REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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PNOC DEVELOPMENT AND MANAGEMENT CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8649

Members:

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

Promulgated:

JUN 27 2016, 2:40 p.m.

x - x

RESOLUTION

UY, J.:

For resolution are:

1. respondent's **"MOTION FOR RECONSIDERATION"** filed on February 5, 2016, together with petitioner's **"COMMENT/ OPPOSITION (to Respondent's Motion for Reconsideration)"** filed on March 22, 2016, praying for the reconsideration and setting aside of this Court's Decision dated January 22, 2016; and

2. petitioner's **"MOTION FOR PARTIAL RECONSIDERATION With Manifestation"** filed on February 11, 2016, together with respondent's **"OPPOSITION/COMMENT to the MOTION FOR PARTIAL RECONSIDERATION"** filed on March 10, 2016, praying for the partial reconsideration of the same Decision.

The dispositive portion of the assailed Decision reads:

> "**WHEREFORE**, all the foregoing considered, the instant Petition for Review is **PARTIALLY GRANTED**. The assessments issued by respondent against petitioner

for taxable year 2007 covering deficiency EWT, WTC, income tax, VAT, and final withholding VAT are **AFFIRMED** with some modifications. Accordingly, petitioner is **ORDERED TO PAY** the amount of **EIGHTY-ONE MILLION FIVE HUNDRED EIGHT THOUSAND FIVE HUNDRED SIXTY-NINE PESOS AND TWELVE CENTAVOS (₱81,508,569.12)**, representing basic deficiency EWT, WTC, income tax, VAT, and final withholding VAT, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, computed as follows:

Deficiency Tax	Basic Tax	25% Surcharge	Total
EWT	₱ 310,817.69	₱ 77,704.42	₱ 388,522.11
WTC	941,394.73	235,348.68	1,176,743.41
Income Tax	4,522,197.00	1,130,549.25	5,652,746.25
VAT	58,263,714.65	14,565,928.66	72,829,643.31
Final Withholding VAT	1,168,731.23	292,182.81	1,460,914.04
Total	**₱65,206,855.30**	**₱16,301,713.82**	**₱81,508,569.12**

In addition, petitioner is **ORDERED TO PAY**:

(a) Deficiency interest at the rate of twenty percent (20%) *per annum* on the basic deficiency income tax, computed from April 15, 2008 until full payment thereof, pursuant to Section 249(B) of the NIRC of 1997;

(b) Delinquency interest at the rate of 20% *per annum* on the total amount of **₱81,508,569.12**, and on the 20% deficiency interest which has accrued as stated in subparagraph (a) hereof, computed from October 1, 2012 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997.

SO ORDERED."

Respondent's Motion for Reconsideration

In her motion, respondent prays that this Court review, re-evaluate and revisit the assailed Decision, specifically the following items:

1. Undeclared income from unaccounted expenses amounting to ₱91,677.34;

2. Fifty percent (50%) surcharge on petitioner's deficiency VAT; and
3. Imposition of deficiency interest under Section 249 of the National Internal Revenue Code (NIRC) of 1997.

Respondent also contends that the assessments issued against petitioner were made in accordance with law and regulations; that assessments are *prima facie* presumed correct and made in good faith; that the taxpayer has the duty of proving otherwise; and in the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed.

Petitioner's Motion for Reconsideration

Petitioner, in its Motion, argues as follows:

1. The Site 2A property sold to Majestic Technical Skills (MTS) never became part of petitioner's stock in trade or inventory, hence, should be considered as capital asset;

2. Petitioner was deprived of due process of law by the Commissioner of Internal Revenue; and

3. Petitioner filed an application for compromise as early as July 30, 2014 and paid ₱28,176,394.94.

In connection with the filing of the said application for compromise and payment of the said amount, petitioner prays that the same be noted by this Court, and the payments in relation to the same application for compromise be considered in the recomputation of the interests.

THE COURT'S RULING

Both Motions lack merit.

Respondent failed to present any argument to convince this Court to reverse or modify the assailed Decision. A careful reading of respondent's Motion for Reconsideration shows that the arguments raised therein have already been sufficiently passed upon and exhaustively discussed in the assailed Decision. Thus, We will not endeavor to reiterate them in this Resolution.

In the same vein, petitioner's argument that the Site 2A property sold to MTS should be considered as capital asset has been amply addressed in the assailed Decision, and thus, no further elaboration thereon is needed.

Nevertheless, the contentions of petitioner that it was deprived of due process of law by respondent and that it filed an application for compromise as early as July 30, 2014 and paid the amount of ₱28,176,394.94, albeit being raised only at this juncture, likewise deserve scant consideration.

In *Securities and Exchange Commission vs. Universal Rightfield Property Holdings, Inc.*,[1] the Supreme Court held:

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

In this case, there is no *"absolute absence"* of notice to petitioner. By its own admission, petitioner states that it has been given by the Bureau of Internal Revenue (BIR), a Notice of Informal Conference.[2] Moreover, one of the undisputed facts of this case (in relation to due process) establishes that on September 28, 2012, petitioner filed with the BIR its Administrative Protest Letters, all dated September 25, 2012,[3] against each of the assessed deficiency taxes.[4] Clearly, petitioner was given due process.

As for the supposed filing of application for compromise by petitioner and its alleged payment in the amount of ₱28,176,394.94 on July 30, 2014, this Court cannot take cognizance of the same. It is well-settled that courts cannot consider evidence which has not been

[1] G.R. No. 181381, July 20, 2015.
[2] See Pars. 14 to 16, Petitioner's Motion for Partial Reconsideration with Manifestation.
[3] Exhibits "P-39" and "P-40", Docket, pp. 882 to 885 and pp. 898 to 907.
[4] Par. 4, Stipulation of Facts, JSFI, Docket, p. 545.

formally offered.[5] Worthy of note is that the instant case was submitted for decision on January 13, 2015.[6] Thus, before this latter date, petitioner had ample time to introduce and offer the documents purporting to be the evidence showing that it paid the amount of ₱28,176,394.94 in connection with its application for compromise. Such being case and for failure to offer in evidence the subject documents, the said amount cannot have any bearing on the amounts to be paid by petitioner as held in the assailed Decision.

WHEREFORE, the parties respective Motions for Reconsideration are hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ON LEAVE

CIELITO N. MINDARO-GRULLA
Associate Justice

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[5] *Dizon vs. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008.
[6] Resolution dated January 13, 2015, Docket, p. 994.