REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PRIME INVESTMENT KOREA INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 2129
(CTA Case No. 9573)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
JAN 08 2021 3:43 p.m.

x - x

DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner Prime Investment Korea Inc. (**petitioner**) seeking to nullify the Decision

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1 Rule 8 - Procedure in Civil Cases, Section 3(b), Revised Rules of the Court of Tax Appeals.
Section 3. *Who may appeal; period to file petition.* —

. . .

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

dated 31 May 2019[2] and Resolution dated 20 August 2019[3], of the Special Second Division (**Court in Division**) in CTA Case No. 9573, entitled *Prime Investment Korea Inc. v. Commissioner of Internal Revenue.*

The antecedent facts follow.

Petitioner is a corporation organized and existing under the laws of the Philippines authorized to conduct, maintain and operate the business of recreation, games and amusement.[4] It is registered with the Bureau of Internal Revenue (**BIR**) with Taxpayer Identification No. (**TIN**) 008-410-374-000.[5]

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue (**respondent/CIR**) who has the power to decide on disputed assessments, refunds of internal revenue taxes, fees, or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (**NIRC**) or other laws or portions thereof administered by the BIR.

On 03 July 2013, petitioner and the Philippine Amusement and Gaming Corporation (**PAGCOR**) entered into a Junket Agreement[6] authorizing (**Grant of Authority**) petitioner to conduct junket gaming operations at Casino Filipino, pursuant to Presidential Decree (**PD**) No. 1869.[7]

Thereafter or on 13 September 2013, petitioner and PAGCOR supplemented the Junket Agreement, providing the former another Grant of Authority to introduce and offer additional services for its junket gaming operations at PAGCOR's Casino Filipino-Midas.[8]

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2 Division Docket, Volume II, pp. 771-785; Penned by Associate Justice Juanito C. Castañeda, Jr., and concurred in by Associate Justice Catherine T. Manahan.
3 Id., pp. 841-846.
4 Paragraphs 1 and 5, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), Division Docket, Volume I, pp. 323-324.
5 Paragraph 6, id., p. 324.
6 Paragraph 7, id.
7 CONSOLIDATING AND AMENDING PRESIDENTIAL DECREE NOS. 1067-A, 1067-B, 1067-C, 1399 AND 1632, RELATIVE TO THE FRANCHISE AND POWERS OF THE PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR).
8 Paragraph 8, Stipulation of Facts, JSFI, Division Docket, Volume I, p. 324.

The said Grants of Authority were later extended and renewed by virtue of the Junket Agreement and Supplement to Junket Agreement on 10 June 2016.[9]

On 15 April 2015, petitioner filed its Annual Income Tax Return (**ITR**) (BIR Form No. 1702-RT) for taxable year (**TY**) 2014 and paid the total income tax payable of ₱25,904,788.00.[10] Its share in revenues from junket gaming operations for TY 2014 amounted to ₱394,791,325.00, net of PAGCOR charges/fees.[11]

Later, on 05 April 2017, petitioner filed with the BIR an administrative claim for refund or issuance of a tax credit certificate (**TCC**) relative to its alleged erroneously, wrongfully, or excessively paid corporate income tax on junket gaming revenues for TY 2014 in the aggregate amount of ₱24,365,980.30.[12]

Without any decision from respondent[13], petitioner filed its Petition for Review before the Court in Division on 11 April 2017.

After trial on the merits, petitioner's claim for refund or issuance of TCC was denied for lack of merit. The dispositive portion of the 31 May 2019 Decision reads:

> ...
>
> **WHEREFORE**, premises considered, petitioner's claim for refund or issuance of tax credit certificate is **DENIED** for lack of merit.
>
> **SO ORDERED.**
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> ...

Petitioner filed its Omnibus Motion praying for (1) reconsideration of the above Decision; and, (2) leave of Court to present additional clarificatory testimony. The Court in Division

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9 Paragraph 9, id.
10 Paragraph 10, id.
11 Paragraph 11, id.
12 Paragraph 13, id.
13 Paragraph 14, id.

denied the Omnibus Motion in its similarly assailed Resolution of 20 August 2019.

Aggrieved, petitioner now seeks before Us the reversal of the Court in Division's denial of its Petition for Review and assigns the following errors:

I.
WHETHER THE COURT IN DIVISION ERRED IN RULING THAT PETITIONER IS LIABLE FOR CORPORATE INCOME TAX ON ITS REVENUES FROM JUNKET GAMING OPERATIONS; and,

II.
WHETHER PETITIONER IS ENTITLED TO THE RECOVERY OF ERRONEOUSLY, WRONGFULLY, ILLEGALLY AND EXCESSIVELY PAID CORPORATE INCOME TAXES ON REVENUES FROM JUNKET GAMING OPERATIONS FOR TAXABLE YEAR 2014 IN THE AMOUNT OF ₱24,365,980.30.

In support of the above, petitioner vehemently argues that its junket gaming revenues are not subject to corporate income tax pursuant to subparagraph (a)[14] of Section 13(2) of PD 1869, as amended. It posits that, as contractee/licensee, PAGCOR's exemption from tax extends to it for all its gaming operations, essential services and/or technical services provided under subparagraph (b)[15] of Section 13(2) of PD 1869.

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[14] **Sec. 13.** *Exemptions.* –

...

(2) Income and other taxes. – (a) Franchise Holder: No tax of any kind or form, income or otherwise, as well as fees, charges or levies of whatever nature, whether National or Local, shall be assessed and collected under this Franchise from the Corporation; nor shall any form of tax or charge attach in any way to the earnings of the Corporation, except a Franchise Tax of five (5%) percent of the gross revenue or earnings derived by the Corporation from its operation under this Franchise. Such tax shall be due and payable quarterly to the National Government and shall be in lieu of all kinds of taxes, levies, fees or assessments of any kind, nature or description, levied, established or collected by any municipal, provincial, or national government authority.

...

[15] (b) Others: The exemptions herein granted for earnings derived from the operations conducted under the franchise specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, shall inure to the benefit of and extend to corporation(s), association(s), agency(ies), or individual(s) with whom the Corporation or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise and to those receiving compensation or other remuneration from the Corporation or operator as a result of essential facilities furnished and/or technical services rendered to the Corporation or operator.

...

Invoking the Supreme Court ruling in *Bloomberry Resorts and Hotels, Inc. v. Bureau of Internal Revenue*[16] (**Bloomberry case**), petitioner contends that contractees and licensees are likewise liable only for 5% franchise tax in lieu of all kinds of taxes, including corporate income tax.

Petitioner further argues that the classification of petitioner's income from junket gaming operations as "other related operations" is erroneous and inconsistent with PD 1869, as amended. Thus, the Court erred in its reliance on Revenue Memorandum Circular (**RMC**) No. 33-2013.[17]

In refutation, respondent avers that petitioner's claim that it is exempt from corporate income tax is without legal basis. It is without doubt that PAGCOR, its contractees and licensees shall likewise pay corporate income tax for income derived from such "other related services", including income from junket operations. Under Section 14(5)[18] of PD 1869, any income that may be realized from related services shall be subject to income tax, and not franchise tax.

We resolve.

After an assiduous review of the records and the parties' contrasting arguments, the Court finds the instant Petition for Review bereft of merit. Petitioner's arguments are mere rehash of its case before the Court in Division. We find no cogent reason to deviate from the Court in Division's disquisitions.

Consistently, this Court has ruled that the income from junket operations is classified as "other related services" and is subject to

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16 G.R. No. 212530, 10 August 2016.

17 Income Tax and Franchise Tax Due From the Philippine Amusement and Gaming Corporation (PAGCOR), Its Contractees and Licensees.

18 **Sec. 14.** *Other Conditions*.-

...

(5) Operation of related services – The Corporation is authorized to operate such necessary and related services, shows and entertainment. Any income that may be realized from these related services shall not be included as part of the income of the Corporation for the purpose of applying the franchise tax, but the same shall be considered as a separate income of the Corporation and shall be subject to income tax.

...

corporate income tax. We quote in agreement the relevant portions of the assailed Decision:

> ...
>
> As earlier ruled by the Supreme Court in the *Bloomberry* case, the determination of the submissions of petitioner will have to follow the case of *PAGCOR vs. The Bureau of Internal Revenue, et al.*, where the Supreme Court clarified its earlier ruling in G.R. No. 172087 involving the same parties, and expressed that: (i) Section 1 of Republic Act No. 9337, amending Section 27(C) of the Tax Code, which excluded PAGCOR from the enumeration of government-owned and controlled corporations exempted from corporate income tax is valid and constitutional; (ii) PAGCOR's tax privilege of paying 5% franchise tax *in lieu* of all other taxes with respect to its income from gaming operations is not repealed or amended by Section 1(c) of R.A. No. 9337; (iii) PAGCOR's income from gaming operations is subject to the 5% franchise tax only; and (iv) PAGCOR's income from other related services is subject to corporate income tax only.
>
> Under P.D. No. 1869, as amended, the income of PAGCOR is classified into two: (1) income from its operations conducted under its franchise, pursuant to Section 13(2)(b) thereof (*income from gaming operations*); and, (2) income from its operation of necessary and related services under Section 14(5) thereof (*income from other related services*)...
>
> The nature of taxes imposable is well defined for each kind of activity or operation. For proper guidance, the first classification of PAGCOR's income under RMC No. 33-2013 (*i.e.* income from its operations and licensing of gambling casinos, gaming clubs and other similar recreation or amusement places, gaming pools) should be interpreted in relation to Section 13(2) of P.D. No. 1869, which pertains to the income derived from issuing and/or granting the license to operate casinos to PAGCOR's contractees and licensees, as well as earnings derived by PAGCOR from its own operations under the franchise. On the other hand, the second classification of PAGCOR's income under RMC No. 33-2013 (*i.e.* income from other related operations) should be interpreted in relation to Section 14(5) of P.D. No. 1869, which pertains to income received by PAGCOR from its contractees and licensees in the latter's operation of casinos, as well as PAGCOR's own income from operating necessary and related services, shows and entertainment.[19]
>
> ...

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[19] Citations omitted and italics in the original text.

In *Philippine Amusement and Gaming Corporation (PAGCOR) v. The Bureau Internal Revenue, et al.*[20] (**PAGCOR decision**), the Supreme Court explained the nature of income *vis-à-vis* the applicable tax thereon, to wit:

> ...
>
> For clarity, it is worthy to note that under P.D. 1869, as amended, PAGCOR's income is classified into two: (1) income from its operations conducted under its Franchise, pursuant to Section 13(2)(b) thereof (*income from gaming operations*); and (2) income from its operation of necessary and related services under Section 14(5) thereof (*income from other related services*). In RMC No. 33-2013, respondent further classified the aforesaid income as follows:
>
> 1. PAGCOR's ***income from its operations and licensing of gambling casinos, gaming clubs and other similar recreation or amusement places, gaming pools***, includes, among others:
>   (a) Income from its casino operations;
>   (b) Income from dollar pit operations;
>   (c) Income from regular bingo operations; and
>   (d) Income from mobile bingo operations operated by it, with agents on commission basis. Provided, however, that the agents' commission income shall be subject to regular income tax, and consequently, to withholding tax under exisiting regulations.
>
> 2. ***Income from "other related operations"*** includes, but is not limited to:
>   (a) Income from licensed private casinos covered by authorities to operate issued to private operators;
>   (b) Income from traditional bingo, electronic bingo and other bingo variations covered by authorities to operate issued to private operators;
>   (c) Income from private internet casino gaming, internet sports betting and private mobile gaming operations;
>   (d) Income from private poker operations;
>   **(e) Income from junket operations;**
>   (f) Income from SM demo units; and
>   (g) Income from other necessary and related services, shows and entertainment.
>
> After a thorough study of the arguments and points raised by the parties, and in accordance with our Decision dated March 15, 2011, we sustain petitioner's contention that its income from gaming operations is subject only to five percent (5%) franchise tax under

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[20] G.R. No. 215427, 10 December 2014.

> P.D. 1869, as amended, **while its income from other related services is subject to corporate income tax pursuant to P.D. 1869, as amended, as well as R.A. No. 9337.** This is demonstrable.
>
> ***First.*** Under P.D. 1869, as amended, petitioner is subject to income tax only with respect to its operation of related services. Accordingly, the income tax exemption ordained under Section 27(c) of R.A. No. 8424 clearly pertains only to petitioner's income from operation of related services. Such income tax exemption could not have been applicable to petitioner's income from gaming operations as it is already exempt therefrom under P.D. 1869, as amended...[21]
>
> ...

Evidently from the foregoing, the income from junket operations is classified under "other related services" subject to corporate income tax and not franchise tax. Such treatment extends to petitioner as contractee/licensee pursuant to the Junket Agreement. It was categorically held by the Supreme Court in the later *Bloomberry* case[22] that payment of corporate income tax on "other related services" extends to contractees/licensees, thus:

> ...
>
> As the PAGCOR Charter states in unequivocal terms that exemptions granted for earnings derived from the operations conducted under the franchise specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, ***shall inure to the benefit of and extend to*** corporation(s), association(s), agenc(ies), or individual(s) with whom the PAGCOR or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise, so it must be that all *contractees and licensees* of PAGCOR, upon payment of the 5% franchise tax, shall likewise be exempted from all other taxes, including corporate income tax realized from the operation of casinos.
>
> <u>For the same reasons that made us conclude in the 10 December 2014 Decision of the Court sitting En Banc in G.R. No. 215427 that PAGCOR is subject to corporate income tax for "other related services", we find it logical that its *contractees and licensees* shall likewise pay corporate income tax for income derived from such "related services".</u>[23]
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> ...

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21 Citation omitted, emphasis and italics in the original text and supplied.
22 Supra at note 16.
23 Emphasis and italics in the original text and underscoring supplied.

The language of the law is too plain and unambiguous to be construed. It is a basic tenet in statutory construction that when the statute is clear, it must be given its literal meaning and applied without any attempted interpretation.[24]

Considering that petitioner's income from junket operations is subject to corporate income tax, its claim for refund or issuance of TCC arising from alleged erroneous payment of taxes has no legal mooring. Accordingly, We affirm that petitioner is not entitled to the refund or issuance of TCC for the taxes paid for TY 2014.

WHEREFORE, premises considered, the instant Petition for Review filed by petitioner Prime Investment Korea Inc. is **DENIED** for lack of merit. Accordingly, the Decision and Resolution dated 31 May 2019 and 20 August 2019, respectively, of the Special Second Division in CTA Case No. 9573, entitled *Prime Investment Korea Inc. v. Commissioner of Internal Revenue*, are hereby **AFFIRMED**.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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[24] *Bloomberry Resorts and Hotels, Inc. v. Bureau of Internal Revenue*, supra at note 16.

JUANITO C. CASTANEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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 before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice