REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

SOUTH ENTERTAINMENT GALLERY, INC., Petitioner,	**CTA CASE NO. 8286**
	Members: **BAUTISTA,** *Chairperson,* **FABON-VICTORINO,** *and* **RINGPIS-LIBAN,** *JJ.*
- versus -	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** APR 15 2014 4:03 p.m.

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DECISION

BAUTISTA, J.:

The Petition for Review,[1] filed on May 11, 2011, pursuant to Section 7(a)(1)[2] of Republic Act No. 1125,[3] as amended by Republic Act No. 9282,[4] and Republic Act No. 9503,[5] seeks for the withdrawal and cancellation of the Warrant of Distraint and/or Levy dated September 1, 2010, and accordingly, for the declaration that petitioner is not liable for deficiency Income Tax and Value-added Tax in the aggregate amount of ₱39,788,105.55, for taxable year 2007.

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[1] *Records,* (CTA Case No. 8286), pp. 6-104, with Annexes.

[2] SEC. 7. *Jurisdiction.* – The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue.

[3] An Act Creating the Court of Tax Appeals, as amended.

[4] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes.

[5] An Act Enlarging the Organizational Structure of the Court of Tax Appeals, Amending for the Purpose Certain Sections of the Law Creating the Court of Tax Appeals, and for Other Purposes.

FACTS OF THE CASE

Petitioner, South Entertainment Gallery, Inc., is a corporation organized and existing under the laws of the Philippines, with office address at 3/F SM City Pampanga, Barangay San Jose, San Fernando City, Pampanga, and Barangay Lagundi, Mexico City, Pampanga. It is engaged in the business of operating and conducting Bingo games and other games of chance, among others.

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

On June 8, 2009, petitioner received a Notice of Informal Conference dated May 8, 2009, issued by OIC-Revenue District Officer, Amador P. Ducut, of Revenue District Office No. 21, of the City of San Fernando, Pampanga, informing the former of the proposed assessments for deficiency Income Tax and Value-added Tax for taxable year 2007.[6] Attached therewith is the Report signed by Revenue Officer II, Zenia O. Miclat.[7]

Consequently, on June 9, 2009, petitioner issued a Letter-Reply, addressed to OIC-Revenue District Officer Ducut, invoking its tax-exempt status as a grantee of Philippine Amusement and Gaming Corporation ("PAGCOR").[8]

On August 20, 2009, a Letter signed by Revenue Officer II Miclat, was issued to petitioner, answering the Letter-Reply dated June 9, 2009, and informing the latter of the instruction for the issuance of an Informal Notice of Assessment.[9]

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[6] *Records*, pp. 298-299.
[7] *Exhibit "D."*
[8] *Exhibit "E."*
[9] *Records*, p. 229; *Exhibit "F."*

Thus, on October 8, 2009, petitioner issued a Letter, addressed to OIC-Revenue District Officer Ducut, enclosing correspondence from PAGCOR and BIR.[10]

On October 16, 2009, petitioner received a Preliminary Assessment Notice dated September 16, 2009, issued by Regional Director Romulo L. Aguila, Jr., for deficiency Income Tax and Value-added Tax, in the respective amounts of ₱8,068,653.80 and ₱30,529,560.40, inclusive of surcharge, interests and penalties, for taxable year 2007.[11]

Accordingly, on October 19, 2009, petitioner issued a Letter, addressed to Regional Director Aguila, Jr., enclosing again copies of correspondence from PAGCOR and BIR.[12]

On October 27, 2009, Regional Director Aguila, Jr., issued a Letter, addressed to petitioner, informing the latter of the denial of its Letters dated October 8, 2009 and October 19, 2009.[13]

On December 4, 2009, PAGCOR, thru counsel, issued a Letter, addressed to Regional Director Aguila, Jr., seeking for the reconsideration and setting aside of the assessments against petitioner.[14]

And on December 9, 2009, Regional Director Aguila, Jr., issued the assailed Formal Letter of Demand, with attached Details of Discrepancies and Assessment Notices.[15]

On May 28, 2010, OIC-Revenue District Officer Ducut issued a Final Notice Before Seizure, addressed to petitioner, giving the latter ten (10) days from receipt thereof, within which to settle the deficiency assessments for Income Tax and Value-added Tax, in the aggregate amount of ₱39,788,105.55, inclusive of surcharge, interests and penalties, for taxable year 2007.[16]

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[10] *Exhibit "G."*
[11] *Records*, p. 299; *Exhibit "H."*
[12] *Exhibit "I."*
[13] *Exhibit "J."*
[14] *Exhibit "K."*
[15] *Exhibit "8,"* with subannexes.
[16] *Exhibit "L."*

On September 1, 2010, OIC-Revenue District Officer Ducut issued the subject Warrant of Distraint and/or Levy, addressed to petitioner, enforcing the deficiency assessments in the aggregate amount of ₱39,788,105.55.[17]

On September 24, 2010, petitioner issued a Letter, addressed to OIC-Revenue District Officer Ducut, requesting for the withdrawal and cancellation of the subject Warrant of Distraint and/or Levy dated September 1, 2010.[18]

On April 13, 2011, petitioner received a Letter dated March 28, 2011, issued by OIC-Revenue District Officer Ducut, reiterating the collection of the deficiency assessments for Income Tax and Value-added Tax for taxable year 2007;[19] with attached Memorandum dated February 3, 2011.[20]

With that, on May 11, 2011, petitioner filed the present Petition for Review [With Prayer for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction];[21] raffled to the then First Division of the Court.[22]

On July 14, 2011, the Court issued a Resolution, suspending the implementation of the subject Warrant of Distraint and/or Levy dated September 1, 2010, subject to the posting of a security bond.[23] On August 1, 2011, the Court, through a Resolution, approved the surety bond filed by petitioner.[24]

On September 9, 2011, respondent filed her Answer,[25] interposing the following Special and Affirmative Defenses:

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[17] *Records*, p. 299; *Exhibit "M."*
[18] *Exhibit "N."*
[19] *Records*, p. 299; *Exhibit "O."*
[20] *Id.*; *Exhibit "O-1."*
[21] *Supra*, note 1.
[22] Composed of then Presiding Justice Ernesto D. Acosta and Associate Justices Erlinda P. Uy and Esperanza R. Fabon-Victorino.
[23] *Records*, pp. 117-125.
[24] *Id.*, at p. 239.
[25] *Id.*, at pp. 252-260.

"4. Respondent hereby repleads the foregoing admissions and denials as part of her Special and Affirmative Defenses;

5. Contractual relationship between petitioner and the Philippine Amusement and Gaming Corporation (PAGCOR) does not serve to exempt petitioner from tax liability:

5.1. Philippine Amusement and Gaming Corporation (PAGCOR) was one of the five government-owned or controlled corporations (GOCCs) exempted from payment of corporate income tax under Section 27(C) of Republic Act No. 8424 otherwise known as 'An Act Amending the National Internal Revenue Code, as amended and for other purposes.' Under Section 1(C) of RA 9337 (effective November 1, 2005), PAGCOR was deleted from the list of exempted GOCCs;

5.2. Before RA 9337 became effective, various groups already [*sic*] lodged petitions for certiorari with the Supreme Court (SC), questioning the validity and constitutionality of RA 9337. On September 1, 2005, the SC dismissed all the petitions and declared RA 9337 as constitutional;

5.3. PAGCOR is no longer exempt from corporate income tax in view of its exclusion from the list of government-owned or controlled corporations (GOCCs) exempt from income tax under Section 27(C) of RA 8424. This is evident from the enactment of RA 9337. When the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. Where the law speaks in clear and categorical language, there is no occasion for interpretation; there is only room for application;

5.4. In the case of *Abakada Guro Party List vs. Honourable Secretary Ermita, et al.*, the SC succinctly stated: 'The Philippine Amusement and Gaming Corporation is not exempt from income tax anymore.' Both in law and jurisprudence the ultimate truth is announced of the relegation of petitioner into the status of an ordinary corporate taxpayer;

5.5. All legislative franchises, except only electric, gas and water utilities have been expressly subjected to the 10%

VAT pursuant to Section 102 of the old NIRC as amended by RA 7716 (now Sec. 108 of the NIRC of 1997). Upon effectivity of Section 102 of the old NIRC as amended by RA 7716, PAGCOR ceased to be embraced by the franchise tax. Instead, it became subject to 10% VAT, in lieu of all other taxes, pursuant to Section 13 of PD No. 1869 as amended by Sections 3 and 12 of RA 7716. The 5% franchise tax had already been replaced by VAT. Section 108 of the NIRC of 1997 (then Section 106 of old NIRC as amended) provides that all franchise grantees which are not subject to the franchise tax under Section 119 NIRC of 1997 shall be considered as other franchise grantees subject to the 10% VAT;

5.6. In 15 March 2011, the Supreme Court affirmed the exclusion of PAGCOR from the list of GOCCs exempt from payment of tax under Section 27(C) of RA 8424 in the case of *PAGCOR vs. BIR*:

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6. Petitioner is liable for deficiency Income tax (IT) and Value-added Tax (VAT) in the respective amounts of ₱8,378,025.10 and ₱31,410,080.45 for taxable year 2007, broken down as follows:

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6.1. Verification by respondent's revenue examiners disclosed that petitioner failed to pay income tax due per income tax return filed for taxable year 2007, hence, the above assessment in accordance with Section 27 of the NIRC of 1997;

6.2. Verification by respondent's revenue examiners disclosed that petitioner failed to file VAT returns required under Section 114 of the NIRC of 1997 in relation to Section 4-108-3(h) of Revenue Regulations No. 16-2005 implementing RA No. 9337;

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7. Petitioner was afforded due process in the service of notices relative to the assessment of deficiency IT and VAT for taxable year 200[7]:

7.1. The assessment was carried out by virtue of Letter of Authority No. LOA 2007 00029838 dated 05 August 2008 granting revenue officers Zenia Miclat and Emmanuel F. Macalino the power to examine petitioner's books of accounts and other accounting records for all internal revenue taxes;

7.2. A Request for Presentation of Records and Checklist Requirements dated 18 August 2008 was issued by respondent and received by petitioner in relation to the investigation under LOA 2007 00029838;

7.3. A Second Request for Presentation of Records dated 03 September 2008 was issued by respondent and received by petitioner in relation to the investigation under LOA 2007 00029838;

7.4. A 3rd and Final Notice dated 02 October 2008 was issued by respondent and received by petitioner in relation to the investigation under LOA 2007 00029838;

7.5. A Notice of Informal Conference dated 08 May 2009 was issued by respondent and received by petitioner in relation to the investigation under LOA 2007 00029838;

7.6. A Preliminary Assessment Notice dated 16 September 2009 was issued by respondent and received by petitioner in relation to the investigation under LOA 2007 00029838;

7.7. A Formal Letter of Demand dated 09 December 2009 with attached Details of Discrepancies and Assessment Notice was issued by respondent and received by petitioner on 08 January 2010 in relation to the investigation under LOA 2007 00029838. Receipt by petitioner of the Formal Letter of Demand is evinced by Registry Receipt No. 44 and as indicated in the list of documents for mailing on 08 January 2010 of the Assessment Division of Revenue Region No. 4, San Fernando City, Pampanga;

7.8. A Preliminary Collection Letter dated 20 April 2010 was issued by respondent and received by petitioner in relation to the investigation under LOA 2007 00029838;

7.9. A Final Notice Before Seizure dated 28 May 2010 was issued by respondent and received by petitioner in relation to the investigation under LOA 2007 00029838;

7.10. A Warrant of Distraint and/or Levy was issued by respondent and received by petitioner in relation to the investigation under LOA 2007 00029838.

8. The assessment has become final, executory and demandable in view of petitioner's failure to file a protest thereon:

8.1. The penultimate and ultimate paragraphs of Section 228 of the National Internal Revenue Code of 1997 read as follows:

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8.2. Revenue Regulations No. 12-99 provides that the taxpayer may file an administrative protest against the formal letter of demand and assessment notice within thirty days from receipt thereof and if the taxpayer fails to file a valid protest within the allotted period from receipt, the assessment shall become final, executory and demandable;

8.3. Section 3(a), Rule 8 of the Revised Rules of the Court of Tax Appeals (CTA Rules) reads as follows:

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8.4. In the case at bar, petitioner received a copy of the Formal Letter of Demand and Assessment Notices on 08 January 2010. However, petitioner did not file a protest on the Formal Letter of Demand and simply denied receipt thereof; and

8.5. Failure to observe the reglementary period provided under the law is fatal to the cause of petitioner. Without a valid protest filed on time, the assessment is considered under law, rules and jurisprudence as final, executory and demandable."[26]

[26] *Id.*, at pp. 253-259. Citations omitted.

On October 24, 2011, the parties entered their Joint Stipulation of Facts and Issues;[27] the same was approved by the Court in a Resolution dated October 27, 2011.[28] On January 9, 2012, the Court issued the Pre-Trial Order.[29]

Trial ensued. Both parties presented and offered their respective documentary and testimonial evidence.

On April 8, 2013, the case was transferred to the Third Division of the Court, pursuant to CTA Administrative Circular No. 01-2013, dated March 26, 2013, entitled "Reorganizing the Three (3) Divisions of the Court of Tax Appeals."[30]

On April 22, 2013,[31] the case was submitted for decision, taking into consideration the Memorandum for Petitioner,[32] *sans* respondent.[33]

Hence, this Decision.

ISSUES

As stipulated upon by the parties, the issues for this Court's consideration are:

> "I. WHETHER OR NOT THE W[ARRANT OF] D[ISTRAINT AND/OR] L[EVY] IS PREMATURE AND THUS INVALID AS TAX DELINQUENCY HAS NOT SET IN;
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> II. WHETHER OR NOT THE PERIOD TO ASSESS PETITIONER [FOR] INTERNAL REVENUE TAXES FOR TAXABLE YEAR 2007 HAS ALREADY PRESCRIBED; and

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[27] *Id.*, at pp. 298-304.
[28] *Id.*, at p. 306.
[29] *Id.*, at pp. 323-329.
[30] *Id.*, at p. 763.
[31] *Id.*, at p. 1314.
[32] *Id.*, at pp. 728-758.
[33] *Id.*, at p. 760.

III. WHETHER OR NOT PETITIONER IS LIABLE FOR ALLEGED DEFICIENCY INCOME TAX AND V[ALUE]-A[DDED] T[AX] FOR TAXABLE YEAR 2007."[34]

RULING OF THE COURT

The Court finds the Petition for Review partly meritorious.

Petitioner claims the absence of valid service of the Formal Letter of Demand, with attached Details of Discrepancies and Assessment Notices dated December 9, 2009.[35] It further asserts its exemption from all taxes, whether national or local, pursuant to Presidential Decree ("PD") No. 1869,[36] otherwise known as the PAGCOR Charter, taking into consideration its contractual relations thereto with the latter.

On the other hand, respondent discounts the denial made by petitioner on the service of the Formal Letter of Demand, with attached Details of Discrepancies and Assessment Notices dated December 9, 2009, and points out petitioner's failure to file a timely protest pursuant to Section 228 of the 1997 National Internal Revenue Code ("NIRC"),[37] as amended, as well as, the exclusion of PAGCOR from the list of government-owned and -controlled corporations ("GOCC") that are exempt from payment of tax.

After consideration of the foregoing, the Court finds the case of *Barcelon Roxas Securities, Inc., (now known as UBP Securities, Inc.,) v. Commissioner of Internal Revenue*,[38] instructive, to quote:

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[34] *Id.*, at p. 300.
[35] *Exhibit "8,"* with subannexes.
[36] 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) dated July 11, 1983.
[37] SEC. 228. *Protesting of Assessment.* – xxx

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Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

[38] G.R. No. 157064, August 7, 2006, 498 SCRA 126. Citations omitted.

"In its Decision, the CTA resolved the issues raised by the parties thus:

> Jurisprudence is replete with cases holding that **if the taxpayer denies ever having received an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. The *onus probandi* was shifted to respondent to prove by contrary evidence that the Petitioner received the assessment in the due course of mail.** The Supreme Court has consistently held that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion and a direct denial thereof shifts the burden to the party favored by the presumption to prove that the mailed letter was indeed received by the addressee *(Republic vs. Court of Appeals, 149 SCRA 351).* Thus as held by the Supreme Court in *Gonzalo P. Nava vs. Commissioner of Internal Revenue, 13 SCRA 104, January 30, 1965:*
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> xxx. **What is essential to prove the fact of mailing is the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by the Petitioner or its authorized representative. And if said documents cannot be located, Respondent at the very least, should have submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document which is executed with the intervention of the Bureau of Posts**. xxx.
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In *Protector's Services, Inc. v. Court of Appeals,* this Court ruled that **when a mail matter is sent by registered mail, there exists a presumption, set forth under Section 3(v), Rule 131 of the Rules of Court, that it was received in the regular course of mail**. The facts to be proved in order to raise this presumption are: (a) that the letter was properly addressed with postage prepaid; and (b) that it was mailed. While a mailed letter is deemed received by the addressee in the ordinary course of mail, this is still merely a disputable presumption subject to controversion, and a direct denial of the

> receipt thereof shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee." (*Boldfacing supplied.*)

From the foregoing, when the taxpayer-addressee denies the receipt of the disputed assessment - delivered and served through registered mail - issued by respondent against the former, the burden of proof is now shifted to the latter to present and offer evidence to prove that the same was indeed duly delivered and received; for the presumption of regularity in the ordinary course of mail is merely disputable. Thus, the above-ruling sets forth the significance of the Registry Receipt issued by the Bureau of Posts, the Registry Return Card signed by the taxpayer-addressee or its duly authorized representative, as well as the Certification issued by the same Bureau, in order to prove the fact of mailing and receipt.

Based on the records of the case, respondent offered and presented Registry Receipt No. 44 posted on January 8, 2010,[39] and the Certification dated August 22, 2012,[40] from the Office of the Postmaster, to prove that the Formal Letter of Demand, with attached Details of Discrepancies and Assessment Notices dated December 9, 2009, was received on January 13, 2010.[41]

And to continue, the Court quotes the same case, thus:[42]

> "In the present case, petitioner denies receiving the assessment notice, and the respondent was unable to present substantial evidence that such notice was, indeed, mailed or sent by the respondent before the BIR's right to assess had prescribed and that said notice was received by the petitioner. **The respondent presented the BIR record book where the name of the taxpayer, the kind of tax assessed, the registry receipt number and the date of mailing were noted. The BIR records custodian, Ingrid Versola, also testified that she made the entries therein.** Respondent offered the entry in the BIR record book and the testimony of its record custodian as entries in official records in accordance with Section 44, Rule 130 of the Rules of Court, which states that:

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[39] *Exhibit "13."*
[40] *Exhibit "14."*
[41] *Exhibit "8,"* with subannexes.
[42] *Supra*, note 38.

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The foregoing rule on evidence, however, must be read in accordance with this Court's pronouncement in *Africa v. Caltex (Phil.), Inc.*, where it has been held that **an entrant must have personal knowledge of the facts stated by him or such facts were acquired by him from reports made by persons under a legal duty to submit the same.**

There are three requisites for admissibility under the rule just mentioned: (a) that the entry was made by a public officer, or by another person specially enjoined by law to do so; (b) that it was made by the public officer in the performance of his duties, or by such other person in the performance of a duty specially enjoined by law; and (c) that the public officer or other person had sufficient knowledge of the facts by him stated, which must have been acquired by him personally or through official information, xxx.

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Furthermore, **independent evidence, such as the registry receipt of the assessment notice, or a certification from the Bureau of Posts,** could have easily been obtained. Yet respondent failed to present such evidence." (*Boldfacing supplied.*)

A reading of the foregoing bolsters the importance of the Registry Receipt, or the Certification issued by the Bureau of Posts, in addition to the BIR record book where the name of the taxpayer, the kind of tax assessed, the registry receipt number and the date of mailing were noted, and the testimonies made by the BIR records custodian therein.[43]

In the case at bench, in addition to the Registry Receipt No. 44 posted on January 8, 2010,[44] and the Certification dated August 22, 2012,[45] from the Office of the Postmaster, respondent has offered and presented the Judicial Affidavit of Ronnie SJ Ocampo,[46] which stated his official duties and personal knowledge on the preparation and mailing thereof; and the record book of the Assessment Division, attached to

[43] *Ibid.*
[44] *Exhibit "13."*
[45] *Exhibit "14."*
[46] *Exhibit "12."*

Registry Receipt No. 44,[47] which showed the Registry Receipt number, name of the taxpayer, address of the taxpayer, subject matter, taxable year, date referred to concerned office, and remarks. And after a perusal of the foregoing, the Court finds that respondent has satisfactorily proven her compliance with the above-mentioned requirements; thus, respondent has duly established that the Formal Letter of Demand, with attached Details of Discrepancies and Assessment Notices dated December 9, 2009,[48] was indeed mailed or sent to petitioner.

The Court further notes that it was only on September 24, 2010 that petitioner issued a Letter, addressed to OIC-Revenue District Officer Ducut, requesting for the withdrawal and cancellation of the subject Warrant of Distraint and/or Levy dated September 1, 2010;[49] and only on May 11, 2011, that petitioner filed the present Petition for Review [With Prayer for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction],[50] upon its receipt on April 13, 2011 of the Letter dated March 28, 2011, reiterating the collection of the deficiency assessments for Income Tax and Value-added Tax for taxable year 2007,[51] - that petitioner failed to present or even prove that it took any action against the Final Notice Before Seizure dated May 28, 2010, which only gave the latter ten (10) days from receipt thereof.[52]

With the foregoing discussions, petitioner indeed failed to observe Section 228 of the 1997 NIRC, as amended.[53]

The Court likewise takes into consideration that the deficiency assessments for Income Tax and Value-added Tax covers taxable year 2007, thus, the Formal Letter of Demand, with attached Details of Discrepancies and Assessment Notices dated December 9, 2009,[54] was issued within the prescribed period in accordance with Section 203 of the 1997 NIRC, as amended, to quote:

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[47] *Exhibit "13."*
[48] *Exhibit "8,"* with subannexes.
[49] *Exhibit "N."*
[50] *Supra*, note 1.
[51] *Records*, p. 299; *Exhibit "O."*
[52] *Exhibit "L."*
[53] *Supra*, note 37.
[54] *Exhibit "8,"* with subannexes.

"SECTION 203. *Period of Limitation Upon Assessment and Collection.* – Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided,* That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day."

And the above-provision must be read with Sections 77 and 114 of the 1997 NIRC, as amended, scilicet:

"SEC. 77. xxx

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(B) *Time of Filing the Income Tax Return.* - The corporate quarterly declaration shall be filed within sixty (60) days following the close of each of the first three (3) quarters of the taxable year. The final adjustment return shall be filed on or before the fifteenth (15^{th}) day of April, or on or before the fifteen (15^{th}) day of the fourth (4^{th}) month following the close of the fiscal year, as the case may be.

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SEC. 114. *Return and Payment of Value-added Tax.* -

(A) *In General.* - Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: *Provided, however,* That VAT-registered persons shall pay the value-added tax on a monthly basis."

A perusal of the records shows that petitioner submitted its Annual Income Tax Return for the taxable year 2007,[55] filed on April 14,

[55] *Exhibit "Q."*

2008, without however, the relevant Value-added Tax Returns.[56] Counting therefore, from April 14, 2008, respondent had until April 15, 2011, within which to assess petitioner for the subject tax. Clearly, the Formal Letter of Demand, with attached Details of Discrepancies and Assessment Notices, dated December 9, 2009;[57] the Final Notice Before Seizure dated May 28, 2010;[58] and the Warrant of Distraint and/or Levy dated September 1, 2010,[59] were all issued within the mandatory three (3)-year period.

Finally, in addressing petitioner's invocation of its exemption from taxes pursuant to its contractual relations with PAGCOR, in accordance with PD No. 1869, the Court cites the case of *Thunderbird Pilipinas Hotels and Resorts, Inc., v. Commissioner of Internal Revenue*:[60]

> "The issue on whether PAGCOR is still exempt from payment of income tax is not novel. The Supreme Court has already ruled in the case of *Abakada Guro Party List vs. Honourable Secretary Ermita, et al., GR No. 168056, September 1, 2005,* that the Philippine Amusement and Gaming Corporation is not exempt from income taxes anymore.
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> More direct and firm was the pronouncement by the Supreme Court of the removal of PAGCOR's exemption in the more recent case of *Philippine Amusement and Gaming Corporation (PAGCOR) vs. The Bureau of Internal Revenue, represented herein by Hon. Jose Mario Buñag, GR No. 172087, March 15, 2011* (PAGCOR case), wherein it was emphasized that with the passage of Republic Act (RA) No. 9337, PAGCOR is no longer exempt from corporate income tax.
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> It is very clear in the foregoing pronounced PAGCOR case that PAGCOR's exemption was already eliminated, hence, it is now subject to income tax. Thus, petitioner, as the licensee or contractee of PAGCOR, cannot rely with the exemption of PAGCOR to renege on its obligation to pay the proper income tax.
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> Petitioner attempts to argue that the PAGCOR case establishes a new doctrinal interpretation of Section 13(2)(a) and (b) of PD 1869

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[56] *Exhibit "Q."*
[57] *Exhibit "8,"* with subannexes.
[58] *Exhibit "L."*
[59] *Records*, p. 299; *Exhibit "M."*
[60] CTA Case No. 7902, July 18, 2012. Citations omitted.

with respect to the corporate income tax liability of PAGCOR and should be applied prospectively. Petitioner avers that the new doctrine should not apply to parties who relied on the old doctrine and acted thereon in good faith. And considering that PAGCOR, in the exercise of its government, places it in the category of an agency or instrumentality of the Government from which contracts entered into by it for valuable consideration are covered by the non-impairment clause of the Constitution.

The petitioner's arguments are unmeritorious.

The line of argument by petitioner has been adequately addressed and ruled upon by the Supreme Court in the PAGCOR case, *viz.*:

> Petitioner further contends that Section 1(c) of R.A. No. 9337 is null and void *ab initio* for violating the non-impairment clause of the Constitution. Petitioner avers that laws form part of, and is read into, the contract even without the parties expressly saying so. Petitioner states that the private parties/investors transacting with it considered the tax exemptions, which inure to their benefit, as the main consideration and inducement for their decision to transact/invest with it. Petitioner argues that the withdrawal of its exemption from corporate income tax by R.A. No. 9337 has the effect of changing the main consideration and inducement for the transactions of private parties with it; thus, the amendatory provision is violative of the non-impairment clause of the Constitution.
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> Petitioner's contention lacks merit.
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> The non-impairment clause is contained in Section 10, Article III of the Constitution, which provides that no law impairing the obligation of contracts shall be passed. The non-impairment clause is limited in application to laws that derogate from prior acts or contracts by enlarging, abridging or in any manner changing the intention of the parties. There is impairment if a subsequent law changes the terms of a contract between the parties, imposes new conditions, dispenses with those agreed upon or withdraws remedies for the enforcement of the rights of the parties.

As regards franchises, Section 11, Article XII of the Constitution provides that no franchise or right shall be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires.

In *Manila Electric Company v. Province of Laguna,* the Court held that a franchise partakes the nature of a grant, which is beyond the purview of the non-impairment clause of the Constitution. The pertinent portion of the case states:

> While the Court has, not too infrequently, referred to tax exemptions contained in special franchises as being in the nature of contracts and a part of the inducement for carrying on the franchise, these exemptions, nevertheless, are far from being strictly contractual in nature. Contractual tax exemptions, in the real sense of the term and where the non-impairment clause of the Constitution can rightly be invoked, are those agreed to by the taxing authority in contracts, such as those contained in government bonds or debentures, lawfully entered into by them under enabling laws in which the government, acting in its private capacity, sheds its cloak of authority and waives its governmental immunity. Truly, tax exemptions of this kind may not be revoked without impairing the obligations of contracts. These contractual tax exemptions, however, are not to be confused with tax exemptions granted under franchises. A franchise partakes the nature of a grant which is beyond the purview of the non-impairment clause of the Constitution. Indeed, Article XII, Section 11, of the 1987 Constitution, like its precursor provisions in the 1935 and the 1973 Constitutions, is explicit that no franchise for the operation of a public utility shall be granted except under the condition

that such privilege shall be subject to amendment, alteration or repeal by Congress as and when the common good so requires.

In this case, PAGCOR was granted a franchise 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. Under Section 11, Article XII of the Constitution, PAGCOR's franchise is subject to amendment, alteration or repeal by Congress such as the amendment under Section 1 of R.A. No. 9377. Hence, the provision in Section 1 of R.A. No. 9337, amending Section 27(c) of R.A. No. 8424 by withdrawing the exemption of PAGCOR from corporate income tax, which may affect any benefits to PAGCOR's transactions with private parties, is not violative of the non-impairment clause of the Constitution.

Indeed, it cannot be said the there was a violation of the non-impairment clause of the Constitution."

Thus, petitioner cannot now invoke PD No. 1869 as basis in assailing the subject deficiency Income Tax.

On the other hand, for Value-added Tax, the Court quotes the landmark case of *Philippine Amusement and Gaming Corporation v. The Bureau of Internal Revenue, et al.*:[61]

"Nowhere in R.A. No. 9337 is it provided that petitioner can be subjected to VAT. R.A. No. 9337 is clear only as to the removal of petitioner's exemption from the payment of corporate income tax, which was already addressed above by this Court.

As pointed out by the OSG, R.A. No. 9337 itself exempts petitioner from VAT pursuant to Section 7(k) thereof, which reads:

xxx xxx xxx

[61] G.R. No. 172087, March 15, 2011, 645 SCRA 338. Citations omitted.

Petitioner is exempt from the payment of VAT, because PAGCOR's charter, P.D. No. 1869, is a special law that grants petitioner exemption from taxes.

Moreover, the exemption of PAGCOR from VAT is supported by Section 6 of R.A. No. 9337, which retained Section 108(B)(3) of R.A. No. 8424, thus:

xxx xxx xxx

As pointed out by petitioner, although R.A. No. 9337 introduced amendments to Section 108 of R.A. No. 8424 by imposing VAT on other services not previously covered, it did not amend the portion of Section 108(B)(3) that subjects to zero percent rate services performed by VAT-registered persons to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to 0% rate."

Applying the foregoing, petitioner, being a grantee of PAGCOR, is not exempt from Value-added Tax, but is subject to the said tax at zero percent (0%) rate, in accordance with Section 108(B)(3) of the 1997 NIRC, as amended, to quote:

"SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –

xxx xxx xxx

(B) *Transactions Subject to Zero Percent (0%) Rate.* – The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:

xxx xxx xxx

(3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate."

And since the deficiency Value-added Tax, as well as, the twenty five percent (25%) surcharge, the twenty percent (20%) interest, and the compromise penalty included in the Formal Letter of Demand, with attached Details of Discrepancies and Assessment Notices, dated December 9, 2009;[62] the Final Notice Before Seizure dated May 28, 2010;[63] and the Warrant of Distraint and/or Levy dated September 1, 2010,[64] have no basis, the same must be cancelled – for while taxation is the rule and exemption is the exception, the foregoing disquisitions vis-à-vis legal provisions, clearly supports that petitioner is subject to zero percent (0%) Value-added Tax rate.

In sum, while the Court upholds the deficiency Income Tax assessment against petitioner, the deficiency Value-added Tax assessment must however be set aside.

WHEREFORE, the Petition for Review is hereby **PARTLY GRANTED.**

Accordingly, the Formal Letter of Demand, with attached Details of Discrepancies and Assessment Notices, dated December 9, 2009; the Final Notice Before Seizure dated May 28, 2010; and the Warrant of Distraint and/or Levy dated September 1, 2010, insofar as it covers the deficiency Value-added Tax for taxable year 2007 are hereby **CANCELLED** and **SET ASIDE.**

On the other hand, petitioner is hereby **ORDERED** to **PAY** the amount of ₱7,734,282.50, representing deficiency Income Tax, inclusive of the twenty five percent (25%) surcharge imposed under Section 248(A)(3) of the 1997 NIRC, as amended;[65] to compute:

	Basic	***Surcharge***	***Total***
Income Tax	₱6,187,426.00	₱1,546,856.50	₱7,734,282.50

In addition, petitioner is hereby **ORDERED** to **PAY**, as follows:

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[62] *Exhibit "8,"* with subannexes.
[63] *Exhibit "L."*
[64] *Records*, p. 299; *Exhibit "M."*
[65] SEC. 248. *Civil Penalties.* –
(A) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty five percent (25%) of the amount due, in the following cases:
xxx xxx xxx
(3) Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment.

a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency Income Tax in the amount of ₱6,187,400.92, computed from April 15, 2008, until full payment thereof pursuant to Section 249(B) of the 1997 of the NIRC, as amended;[66] and

b) Delinquency at the rate of twenty percent (20%) per annum on the total deficiency taxes of ₱7,734,282.50 and on the twenty percent (20%) deficiency interest which have accrued from the date afore-stated in (a) computed from January 15, 2009, until full payment thereof pursuant to Section 249(C) of the 1997 NIRC, as amended.[67]

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

[66] SEC. 249. *Interest.* –
xxx xxx xxx
(B) *Deficiency Interest.* – Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.
[67] SEC. 249. *Interest.* –
xxx xxx xxx
(C) *Delinquency Interest.* – In case of failure to pay:
xxx xxx xxx
(3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax.

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice