REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

HON. HERBERT M. BAUTISTA and MR. EDGAR VILLANUEVA, respectively in their official capacity as Mayor and Treasurer of Quezon City,
Petitioners,

-versus-

PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR), represented by ATTY. CARLOS R. BAUTISTA,
Respondent.

CTA EB No. 1159
(CTA AC No. 93)

Present:
DEL ROSARIO, *P.J.*,
CASTAÑEDA JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

NOV 05 2015

x- 2:50 p.m. - x

DECISION

RINGPIS-LIBAN, *J.*:

Before the Court *En Banc* is a Petition for Review[1] filed on May 8, 2014, assailing the Resolution dated April 1, 2014 of the Special First Division of this Court in CTA AC No. 93, denying herein petitioner's Motion for Reconsideration of the Decision dated November 20, 2013. The said Decision, as upheld by the Resolution, denied for lack of merit the petitioner's appeal against the Decision dated December 29, 2011 and Order dated May 30, 2012 of the Regional Trial Court (RTC), Branch 27, City of Manila in Civil Case No. 10-122976.

[1] Filed under Section 11 of Republic Act No. 9282 in relation to Rule 8 of the Revised Rules of the Court of Tax Appeals (A.M. No. 05-11-07-CTA, November 22, 2005).

The appeal to the CTA stems from a Petition for Prohibition with Prayer for the Issuance of a Writ of Temporary Restraining Order (TRO) and/or Preliminary Injunction filed by respondent with the RTC on February 15, 2010, to enjoin petitioners from assessing and collecting local/city tax from it and committing further acts which might result to the cessation of and/or closure of its PAGCOR e-Games Stations (PEGS).

THE PARTIES

Petitioner Herbert M. Bautista is the Mayor of Quezon City, a municipal corporation organized and existing by virtue of Republic Act No. 537, otherwise known as the Revised Quezon City Charter. The other petitioner, Edgar T. Villanueva, is the Treasurer of Quezon City, who is primarily responsible for the imposition and collection of taxes within the territorial jurisdiction of Quezon City. The petitioners were the respondents in Civil Case No. 10-122976 filed by PAGCOR with the Regional Trial Court (RTC) of Manila, Branch 27 and the petitioners in CTA AC No. 93.

Respondent PAGCOR is a government-owned and controlled corporation (GOCC) created pursuant to Presidential Decree No. (PD) 1869, as amended, with principal office at the 6th Floor, Hyatt Hotel and Casino-Manila, M.H. del Pilar corner P. Gil Streets Ermita, Manila. It was the petitioner in Civil Case No. 10-122976, and the respondent in CTA AC No. 93.

JURISDICTIONAL FACTS

The petitioners received the assailed November 20, 2013 Decision of the Special First Division on December 12, 2013. On December 27, 2013, within the fifteen (15)-day reglementary period, petitioners filed a Motion for Reconsideration which was denied in a Resolution dated April 1, 2014 which petitioners received on April 8, 2014. Thus, petitioners had until April 23, 2014 within which to file their Petition for Review.

On April 22, 2014, petitioners filed a "Motion for Extension of Time to File Petition for Review to the Court of Tax Appeals En Banc", seeking an extension of fifteen (15) days from April 23, 2014, or until May 8, 2014, within which to file its Petition for Review. On April 24, 2014, this Court resolved to grant the motion.

The instant Petition for Review was filed on May 8, 2014, and was therefore timely filed.

The Decision and Resolution of the Special First Division of this Court in CTA AC No. 93 appealed from involves a local tax case decided by the RTC of Manila in the exercise of its original jurisdiction, and is therefore within the exclusive appellate jurisdiction of the Court *En Banc* to review by appeal, under Section 2(a)(2), Rule 4 of the Revised Rules of the Court of Tax Appeals.[2]

FACTUAL ANTECEDENTS

Under Presidential Decree No. 1869, as amended by Republic Act (RA) No. 9487, PAGCOR is granted the authority to operate gaming clubs and other similar recreation or amusement places within the territorial jurisdiction of the Republic of the Philippines.[3] It is also authorized under RA 9487 to enter into, make, conclude, perform, and carry out contracts of every kind and nature and for any lawful purpose which is necessary, appropriate, proper or incidental to any business or purpose of PAGCOR, including agency agreements, whether as principal or agent.[4]

Consistent with its authority to operate gaming clubs and other similar recreation or amusement places within the territorial jurisdiction of the Republic of the Philippines, PAGCOR established twenty-four (24) PAGCOR e-Games Stations (PEGS) at various locations in Quezon City. Several other PEGS were established in other localities throughout the Philippines.

While the PEGS are PAGCOR's legal establishments, there are other entities involved in their operations, *i.e.*, Philweb Corporation (Philweb) who is PAGCOR's technology provider for PEGS, and there are seventeen (17) PEGS operators in Quezon City who act as PAGCOR agents by providing the sites of the stations and selling PAGCOR's products to its players.

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[2] A.M. No. 05-11-07-CTA.

[3] PD No. 1869, Section 10. Nature and term of franchise. — Subject to the terms and conditions established in this Decree, the Corporation is hereby granted for a period of twenty-five (2S) years, renewable for another twenty-five (25) years, the rights, privilege and authority to operate and maintain gambling casinos, clubs, and other recreation or amusement places, sports, gaming pools, i.e. basketball, football, lotteries, etc. whether on land or sea, within the territorial jurisdiction of the Republic of the Philippines.

[4] Sec. 1(2), RA No. 9487.

SECTION 1. The Philippine Amusement and Gaming Corporation VAGCOR) franchise granted under Presidential Decree No. 1869, otherwise known as the PAGCOR Charter, is hereby further amended to read as follows: x x x

(2) Section 3 (h) is hereby amended to read as follows:

"SEC. 3. Corporate Powers. -

"x x x

"(h) to enter into, make, conclude, perform, and carry out contracts of every kind and nature and for any lawful purpose which are necessary, appropriate, proper or incidental to any business or purpose of the PAGCOR, including but not limited to investment agreements, joint venture agreements, management agreements, agency agreements, whether as principal or as an agent, manpower supply agreements, or any other similar agreements or arrangements with any person, firm, association or corporation."

The PEGS operators are entitled to 28% commission based on the PEGS' casino winnings (*i.e.*, after the 5% national franchise tax is deducted and remitted to the BIR). This 28% Operator's Commission is in consideration of the services rendered by the operator to PAGCOR such as provision for adequate manpower, lease payment, and capital expenditure. On the other hand, PAGCOR is entitled to 35.8% of the casino winnings, with the remaining balance distributed among Philweb, the game software provider and for marketing expenses.

During the previous years, the Quezon City government, through the petitioners, assessed and collected city tax from the PEGS operators based on their 28% commission. No tax was assessed on PAGCOR's revenue share.

However, during the 2010 renewal of business permits where the city/business tax was based on the 2009 income, the PEGS operators were assessed additional business tax on the ground that the operator's city tax should be based on the PEGS' gross winnings, and not on their commission. They were also informed that their licenses would not be renewed unless they paid the deficiency business/city tax for 2009 which was assessed based on the PEGS' gross winnings which included PAGCOR's revenue share for 2008. This necessarily meant that PAGCOR was being assessed local taxes.

A meeting was held among representatives of PAGCOR, the Quezon City (QC) Government, and Philweb. PAGCOR's representatives explained to the QC Government representatives its exemption from local tax, local permits, local fees and other privileges under PD 1869, as amended by RA 9487, its Charter. It was agreed, however, that the issue on local taxation and other related matters shall be elevated to the Department of Justice (DOJ) through the Office of the Government Corporate Counsel (OGCC).

On May 19, 2009, OGCC rendered Opinion No. 106 series of 2009 stating that local government units have no power to impose taxes on PAGCOR and/or its licensees, grantees, agents or other persons with contracts with the petitioner for the operation of gaming activities.[5] Despite the aforesaid OGCC opinion and the various correspondence sent to PAGCOR, the QC government officials proceeded with the assessment and collection of taxes from one of the PEGS operators, inclusive of PAGCOR's share, as basis for their tax assessment and collection for the year 2010.

At the time PAGCOR filed the Petition for Prohibition before the lower court, the remaining twenty-three (23) PEGS stations had not yet paid their annual local/city tax for 2010 which was a condition precedent for the issuance of Business Permits for CY 2010, on the ground that PAGCOR's share should not be included in the computation of business/city tax due for that year, and

[5] *Rollo*, p. 47.

that neither should they be required to pay the deficiency local/city tax for the past years.

As contended by PAGCOR, even its income was being taxed by the QC Government through respondents[6] (QC Officials), and the same was not in accordance with law, jurisprudence, and issuances of competent authority.

Finding the Petition for Prohibition with Temporary Restraining Order (TRO) and/or Preliminary Injunction application to be sufficient in form and substance, the lower court issued an Order dated February 15, 2010 directing the QC Officials to file Comment to the Petition within ten (10) days from receipt of the Order.

During the February 22, 2010 hearing before the lower court set for consideration of PAGCOR's application for TRO and/or preliminary injunction, PAGCOR's counsel manifested that he was submitting the application for TRO and/or Writ of Preliminary Injunction (WPI) based on the allegations contained in the Petition and its Annexes. The QC Officials asked to file their Opposition, a copy of which PAGCOR received on March 2, 2010. During that hearing, both parties discussed that the issue in both the application for TRO and/or WPI and the main petition itself was a legal one which involved PAGCOR's Charter.

In its Comment to the Petition for Prohibition, the QC Officials argued the basic taxation principle of the "Lifeblood Doctrine." They stressed that the PEGS are independent private proprietors/corporations on which charges are being imposed, not PAGCOR. According to the QC Officials, this is based on the Special Permits to Operate granted to them by the City Council. Moreover, they insist that PAGCOR has a separate and distinct personality from these independent private proprietors/corporations, hence, they cannot be considered agents of PAGCOR. This justifies the City Treasurer's action in taxing the PEGS. The issue, according to the QC Officials, is not the liability of the PAGCOR from payment of charges imposed by the Office of the City Treasurer of Quezon City, but the liability of these independent private proprietors/corporations. In fact, according to them, there is doubt on petitioner's exemption as provided under Section 13 of PD 1869, there being no declaration that the payment of national franchise prevents any city government to impose upon the petitioner's levies, fees, or assessment of any kind.

The QC Officials further argued in their Comment that PAGCOR was unable to show proof of its contractual relation with Philweb and these

[6] In Civil Case No. 10122976 in the RTC, respondents were Hon. Feliciano Belmonte, Dr. Victor B. Endriga, and Mr. Edgar Villanueva respectively in their official capacity as Mayor, City Treasurer, and Assistant City Treasurer of Quezon City.

independent private proprietors/corporations, especially on financial considerations which would be their basis for recomputations, if necessary, on the liability of the latter. PAGCOR likewise failed to prove its participation in the operation of the gaming stations. What was clear to the QC Officials was that Philweb, the game software provider, and these independent private proprietors/corporations, were the ones in control of the stations. Therefore, these independent private proprietors/corporations are not agents and do not fall under Section 13(2)(b) of PD 1869. Most importantly, the QC Officials advocated for the outright dismissal of the Petition for failure of PAGCOR to exhaust administrative remedies. They claimed that the action taken by the PAGCOR was premature as there was still an adequate remedy in the ordinary course of law, which was an appeal to the Local Boards of Assessment Appeals (LBAA) where an aggrieved party may contest the assessment.

On December 29, 2011, the RTC rendered its Decision[7] granting PAGCOR's Petition for Prohibition, and prohibiting the City Mayor, City Treasurer and Assistant City Treasurer of Quezon City, their subordinates, agents and any or all other persons acting upon their instruction and/or behalf, individually and/or collectively from assessing, collecting, and imposing, local city tax on PAGCOR, holding the latter exempt from payment thereof under the law, jurisprudence and issuances of competent authorities, and limiting the assessment/collection of the local city tax, to the 28% operator's/PAGCOR e-Games Stations' (PEGS) commission.

In finding for PAGCOR, the RTC ratiocinated that taxing the PEGS on their gross income would adversely affect PAGCOR's share in the income. PAGCOR and its operators would be threatened with possible distraint or levy on their personal property or real property for failure to pay city tax assessed by petitioners that could hamper the operation of their legal business activity. By imposing 3% city tax on the PEGS operators based on the respective gross revenue, the income share of PAGCOR would certainly be reduced.[8]

The RTC likewise declared that PEGS and Philweb were operating under the franchise granted to them by PAGCOR. In view thereof, there existed a principal-agent relationship between PAGCOR and the PEGS operators such that, if the agent was assessed by the local government, the assessment would be effectively against PAGCOR.[9]

In the Order dated May 30, 2012, the RTC denied the QC Officials' Motion for Reconsideration filed on February 17, 2012.[10]

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[7] *Docket*, pp. 13-17.
[8] *Id.*
[9] *Id.*
[10] *Id.*, pp. 18-23.

On August 15, 2012, petitioners Hon. Herbert M. Bautista (Mayor Bautista) and Mr. Edgar Villanueva (Mr. Villanueva), in their official capacity as Mayor and City Treasurer of Quezon City (still hereinafter referred to as 'QC Officials'), filed their Petition for Review, which was docketed as CTA AC No. 93 and heard by this Court's Special First Division.

On October 5, 2012, PAGCOR filed its Comment[11], to which the QC Officials filed their Reply and Answer[12] on November 20, 2012.

On January 25, 2013, the parties were given thirty (30) days from notice within which to file their memoranda.

On March 7, 2013, the QC Officials filed their Memorandum[13]. On the other hand, PAGCOR submitted its Memorandum[14] on March 14, 2013.

On March 22, 2013, the case was deemed submitted for decision[15].

On November 20, 2013, the Special First Division promulgated its Decision[16], denying the QC Officials' petition for lack of merit. The Decision affirmed the RTC decision and held that the RTC committed no violation of Section 8, Rule 65 of the Rules of Court; that PAGCOR was a proper party to the suit; that PAGCOR was empowered to enter into agency agreements where it can designate a private individual or corporation as an agent to operate gambling activities; that PAGCOR and its agents are exempt from paying local franchise tax; that the assailed Resolution issued and relied upon by the QC Officials as basis to collect the tax conferred no rights; and that PAGCOR is not estopped from questioning the assailed assessment notices.

On December 27, 2013, the QC Officials moved for reconsideration[17] of the Special First Division's Decision. On February 12, 2014, PAGCOR filed its Comment[18] on the QC Officials' motion.

On February 27, 2014, the QC Officials' motion for reconsideration was submitted for resolution.[19] However, on April 1, 2014, the motion for reconsideration was denied for lack of merit.[20]

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[11] *Id.*, pp. 152-174.
[12] *Id.*, pp. 234-245.
[13] *Id.*, pp. 279-302.
[14] *Id.*, pp. 249-277.
[15] *Id.*, p. 304.
[16] *Id.*, pp. 309-339.
[17] *Id.*, pp. 340-348.
[18] *Id.*, pp. 358-375.
[19] *Id.*, p. 379.
[20] *Id.*, pp. 381-383.

On April 22, 2014, the QC Officials filed a Motion for Extension of Time to File Petition for Review[21] to the CTA *En Banc*. This was granted by the Court *En Banc* on April 23, 2014[22]; the QC Officials were given until May 8, 2014 for the filing of the said Petition.

On May 8, 2014, the QC Officials filed the instant Petition for Review[23].

On June 23, 2014, PAGCOR was given ten (10) days from notice within which to file its Comment.[24] PAGCOR filed its Comment[25] on August 1, 2014, after being granted several extensions of the period to file Comment by the Court.

On September 8, 2014, the parties were granted thirty (30) days for the filing of their memoranda.[26] PAGCOR filed its Memorandum[27] on October 27, 2014. The QC Officials, on the other hand, filed their Memorandum[28] on November 11, 2014, after being granted an extension of the period to file its Memorandum.

On December 4, 2014, the Court deemed the case submitted for decision.

ASSIGNMENTS OF ERROR

The six (6) issues raised by the petitioner are whether or not this Court's Special First Division erred --

I

IN DENYING THE PETITION FOR REVIEW;

II

IN RULING THAT THE RTC DID NOT VIOLATE SECTION 8 OF RULE 65 OF THE RULES OF COURT;

III

IN RULING THAT PAGCOR IS A PROPER PARTY TO FILE THE CASE BEFORE THE RTC;

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[21] *Rollo*, pp. 1-6.
[22] *Id.*, p. 7.
[23] *Id.*, pp. 9-39.
[24] *Id.*, pp. 222-223.
[25] *Id.*, pp. 239-253.
[26] *Id.*, pp. 262-263.
[27] *Id.*, pp. 267-296.
[28] *Id.*, pp. 297-317.

IV
IN RULING THAT PAGCOR AND ITS AGENTS ARE EXEMPT;

V
IN RULING THAT "THE ASSAILED RESOLUTION CONFERS NO RIGHTS"; and

VI
IN RULING THAT "PAGCOR IS NOT ESTOPPED FROM QUESTIONING THE ASSAILED ASSESSMENT NOTICES".

In fine, the Court finds that all of the petitioners' assignments of error are summed up in its first -- whether or not the Special First Division erred in denying its Petition for Review.

APPLICABLE LAWS

Applicable in resolving the instant case are pertinent provisions of Presidential Decree (P.D.) No. 1067-A[29], the act creating PAGCOR, P.D. No. 1067-B[30] (supplementing P.D. No. 1067-A) which was issued exempting PAGCOR from the payment of any type of tax, except a franchise tax of five percent (5%) of the gross revenue, P.D. No. 1399[31] which expanded the scope of PAGCOR's exemption, Presidential Decree No. 1869[32], which consolidated and amended laws relating to the franchise and powers of PAGCOR, otherwise known as the PAGCOR Charter, and P.D. No. 1931[33] which removed PAGCOR's tax exemption.

[29] Promulgated on January 1, 1977; "Presidential Decree No. 1067-A - Creating The Philippine Amusements and Gaming Corporation, Defining its Powers and Functions, Providing Funds Therefor, and for Other Purposes".
[30] *Id.*; "Presidential Decree No. 1067-B - Granting the Philippine Amusements and Gaming Corporation a Franchise to Establish, Operate, and Maintain Gambling Casinos on Land or Water within the Territorial Jurisdiction of the Republic of the Philippines".
[31] Enacted June 2, 1978; "Amending Certain Sections of Presidential Decree No. 1067-A Dated January 1, 1977, Entitled 'Creating the Philippine Amusements and Gaming Corporation, Defining its Powers and Functions, Providing Funds Therefor and for Other Purposes,' and Presidential Decree No. 1067-B Dated January 1, 1977, Entitled, "Granting the Philippine Amusements and Gaming Corporation a Franchise to Establish, Operate, and Maintain Gambling Casinos on Land or Water within the Territorial Jurisdiction of the Republic of the Philippines."
[32] Enacted July 11, 1983; "Presidential Decree No. 1869 - 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)".
[33] Promulgated June 11, 1984; "Presidential Decree No. 1931 - Directing the Rationalization of Duty and Tax Exemption Privileges Granted to Government-Owned or Controlled Corporations and all Other Units of Government".

Of relevance also is Section 27(c) of Republic Act (RA) No. 8424[34], otherwise known as the National Internal Revenue Code of 1997 (Tax Code) which provides that all government-owned and controlled corporations (GOCCs) shall pay corporate income tax with the exception of PAGCOR, the GSIC[35], the SSS[36], the PHIC[37], and the PCSO[38]. Section 1 of R.A. No. 9337, amended the Tax Code by excluding PAGCOR from the enumeration of GOCCs that are exempt from payment of corporate income tax[39].

RA 9487[40] is also applicable as such amended the PAGCOR charter, granting PAGCOR the power to enter into special agreement with third parties to share the privileges under its franchise for the operation of gambling casinos.

Article 1868 of the Civil Code[41] under the Title: Agency is applicable as well.

DISCUSSION

At the outset, it must be said that, after a review of the arguments of both parties, *We* find no palpable errors in the Decision rendered by the Special First Division subject of this appeal.

The Court's reasons therefore are set forth below:

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[34] Enacted January 1, 1998; RA 8424, "SEC. 27. Rates of Income tax on Domestic Corporations. - x x x

(C) Government-owned or Controlled-Corporations, Agencies or Instrumentalities - The provisions of existing special or general laws to the contrary notwithstanding, all corporations, agencies, or instrumentalities owned or controlled by the Government, except the Government Service Insurance System (GSIS), the Social Security System (SSS), the Philippine Health Insurance Corporation (PHIC), the Philippine Charity Sweepstakes Office (PCSO) and the Philippine Amusement and Gaming Corporation (PAGCOR), shall pay such rate of tax upon their taxable income as are imposed by this Section upon corporations or associations engaged in s similar business, industry, or activity."

[35] Government Service and Insurance Corporation.

[36] Social Security System.

[37] Philippine Health Insurance Corporation.

[38] Philippine Charity Sweepstakes Office.

[39] RA 9337, Section 1. Section 27 of the National Internal Revenue Code of 1997, as amended, is hereby further amended to read as follows:

"SEC. 27. Rates of Income Tax on Domestic Corporations. - x x x

"(C) Government-owned or -Controlled Corporations, Agencies or Instrumentalities. - The provisions of existing special or general laws to the contrary notwithstanding, all corporations, agencies, or instrumentalities owned or controlled by the Government, except the Government Service and Insurance System (GSIS), the Social Security System (SSS), the Philippine Health Insurance Corporation (PHIC), and the Philippine Charity Sweepstakes Office (PCSO), shall pay such rate of tax upon their taxable income as are imposed by this Section upon corporations or associations engaged in a similar business, industry, or activity."

[40] Enacted June 20, 2007.

[41] Civil Code, Art. 1868. By the contract of agency a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter.

The Parties were Accorded Due Process in the RTC Proceedings

Petitioners claim that they were denied their day in court in violation of their right to due process when the RTC issued a Decision on the Petition for Prohibition without hearing and without requiring the parties to submit their respective memoranda.

They claim that this is contrary to Section 8 of Rule 65 of the Rules of Court which provides:

> "SEC. 8. *Proceedings after comment is filed.* — After the comment or other pleadings required by the court are filed, or the time for the filing thereof has expired, **the court may hear the case or require the parties to submit memoranda**. If, after such hearing or filing of memoranda or upon the expiration of the period for filing, the court finds that the allegations of the petition are true, it shall render judgment for such relief to which the petitioner is entitled.
>
> However, the court may dismiss the petition if it finds the same patently without merit or prosecuted manifestly for delay, or if the questions raised therein are too unsubstantial to require consideration. . . . *(Emphasis supplied)*"

We find the interpretation of the above provision by the Court in Division and also by the RTC in its Order dated May 30, 2012, correct. The word "may" is only permissive and not mandatory. As such, the Court was permitted by the rules to exercise judicial discretion on the necessity of a hearing or the submission of memoranda.

Well-settled is the rule that the essence of due process is merely the opportunity to be heard. A fair and reasonable opportunity to explain one's side suffices to meet the requirements of due process.[42] In *Villaran v. DARAB*[43], the Supreme Court elaborated on the concept, thus:

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[42] *Villaran, et. al. v. DARAB, et. al.*, G.R. No. 160882, March 7, 2012 citing *Autencio v. City Administrator Maara and the City of Cotabato*, G.R. No. 152752, January 19, 2005, 449 SCRA 46, 55, cited in *Department of Agrarian Reform v. Samson*, G.R. Nos. 161910, 161930, June 17, 2008, 554 SCRA 500, 509.

[43] *Id.*

"[A] fair and reasonable opportunity to explain one's side suffices to meet the requirements of due process.[44] As we held in *Casimiro v. Tandog*[45]:

> The essence of procedural due process is embodied in the basic requirement of notice and a real opportunity to be heard. x x x **'To be heard' does not mean only verbal arguments in court; <u>one may be heard also thru pleadings</u>. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process.**

We, therefore, agree with the Court of Appeals that –

> Petitioners' contention x x x is bereft of merit. From the proceedings before the Barangay Agrarian Reform Council (BARC) up to the DARAB, petitioners were given all notices and chances to submit all necessary or required pleadings. From the Regional Adjudicator, they appealed to the DARAB and thereafter filed a Motion for Reconsideration x x x. All these show that they were given ample opportunity to present their side. **Due process simply demands an opportunity to be heard and this opportunity was not denied petitioners.**" *(Emphasis supplied)*

In the instant case, the RTC gave the parties ample opportunity to ventilate their respective stances through the pleadings they submitted. The petitioners would have the Court believe that the RTC Decision was railroaded with shocking lightning speed without due consideration of the parties' arguments, considering that it was promulgated a day after the Order denying petitioner's Motion for Reconsideration on the grant of the Preliminary Injunction. However, in the light of facts, the context provided by petitioners is misleading and this Court looks upon the same with disfavor as it does nothing but cast aspersions on the integrity of the lower court.

A perusal of the records shows that the Petition for Prohibition was filed in the RTC on February 11, 2010. The Decision on the petition was promulgated on December 29, 2011 which gave the court more than a year to study the issues involved which were purely legal.

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[44] *Id.* citing *Autencio v. City Administrator Maora and the City of Cotobato*, G.R. No. 152752, January 19, 2005, 449 SCRA 46, 55, cited in *Department of Agrorion Reform v. Samson*, G.R. Nos. 161910, 161930, June 17, 2008, 554 SCRA 500, 509.

[45] G.R. No. 146137, June 8, 2005, 459 SCRA 624, cited in DAR v. Samson, *supra*.

In the proceedings involving the grant of a Preliminary Injunction in PAGCOR's favor, records show that counsel for the QC Officials admitted before the Court that there was no necessity for the issuance of a Temporary Restraining Order during the hearing held on February 22, 2010.[46] Thus, the hearing and the submissions of pleadings that followed were geared towards the propriety of issuing a Preliminary Injunction. In this matter, petitioners were able to ventilate their case through their "Opposition to the Petition for Preliminary Injunction" and their "Rejoinder to the Petitioner's Reply to their Opposition".[47]

Considering the pleadings already submitted by the parties, the RTC's own assessment regarding the sufficiency of such in deciding the main petition was well within its judicial discretion. There is nothing on the record to substantiate the claim of petitioners that the opportunity to be heard was denied them. Moreover, through the proceedings in the Court in Division and with the present case before the Court *En Banc*, petitioners were given the opportunity to fully ventilate their case with the submission of memoranda. Thus, their claims of being denied due process have no leg to stand on.

As Principal of PEGS Operators, PAGCOR is a Proper Party to the Suit

Petitioners contend that PAGCOR is not a proper party to institute the suit before the RTC since the QC Council Resolutions granting Special Permits to Operate PEGS and requiring remittance of a franchise fee of three (3%) percent of their gross revenue were bestowed on independent operators and that PAGCOR is not privy to those agreements.

Section 2 of Rule 3 of the 1997 Rules of Court provides that "[a] real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest."

We find no reason to disturb the findings of the Court in Division that, as PAGCOR is the principal of PEGS operators who are its agents, PAGCOR "is a real party in interest as it will certainly stand to be injured or prejudiced by the assailed action of petitioners. The assessment and collection of the impositions will definitely diminish its revenues which will eventually hamper if

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[46] *Rollo*, p. 135.
[47] *Rollo*, p. 126.

not adversely affect its operation."[48] As such, PAGCOR is the proper party to assail petitioners' action before the RTC and even before the CTA.

The Supreme Court held in *Philippine Association of Service Exporters, Inc., et. al. vs. Ruben D. Torres, et. Al.*,[49] thus:

> "We need only reiterate that the 'proper-party' requirement is satisfied if it is alleged that petitioners and intervenors have sustained or are in danger of sustaining immediate injury resulting from the acts or measures complained of."

Records show that during the trial before the RTC, PAGCOR was able to establish that, together with the PEGS operators, it was in danger of sustaining immediate injury because failure to pay the tax being assessed by petitioners would result in the distraint of their personal property or levy on their real properly thereby hampering the operation of their legal business activity.

As regards the partner-agent relationship that PAGCOR and the PEGS operators have, the assailed Decision of the Court in Division more than adequately discussed how, in the case of *Yun Kwan Byung vs. Philippine Amusement and Gaming Corporation,*[50] the Supreme Court elaborated on the development of PAGCOR's ability to share its franchise, thus:

> **"RA 9487 amended the PAGCOR charter, granting PAGCOR the power to enter into special agreement with third parties to share the privileges under its franchise for the operation of gambling casinos**:
>
> > Section 1. The Philippine Amusement and Gaming Corporation (PAGCOR) franchise granted under Presidential Decree No. 1869 otherwise known as the PAGCOR Charter, is hereby further amended to read as follows:
> >
> > xxx xxx xxx
> >
> > (2) SECTION 3(H) IS HEREBY AMENDED TO READ AS FOLLOWS:

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[48] *Rollo*, p. 63.

[49] G.R. No. 98472, August 19, 1993 citing Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform, G.R. No. 78742 and companion cases, 14 July 1989; 175 SCRA 343, 364.

[50] G.R. No. 163553, December 11, 2009.

"SEC. 3. CORPORATE POWERS. —

xxx xxx xxx

"(h) **to enter into, make, conclude, perform, and carry out contracts of every kind and nature and for any lawful purpose which are necessary, appropriate, proper or incidental to any business or purpose of the PAGCOR, including but not limited to investment agreements, joint venture agreements, management agreements, agency agreements, whether as principal or as an agent, manpower supply agreements, or any other similar agreements or arrangements with any person, firm, association or corporation.**"

PAGCOR sought the amendment of its charter precisely to address and remedy the legal impediment raised in *Senator Jaworski v. Phil. Amusement and Gaming Corp.* (Citations omitted and emphases supplied)"

The Court in Division went on to explain:

"Aside from the authority to enter into agreements with private corporations, respondent is also empowered to enter into agency agreements where it can designate a private individual or corporation as an agent to operate gambling activities.

Section 1 (2) of R.A. No. 9487 states:

(2) Section 3 (h) is hereby amended to read as follows:

SEC. 3. Corporate Powers. —

xxx xxx xxx

(h) to enter into, make, conclude, perform, and carry out contracts of every kind and nature and for any lawful purpose which are necessary, appropriate, proper or incidental to any business or purpose of the PAGCOR, including but not limited

> to investment agreements, joint venture agreements, management agreements, **agency agreements, whether as principal or as an agent**, manpower supply agreements, or any other similar agreements or arrangements with any person, firm, association or corporation. (Emphasis supplied)"

Furthermore, evidence submitted to the Court in Division, such as the Certificate to Operate a PAGCOR Internet Casino Station[51] underscores the principal-agent relationship between PAGCOR and its PEGS operators. The said Certificate to Operate provides:

> "CERTIFICATE TO OPERATE
> PAGCOR ICS
>
> This is to certify that Mr. David G. Syjueco, Jr. (SBM Orient Pacific Management Services, Inc.) <u>is a duly appointed sales agent of PAGCOR</u>, and is hereby authorized to operate a PAGCOR accredited Internet Casino Station (ICS) located at Estuar Bldg., Quezon Ave., Brgy. Paligsahan, Quezon City.
>
> The accredited ICS Operator is a mere extension of PAGCOR and as such, covered by the provisions of PD 1869 as amended x x x." *(Underscoring supplied)*

Several findings of the Court in Division which *We* ascribe great weight to are as follows:

> "Respondent also submitted Annexes '11' to '19', representing tax bills paid to local government of Quezon City, which clearly bear the name of respondent. As stated earlier, the basis of agency is representation.
>
> Significantly, **petitioners did not submit any evidence to contradict the clear import of the pieces of evidence submitted by respondent.** They only had unsubstantiated allegations, worse, speculations. 'Bare allegations, unsubstantiated by evidence, are not equivalent to proof under our Rules of Court.'[52] Also, petitioners impliedly admitted that certain assessment notices indicated the name of respondent as taxpayer. More, respondent was able to establish that a principal-agent

[51] *Rollo*, p. 62.

[52] Citing *Manzono vs. Perez, et al.*, G.R. No. 112485, August 9, 2001; *Coronel vs. Constantino*, G.R. No. 121069, February 7, 2003.

relationship exists in relation to PEGS operations." *(Emphasis supplied)*

PAGCOR's Income Exempt from Local Franchise Tax

Petitioners primarily take issue with the finding in the assailed Decision that PAGCOR is exempt from being assessed and from paying local franchise tax and that this exemption extends to their agents, specifically, the PEGS operators.

They premise their argument on the holding in the *Senator Jaworski v. Phil. Amusement and Gaming Corp.*[53] case that Internet Casino Stations are not within the scope of PD 1869 and, hence, PAGCOR is without authority to delegate its franchise to independent private proprietors/operators such as the PEGS operators.

We have already disposed of this matter in the discussion above on how the *Yun Kwan Byung*[54] case elaborated on the development of PAGCOR's ability to share its franchise. To emphasize, RA 9487 amended the PAGCOR charter, granting PAGCOR the power to enter into special agreement with third parties to share the privileges under its franchise for the operation of gambling casinos. The matter need not be discussed further.

As regards PAGCOR's exemption, on the one hand, petitioners have an admission in their Memorandum that "The exemption of the respondent is not in issue."[55] On the other hand, petitioners contradict themselves in saying that respondent is also not exempt under Section 193 of the Local Government Code of 1991 which, it claims, withdrew all exemptions and incentives of government and controlled corporations including those of respondent.[56]

Section 193 of the Local Government Code of 1991 states:

"SEC. 193. *Withdrawal of Tax Exemption Privileges.* - Unless otherwise provided in this Code, tax exemptions or incentives granted to, or presently enjoyed by all persons, whether natural or juridical, including government-owned or -controlled corporations, except local water districts, cooperatives duly registered under R.A. No. 6938, non-stock and non-profit

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[53] G.R. No. 144463, January 14, 2004.
[54] *Id.* at Note 56.
[55] *Rollo*, p. 309.
[56] *Id.*

hospitals and educational institutions, are hereby withdrawn upon the effectivity of this Code."

The assailed Decision aptly quotes the Supreme Court's disquisition on the development of PAGCOR's tax exemption in the case of *Philippine Amusement and Gaming Corporation (PAGCOR) vs. The Bureau of Internal Revenue, et al.,*[57] to wit:

"PAGCOR was created pursuant to Presidential Decree (P.D.) No. 1067-A on January 1, 1977. Simultaneous to its creation, P.D. No. 1067-B (supplementing P.D. No. 1067-A) was issued exempting PAGCOR from the payment of any type of tax, except a franchise tax of five percent (5%) of the gross revenue. Thereafter, on June 2, 1978, P.D. No. 1399 was issued expanding the scope of PAGCOR's exemption.

To consolidate the laws pertaining to the franchise and powers of PAGCOR, P.D. No. 1869 was issued. Section 13 thereof reads as follows:

Sec. 13. <u>Exemptions</u>. — x x x

(1) Customs Duties, taxes and other imposts on importations. — All importations of equipment, vehicles, automobiles, boats, ships, barges, aircraft and such other gambling paraphernalia, including accessories or related facilities, for the sole and exclusive use of the casinos, the proper and efficient management and administration thereof and such other clubs, recreation or amusement places to be established under and by virtue of this Franchise shall be exempt from the payment of duties, taxes and other imposts, including all kinds of fees, levies, or charges of any kind or nature.

Vessels and/or accessory ferry boats imported or to be imported by any corporation having existing contractual arrangements with the Corporation, for the sole and exclusive use of the casino or to be used to service the operations and requirements of the casino, shall likewise be totally exempt from the payment of all customs duties, taxes and other

[57] G.R. No. 172087, March 15, 2011.

imposts, including all kinds of fees, levies, assessments or charges of any kind or nature, whether National or Local.

(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 percent (5%) 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 exemption 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 as a result of essential facilities furnished and/or technical services rendered to the Corporation or operator.

The fee or remuneration of foreign entertainers contracted by the Corporation or operator in pursuance of this provision shall be free of any tax.

(3) *Dividend Income.* — Notwithstanding any provision of law to the contrary, in the event the Corporation should declare a cash dividend income corresponding to the participation of the private

sector shall, as an incentive to the beneficiaries, be subject only to a final flat income rate of ten percent (10%) of the regular income tax rates. The dividend income shall not in such case be considered as part of the beneficiaries' taxable income; provided, however, that such dividend income shall be totally exempted from income or other form of taxes if invested within six (6) months from the date the dividend income is received in the following:

(a) operation of the casino(s) or investments in any affiliate activity that will ultimately redound to the benefit of the Corporation; or any other corporation with whom the Corporation has any existing arrangements in connection with or related to the operations of the casino(s);

(b) Government bonds, securities, treasury notes, or government debentures; or

(c) BOI-registered or export-oriented corporation(s).

PAGCOR's tax exemption was removed in June 1984 through P.D. No. 1931, but it was later restored by Letter of Instruction No. 1430, which was issued in September 1984.

On January 1, 1998, R.A. No. 8424, otherwise known as the *National Internal Revenue Code of 1997*, took effect. Section 27(c) of R.A. No. 8424 provides that government-owned and controlled corporations (GOCCs) shall pay corporate income tax, except petitioner PAGCOR, the Government Service and Insurance Corporation, the Social Security System, the Philippine Health Insurance Corporation, and the Philippine Charity Sweepstakes Office, thus:

(c) Government-owned or Controlled Corporations, Agencies or Instrumentalities. — The provisions of existing special general laws to the contrary notwithstanding, all corporations, agencies or instrumentalities owned and controlled by the Government, except the Government Service and Insurance Corporation (GSIS), the Social Security System (SSS), the Philippine Health Insurance

> Corporation (PHIC), the Philippine Charity Sweepstakes Office (PCSO), and the Philippine Amusement and Gaming Corporation (PAGCOR), shall pay such rate of tax upon their taxable income as are imposed by this Section upon corporations or associations engaged in similar business, industry, or activity.

With the enactment of R.A. No. 9337 on May 24, 2005, certain sections of the National Internal Revenue Code of 1997 were amended. The particular amendment that is at issue in this case is Section 1 of R.A. No. 9337, which amended Section 27(c) of the National Internal Revenue Code of 1997 by excluding PAGCOR from the enumeration of GOCCs that are exempt from payment of corporate income tax, thus:

> (c) Government-owned or Controlled Corporations, Agencies or Instrumentalities. — The provisions of existing special general laws to the contrary notwithstanding, all corporations, agencies, or instrumentalities owned and controlled by the Government, except the Government Service and Insurance Corporation (GSIS), the Social Security System (SSS), the Philippine Health Insurance Corporation (PHIC), and the Philippine Charity Sweepstakes Office (PCSO), shall pay such rate of tax upon their taxable income as are imposed by this Section upon corporations or associations engaged in similar business, industry, or activity x x x" (*Emphasis supplied; citations omitted*)

In the aforequoted case, it was also held that PAGCOR's tax exemption does not apply to corporate income tax by virtue of Section 1 of RA 9337 amending Section 27(c) of the Tax Code and omitting PAGCOR from the exemption.

The Supreme Court had occasion to clarify their ruling in the above-cited case on December 10, 2014 in *Philippine Amusement and Gaming Corporation (PAGCOR) v. The Bureau of Internal Revenue, represented by Jose Mario Buñag, in his capacity as Commissioner of the Bureau of Internal Revenue, and John Doe and Jane Doe, who are persons acting for, in behalf or under the authority of Respondent,*[58] thus:

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

"In our Decision dated March 15, 2011, we have already declared petitioner's income tax liability in view of the withdrawal of its tax privilege under R.A. No. 9337. However, we made no distinction as to which income is subject to corporate income tax, considering that the issue raised therein was only the constitutionality of Section 1 of R.A. No. 9337, which excluded petitioner from the enumeration of GOCCs exempted from corporate income tax.

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 existing 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 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, to wit:

> SECTION 13. Exemptions. –
>
> x x x x
>
> (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.

Indeed, the grant of tax exemption or the withdrawal thereof assumes that the person or entity involved is subject to tax. This is the most sound and logical interpretation because petitioner could not have been exempted from paying taxes which it was not liable to pay in the first place. This is clear from the wordings of P.D. 1869, as amended, imposing a franchise tax of five percent (5%) on its gross revenue or earnings derived by petitioner from its operation under the Franchise *in lieu* of all taxes of any kind or form, as well as fees, charges or levies of whatever nature, which necessarily include corporate income tax.

In other words, **there was no need for Congress to grant tax exemption to petitioner with respect to its income from gaming operations as the same is already exempted from all taxes of any kind or form, income or otherwise, whether national or local, under its Charter**, save only for the five percent (5%) franchise tax. The exemption attached to the income from gaming operations exists independently from the enactment of R.A. No. 8424. To adopt an assumption otherwise would be downright ridiculous, if not deleterious, since petitioner would be in a worse position if the exemption was granted (then withdrawn) than when it was not granted at all in the first place.

x x x x x x x x x

Second. Every effort must be exerted to avoid a conflict between statutes; so that if reasonable construction is possible, the laws must be reconciled in that manner.[59]

As we see it, there is no conflict between P.D. 1869, as amended, and R.A. No. 9337. The former lays down the taxes imposable upon petitioner, as follows: (1) *a five percent (5%) franchise tax* of the gross revenues or earnings derived from its operations conducted under the Franchise, which shall be due and payable *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;[60] (2) *income tax* for income realized from other necessary and related services, shows and entertainment of petitioner.[61] With the enactment of R.A. No. 9337, which withdrew the income tax exemption under R.A. No. 8424, petitioner's tax liability on income from other related services was merely reinstated.

It cannot be gainsaid, therefore, that the nature of taxes imposable is well defined for each kind of activity or operation.

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[59] *Id.* citing Lopez v. The Civil Service Commission, 273 Phil. 147, 152 (1991).
[60] *Id.* at Note 64 citing P.D. No. 1869, Sec. 13(2).
[61] *Id.* citing P.D. No. 1869, Sec. 14(5).

There is no inconsistency between the statutes; and in fact, they complement each other.

Third. Even assuming that an inconsistency exists, **P.D. 1869, as amended, which expressly provides the tax treatment of petitioner's income prevails over R.A. No. 9337, which is a general law.** It is a canon of statutory construction that a special law prevails over a general law — regardless of their dates of passage — and the special is to be considered as remaining an exception to the general.[62] The *rationale* is:

> Why a special law prevails over a general law has been put by the Court as follows:
>
> x x x x
>
> x x x The Legislature consider and make provision for all the circumstances of the particular case. ***The Legislature having specially considered all of the facts and circumstances in the particular case in granting a special charter, it will not be considered that the Legislature, by adopting a general law containing provisions repugnant to the provisions of the charter, and without making any mention of its intention to amend or modify the charter, intended to amend, repeal, or modify the special act.*** (Lewis vs. Cook County, 74 I11. App., 151; Philippine Railway Co. vs. Nolting 34 Phil., 401.)[63]

Where a general law is enacted to regulate an industry, it is common for individual franchises subsequently granted to restate the rights and privileges already mentioned in the general law, or to amend the later law, as may be needed, to conform to the general law.[64] However, if no provision or amendment is stated in the franchise to effect the provisions of the general law, it cannot be said that the same is the intent of the lawmakers, for repeal of laws by implication is not favored.[65]

In this regard, we agree with petitioner that if the lawmakers had intended to withdraw petitioner's tax exemption of

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[62] *Id.* at Note 65.
[63] *Id.*
[64] *Id.* citing Separate Opinion of Justice Antonio T. Carpio in PLDT v. City of Davao, 447 Phil. 571, 598 (2003).
[65] Lopez v. Civil Service Commission, supra note 65.

its gaming income, then Section 13(2)(a) of P.D. 1869 should have been amended expressly in R.A. No. 9487, or the same, at the very least, should have been mentioned in the repealing clause of R.A. No. 9337.21 However, the repealing clause never mentioned petitioner's Charter as one of the laws being repealed. On the other hand, the repeal of other special laws, namely, Section 13 of R.A. No. 6395 as well as Section 6, fifth paragraph of R.A. No. 9136, is categorically provided under Section 24(a) (b) of R.A. No. 9337, to wit:

x x x x x x x x x

When petitioner's franchise was extended on June 20, 2007 without revoking or withdrawing its tax exemption, it effectively reinstated and reiterated all of petitioner's rights, privileges and authority granted under its Charter. Otherwise, Congress would have painstakingly enumerated the rights and privileges that it wants to withdraw, given that a franchise is a legislative grant of a special privilege to a person. **Thus, the extension of petitioner's franchise under the same terms and conditions means a continuation of its tax exempt status with respect to its income from gaming operations. Moreover, all laws, rules and regulations, or parts thereof, which are inconsistent with the provisions of P.D. 1869, as amended, a special law, are considered repealed, amended and modified, consistent with Section 2 of R.A. No. 9487,** thus:

> SECTION 2. *Repealing Clause.* – All laws, decrees, executive orders, proclamations, rules and regulations and other issuances, or parts thereof, which are inconsistent with the provisions of this Act, are hereby repealed, amended and modified.

It is settled that where a statute is susceptible of more than one interpretation, the court should adopt such reasonable and beneficial construction which will render the provision thereof operative and effective, as well as harmonious with each other.[66]

Given that petitioner's Charter is not deemed repealed or amended by R.A. No. 9337, petitioner's income derived from gaming operations is subject only to the five percent (5%) franchise tax, in accordance with P.D. 1869, as amended. With

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[66] *Id.* at Note 64 citing R. Agpalo, *Statutory Construction* (3rd ed., 1995), p. 199; citing *Javellana v. Tayo*, 116 Phil. 1342, 1351 (1962); *Radiola-Toshiba Phil., Inc. v. IAC*, 276 Phil. 404, 412 (1991).

respect to petitioner's income from operation of other related services, the same is subject to income tax only. The five percent (5%) franchise tax finds no application with respect to petitioner's income from other related services, in view of the express provision of Section 14(5) of P.D. 1869, as amended, to wit:

> Section 14. Other Conditions.
>
> x x x x
>
> (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.

Thus, it would be the height of injustice to impose franchise tax upon petitioner for its income from other related services without basis therefor.

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, gambling pools) should be interpreted in relation to Section 13(2) of P.D. 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. 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." *(Italics in the original; boldface supplied)*

It is indubitable, from the discussion above, that Section 193 of the Local Government Code, a general law, cannot be given precedence over PD 1869 and RA 9487, both special laws, as petitioners contend.

While the SC deigned to rule on the issue of whether or not PAGCOR's tax privilege of paying 5% franchise tax inures to the benefit of third parties with contractual relationship with PAGCOR in connection with the operation of casinos, this was merely because the resolution of the petition was limited to clarifying the tax treatment of PAGCOR's income by the BIR vis-à-vis their Decision dated March 15, 2011 and because PAGCOR's contractees and licensees were not parties to the suit. This Court, however, believes that the tax exemption of PAGCOR extends to its agents, contractees and licensees.

RMC No. 33-2013 clearly misclassified "income from licensed private casinos covered by authorities to operate issued to private operators" under "other related operations".

For one thing, an administrative issuance cannot take precedence over law.

Section 13(2) of PD 1869 states:

> "Section 13. Exemptions. — x x x
>
> (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 ours)*

It is a well-settled rule that an administrative issuance cannot amend a legislative act.[67] In *MCC Industrial Sales Corp. v. Ssangyong Corporation*[68], the Supreme Court held:

> "After all, the power of administrative officials to promulgate rules in the implementation of a statute is necessarily limited to what is found in the legislative enactment itself. The implementing rules and regulations of a law cannot extend the law or expand its coverage, as the power to amend or repeal a statute is vested in the Legislature. Thus, if a discrepancy occurs between the basic law and an implementing rule or regulation, it is the former that prevails, because the law cannot be broadened by a mere administrative issuance — an administrative agency certainly cannot amend an act of Congress."

Second, as acknowledged by the Supreme Court in the 2014 *PAGCOR v. BIR* case, "where a statute is susceptible of more than one interpretation, the court should adopt such reasonable and beneficial construction which will render the provision thereof operative and effective, as well as harmonious with each other."[69]

Section 14(5) of P.D. 1869 states:

> "Section 14. Other Conditions. — x x x
>
> (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."

A statute must receive such reasonable construction as will, if possible, make all its parts harmonize with each other, and render them consistent with its scope and object.[70] Courts should adopt a construction that will give effect to every part of a statute, if at all possible. This rule is expressed in the maxim,

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[67] *Grande v. Antonio*, G.R. No. 206248, February 18, 2014.
[68] G.R. No. 170633, October 17, 2007, 536 SCRA 408, 453.
[69] *Supra* at Note 72.
[70] *Id.* citing *Sotto v. Sotto*, 43 Phil. 688 (1922), citing Sutherland on Statutory Construction, 2ed. Sec. 368; *Araneta v. Concepcion*, 99 Phil. 709 (1956).

ut magis valeat quam pereat or that construction is to be sought which gives effect to the whole of the statute - its every word.[71]

An absurd reading of the law would result if, after having declared in Section 13(2)(b) thereof that associations, agencies, or individuals with whom PAGCOR has any contractual relationship in connection with the operations of the casinos would likewise benefit from exemptions granted under the franchise, the law would contradict itself in another section thereof, in particular, in its Section 14(5). It would be akin to the left hand taking away what the right hand has given.

The only reasonable construction of Section 14(5) of PD 1869, therefore, that would give harmony to all of its provisions, is that the "operation of related services" pertains to **things other than the operations of casinos by persons or entities PAGCOR has a contractual relationship with**.

While RMC No. 33-2013 is not directly at issue in the case at bar, the interpretation thereof in the *2014 PAGCOR v. BIR* case contains implications in the tax treatment of agents, contractees, and licensees under PAGCOR's franchise and how PAGCOR's exemption inures to its benefit.

In view of the foregoing discussion, this Court upholds the finding in the assailed Decision that "[b]y imposing a franchise fee of 3% on the gross revenue of the PEGS, [PAGCOR's] tax exemption is compromised as it stands to collect a specified percentage from the operations of its agents. This will indirectly violate [PAGCOR's] tax exemption."[72]

The Resolutions of the QC Council Granting Special Permits to Operate to PEGS Operators Confers No Rights

In characterizing the Special Permits to Operate granted by the Quezon City Council via Resolution as a legislative act, petitioners claim that these resolutions cannot be collaterally attacked as the same have not been assailed in a direct proceeding.

Petitioners fail to appreciate the full import and legal significance of the Special Permit to Operate granted to PEGS operators. As pointed out by PAGCOR in its Memorandum, the Special Permit simply embodies the

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[71] *Id.* citing *Almeda v. Florentino*, G.R. No. 23800, December 21, 1965, 15 SCRA 514 (1965); *U.S. v. Estapia*, 37 Phil. 17 (1917); *JMM Promotions & Management, Inc. v. NLRC*, 228 SCRA 129 1993).
[72] *Rollo*, p. 72.

consent of the Quezon City Government that an internet casino operation will be conducted within its territorial jurisdiction. This is simply in compliance with the consent requirement under Section 1 of RA 9487 which provides that:

> "x x x the corporation **shall obtain the consent of the local government unit** that has territorial jurisdiction over the area chosen as the site for any of its operations." *(Emphasis ours).*

As the Office of the Government Corporate Counsel elaborates in its Opinion 106, Series of 2009:

> "The extent of the consent only refers to the area or site for the operations, not in the exercise of PAGCOR's franchise. This is to ensure that the site of the gambling activities be restricted, in order not to make it accessible, for instance, to minors. x x x. Thus, as soon as the area is chosen and/or the site of operation is established, subject to compliance with pertinent statutes, the LGUs have no control or authority over PAGCOR, in the latter's exercise of its franchise under its Charter, as amended."[73]

Furthermore, the difference between a Resolution and an Ordinance was sufficiently discussed in the assailed Decision, to wit:

> "In the case of *Spouses Yusay vs. Court of Appeals, City Mayor and City Council of Mandaluyong City*[74], 28 the Highest Tribunal differentiated a resolution from an ordinance, in this fashion:
>
> > (I)t is well to differentiate between a resolution and an ordinance. The first is upon a specific matter of a temporary nature while the latter is a law that is permanent in character. No rights can be conferred by and be inferred from a resolution, which is nothing but an embodiment of what the lawmaking body has to say in the light of attendant circumstances. In simply expressing its sentiment or opinion through the resolution, therefore, the Sangguniang Panglungsod in no way abused its discretion, least of all gravely, for its expression of sentiment or opinion was a constitutionally protected right.

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[73] *Rollo*, p. 281.
[74] G.R. No. 111097, July 20, 1994.

The foregoing declaration was echoed in the case of *Land Bank of the Philippines vs. Cacayuran*[75]. The Supreme Court held that 'while ordinances are laws and possess a general and permanent character, resolutions are merely declarations of the sentiment or opinion of a lawmaking body on a specific matter and are temporary in nature. As opposed to ordinances, "no rights can be conferred by and be inferred from a resolution."' The assailed Resolution by the city government does not confer any rights. The court a quo correctly ruled on this matter as no rights can emanate from an act against the law. Nothing is clearer than the foregoing pronouncement insofar as the right of petitioner to assess and impose additional business tax upon respondent is concern. *(sic)*"

We see no reason to depart from the ruling of the Court *a quo* in this matter.

Estoppel Will Not Lie Against PAGCOR

Petitioners admit in its Memorandum that estoppel against PAGCOR is not in issue. They claim that it is the PEGS operators who have not opposed the Resolutions granting Special Permits to Operate, have been operating on the basis thereof, and have been diligently paying the impositions for several years that are estopped from questioning the same.

As regards whether or not estoppel lies against the PEGS operators, *We* find no reason to rule upon the same. The resolution of this particular issue in the instant petition is limited to whether or not estoppel lies against PAGCOR. First, the PEGS operators are not parties to the instant case, and may not therefore stand to benefit or bear the consequences of this resolution. Second, a finding that PAGCOR's agents, contractees and licensees are estopped from questioning the Resolutions would be premature and iniquitous as the same would effectively countenance sidesteps to judicial process.

As against PAGCOR, however, the doctrine of estoppel will not work because petitioner's assessments are based on an erroneous interpretation of the law. The Supreme Court elaborated on the doctrine of estoppel in ***Commissioner of Internal Revenue v. Kudos Metal Corporation***[76], thus:

"The doctrine of estoppel cannot be applied in this case as an exception to the statute of limitations on the assessment of taxes considering that there is a detailed procedure for the proper execution of the waiver, which the BIR must strictly follow. As

[75] G.R. No. 191667, April 17, 2013, citing *Spouses Yusay vs. Court of Appeals, et al., supra.*
[76] G.R. No. 178087, May 5, 2010.

> we have often said, the doctrine of estoppel is predicated on, and has its origin in equity which, broadly defined, is justice according to natural law and right. **<u>As such, the doctrine of estoppel cannot give validity to an act that is prohibited by law or one that is against public policy</u>**. It should be resorted to solely as a means of preventing injustice and should not be permitted to defeat the administration of the law, or to accomplish a wrong to secure an undue advantage, or to extend beyond them requirements of the transactions in which they originate. Simply put, the doctrine of estoppel must be sparingly applied." *(Emphasis ours)*

Given that the imposition of the 3% local business tax against PEGS operators is legally infirm, the doctrine of estoppel cannot be properly invoked. *We* affirm the ruling of the RTC and the Court in Division that "the principle of estoppel is based on justice and fair play. The principle cannot give birth to a valid act based on the improper or flawed interpretation and application of law and jurisprudence."

WHEREFORE, the Petition for Review is **DENIED**. The assailed Resolution dated April 1, 2014 and the assailed Decision dated November 20, 2013 of the Special First Division of this Court in CTA AC No. 93 are **AFFIRMED *in toto*.**

SO ORDERED.

Ma. Belen S L

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

with separate concurring opinion

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

HON. HERBERT M. BAUTISTA and MR. EDGAR VILLANUEVA, respectively in their official capacity as Mayor and Treasurer of Quezon City,	**CTA EB NO. 1159** (CTA AC No. 93)
Petitioners,	Present:
-versus-	**DEL ROSARIO**, *PJ,* **CASTAÑEDA, JR.,** **BAUTISTA,** **UY,** **CASANOVA,** **FABON-VICTORINO,** **MINDARO-GRULLA,** **COTANGCO-MANALASTAS,** *and* **RINGPIS-LIBAN,** *JJ.*
PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR), represented by ATTY. CARLOS R. BAUTISTA, *Respondent.*	Promulgated: NOV 05 2015 2:50 p.m.

x -- x

SEPARATE CONCURRING OPINION

DEL ROSARIO, PJ.:

I concur with the *ponencia* in denying the Petition for Review albeit on the ground that the Court of Tax Appeals (CTA) Special First Division has no jurisdiction over the Petition for Review in CTA AC No. 93.

I, however, submit that the CTA has no jurisdiction over the present controversy.

To begin with, Section 2, Rule 41 of the Revised Rules of Court governs appeals from judgments and final orders of the Regional Trial Court, *viz:*

"Sec. 2. *Modes of Appeal.* –

(a) Ordinary Appeal -- The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require. In such cases, the record on appeal shall be filed and served in like manner.

(b) Petition for review. The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its appellate jurisdiction shall be by petition for review in accordance with Rule 42.

(c) Appeal by certiorari. In all cases **where only questions of law are raised or involved, the appeal shall be to the Supreme Court by petition for review on certiorari in accordance with Rule 45.**"

In *Macawili Gold Mining and Development Co., Inc. v. Court of Appeals,*[1] the Supreme Court summarized the modes of appeal from judgments of the RTC, as follows:

(1) In all cases decided by the RTC in the exercise of its original jurisdiction, appeal may be made to the Court of Appeals by mere notice of appeal where the appellant raises questions of fact or mixed questions of fact and law;

(2) In all cases decided by the RTC in the exercise of its original jurisdiction where the appellant raises only questions of law, the appeal must be taken to the Supreme Court on a petition for review on certiorari under Rule 45;

(3) All appeals from judgments rendered by the RTC in the exercise of its appellate jurisdiction, regardless of whether the appellant raises questions of fact, questions of law, or mixed questions of fact and law, shall be brought to the Court of Appeals by filing a petition for review under Rule 42.

Stated otherwise, **decisions of the RTC rendered in the exercise of its original jurisdiction where the appellant raises only questions of law,**

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[1] G.R. No. 115104, October 12, 1998.

is exclusively appealable to the Supreme Court by way of a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court.

Relatedly, in *Quezon City and The City Treasurer of Quezon City v. ABS-CBN Broadcasting Corporation (QC v. ABS CBN),*[2] the Supreme Court clarified that appeals from decisions of the RTC raising purely legal questions are cognizable by the Supreme Court to the exclusion of all other courts, to wit:

> "I. The dismissal by the CA of petitioners appeal is in order because it raised purely legal issues, namely:
>
> 1) Whether appellee, whose franchise expressly provides that its payment of franchise tax shall be in lieu of all taxes in this franchise or earnings thereof, is absolutely excused from paying the franchise tax imposed by appellants;
> 2) Whether appellants imposition of local franchise tax is a violation of appellees legislative franchise; and
> 3) Whether one can do away with the requirement on prior written claim for refund.
>
> **Obviously, these are purely legal questions, cognizable by this Court, to the exclusion of all other courts.** There is a question of law when the doubt or difference arises as to what the law is pertaining to a certain state of facts.
>
> Section 2, Rule 50 of the Rules of Court provides that an appeal taken to the CA under Rule 41 raising only questions of law is erroneous and shall be dismissed, issues of pure law not being within its jurisdiction. Consequently, the dismissal by the CA of petitioners appeal was in order."

In the case at bar, there is no dispute that the assailed decision of the RTC in Civil Case No. 10-122976 involves a pure question of law, pertaining to the proper interpretation or application of the PAGCOR Charter. It is a basic legal truism that a question of law arises when there is doubt as to what the law is on a certain state of facts. It does not involve an examination of the probative value of the evidence presented by any of the litigants.[3] While no evidence was presented by the party litigants in the case, the assailed decision was even explicit and categorical in stating that the controversy is confined to a legal question, *viz:*

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[2] G.R. No. 166408, October 6, 2008.

[3] *Tongonan Holdings and Development Corporation v. Atty. Francisco Escaño, Jr.,* G.R. No. 190994, September 7, 2011.

cm

> "xxx **As the issues to be resolved are purely legal in nature**, public respondents were given time to file comment/opposition to both the application for TRO and/or Preliminary Injunction, as well as to file comment on the main petition for Prohibition itself. xxx"[4]

Consistent with *QC vs. ABS-CBN* case, I respectfully submit that the CTA Special First Division is not vested with jurisdiction to take cognizance of the petition for review filed in CTA AC No. 93 as said petition raises pure questions of law.

All told, I **VOTE** to **DISMISS** the present Petition for Review and declare the Decision dated December 29, 2011 in Civil Case No. 10-122976 final and executory.

ROMAN G. DEL ROSARIO
Presiding Justice

[4] Division Docket, p. 13.