REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

PRIME INVESTMENT KOREA INC., *Petitioners,*	**CTA *EB* NO. 2483** *(CTA Case No. 9814)*
	Present:
-versus-	**DEL ROSARIO, P.J., RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES, ANGELES, *JJ.***
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: APR 17 2024 1:35 p.m.

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RESOLUTION

MODESTO-SAN PEDRO, J:

For the Court *En Banc*'s resolution is respondent's "Motion for Reconsideration (Re: Decision dated 9 January 2023)" ("Motion"), filed via registered mail on 26 January 2023, with petitioner's "Comment/Opposition [To Respondent's Motion for Reconsideration (Re: Decision dated 9 January 2023)]" ("Comment"), filed on 15 February 2023.

Through his Motion, respondent seeks the reversal and setting aside of the Decision, dated 9 January 2023 ("Assailed Decision"). His disagreement is founded on two (2) contentions: (a) ***Revenue Memorandum Circular*** ("***RMC***") ***No. 32-2022*** cannot be retroactively applied; and (b) based on the Junket Agreement between petitioner and the Philippines Amusement and Gaming Corporation ("PAGCOR"), petitioner merely brings junket players to the Gaming Room in one of PAGCOR's casinos, meaning the latter's tax exemptions do not extend to the former.

Petitioner, in its Comment, asserts that (a) ***RMC No. 32-2022***'s curative nature allows its retroactive application; and (b) the testimonies of its witnesses and the evidence it offered disprove respondent's characterization of its operations.

The Motion is without merit.

While new statutes generally cannot be retroactively applied, curative statutes can. Citing ***Juan G. Frivaldo v. Commission on Elections and Raul R. Lee***[1] ("***Frivaldo***"), the Supreme Court explained the concept of curative statutes and upheld the propriety of their retroactive application in ***Republic of the Philippines v. Pasig Rizal Co., Inc.***:[2]

> "According to Tolentino, **curative statutes are those which undertake to cure errors and irregularities**, thereby validating judicial or administrative proceedings, acts of public officers, or private deeds and contracts which otherwise would not produce their intended consequences by reason of some statutory disability or failure to comply with some technical requirement. **They operate on conditions already existing, and are necessarily retroactive in operation**. Agpalo, on the other hand, says that curative statutes are 'healing acts x x x **curing defects and adding to the means of enforcing existing obligations** x x x (and) are **intended to supply defects, abridge superfluities in existing laws**, and curb certain evils. x x x **By their very nature, curative statutes are retroactive** x x x (and) reach back to past events to correct errors or irregularities and to render valid and effective attempted acts which would be otherwise ineffective for the purpose the parties intended.'"
> (Emphasis and underscoring supplied.)

A similar treatment of curative statutes was also forwarded in ***Aces Philippines Cellular Satellite Corporation v. Commissioner of Internal Revenue***,[3] drawing from ***Juanita Narzoles, et al. v. National Labor Relations Commission, et al.***[4]

RMC No. 32-2022 fits the definition of a curative statute as constructed by ***Frivaldo***. It clearly attempts to amend the deficient interpretations of the law found in ***RMC No. 33-2013*** to better enforce the provisions of ***Presidential Decree*** ("***PD***") ***No. 1869***. It cites clarificatory jurisprudence and parts of said law itself to justify its departures from ***RMC No. 33-2013***. Said departures were thus undertaken to "cure errors and irregularities" and address the "defects" of the earlier memorandum circular's implementation of ***Presidential Decree ("PD") No. 1869*** and other relevant laws.

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1 G.R. Nos. 120295 & 123755, 28 June 1996.
2 G.R. No. 213207, 15 February 2022.
3 G.R. No. 226680, 30 August 2022.
4 G.R. No. 141959, Resolution, 29 September 2000.

Respondent is silent on this curative aspect, focusing instead on the general rule of non-retroactivity. Given said curative character, however, the Court *En Banc* stands behind Our retroactive application of ***RMC No. 32-2022***.

Either way, the non-retroactive application of tax-related rules, regulations, **circulars**, or rulings is governed by ***Section 246 of the National Internal Revenue Code of 1997, as amended***. Said provision only prohibits the retroactive application of such rulings when such application would be prejudicial to taxpayers, however. Given that ***RMC No. 32-2022*** restricted the kinds of income that would be subject to corporate income tax, relative to ***RMC No. 33-2013***, its amendments are clearly not prejudicial to taxpayers. It thus does not fall under the prohibition invoked by petitioner, and Our retroactive application of said issuance stands.

As to respondent's claim that petitioner merely brings junket players to the casino but does not actually operate it, this Court is unconvinced. As observed by petitioner, respondent fixates on a single portion of the Junket Agreement and claims that said Agreement as a whole proves his point, without delving into how. He does not, however, address the evidence offered by petitioner and the testimonies of its witnesses, which, among others, refute the picture of petitioner's operations as composed by respondent.

Crucially, respondent is silent on the testimony of the PAGCOR representative presented by petitioner before the Court in Division. Said testimony was the basis, in the Assailed Decision, for Our finding that PAGCOR merely regulates petitioner's junket gaming operations and that said operation is the same as the operation of an ordinary casino. This testimony, and thus the conclusions we drew from it, remain uncontroverted. We accordingly remain unpersuaded by respondent's dissent.

All told, this Court *En Banc* finds nothing in the present Motion that would seriously challenge the ruling in Our Decision.

WHEREFORE, respondent's Motion for Reconsideration (Re: Decision dated 9 January 2023) is hereby **DENIED** for lack of merit. The Court *En Banc*'s Decision, dated 9 January 2023, is hereby **AFFIRMED.**

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice