REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION
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HIGHLAND GAMING CORPORATION, Petitioner,	**CTA Case No. 8730**
	Members:
- versus -	**DEL ROSARIO,** P.J., Chairperson, **UY,** and **MINDARO-GRULLA,** JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** JAN 17 2019 : 3:00 pm

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DECISION

UY, J.:

This is a *Petition for Review* filed by Highland Gaming Corporation against the Commissioner of Internal Revenue in accordance with Section 228 of the National Internal Revenue Code (NIRC) of 1997, because of the latter's denial of the former's protest against the assessment for alleged deficiency income tax for taxable year (TY) ended December 31, 2009 in the aggregate amount of ₱12,023,215.47, inclusive of interest, through the issuance of a *Preliminary Collection Letter* (PCL) dated October 7, 2013.[1]

THE FACTS

Petitioner Highland Gaming Corporation is a corporation duly organized and existing under and by virtue of the laws of the

[1] Statement of the Case, Pre-Trial Order, Docket – Vol. I, p. 633.

Philippines, with business address at 26th Floor West Tower PSE Centre Bldg., Exchange Road, Ortigas Center, Pasig City.[2] It is also a registered taxpayer with Certificate of Registration No. OCN3RC0000584172.[3]

As stated in petitioner's Articles of Incorporation, its primary purpose is as follows:

> "To purchase, acquire, establish, own, hold, sell, lease, conduct, operate, manage and supervise restaurants, cafes, bars and general amusement and recreation enterprises of every kind and nature; to furnish amusement and recreation to the public, such as but not limited to, bingo games, ballroom dancing, tea and garden parties, movie premiers, stage plays, basketball games, concerts, variety shows and other similar related business activities; and to carry on any lawful business and to do any and everything necessary, suitable convenient or proper for the accomplishment of any of the purposes enumerated or incidental to the powers of the corporation."[4]

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue, who holds office at the Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.[5]

On September 20, 2010, respondent issued a Letter of Authority authorizing revenue officers to examine petitioner's books of accounts and other accounting records for all internal revenue taxes covering the period from January 1, 2009 to December 31, 2009, which petitioner received on even date.[6]

Petitioner received the *Notice for Informal Conference* dated July 11, 2012[7] from Revenue District Officer (RDO) Florante R. Aninag of BIR-Revenue District Office No. 43A, East Pasig, on July

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[2] Exhibit "P-1", Docket – Vol. I, pp. 781 to 800.
[3] Exhibit "P-2", Docket – Vol. I, p. 801.
[4] Exhibit "P-1", Docket – Vol. I, p. 781.
[5] Par. 1, Joint Stipulation of Facts and Issues (JSFI), Docket – Vol. I, p. 605.
[6] Exhibit "R-1", Docket – Vol. II, p. 941.
[7] Exhibit "P-9", Docket – Vol. I, p. 837; Exhibit "R-2", Docket – Vol. II, p. 942.

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13, 2012, informing petitioner of the proposed deficiency income tax and expanded withholding tax (EWT) assessments for TY 2009 against it.[8] Petitioner replied through the letter dated July 19, 2012.[9]

On July 30, 2012, petitioner then received a *Post Reporting Notice* dated July 25, 2011[10] issued by RDO Aninag, reiterating the proposed deficiency income tax assessment.

On August 23, 2012, petitioner received the letter dated August 17, 2012, denying its arguments in the letter dated August 9, 2011 and reiterating the assessment for deficiency income tax.[11]

Petitioner then received a *Preliminary Assessment Notice* (PAN) from OIC Regional Director Jonas DP. Amora of BIR Revenue Region No. 7, Quezon City on March 13, 2013, informing petitioner of its alleged deficiency income tax amounting to ₱11,780,280.64, inclusive of interest.[12] As such, petitioner disputed the said PAN on March 22, 2013.[13]

On April 5, 2013, petitioner received from OIC-Regional Director Amora a *Formal Letter of Demand* (FLD) with attached Assessment Notice (FAN) No. 043A-B205-09 dated March 15, 2013,[14] assessing the latter for deficiency income tax in the amount of ₱12,023,215.47, inclusive of interest. On April 15, 2013, petitioner protested the said FAN and FLD.[15]

Petitioner received on October 17, 2013, the PCL dated October 7, 2013, seeking to collect the total amount of ₱12,023,215.47, as alleged deficiency income tax, inclusive of interest.[16] Subsequently, respondent released a *Final Notice Before*

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[8] Par. 2, JSFI, Docket – Vol. I, pp. 605 to 606.
[9] Exhibit "P-10", Docket – Vol. I, pp. 840 to 842.
[10] Par. 3, JSFI, Docket – Vol. I, p. 606; Exhibit "P-11", Docket – Vol. I, p. 843.
[11] Par. 4, JSFI, Docket – Vol. I, p. 606.
[12] Par. 5, Docket – Vol. I, p. 606; Exhibits "P-14" and "P-14-1", Docket – Vol. I, pp. 844 to 845; Exhibits "R-7" and "R-8", Docket – Vol. II, pp. 947 and 948, respectively.
[13] Exhibit "P-15", Docket – Vol. I, pp. 846 to 849.
[14] Par. 6, JSFI, Docket – Vol. I, p. 606; Exhibits "P-16", "P-16-1", and "P-16-2", Docket – Vol. I, pp. 850 to 852; Exhibits "R-9", "R-10", and "R-11", Docket – Vol. II, pp. 949, 950, and 951, respectively.
[15] Exhibit "P-17", Docket – Vol. I, pp. 853 to 860.
[16] Par. 7, JSFI, Docket – Vol. I, p. 606; Exhibit "P-7", Docket – Vol. I, p. 835.

Seizure (FNBS) on October 30, 2013 to collect the aforesaid deficiency tax.[17]

On November 14, 2013, petitioner filed the instant *Petition for Review.*[18]

In the *Answer* filed on January 17, 2014,[19] respondent raised the following special and affirmative defenses, to wit: this Court has no jurisdiction over the case; the filing of the instant *Petition for Review* is well beyond the 180-day period prescribed in the case of *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*,[20] and thus, was filed out of time. Allegedly, the disputed assessment became final, demandable and executory; and if petitioner opted to wait for the final decision of respondent, the same *Petition for Review* was prematurely filed, in the absence of a final decision of respondent denying petitioner's protest.

On December 19, 2013, petitioner filed an *Urgent Motion for Suspension of Collection of Taxes.*[21] In support of the said *Motion*, petitioner presented Atty. Rufino A. Alicante, Jr., as its witness. Thereafter, petitioner formally offered its documentary evidence in relation to the said motion, and the Court admitted the same.[22]

On October 14, 2014, the Court allowed the suspension of the collection of taxes and directed respondent to cease and desist from committing any or all acts to collect the alleged deficiency taxes for TY 2009 provided petitioner would file a cash bond or post a surety bond.[23]

After the pre-trial conference held on June 20, 2014[24], the parties filed their *Joint Stipulation of Facts and Issues*[25] and *Supplemental Joint Stipulation of Facts and Issues*[26] on July 21, 2014 and on August 27, 2014, respectively. The Court approved the same

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[17] Exhibit "P-8", Docket – Vol. I, p. 836.
[18] Docket – Vol. I, p. 14.
[19] Docket – Vol. I, pp. 208 to 210.
[20] G.R. No. 168498, April 24, 2007.
[21] Docket – Vol. I, pp. 113 to 118.
[22] Resolution dated March 20, 2014, Docket – Vol. I, p. 342.
[23] Resolution dated October 14, 2014, Docket – Vol. I, pp. 648 to 653.
[24] Minutes of Hearing and Resolution, Docket – Vol. I, pp. 591 to 594 and 599 to 600, respectively.
[25] Docket – Vol. I, pp. 605 to 614.
[26] Docket – Vol. I, pp. 622 to 623.

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on September 1, 2014, and terminated the pre-trial.[27] Consequently, the Court issued a Pre-Trial Order on September 9, 2014.[28]

During trial proper, petitioner recalled and again presented Atty. Rufino A. Alicante, Jr. as its sole witness. Subsequently, petitioner formally offered its testimonial and documentary evidence, consisting of Exhibits "P-1" to "P-11" and "P-14" to "P-20", inclusive of submarkings; which were all admitted by the Court.[29]

On the other hand, respondent presented the following witnesses: Revenue Officers Angel B. Rabago, Jr. and Owen R. Villanueva. Thereafter, respondent formally offered his documentary evidence, consisting of Exhibits "R-1" to "R-14.1", inclusive of submarkings; which were all admitted by the Court.[30]

The Court considered the instant case submitted for decision on January 23, 2018, considering the filing of the *Amended Memorandum for Petitioner* on January 4, 2018,[31] and the Records Verification dated January 17, 2018,[32] stating the failure of respondent to file his memorandum.[33]

Hence, this Decision.

THE ISSUES

The parties stipulated the following issues for the Court's resolution, to wit:

"1. WHETHER OR NOT THIS HONORABLE COURT HAS JURISDICTION OVER THE INSTANT CASE.

2. WHETHER OR NOT THE FINAL ASSESSMENT NOTICE ISSUED AGAINST PETITIONER FOR

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[27] Resolution dated September 1, 2014, Docket – Vol. I, p. 625.
[28] Docket – Vol. I, pp. 633 to 643.
[29] Resolutions dated September 2, 2015 and December 1, 2015, Docket – Vol. II, pp. 900 to 901 and pp. 931 to 932, respectively.
[30] Resolution dated December 1, 2017, Docket – Vol. II, pp. 1086 to 1087.
[31] Docket – Vol. II, pp. 1088 to 1122.
[32] Docket – Vol. II, p. 1124.
[33] Resolution, Docket – Vol. II, p. 1129.

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ALLEGED DEFICIENCY INCOME TAX FOR TAXABLE YEAR 2009 IS VOID.

3. WHETHER OR NOT PETITIONER IS LIABLE FOR ALLEGED DEFICIENCY INCOME TAX FOR TAXABLE YEAR 2009 IN THE AGGREGATE AMOUNT OF P12,023,215.47, INCLUSIVE OF INTEREST."[34]

Petitioner's arguments:

Petitioner argues that this Court has jurisdiction over the instant case. Allegedly, a demand letter for payment of delinquent taxes may be considered a decision on a disputed or protested assessment. In this case, the PCL dated October 7, 2013 unquestionably constitutes the final action taken by the respondent on petitioner's Letter-Protest when it reiterated the tax deficiency assessments due from petitioner, and requested the payment thereof. It also indicated that if petitioner failed to pay the same, respondent would be constrained to serve and execute the Administrative Summary Remedies to enforce the collection of petitioner's tax liabilities. Thus, it is well within the jurisdiction of the CTA to entertain the instant Petition for Review questioning the PCL issued against petitioner for taxable year 2009.

Petitioner maintains that the Final Assessment Notice issued against petitioner for alleged deficiency income tax for taxable year 2009 is void. Under the law, petitioner had fifteen (15) days from the receipt of the PAN, within which to file its protest thereto. However, respondent issued the FAN, merely two days after the PAN was issued, before the period for filing the protest has lapsed. By prematurely issuing the FAN without awaiting the lapse of fifteen (15) days from the date of the receipt of the PAN by petitioner, respondent acted with grave abuse of discretion by clearly violating petitioner's right to due process, thereby rendering the FAN void.

Moreover, petitioner points out that the FAN, and the subsequent PCL, for alleged deficiency income tax for taxable year 2009, should be withdrawn and cancelled for lack of factual and legal basis.

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[34] Par. III, JSFI, Docket – Vol. I, p. 607.

Allegedly, petitioner, having a contractual relationship with PAGCOR, is exempt from all taxes, national or local, including income tax, pursuant to Section 13(2) of PD 1869. Hence, petitioner is not subject to the alleged deficiency income tax and VAT for taxable year 2009.

R.A. No. 9337 and the Supreme Court decision in *PAGCOR vs. BIR, et al.*[35] ("*PAGCOR* case"), did not operate to remove or repeal the income tax exemption of petitioner as a PAGCOR licensee, because the law did not expressly or specifically provide for the repeal of P.D. No. 1869. Section 13(2)(a) and (b) of P.D. No. 1869, not being clearly repugnant with Section 27(C) of the 1997 NIRC, is deemed operative, notwithstanding the amendment introduced by R.A. No. 9337 thereon. Accordingly, P.D. No. 1869, being a special law, remained to be the operative law with respect to PAGCOR licensees' tax exemption, particularly from income tax.

Petitioner likewise stresses that even after the effectivity of R.A. No. 9337, the Supreme Court, in *Commissioner of Internal Revenue vs. Acesite (Philippines) Hotel Corporation*,[36] held that Section 13 of P.D. No. 1869 clearly gives PAGCOR a blanket exemption to taxes, with no distinction on whether the taxes are direct or indirect.

In addition, petitioner points out that PAGCOR issued a Memorandum dated June 5, 2006, stating that R.A. No. 9337 did not repeal the tax treatment of Bingo Grantees as mandated by P.D. No. 1869, until otherwise advised by PAGCOR or ordered by a court of competent authority.

Assuming that the decision of the Supreme Court in the *PAGCOR* case applies to licensees of PAGCOR, the same should be applied prospectively. In this case, the *PAGCOR case* establishes a new doctrinal interpretation of Section 13(2)(a) and (b) of P.D. No. 1869, with respect to the corporation income tax liability of PAGCOR and should, therefore, be applied prospectively.

Lastly, petitioner avers that in any case, it continuously remits 5% tax to PAGCOR, which is subsequently remitted to the BIR. Thus, assuming further that PAGCOR and its licensees/grantees are

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[35] 645 SCRA 338 (2011).
[36] 516 SCRA 93 (2007).

liable for income tax, the 5% tax paid by petitioner should be considered and applied against its supposed deficiency income tax, if any. Otherwise, the collection of additional income tax on top of the 5% tax paid is excessive and constitutes double taxation. Moreover, contrary to the position of the respondent, petitioner argues that the total salaries and wage expenses incurred for taxable year 2009 are duly substantiated by supporting documents.

Respondent's counter-arguments:

In his *Answer*, respondent contends that the CTA has no jurisdiction over the case. In the case of *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue* ("*RCBC* case"),[37] the Supreme Court held that a taxpayer has 30 days, from the expiration of the 180 period from the submission of documents, within which to file a petition for review, or if it opted to await the final decision of the Commissioner, a taxpayer has 30 days from the receipt of the decision, within which to file a petition for review.

In this case, petitioner allegedly filed its Letter-Protest on April 15, 2013, but it filed the instant *Petition for Review* only on November 14, 2013. Clearly, the filing of the *Petition for Review* is well beyond the 180-day period prescribed in the *RCBC* case, and is filed out of time. The disputed assessment became final, demandable, and executory. Thus, according to respondent, this Court has no jurisdiction over the instant case. On the other hand, if petitioner opted to await the final decision of the Commissioner, the instant Petition for Review is filed prematurely, considering the absence of a final decision by the Commissioner denying its protest.

THE COURT'S RULING

The Court shall first discuss the issue of jurisdiction over the instant *Petition for Review*.

Petitioner contends that instead of receiving a Final Decision on Disputed Assessment, petitioner received the PCL on October 17, 2013. It argues that when the PCL reiterated the deficiency tax assessment and requested the payment thereof, the said PCL was considered the final action/decision of respondent on petitioner's

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[37] G.R. No. 168498, April 24, 2007.

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protest letter. Since petitioner filed the *Petition for Review* on November 14, 2013 or 28 days from receipt of the PCL, it is allegedly within the jurisdiction of this Court to entertain the instant *Petition for Review*.

Section 228 of the NIRC of 1997 provides:

> "SEC. 228. *Protesting of Assessment*. – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, That a preassessment notice shall not be required in the following cases:
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> xxx xxx xxx
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> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
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> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> 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 the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

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Based on the foregoing provisions, petitioner has thirty (30) days from receipt of respondent's decision within which to appeal the same.

However, petitioner received a PCL on October 17, 2013[38] instead of a Final Decision on Disputed Assessment. Thus, the Court shall evaluate carefully whether the PCL is respondent's final decision as contemplated in the afore-quoted provision.

The Supreme Court, in the case of *Oceanic Wireless Network, Inc. vs. Commissioner of Internal Revenue, et al.*,[39] emphasized that the language used and the tenor of the letter sent to the taxpayer must be clear and unequivocal as the final decision, *viz*:

> "A demand letter for payment of delinquent taxes may be considered a decision on a disputed or protested assessment. The determination on whether or not a demand letter is final is conditioned upon the language used or the tenor of the letter being sent to the taxpayer.
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> We laid down the rule that the Commissioner of Internal Revenue should always indicate to the taxpayer in clear and unequivocal language what constitutes his final determination of the disputed assessment, thus:
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> > . . . we deem it appropriate to state that the Commissioner of Internal Revenue should always indicate to the taxpayer in clear and unequivocal language whenever his action on an assessment questioned by a taxpayer constitutes his final determination on the disputed assessment, as contemplated by Sections 7 and 11 of Republic Act No. 1125, as amended. On the basis of his statement indubitably showing that the Commissioners communicated action is his final decision on the contested assessment, the aggrieved taxpayer would then be able to take recourse to the tax court at the opportune time. Without needless difficulty, the taxpayer would be able

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[38] Par. 7, JSFI, Docket – Vol. I, p. 606; Exhibit "P-7", Docket – Vol. I, p. 835.
[39] G.R. No. 148380, December 9, 2005.

> to determine when his right to appeal to the tax court accrues. xxx"

The PCL dated October 7, 2013 apparently indicates that in case petitioner failed to pay the deficiency tax, respondent shall be constrained to enforce the collection through administrative summary remedies provided by law, to wit:

> "In order to avoid the accumulation of interest and surcharge, it is requested that you pay the tax liability/ies within ten (10) days from receipt hereof, at the:
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> RR-007 – QUEZON CITY
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> However, if payment has/have already been made, please send or bring us your copies of the receipts of payment together with this letter to be the basis for cancelling/closing your liability/ies. Otherwise, we shall be constrained to enforce the collection thereof thru the administrative summary remedies provided for by law, without further notice."[40]

A final demand letter from the BIR, reiterating to the taxpayer the immediate payment of a tax deficiency assessment previously made, is tantamount to a denial of the taxpayer's request for reconsideration. Such letter amounts to a final decision on a disputed assessment and is thus appealable to this Court.[41]

Considering the foregoing, the Court finds the PCL as respondent's final decision on petitioner's protest against the FAN and the FLD.

Records show that petitioner received the PCL on October 17, 2013. Thus, it had 30 days therefrom or until November 16, 2013 within which to appeal respondent's final decision before this Court. Evidently, the instant *Petition for Review* was filed on November 14, 2013. Hence, the same was timely filed. Thus, this Court has jurisdiction over the present case.

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[40] Exhibit "P-7", Docket – Vol. I, p. 835.
[41] *Commissioner of Internal Revenue vs. Isabela Cultural Corporation*, G.R. No. 135210, July 11, 2001.

The Court shall now proceed to determine whether the FAN and the FLD are void.

Petitioner asserts that the FAN and the FLD are void for failure of respondent to observe due process. Allegedly, it received the PAN on March 13, 2013; thus, it had fifteen (15) days therefrom within which to file a protest before respondent. However, respondent issued the FAN and the FLD on March 15, 2013, or barely two days after petitioner received the PAN. As such, petitioner claims that respondent violated its right to due process when respondent hastily issued the FAN and disregarded the protest filed by petitioner on March 22, 2013.

We agree with petitioner.

Section 3.1.2 of Revenue Regulations (RR) No. 12-99 states:

> "SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* –
>
> xxx xxx xxx
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> 3.1.2 *Preliminary Assessment Notice (PAN).* – If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based xxx. **If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.**" (*Emphasis supplied*)

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As earlier cited, Section 228 of the NIRC of 1997 states that the taxpayer shall be required to respond to the PAN within a period to be prescribed by implementing rules and regulations. Furthermore, Section 3.1.2 of RR No. 12-99, implementing the said Section 228 provides that a taxpayer has fifteen (15) days within which to reply to the PAN. If the taxpayer fails to respond to the PAN within the said 15-day period, the taxpayer shall be considered in default and the BIR shall then issue the FLD/FAN.

In *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*[42] ("*Metro Star Superama* case" for brevity), the Supreme Court ruled as follows, to wit:

> "From the provision quoted above, it is clear that the sending of a PAN to taxpayer to inform him of the assessment made is but part of the 'due process requirement in the issuance of a deficiency tax assessment,' the absence of which renders nugatory any assessment made by the tax authorities. The use of the word 'shall' in subsection 3.1.2 describes the mandatory nature of the service of a PAN. **The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the CIR to strictly comply with the requirements laid down by law and its own rules is a denial of Metro Star's right to due process.**" *(Emphasis supplied)*

Thus, on the basis of the foregoing jurisprudential pronouncement, the failure of the BIR Commissioner to strictly comply with the requirements laid down by law and its own rules is a denial of a taxpayer's right to due process. Pursuant to the above-quoted Section 3.1.2 of RR No. 12-99, respondent needs to wait for the lapse of the 15-day period, before issuing the pertinent FLD and FAN.

In the present case, records show that petitioner indeed received the PAN dated March 6, 2013 on March 13, 2013,[43] and respondent issued both the FAN and the FLD two (2) days after such receipt, or on March 15, 2013.[44] It is noteworthy that even though petitioner received the FAN on April 5, 2013, respondent already

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[42] G.R. No. 185371, December 8, 2010.
[43] Exhibit "P-14", Docket – Vol. I, p. 844.
[44] Exhibit "P-16-1", Docket – Vol. I, p. 850.

prepared and issued the same, without regard to the 15-day period, within which petitioner is allowed by law to respond to the PAN, and without taking into consideration the protest made by petitioner on March 22, 2013[45].

It is an elementary rule enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law. In balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution.[46]

Considering that respondent failed to give petitioner an opportunity to explain its side by responding to the PAN, petitioner's right to due process has been violated by respondent. Correspondingly, the subject FAN and the FLD are void.

Needless to state, a void assessment bears no valid fruit.[47] Such being the case, FAN No. 043A-B205-09 and the FLD, both dated March 15, 2013, and the PCL dated October 7, 2013, must already be cancelled.

Nevertheless, even granting that the FAN and the FLD are valid, the Court finds the same without basis.

Respondent assessed petitioner for deficiency income tax amounting to ₱12,023,215.47 for taxable year 2009, as computed below:[48]

Taxable income per Income Tax Return (ITR)			₱ -
Add:	Adjustments per investigation		
	Taxable income not subjected to income tax	₱ 20,092,214.00	
	Unsupported expenses	4,956,151.56	25,048,365.56
Taxable income per investigation			**₱ 25,048,365.56**

[45] Exhibit "P-15", Docket – Vol. I, p. 846.
[46] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.
[47] *Samar-I Electric Cooperative vs. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014.
[48] Exhibit "P-16", Docket – Vol. I, p. 851.

Income tax due thereon			₱ 7,514,509.67
Less:	Allowable tax credits/payments		-
Deficiency income tax			7,514,509.67
Add:	20% Interest p.a. (04.16.10 to 4.15.13)		4,508,705.80
TOTAL AMOUNT DUE			**₱ 12,023,215.47**

A. On the taxable income not subjected to income tax in the amount of ₱20,092,214.00.

Respondent's verification disclosed that as per Financial Statement (FS), petitioner did not subject the income from operation amounting to ₱20,092,214.00 to income tax; thus, the same was assessed pursuant to Section 31 of the NIRC of 1997.[49]

Petitioner asserts that having contractual relationship with the Philippine Amusement and Gaming Corporation (PAGCOR), petitioner is exempt from all taxes, national or local, pursuant to Section 13(2)[50] of Presidential Decree (PD) No. 1869. Hence, petitioner claims that it is not subject to deficiency income tax for TY 2009.

Respondent assessed petitioner for deficiency income tax in the amount of ₱20,092,214.00 on the basis of the pronouncement of

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[49] Exhibit "P-16", Details of Discrepancies, Docket – Vol. I, p. 852.

[50] SECTION 13. *Exemptions.* -

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(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.

(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.

the Supreme Court, in the *PAGCOR* case[51], that PAGCOR is not exempt from income tax; and being a franchise grantee of PAGCOR, petitioner is likewise not exempt from income tax.[52]

We do not agree with respondent.

The Supreme Court clarified, in the case of *Bloomberry Resorts and Hotels, Inc. vs. Bureau of Internal Revenue*,[53] that PAGCOR's income from gaming operations is subject only to five percent (5%) franchise tax under Presidential Decree No. 1869, as amended, while its income from other related services is subject to corporate income tax pursuant to PD No. 1869, as amended, as well as Republic Act (RA) No. 9337, *viz*:

> "The determination of the submissions of petitioner will have to follow the pilot case of *PAGCOR v. The Bureau of Internal Revenue, et al.*, where this Court clarified its earlier ruling in G.R. No. 172087 involving the same parties, and expressed that: (i) Section 1 of RA No. 9337, amending Section 27 (C) of the NIRC of 1997, as amended, which excluded PAGCOR from the enumeration of GOCCs exempted from corporate income tax, is valid and constitutional; (ii) PAGCOR's tax privilege of paying five percent (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.
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> xxx xxx xxx
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> The Court through Justice Diosdado M. Peralta, categorically followed what was simply provided under the PAGCOR Charter (PD No. 1869, as amended by RA No. 9487), by proclaiming that despite amendments to the NIRC of 1997, the said Charter remains in effect. Thus, income derived by PAGCOR from its *gaming operations* such as the operation and licensing of gambling casinos,

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[51] G.R. No. 172087, March 15, 2011.
[52] Exhibit "P-9", Details of Discrepancies, Docket – Vol. I, p. 839.
[53] G.R. No. 212530, August 10, 2016.

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gaming clubs and other similar recreation or amusement places, gaming pools and related operations is subject only to 5% franchise tax, *in lieu* of all other taxes, including corporate income tax. The Court concluded that the **CIR committed grave abuse of discretion amounting to lack or excess of jurisdiction when it issued RMC No. 33-2013 subjecting both income from gaming operations and other related services to corporate income tax and 5% franchise tax considering that it unduly expands the Court's Decision dated 15 March 2011 without due process, which creates additional burden upon PAGCOR.**

Noticeably, however, the High Court in the abovementioned case intentionally did not rule on the issue of whether or not PAGCOR's tax privilege of paying only the 5% franchise tax *in lieu* of all other taxes inures to the benefit of third parties with contractual relationship with it in connection with the operation of casinos, such as petitioner herein. The Court sitting En Banc simply stated that:

> The resolution of the instant petition is limited to clarifying the tax treatment of [PAGCOR's] income vis-a-vis our Decision dated March 15, 2011. This Decision (dated 10 December 2014) is not meant to expand our original Decision (dated 15 March 2011) by delving into new issues involving [PAGCOR's] contractees and licensees. For one, the latter are not parties to the instant case, and may not therefore stand to benefit or bear the consequences of this resolution. For another, to answer the fourth issue raised by [PAGCOR] relative to its contractees and licensees would be downright premature and iniquitous as the same would effectively countenance sidesteps to judicial process.

Bearing in mind the parties involved and the similarities of the issues submitted in the present case, we are now presented with the prospect of finally resolving the confusion caused by the amendments introduced by RA No. 9337 to the NIRC of 1997, and the subsequent issuance of RMC No. 33-2013, affecting the tax regime not only of PAGCOR but also its contractees and licensees under the existing laws and prevailing jurisprudence.

Section 13 of PD No. 1869 evidently states that payment of the 5% franchise tax by PAGCOR and its *contractees and licensees* exempts them from payment of any other taxes, including corporate income tax, quoted hereunder for ready reference:

> Sec. 13. *Exemptions.* –
>
> xxx xxx xxx
>
> (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.
>
> **(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.** (Emphasis and underlining supplied)

As previously recognized, the above-quoted provision providing for the said exemption was neither amended nor repealed by any subsequent laws (*i.e.*, Section 1 of R.A. No. 9337 which amended Section 27 (C) of the NIRC of 1997); thus, it is still in effect. Guided by the doctrinal teachings in resolving the case at bench, it is without a doubt that, like PAGCOR, its *contractees and licensees* remain exempted from the payment of corporate income tax and other taxes since the law is clear that said exemption inures to their benefit.

We adhere to the cardinal rule in statutory construction that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. As has been our consistent ruling, where the law speaks in clear and categorical language, there is no occasion for interpretation; there is only room for application.

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 an extend to*** corporation(s), association(s), agency(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.

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> 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.'"

Based on the foregoing, it well-settled that PAGCOR and its contractees and licensees are liable to the corporate income tax only in their "other related services". Such income tax liability does not extend to their gaming operations, such as the operation and licensing of gambling casinos, gaming clubs and other similar recreation or amusement places, gaming pools and related operations, so long as the corresponding 5% franchise tax has been paid, as the same is in lieu of all other taxes.

Being a franchise grantee of PAGCOR,[54] petitioner's income from its bingo gaming operations at Baguio Center Mall and SM City - Baguio is exempt from any tax, upon payment of the 5% franchise tax in lieu of all other taxes. Consequently, the 5% franchise tax shall be imposed on petitioner's gross receipts from its bingo gaming operations.

To prove that it remitted the franchise tax, petitioner presented a Statement of Franchise Tax Remittances for CY 2009[55] issued by PAGCOR, showing that petitioner's reported gross revenues for TY 2009 amounted to ₱69,515,962.17 with the corresponding franchise tax remittances in the amount of ₱3,475,797.61.

Following Bingo Regulatory Order No. 2008-01, the gross revenues reported by petitioner to PAGCOR in the amount of ₱69,515.962.17 is comprised of gross bingo card sales less the payouts.

Correspondingly, the Court finds that petitioner is not liable for any deficiency income tax. Such being the case, the assessment of deficiency income tax derived from petitioner's income due to bingo gaming operations for TY 2009 amounting to ₱20,092,214.00 should be cancelled.

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[54] Exhibit "P-9", Details of Discrepancies, Docket – Vol. I, p. 839.
[55] Exhibit "P-19", Docket – Vol. I, p. 893.

B. On the unsupported expenses amounting to ₱4,956,151.56.

Respondent's verification disclosed that the following expenses were not fully substantiated with necessary documentary evidence; hence, the same were disallowed as deductions in computing petitioner's taxable income pursuant to Section 34(A) of the NIRC of 1997. The said amount is determined as follows:[56]

	Per FS/ITR/Audit	**Per Alphalist**	**Difference**
Salaries and wages	₱ 2,441,392.00		₱ 2,441,392.00
Employee benefits	1,198,937.00		1,198,937.00
Schedule 7.3 With No Previous Employer Within the Year:			
13th Month Pay and Other Benefits		₱ 148,360.31	
SSS, GSIS, PHIC & Pagibig Contrib. and Union Dues		113,403.30	
Salaries and Other Forms of Compensation		2,062,742.83	
Total	₱ 3,640,329.00	₱2,324,506.44	1,315,822.56
Unsupported expenses			**₱ 4,956,151.56**

Petitioner points out that respondent erroneously computed the alleged difference in the salaries, wages and other benefits which resulted in the supposed unsupported expenses. The computation should have been as follows:

	Per FS/ITR/Audit	**Per Alphalist**	**Difference**
Salaries and wages	₱ 2,441,392.00		₱ 2,441,392.00
Employee benefits	1,198,937.00		1,198,937.00
Schedule 7.3 With No Previous Employer Within the Year:			
13th Month Pay and Other Benefits		₱ 148,360.31	(148,360.31)
SSS, GSIS, PHIC & Pagibig Contrib. and Union Dues		113,403.30	(113,403.30)
Salaries and Other Forms of Compensation		2,062,742.83	(2,062,742.83)
Total	**₱ 3,640,329.00**	**₱ 2,324,506.44**	**₱ 1,315,822.56**

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[56] Exhibit "P-16-2", Docket – Vol. I, p. 852.

Contrary to the position of respondent, petitioner alleges that the total salaries and wages expenses incurred for TY 2009 can be duly substantiated by petitioner's Audited Financial Statements indicating that the salaries and allowances and other benefits deducted by petitioner in its gross income amounted to ₱2,441,392.00 and ₱1,198,937.00, respectively.

Nevertheless, even when there are indeed unsupported expenses in the amount of ₱4,956,151.56, this item must likewise be cancelled, since, as already shown, the net income of petitioner for TY 2009 in the amount of ₱20,092,214.00 is exempt from income tax.

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.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

CIELITO N. MINDARO-GRULLA
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
Chairperson, Special 1st Division