REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

HIGHLAND GAMING CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8730

Members:

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

Promulgated:

JUL 05 2019 ; 10:10 am

x - x

RESOLUTION

UY, J.:

Before this Court is respondent's **Motion for Reconsideration (Decision dated 17 January 2019)**, filed on February 7, 2019, with petitioner's **Comment/Opposition [To Respondent's Motion for Reconsideration (Decision dated 17 January 2019) dated February 7, 2019]**, filed on March 8, 2019.

Respondent seeks reconsideration of the Court's Decision dated January 17, 2019, the disposition portion of which reads:

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. Accordingly, FAN No. 043A-B205-09 and the FLD, both dated March 15, 2013, and the PCL dated October 7, 2013 are **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED**."

In assailing the aforesaid Decision, respondent anchors his arguments on the following grounds:

> I. The Court erred in ruling that it has jurisdiction over the instant case; and
>
> II. The Court erred in ruling that petitioner is exempt from income tax.

Respondent contends that this Court has no jurisdiction over this case. Respondent claims that petitioner filed its protest to the Final Assessment Notice/ Formal Letter of Demand (FAN/FLD) on April 15, 2013. However, since petitioner filed a Petition for Review before this Court only on November 14, 2013, respondent stands that the said Petition was filed beyond 30 days after the lapse of the 180-day period fixed by law for the latter to act on the disputed assessment. As such, respondent believes that the disputed assessment became final, demandable and executory; thus, the Court has no jurisdiction over the instant case.

Further, respondent asserts that in accordance with the case of *Thunderbird Pilipinas Hotels and Resorts, Inc. vs. Commissioner of Internal Revenue* (*Thunderbird* case), petitioner being a franchise grantee of Philippine Amusement and Gaming Corporation (PAGCOR) is not exempt from payment of income tax.

On the other hand, petitioner claims that the instant motion is nothing more than *pro forma* as it contains a mere rehash of the arguments which have already been passed upon by this Court in its Decision dated January 17, 2019. As such, this motion should be denied outright.

Petitioner further posits that even if the motion was not a *pro forma*, the same is without merit. Petitioner anchors its counter-arguments on the following grounds:

> I. The Court correctly held that Preliminary Collection Letter (PCL) was respondent's final decision, thus, the Petition for Review was timely filed;
>
> II. The Court correctly held that petitioner's income from its bingo gaming operations is exempt from any tax

upon payment of the 5% franchise tax in lieu of all other taxes, pursuant to Presidential Decree (PD) No. 1869, as amended; and

III. The Court declared that the subject FLD/FAN was void for failure of respondent to observe due process.

Petitioner explains that based on Section 228 of the 1997 National Internal Revenue Code (NIRC), as amended, a taxpayer is granted an option to either (1) file an appeal to the CTA in case of inaction of the Commissioner of Internal Revenue (CIR) within 30 days after the lapse of the 180 days provided by law for the latter to act on the disputed assessment, or (2) wait for the decision of the CIR or his duly authorized representative, even if the issuance of such decision was made after the lapse of the 180-day period, and appeal the same to this Court within 30 days from receipt of the said decision. Allegedly, the option to immediately file an appeal to this Court within 30 days after the lapse of the 180-day period was given to the taxpayer in order to seek immediate relief from the Court rather than wait for an indefinite period of time for the CIR to decide. However, petitioner also states that if the taxpayer chooses to wait for a positive action on the part of the CIR, the taxpayer may do so without the assessment becoming final, executory and demandable. Petitioner clarifies that the instant Petition was not an appeal from the inaction of respondent on the protest but from the latter's final decision. Allegedly, petitioner has received a PCL instead of a Final Decision on Disputed Assessment (FDDA). Thus, petitioner maintains that the Court correctly ruled that the PCL was respondent's final decision on the protest against the FAN/FLD.

Likewise, petitioner expresses that the recent decisions of the Supreme Court in *Philippine Amusement and Gaming Corporation (PAGCOR) vs. Bureau of Internal Revenue, et al.*[1] and *Bloomberry Resorts and Hotels, Inc. vs. Bureau of Internal Revenue*[2] have rendered the ruling on the *Thunderbird* case ineffective and inapplicable. Thus, petitioner's income from its gaming and/or Bingo operations is allegedly not subject to corporate income tax.

Petitioner further avers that even without going to the merits and substance of the assessment, this Court has sufficient ground to

[1] G.R. No. 215427, December 10, 2014.
[2] G.R. No. 212530, August 10, 2016.

grant this Petition for Review and cancel the FAN/FLD for failure of respondent to observe due process.

THE COURT'S RULING

After a careful and thorough evaluation of the arguments raised by respondent, the Court finds that these are mere rehash of the same facts and issues which have already been passed upon extensively in the assailed Decision.

To reiterate the Court's ruling, the PCL dated October 7, 2013 shows that the same is the final decision on petitioner's protest against the FAN and FLD. Thus, counting the 30-day period to appeal from the receipt of the PCL on October 17, 2013, petitioner had until November 16, 2013 to file the petition before this Court. Accordingly, the instant Petition for Review filed on November 14, 2013 was filed on time and the Court has jurisdiction over the case.

Also, the Court further found that respondent failed to give petitioner an opportunity to reply to the PAN, depriving petitioner of its right to due process. Thus, the Court correctly held that the corresponding FAN and FLD are void.

Accordingly, there is no cogent reason to disturb the assailed Decision.

WHEREFORE, in light of the foregoing considerations, respondent's **Motion for Reconsideration (Decision dated 17 January 2019)** is **DENIED** for lack of merit.

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