required as early as the notice for informal conference

23. Thus, petitioner cannot now claim denial of Due Process on the ground that it submitted documents well within the 60-day period. Respondent CIR is not constrained much less prohibited to issue its final decision when it deems proper, as in this case, once it foresees that the taxpayer has not signified any formal

intention regarding the matter.

BIR assessments are independent of BOI findings.

24. Petitioner contends that respondent merely adopted the findings of the Board of Investments (BOI) on the disallowance of some revenues with the inclusion of other items while applying the same grounds for disallowance. Petitioner posits that BOI has jurisdiction to rule on all matters relating to grant of Income Tax Holiday (ITH) incentives more particularly on its deficiency Income Tax (IT) assessments, hence, the assessment made was allegedly premature.

25. Petitioner's asseveration deserves scant consideration.

26. The Bureau of Internal Revenue (BIR) and the Board of Investments (BOI) are separate and distinct Offices under the Department of Finance and Department of Trade and Industry, respectively. The former is the government agency charged, among others, with the responsibility of assessing and collecting all national internal revenue taxes while the latter is the government agency responsible for the implementation of the law, particularly on the regulation and promotion of investments in the Philippines.

27. Indubitably, the instant petition primarily seeks the cancellation of deficiency Income Tax (IT) assessment issued against petitioner. Clearly, this falls not within the jurisdiction of the BOI but of the BIR pursuant to Section 27 in relation to Section 32 of the National Internal Revenue Code of 1997.

28. Hence, a Motion for Reconsideration filed in one does not *ipso facto* suspend an evaluation from the other essentially because they implement parallel functions.

29. Notwithstanding their independent functions, BOI findings are given relative consideration by the BIR on special circumstances, similar to the instant petition, where the assessment involved includes the application of ITH. As previously discussed, both Offices employ dissimilar yet parallel functions. In sum, the grant of ITH is within the jurisdiction of the

BOI but it is the BIR that taxes the grantee.

30. Notably, in the 28 July 2010 letter of the BOI to the petitioner, it stated:

> *'This approval covers your claim of income tax exemption in your 2008 Income Tax Return (ITR) in the amount of P7,226,905.59 representing 24.4401% of the normal income 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 completion of the audit by the Bureau of Internal Revenue (BIR).****'*

31. Similarly, in a letter dated 28 July 2010 of the BOI to Assistant Commissioner – Assessment Service of the BIR, Erlinda A. Simple, the former had occasion to say:

> ***'Should your audit findings show that the amount of income tax due is higher than the amount claimed in its ITR****, the income tax exemption rate would still be equivalent to 24.4401% of the income tax due on its registered activity.*
>
> *Enclosed is a copy of its ITH application together with our evaluation report and other supporting documents.'*

32. The afore-said letters recognized the authority of the BIR to conduct a completely separate and independent evaluation of petitioner's internal revenue tax liabilities.

33. Truthfully, after completion of the audit by the BIR, additional incomes were found and added in the assessment of petitioner's income tax liabilities including the initial findings of the BOI. These amounts were reflected in the assessment notices served to the petitioner and lastly in the Final Decision on Disputed Assessment (FDDA) dated 23 August 2012 and allegedly received by petitioner on 28 May 2012. Accordingly, the same Deficiency Income Tax assessment, with interest computed until 15 September 2012 was shown in the FDDA, as follows:

	ITH Rate	Regular Rate	Total
Adjusted Taxable Income	58,230,684.45	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	0.00	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: Penalty Interest			3,422,088.94
INCOME TAX STILL DUE			**8,422,339.00**

34. Thus, it is not proper, as petitioner alleged, for respondent to give way and wait for the BOI's decision on the request for reconsideration before an assessment on its internal revenue taxes are set.

Petitioner was properly apprised of its Income Tax deficiencies for taxable year 2008.

35. It is most courteously moved that the income tax deficiencies of petitioner are correct.

36. Foremost, the petitioner's BOI registered activity subject to Income Tax Holiday (ITH) is for hotel room accommodation. Any non-BOI registered activity is subject to regular income tax.

37. The accounts listed in the assessment notices served to petitioner were classified by BOI as part of its income from unregistered activities. As above-discussed, findings of the BOI are credited by the BIR in assessing petitioner for reasons above-stated.

38. Therefore, these accounts are income from non-BOI registered activity, hence, it is subject to the regular income tax rate pursuant to Section 27 and 32 of the Tax Code. It provides:

Rent Income (Lease Rental)	18,959,856.00
Income from Meralco Refund	14,451,044.00
Salvage	214,659.94
Handling Fee	200,245.03
Interest on employees loan	5,100.00
Dividend income – PLDT	4,275.00
Disposal of FF & E	300,446.43
TOTAL REGULAR AND OTHER INCOME (subject to regular rate)	34,135,626.40

39. Further, the following 'Other Income' are also classified as income from non-BOI registered activity.

Income from broadband services	15,394,857.76
Reversal of prior year accrual	7,636,958.24
Parking Fee	491,299.36
In-house video	1,918,308.32
Reversal of mock-up expenses previously expense	217,176.42
Reversal of long outstanding payables	596,055.55
TOTAL OTHER INCOME (subject to regular rate)	26,254,655.65

40. Although part of these revenues are coming from services that are necessary and part of regular services provided by a hotel to all guests, it is without a doubt, revenue from services other than hotel room accommodation.

41. The approval of petitioner's BOI application, particularly on petitioners assertion that the 'Specific Terms and Conditions' of its Certificate of Registration which allegedly does not contain any condition, limitation or restriction as to the source of 'Other Hotel Services', does NOT serve to provide it a blanket exemption which will bar any act of the government to enforce its power to tax.

42. It must be stressed that taxation is the rule and exemption is the exception. Tax exemption is by no means irrevocable. For not only are existing laws read into contracts in order to fix obligations as between parties, but the reservation of essential attributes of sovereign power is also read into contracts as a basic postulate of the legal order.

43. Thus, the case of 'Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue is instructive. To wit:

> *'Besides, tax assessments by tax examiners are presumed correct and made in good faith, and all presumptions are in favor of the correctness of a tax assessment unless proven otherwise.'"*

Petitioner, in its Manifestation and Omnibus Motion filed on January 2, 2013, prayed for the suspension of the proceedings of the instant case pending the finality of the decision of the BOI denying some portions of petitioner's revenue for CY 2008 as not forming part of its registered activity entitled to ITH incentive.[24] The Court, however, denied petitioner's prayer for the suspension of proceeding at the hearing held on January 17, 2013.[25]

Undaunted, petitioner filed its Urgent Motion for Reconsideration on January 31, 2013 on January 31, 2013, seeking the reversal and setting aside of this Court's resolution made in open court on January 17, 2013, denying its request for deferral of the proceedings.[26] In the Resolution dated March 13, 2013, this Court denied said Urgent Motion.[27]

Respondent's Pre-Trial Brief was filed on January 11, 2013,[28] while petitioner's Pre-Trial Brief was filed on August 22, 2013.[29]

On February 28, 2013, the BOI determined that the following activities are part of petitioner's ITH entitlement, to wit: broadband services; in-house video; and parking fee as well as 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.[30]

On March 7, 2013, in a letter addressed to the BIR, petitioner requested a recomputation and proposed a partial settlement and payment of the deficiency income tax assessment, except the items on rental income, handling fee, income from broadband services, parking fee, and in-house video which were still being contested before the BOI.[31]

In its letter reply dated June 27, 2013, respondent stated that since the case docket is still with this Court, any adjustments to the FDDA, if warranted, cannot be done until upon the directive of this Court. However, respondent informed petitioner that the latter may voluntarily settle any undisputed tax assessments, in order to stop the

[24] Docket, pp. 50 to 54.
[25] Minutes of the Hearing dated January 17, 2013, Docket, p. 85.
[26] Docket, pp. 86 to 93.
[27] Docket, pp. 116 to 119.
[28] Docket, pp. 76 to 82.
[29] Docket, pp. 347 to 354.
[30] Exhibits "P-15" and "P-15-1", Docket, p. 602.
[31] Exhibit "P-21", Docket, pp. 642 to 644.

running of the interest penalty increments.[32]

Meanwhile, petitioner appealed the decisions of the BOI dated July 28, 2010, October 18, 2012 and February 28, 2013 before the Office of the President on April 2, 2013.[33]

In a letter dated August 5, 2013, petitioner informed respondent of the partial payment of the deficiency income tax assessment in the amount of ₱3,442,704.64.[34]

At the pre-trial hearing held on August 23, 2013, the issue as to whether or not the decision of the Office of the President should be awaited before the Court proceeds to hear the instant case was raised. Consequently, the Court granted the parties a period of fifteen (15) days from that date within which to submit their respective Memorandum on the said issue.[35]

The memorandum for respondent was then filed on September 19, 2013,[36] while the memorandum for petitioner were filed on September 27, 2013.[37]

In the Resolution dated January 29, 2014, the Court ruled to proceed with the trial of this case.[38]

Thereafter, the parties submitted their Joint Stipulation of Facts and Issues (JSFI) on April 3, 2014,[39] and the Supplemental Joint Stipulation of Facts and Issues on April 10, 2014.[40] On April 23, 2014, the Court approved both Joint Stipulations and terminated the pre-trial.[41] A Pre-Trial Order was likewise issued on April 29, 2014.[42]

During trial, petitioner presented witness, Nenita A. Lorbis, while

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[32] Exhibit "P-22", Docket, p. 645.
[33] Exhibit "P-17", Docket, pp. 604 to 605.
[34] Letter dated August 5, 2013, Exhibit "P-24", Docket, pp. 649 to 651; Payment Form, BIR Form No. 0605, Exhibit "P-23", Docket, pp. 646-647; eFPS Payment Details, Exhibit "P-23-1", Docket, p. 648.
[35] Resolution dated August 23, 2013, Docket, p. 359.
[36] Docket, pp. 368 to 377.
[37] Docket, pp. 380 to 390.
[38] Docket, pp. 400 to 403.
[39] Docket, pp. 420 to 423.
[40] Docket, pp. 424 to 427.
[41] Resolution, Docket, p. 450.
[42] Docket, pp. 454 to 460.

respondent presented Revenue Officer Malik D. Dimakuta. Thereafter, the parties formally offered their respective documentary evidence.

After considering the respective Memoranda of respondent and petitioner filed on December 9, 2014[43] and on January 20, 2015[44], respectively, the Court declared the instant case submitted for decision in the Resolution dated January 28, 2015.[45]

Hence, this Decision.

THE ISSUES

The parties submitted the following stipulated issues[46] for this Court's resolution, to wit :

> "1. Whether or not Petitioner is liable for deficiency Income Tax assessment for taxable year 2008 in the aggregate amount of P8,422,339.00; and,
>
> 2. Whether or not the BOI's decision on the disallowed rental income which is now on appeal with the Office of the President can be decided by this Honorable Court?"

Petitioner's arguments:

Petitioner argues that this Court has no jurisdiction to rule on the issue of disallowed rental income, since it is still pending appeal with the Office of the President. Furthermore, according to petitioner, the issue on the disallowed rental income can be considered as a "prejudicial question" which must first be resolved before another case can proceed.

Moreover, petitioner avers that the deficiency income tax assessment issued against it for CY 2008 must be cancelled and withdrawn. In this connection, petitioner points out that the following:

1. Petitioner was able to prove during the trial that the BOI issued

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[43] Docket, p. 717.
[44] Docket, p. 730.
[45] Docket, p. 752.
[46] JSFI, Docket, p. 422; Issues, Pre-Trial Order dated April 29, 2014, Docket, p. 456.

two (2) letter-decisions dated October 18, 2012 and February 28, 2013 confirming that the disallowed revenues such as: (1) Handling Fee, (2) Income from broadband Services, (3) In house video, and (4) Parking fee, were indeed part of the registered activity entitled to the ITH incentive;

2. With regard to the revenues from parking fee and valet services amounting to ₱491,299.36, which was also ruled by the BOI as part of the registered activity but with qualification, petitioner was able to prove that said revenues were derived exclusively from daily cash payments made by hotel guests and clients for CY 2008;

3. Petitioner decided to settle the remaining disallowed revenues such as: (1) Income from Meralco refund, (2) Dividend Income – PLDT, (3) Salvage Income, (4) Disposal of FF & E, (5) Interest on employees loan, (6) Reversal of prior year accrual, (7) Reversal of mock up expenses, and (8) Reversal of long outstanding payable, by paying voluntarily the corresponding deficiency income tax due in the total amount of ₱3,442,704.64, inclusive of interests and compromise penalty.

Respondent's counter-arguments:

Respondent contends that petitioner is liable for the deficiency income tax assessment for taxable year 2008 in the aggregate amount of ₱8,422,339.00.

According to respondent, petitioner has not endeavored to refute the findings of the BIR, or submit evidence to warrant the reversal of the assessment

Lastly, respondent stresses that the issue on whether the parties should wait for the decision of the Office of the President on petitioner's appeal of the BOI decision before this Court can proceed to hear this case, has already been resolved in the Resolution dated January 29, 2014.

THE COURT'S RULING

Considering petitioner's argument that this Court has no jurisdiction to rule on the issue of disallowed rental income as the matter is still pending appeal with the Office of the President, the Court deems it appropriate to first resolve the issue on jurisdiction of this Court.

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

Petitioner argues that this Court has no jurisdiction to rule on the issue of disallowed rental income, since it is still pending appeal with the Office of the President.

We disagree.

Jurisdiction is the power or capacity given by the law to a court or tribunal to entertain, hear and determine certain controversies. Jurisdiction over the subject matter is conferred by law.[47]

Furthermore, the Supreme Court has decreed in *Padlan vs. Dinglasan, et al.*[48] that:

> "...in order to determine which court has jurisdiction over the action, an examination of the complaint is essential. Basic as a hornbook principle is that jurisdiction over the subject matter of a case is conferred by law and determined by the allegations in the complaint which comprise a concise statement of the ultimate facts constituting the plaintiff's cause of action. The nature of an action, as well as which court or body has jurisdiction over it, is determined based on the allegations contained in the complaint of the plaintiff, irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein. The averments in the complaint and the character of the relief sought are the ones to be consulted. xxx.
>
> What determines the jurisdiction of the court is the nature of the action pleaded as appearing from the allegations in the complaint. The averments therein and the character of the relief sought are the ones to be consulted."

Sections 4 and 228 of the National Internal Revenue Code

[47] *Dela Cruz vs. Court of Appeals, et al.*, G.R. No. 139442, December 6, 2006.
[48] G.R. No. 180321, March 20, 2013.

(NIRC) of 1997 confers jurisdiction upon this Court with regard to decisions of the respondent on disputed assessments, to wit:

> "SEC. 4. *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.*— xxx
>
> **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.**" *(Emphases and underscoring supplied)*
>
> "SEC. 228. *Protesting of Assessment.*— xxx
>
> xxx xxx xxxx
>
> If the protest is denied in whole or in part or is not acted upon within one hundred eighty (180) days from submission of documents, **the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period**; otherwise, the decision shall become final, executory and demandable." *(Emphasis and underscoring supplied)*

In addition, Sections 7 and 11 of Republic Act (RA) No. 1125,[49] as amended by RA No. 9282,[50] read as follows:

> "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**

[49] AN ACT CREATING THE COURT OF TAX APPEALS.

[50] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

> <u>**disputed assessments**</u>, 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;
>
> (2) **Inaction by the Commissioner of Internal Revenue in cases** <u>**involving disputed assessments**</u>, refunds of internal revenue taxes, fees or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial;
>
> xxx xxx xxx." *(Emphasis and underscoring supplied)*

> "SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.*— **Any party adversely affected by a** <u>**decision, ruling or inaction of the Commissioner of Internal Revenue**</u>**, xxx may file an** <u>**appeal with the CTA**</u> **within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law** for action as referred to in Section 7(a)(2) herein.
>
> xxx xxx xxx." *(Emphasis and underscoring supplied)*

Based on the foregoing, this Court has exclusive appellate jurisdiction to review by appeal the decision of respondent involving, *inter alia*, disputed assessments.

In this case, petitioner appealed the FDDA dated August 23, 2012 issued by the BIR Large Taxpayers Service.[51] This is very much clear in paragraphs 15 and 16 of the instant Petition for Review, to wit:

> "15. The issuance of the Respondent's Final Decision dated August 23, 2012 is equivalent to the

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[51] Exhibit "P-4", Docket, pp. 487 to 488; Exhibit "R-7", BIR Records, pp. 207 to 208.

> outright denial of the Petitioner's Protest and the same would constitute as the final decision of the Respondent on the deficiency IT assessment. Such being the case, the Final Decision is already appealable to the CTA. xxx
>
> xxx xxx xxx
>
> 16. There being final decision on the alleged deficiency IT assessment, Petitioner is constrained to file the instant Petition for Review by way of appeal to this Honorable Court and in order to preserve the judicial remedy pursuant to Section 228 of the Tax Code, as amended."[52]

Consequently, this Court acquired jurisdiction over the instant Petition for Review upon the timely filing thereof and the payment of the prescribed docket fees. Said jurisdiction continues until the case is finally terminated.[53]

It is noteworthy that the total amount assessed, which sought to be cancelled in the instant Petition for Review, *i.e.*, the amount of ₱8,422,339.00, was arrived at, considering and including, the amount of ₱18,959,856.00, which represents the disallowed rental income.[54] Thus, it is not hard to discern that when this Court acquired jurisdiction over the said Petition for Review, it must perforce acquire the same jurisdiction to determine the propriety of the disallowance of the said rental income, and such jurisdiction continues to subsist until the final termination thereof.

In addition, the instant case may proceed independently of the said appeal of the subject BOI decision. This must be so because while the subject assessment and the assailed FDDA dated August 23, 2012 were influenced by the BOI's treatment or decision as regards the disallowed rental income, that does not change the fact that the said FDDA, which is one decided by respondent as the Commissioner of Internal Revenue by virtue of her power to decide disputed assessments under the aforequoted Section 4 of the NIRC of 1997, is still the subject matter of this appeal, to which this Court has exclusive appellate jurisdiction under the aforecited laws.

Correspondingly, the pendency of the supposed appeal by petitioner of the subject BOI decision does not oust this Court of

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[52] Docket, pp. 22 to 23.
[53] *Uypuanco, et al. vs. Leuterio, et al.*, G.R. No. L-22706, March 28, 1969.
[54] See Exhibit "R-7", BIR Records, pp. 207 to 208.

jurisdiction to rule on the issue of the disallowed rental income, since it is part of the matters being assailed in the instant Petition for Review.

As for the argument that the issue on the disallowed rental income can be considered as "prejudicial question", the same is not meritorious and has already resolved by this Court in the Resolution dated March 13, 2013.[55] To reiterate, the issues presented in the two (2) pending cases are not closely interrelated to each other as to be determinative of the case before the Court. Either issue may stand alone and proceed with its determination regardless of the existence of the other.

Petitioner's income tax liability for taxable year 2008.

In the FDDA dated August 23, 2012,[56] respondent grouped the disallowances into two classes, namely: (1) the BOI disallowances; and (1) the BIR disallowances, detailed as follows:

1. BOI found disallowances from ITH computation **(P34,135,626.40)** – These are specifically excluded by BOI from ITH computation. Unless the BOI reverse its ruling, this Office will impose regular income tax to these revenues. We cannot accept your argument that our income tax assessment is premature because of pending reconsideration by BOI. Your failure to let the BOI reverse its earlier ruling, these items of revenue should still be subjected to regular income tax pursuant to Section 27 in relation Section 32 of the Tax Code. The details of BOI found disallowances from ITH computation are the following:

Rent Income (Lease Rental)	18,959,856.00
Income from meralco refund	14,451,044.00
Salvage	214,659.94
Handling fee	200,245.03
Interest on employees loan	5,100.00
Dividend income – PLDT	4,275.00
Disposal of FF & E	300,446.43
Total Regular & Other Income (subject to regular rate)	**34,135,626.40**

2. BIR found disallowances from ITH computation

[55] Docket, pp. 116 to 119.
[56] Exhibit "P-4", Docket, pp. 487 to 488.

> **(P26,254,655.65)** – These are specifically excluded by this Office from ITH computation. Unless you get a ruling from BOI that these revenues are part of your ITH registered activities, this Office will impose regular income tax to these revenues. Your failure to get a ruling from BOI, these items of revenue should still be subjected to regular income tax pursuant to Section 27 in relation Section 32 of the Tax Code. The details of BIR found disallowances from ITH computation are the following:
>
> | | |
> |---|---:|
> | Income from broadband services | 15,394,857.76 |
> | Reversal of prior year accrual | 7,636,958.24 |
> | Parking Fee | 491,299.36 |
> | In-House video | 1,918,308.32 |
> | Reversal of mock-up expenses previously expense | 217,176.42 |
> | Reversal of long outstanding payables | 596,055.55 |
> | **Total Other Income (subject to regular rate)** | **26,254,655.65** |

Thus, respondent issued the income tax assessment in the amount of ₱8,422,339.00, computed 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	0.00	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**

Considering that this Court has jurisdiction to entertain the instant Petition for Review in its entirety, We shall address the disallowance of the *Rent Income (Lease Rental)* in the amount of ₱18,959,856.00 in the ITH rate computation.

A careful review of petitioner's evidence would reveal that it has not presented any evidence that tend to prove that the disallowance of the said amount of *Rent Income (Lease Rental)* under the ITH rate was erroneous.

In appeals to this Court, the determination of the Commissioner of Internal Revenue is presumed correct and it behooves the taxpayer to rebut such presumption.[57] The burden of proof is upon the complaining party to show clearly that the assessment is erroneous. Failure to present proof of error in the assessment will justify the judicial affirmance of said assessment.[58]

Thus, there being no proof of error in the finding that the *Rent Income (Lease Rental)* does not qualify under the ITH rate, the same must perforce be sustained.

After sustaining the disallowance of the *Rent Income (Lease Rental)* in the amount of ₱18,959,856.00 under the ITH rate, this Court shall then proceed to determine the taxability of the remaining amounts of the disallowed income from the ITH computation.

As already shown earlier, respondent's income tax assessment was principally dependent on the determination of the BOI of whether the subject income falls under the ITH rate or the regular corporate income tax rate. Nevertheless, it is clear from the said FDDA that the said assessment may be reversed, only if *"the BOI reverse its ruling"* as regards the total disallowed amount of ₱34,135,626.73, and if petitioner, in the case of the aggregate disallowed amount of ₱26,254,655.65, will be able to *"get a ruling from BOI that these revenues are part of* (its) *registered activities"*.

During trial, petitioner was able to show that some of the said disallowed amounts were reversed by the BOI in the letters dated October 18, 2012 and February 28, 2012 addressed to petitioner. The pertinent portion of the said letters provide as follows, viz:

BOI letter dated October 18, 2012:[59]

> "**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.** However, your request to include Lease Rental and MERALCO Refund as part of your income from registered activity was denied since such income did not arise from your registered

[57] *Tan Guan vs. Court of Tax Appeals, et al.*, G.R. No. L-23676, April 27, 1967; *Perez vs. Court of Tax Appeals, et al.*, G.R. No. L-10507, May 30, 1958; and *Collector of Internal Revenue vs. Bohol Land Transportation Co.*, G.R. No. L-13099, G.R. No. L-13462, April 29, 1960.
[58] *Marcos II vs. Court of Appeals, et al.*, G.R. No. 120880, June 5, 1997.
[59] Exhibit "P-13", Docket, p. 600.

activity." *(Emphasis supplied)*

<u>BOI letter dated February 28, 2013:</u>[60]

"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.**" *(Emphasis supplied)*

Thus, based on the foregoing undisputed evidence, the *Handling fee* in the amount of ₱200,245.03, the *Income from broadband services* in the amount of ₱15,394,857.76, and the *In-House video* in the amount of ₱1,918,308.32, shall no longer be considered under the regular corporate income tax rate.

As for the *Parking Fee* amounting to ₱491,299.36, the classification made by the BIR shall be upheld. This must be so because while petitioner presented the notarized Certification dated August 1, 2013[61] from its Area Director for Finance & Business Support, Jennifer V. Reyes, relevant to the said *Parking Fee*, the same is not sufficient as it is self-serving and unverified. Specifically, the said Certification is not supported by petitioner's records and/or source documents, such as the pertinent official receipts, and statements of account, which would tend to show the requirement of the BOI that the parking fees and fees for valet services *"are charged to the hotel's guests and not outside clients utilizing the hotel's parking facilities"* is fulfilled.

As cases filed before this Court are litigated *de novo*, party-litigants should prove **every minute aspect** of their cases.[62]

Moreover, it is noteworthy that petitioner already admits the

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[60] Exhibit "P-15", Docket, p. 602.
[61] Exhibit "P-16", Docket, p. 603.
[62] *Dizon vs. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008; *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue,* G.R. No. 145526, March 16, 2007; and *Commissioner of Internal Revenue vs. Manila Mining Corporation,* G.R. No. 153204, August 31, 2005.

taxability of the following disallowed income under the regular corporate income tax rate, viz:

Income from meralco refund	₱ 14,451,044.00
Salvage	214,659.94
Interest on employees loan	5,100.00
Dividend income – PLDT	4,275.00
Disposal of FF & E	300,446.43
Reversal of prior year accrual	7,636,958.24
Reversal of mock-up expenses previously expense	217,176.42
Reversal of long outstanding payables	596,055.55
TOTAL	₱ 23,425,715.58

Thus, petitioner paid on August 1, 2013 the aggregate amount of ₱3,442,704.64,[63] purportedly representing its deficiency basic income tax due for CY 2008 in the amount of ₱1,838,288.02, the interest thereon amounting to ₱1,579,416.62, and compromise penalty of ₱25,000.00. At this juncture, however, it must already be emphasized that the said determination by petitioner is erroneous.

Accordingly, this Court hereby upholds respondent's deficiency income tax assessment with some modifications. Petitioner is liable to pay basic deficiency income tax in the amount of ₱3,502,146.74, plus the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997,[64] computed as follows:

	ITH Rate	Regular	Total
Revenue			
Rooms	₱ 524,344,143.00	-	₱ 524,344,143.00
Food and beverage	288,147,737.00	-	288,147,737.00
Rent	-	₱ 18,959,856.00	18,959,856.00
Other operating depts.	12,045,975.00	-	12,045,975.00
Interest income	9,727,341.00	-	9,727,341.00
Telephone	6,877,043.00	-	6,877,043.00
Other income			
Income from broadband	15,394,857.76	-	15,394,857.76
Reversal of outstanding payables - hotel	-	7,636,958.24	7,636,958.24
Reversal of outstanding payables – corp.	-	596,055.55	596,055.55
Income from MERALCO refund	-	14,451,044.00	14,451,044.00

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[63] Exhibits "P-23" and "P-23-1", Docket, pp. 646 to 648.

[64] "SEC. 248. *Civil Penalties.*—

(A) There shall be imposed, in addition to the tax required to be paid, **a penalty equivalent to twenty-five percent (25%) of the amount due**, in the following cases:

xxx xxx xxx

(3) **Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment;**" *(Emphases supplied)*

Parking fee		491,299.36	491,299.36
Proceeds from salvage – bottles/cans	-	214,659.94	214,659.94
Unrealized FX gains – 2008	9,341,328.25	-	9,341,328.25
Other income	-	-	-
TV rental (in house video)	1,918,308.32	-	1,918,308.32
Handling fee	200,245.03	-	200,245.03
Interest on employees' loans	-	5,100.00	5,100.00
Dividend income-PLDT	-	4,275.00	4,275.00
Reversal mock-up expenses	-	217,176.42	217,176.42
Disposal of FF&E	-	300,446.43	300,446.43
Total	*₱ 867,996,978.36*	*₱ 42,876,870.94*	*₱ 910,873,849.30*
Less: Cost of Sales and Services			
Rooms	₱ 94,733,654.00	-	₱ 94,733,654.00
Food and beverage	175,265,403.00	-	175,265,403.00
Other operating depts.	13,809,994.00	-	13,809,994.00
Depreciation and amortization	78,944,274.00	-	78,944,274.00
Telephone	3,615,745.00	-	3,615,745.00
Land rental	49,370,783.00	-	49,370,783.00
Property operation & maintenance	32,897,829.00	-	32,897,829.00
Management fee	36,756,764.00	-	36,756,764.00
Security services	14,454,691.00	-	14,454,691.00
Entertainment, amusement & recreation	2,100,029.00	-	2,100,029.00
Total	*₱ 501,949,166.00*	-	*₱ 501,949,166.00*
Gross Income from Operation	*₱ 366,047,812.36*	*₱ 42,876,870.94*	*₱ 408,924,683.30*
Less: Deductions			
General & administrative	₱ 82,828,255.00	-	₱ 82,828,255.00
Energy costs	61,885,237.00	-	61,885,237.00
Marketing	40,708,993.00	-	40,708,993.00
Interest expense	24,814,673.00	-	24,814,673.00
Property taxes & insurance	23,478,749.00	-	23,478,749.00
Retirement expense	10,449,800.00	-	10,449,800.00
Corporate expenses	5,101,243.00	-	5,101,243.00
Total	*₱ 249,266,950.00*	-	*₱ 249,266,950.00*
Net Taxable Income	*₱ 116,780,862.36*	*₱ 42,876,870.94*	*₱ 159,657,733.30*
Add: Unallowable deductions			
Nondeductible interest expense	₱ 4,085,483.22	-	₱ 4,085,483.22
Provision of doubtful accounts	(369,231.62)	-	(369,231.62)
Accrued retirement expense	10,449,800.00	-	10,449,800.00
Total	*₱ 14,166,051.60*	-	*₱ 14,166,051.60*
Less: Non-taxable income			
Dividend income - PLDT	-	₱ 4,275.00	₱ 4,275.00
Unrealized FX loss – 2007	₱ 10,262,573.00	-	10,262,573.00
Unrealized FX gain – 2008	9,341,328.00	-	9,341,328.00
Interest income subject to FT	9,727,341.00	-	9,727,341.00
Amortization of PSC	12,773,776.00	-	12,773,776.00

NOLCO	13,097,800.40	-	13,097,800.40
Total	*₱ 55,202,818.40*	*₱ 4,275.00*	*₱ 55,207,093.40*
Adjusted Net Taxable Income	**₱75,744,095.56**	**₱42,872,595.94**	**₱118,616,691.50**
Income Tax Due (regular rate of 35%)	₱ 26,510,433.45	₱ 15,005,408.58	₱ 41,515,842.03
Less: ITH Availment (24.4401%)	6,479,176.45	-	6,479,176.45
Basic Income Tax Due	₱ 20,031,257.00	₱ 15,005,408.58	₱ 35,036,665.58
Less: Income Tax Credits			31,534,518.84
Basic Deficiency Income Tax			**₱ 3,502,146.74**
25 % Surcharge			**875,536.69**
Total			**₱ 4,377,683.43**

In addition, the said amount of ₱3,502,146.74 should be further subjected to the interests imposed under Section 249(B) and (C) of the same Code.

Imposition of interests under Section 249(B) and (C) of the NIRC of 1997, in relation to RR No. 12-99.

Section 249 of the NIRC of 1997 reads:

"SEC. 249. *Interest.* –

(A) *In General.* – There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) *per annum,* or such higher rate as may be prescribed by the rules and regulations, from the date prescribed for its payment until the amount is fully paid.

(B) *Deficiency Interest.* – Any **deficiency** in the tax due, **as the term is defined in this Code**, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.

(C) *Delinquency Interest.* – **In case of failure to pay**:

xxx xxx xxx

(3) **A deficiency tax, or any surcharge or interest thereon on the due date appearing in the**

> **notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax.**" *(Emphases supplied)*

Based on the foregoing, it is clear that the imposition of deficiency interest under Section 248(B) commences *"from the date prescribed for its payment until the full payment thereof"*; and that the imposition of the delinquency interest under Section 249(B) shall commence only from the time when the concerned taxpayer failed to pay the assessed tax within the time allowed as stated in the formal letter of demand.

Needless to state, any partial payment of the tax liability shall have an impact on what is due at the time of such partial payment, and said tax liability shall accordingly be reduced.

Correspondingly, the imposition of the deficiency interest of 20% *per annum* under Section 249(B) of the NIRC of 1997 on the deficiency income tax in the amount of ₱3,502,146.74, shall accrue from April 15, 2009, the date prescribed for its payment,[65] until the same is fully paid. Anent the delinquency interest of 20% *per annum* under Section 249(C) of the same Code, the same shall be applied to the said total amount of ₱4,377,683.43 (₱3,502,146.74 + ₱875,636.69), plus the said deficiency interest computed commencing from June 30, 2012, until the amount is fully paid.

In view, however, of the partial payment of ₱3,442,704.64 made on August 1, 2013 by petitioner, the latter's tax liability shall be accordingly reduced as of such date, computed as follows:

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[65] "SEC. 77. *Place and Time of Filing and Payment of Quarterly Corporate Income Tax.—*

xxx xxx xxx

(B) *Time of Filing the Income Tax Return.*—The corporate quarterly declaration shall be filed within sixty (60) days following the close of each of the first three (3) quarters of the taxable year. **The final adjustment return shall be filed on or before the fifteenth (15th) day of April,** or on or before the fifteenth (15th) days of the fourth (4th) month following the close of the fiscal year, as the case may be.

xxx xxx xxx" *(Emphasis supplied)*

Basic deficiency income tax		₱ 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**

The said amount of ₱5,553,132.53 shall still be subject to the 20% deficiency interest *per annum*, and 20% delinquency interest *per annum* until the same is fully paid, pursuant to Section 249(B) and (C) of the NIRC of 1997, respectively.

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.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

CERTIFICATION

I hereby certify that this Decision was reached after due consultation among the members of this Division in accordance with the provisions of Section 13, Article VIII of the Constitution.

ROMAN G. DEL ROSARIO
Chairperson
Presiding Justice