REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2414** (CTA Case No. 9798)
- versus -	Present: **DEL ROSARIO,** *P.J.,* **UY,** **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA,** **MODESTO-SAN PEDRO,** **REYES-FAJARDO,** *and* **CUI-DAVID,** *JJ.*
PREMIUMLEISURE AND AMUSEMENT, INC. (PLAI), Respondent.	Promulgated: JUL 19 2022 4:10 pm

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RESOLUTION

RINGPIS-LIBAN, *J.*:

This resolves Petitioner's "Motion for Reconsideration [re: Decision dated 12 April 2022]"[1] ("Motion for Reconsideration") filed on May 04, 2022, with Respondent's "Comment (Re: Motion for Reconsideration dated April 29, 2022)"[2] ("Comment") filed on June 01, 2022.

Petitioner's Motion for Reconsideration prays for the cancellation and setting aside of the Decision promulgated on April 12, 2022, and that a new judgment be rendered denying Respondent's "Petition for Review" filed with the court *a quo*.

The dispositive portion of the Assailed Decision[3] promulgated by this Court on April 12, 2022 reads:

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[1] Rollo, pp. 87-100.
[2] *Id.,* pp. 110-124.
[3] *Id.,* pp. 70-86.

> "**WHEREFORE**, premises considered, the instant Petition for Review is **DENIED**. The Decision dated September 02, 2020 and the Resolution dated January 05, 2021 of the First Division in the case docketed as CTA Case No. 9798 are **AFFIRMED**.
>
> **SO ORDERED**."[4]

In his Motion for Reconsideration, Petitioner contends that the Court in Division erred in ruling that Respondent's petition was timely filed. According to Petitioner, the court *a quo* should have dismissed the petition for failure to exhaust administrative remedies, the judicial claim filed only one (1) day after the administrative claim.

Likewise, Petitioner argues that Respondent is not entitled to the refund or issuance of a tax credit certificate of alleged erroneously income taxes for taxable year 2015 because the tax exemption granted under Section 13(2)(b) of Presidential Decree ("P.D.") No. 1869 shall inure only to those entities who provide necessary services to Philippine Amusement and Gaming Corporation ("PAGCOR") in connection with its operations of the casinos. He maintains that the tax exemption does not inure to the benefit of the licensees to which the operation and management of the gaming service is not under the control of the franchise holder, PAGCOR.

Petitioner also alleges that even assuming *arguendo* that Respondent is included in the exemption as a co-licensee or grantee of PAGCOR, it still has not proven entitlement to the refund claimed, for it was not able to prove that PAGCOR paid for the franchise tax, which exempts its co-licensees and grantees from payment of income tax. Mere allegation is insufficient to prove entitlement to the refund claimed.

Finally, assuming further that Respondent can claim for an exemption from payment of income tax, Petitioner submits that the claim for refund was filed out of time, the two-year prescriptive period counted from the actual payment of the tax and not from the filing of the final adjustment return or Annual Income Tax Return ("AITR").

On the other hand, Respondent in its Comment declares that nothing in Section 13 of P.D. No. 1869 or the PAGCOR Charter limits the application of the tax exemption only to PAGCOR's operations. Instead, it expressly provides that PAGCOR's income tax exemption extends to third parties to which it had contractual relations in connection with its gaming operations. When the statute

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4 *Id.,* Decision dated April 12, 2022, p. 85.

is free from any doubt or ambiguity, there is no room for construction or interpretation but only application.

Respondent further asserts that the Supreme Court in *Commissioner of Internal Revenue v. Goodyear Philippines, Inc.*[5] categorically ruled that the taxpayer correctly and timely sought its judicial redress, notwithstanding that the same was filed only thirteen (13) days after its administrative claim. Thus, there was no violation of the rule on exhaustion of administrative remedies.

Lastly, Respondent maintains that contrary to Petitioner's contention, jurisprudence is replete with cases affirming that the two (2) year prescription should be reckoned from the time the final adjustment return or AITR was filed.

We resolve to deny Petitioner's Motion for Reconsideration for lack of merit.

The arguments raised by the CIR in his Motion are mere recapitulation of the arguments he has raised in his Petition for Review filed with this Court. Moreover, these issues have been amply considered, weighed and resolved in the Assailed Decision. Thus, to discuss anew the explanation of the Court on these matters is superfluity.

In sum, the Court *En Banc* finds no cogent reason to overturn the Assailed Decision.

WHEREFORE, premises considered, Petitioner's "Motion for Reconsideration [re: Decision dated 12 April 2022]" is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

5 G.R. No. 216130, August 03, 2016.

ERLINDA P. UY
Associate Justice

(On Leave)
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice