REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

AB LEISURE EXPONENT, INC. (DOING BUSINESS UNDER THE NAME AND STYLE OF BINGO BONANZA), *Petitioner,*	**CTA Case No. 9620**
	Members:
-versus-	**DEL ROSARIO**, *P.J., Chairperson,* **MANAHAN**, *and* **REYES-FAJARDO**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: OCT 18 2021 2:30 p.m.

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DECISION

MANAHAN, *J.*:

The *Petition for Review* seeks that judgment be rendered declaring petitioner not liable for alleged documentary stamp tax (DST) and value-added tax (VAT), for taxable year ending December 31, 2013, in the aggregate amount of ₱517,895,721.18, inclusive of interest, surcharge and compromise penalties, and ordering the deficiency assessments withdrawn and cancelled.[1]

FACTS

Petitioner AB Leisure Exponent, Inc. is a domestic corporation organized and existing under the laws of the Philippines,[2] and is registered with the Securities and Exchange Commission under Company Registration No. AS094-0011753.[3] It is also registered with the Bureau of Internal Revenue (BIR) Large Taxpayers Service Regular Large

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[1] Summary of the Case, Pre-Trial Order dated March 7, 2018, Docket – Vol. 1, p. 497.
[2] Exhibits "P-1" and "P-2", Docket – Vol. 2, pp. 584 to 604.
[3] Par. 1, Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. 1, p. 483; Exhibits "P-1" and "P-2", Docket – Vol. 2, pp. 584 to 604.

Taxpayers Audit Division III under Tax Identification Number (TIN) 004-472-121-00000.[4]

Respondent Commissioner of Internal Revenue is the head of the BIR, the government agency charged with implementing the National Internal Revenue Code (NIRC) and collecting all internal revenue taxes,[5] with office at the BIR National Office Building, BIR Road, Diliman, Quezon City.[6]

The primary purpose for which petitioner is formed is as follows:

> "To purchase, acquire, establish, own, hold, sell, lease, conduct, operate, manage and supervise restaurants, cafes, bars and general amusement and recreation enterprises of every kind and nature; to furnish amusement and recreation to the public, such as, but not limited to, bingo games, ballroom dancing, tea and garden parties, movie premiere, stage plays, basketball games, concerts, variety shows and other similar related business activities; and to carry on any lawful business and to do any and everything necessary, suitable, convenient or proper for the accomplishment of any of the purposes enumerated or incidental to the powers of the corporation."[7]

The Philippine Amusement and Gaming Corporation (PAGCOR) issued in favor of petitioner a *Renewal of the Term of the Authority To Operate Traditional And Electric Bingo Games* dated December 5, 2012, for the period from September 8, 2012 to September 7, 2015,[8] to operate bingo games at the following bingo venues: (1) SM Megamall in Mandaluyong City; (2) Makati Cinema Square in Makati City; (3) Sta. Lucia East Grand Mall in Cainta, Rizal; (4) SM Southmall in Las Piñas City; and (5) SM City North EDSA in Quezon City.

On April 7, 2015, petitioner received the *Letter of Authority* (LOA) SN: eLA201200004476/LOA-126-2015-

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[4] Par. 4, Stipulation of Facts, JSF1, Docket – Vol. 1, p. 484; Exhibit "P-10", Docket – Vol. 2, p. 624.
[5] Par. 2, Stipulation of Facts, JSFI, Docket – Vol. 1, p. 483.
[6] Par. 3, Stipulation of Facts, JSFI, Docket – Vol. 1, p. 484.
[7] Exhibit "P-1-b", Docket – Vol. 2, pp. 588 to 589.
[8] Exhibit "P-3", Docket – Vol. 2, p. 606.

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00000047 dated March 27, 2015 issued by OIC-Assistant Commissioner (OIC-ACIR) of Large Taxpayers Service (LTS), Nestor S. Valeroso,[9] authorizing Revenue Officers (ROs) Ma. Salud Maddela and Zenaida Paz, and Group Supervisor (GS) Merly Santiago of LT Regular Audit Division 3, to examine the books and other accounting records of petitioner for all internal revenue taxes, for the period covering January 1, 2013 to December 31, 2013.

Pursuant to the said LOA, respondent issued the *Letter-Request* dated March 27, 2015,[10] requesting petitioner for the reproduction of certain master and transaction files in electronic form in accordance with Revenue Regulations (RR) No. 16-2006 dated August 16, 2006.

On April 22, 2016, petitioner received the *Preliminary Assessment Notice* (PAN) dated April 18, 2016, with *Details of Discrepancies* and *Schedules*,[11] issued by Mr. Nestor S. Valeroso, now ACIR, finding petitioner liable for deficiency income tax, withholding tax on compensation (WTC), expanded withholding tax (EWT), VAT, final withholding tax (FWT) and DST, including surcharges, interests and compromise penalty, for calendar year ending December 31, 2013.

Thereafter, on July 22, 2016, a *Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code* was executed by petitioner's Vice President for Operations and Marketing, Mr. Alejandro P. Alonte, and was accepted by ACIR Nestor S. Valeroso on July 26, 2016.[12]

On September 15, 2016, petitioner received the *Formal Letter of Demand*, with attached *Details of Discrepancies* and *Schedules*, and the *Final Assessment Notices* (FLD/FAN), all dated September 14, 2016,[13] assessing petitioner for alleged

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[9] Exhibit "R-1", BIR Records, p. 1.
[10] Exhibit "R-2", BIR Records, p. 2.
[11] Exhibit "R-4", BIR Records, pp. 476 to 478.
[12] Exhibit "R-5", BIR Records, p. 480.
[13] Exhibit "P-11", Docket – Vol. 2, pp. 625 to 642; Exhibits "R-7" and "R-8", BIR Records, pp. 494 to 511.

deficiency income tax, WTC, EWT, VAT, FWT, and DST, for taxable year 2013.[14]

On October 13, 2016, petitioner, through Mr. Alejandro P. Alonte, filed its letter dated October 12, 2016,[15] protesting and requesting for reconsideration of the final assessments against petitioner. In the same letter, petitioner also requested that the said final assessments for deficiency taxes, including the imposition of the 25% surcharge, 20% interests, and compromise penalties, for taxable year 2013, be cancelled.

On May 24, 2017, petitioner received the *Final Decision on Disputed Assessment* (FDDA) dated May 24, 2017 *with Details of Discrepancies* and *Schedules*, all evenly dated, issued by respondent, thru OIC-ACIR of the LTS, Ms. Teresita M. Angeles, finding it liable for deficiency income tax, WTC, EWT, FWT, VAT and DST, for taxable year 2013, including surcharges, interests, and compromise penalty.[16]

On May 31, 2017, petitioner settled or paid various items indicated in respondent's FDDA, to wit:

Kind of Tax	**Basic**	**Surcharge**	**Interest**	**Compromise penalty**	**Total**
Income tax[17]	₱6,191,117.27		₱3,867,776.69	₱25,000.00	₱10,083,893.96
WTC[18]	215,311.02		145,855.99	16,000.00	377,167.01
EWT[19]	1,084,951.72		739,250.01	20,000.00	1,844,201.73
FWT[20]	56,940.29		38,572.49	12,000.00	107,512.78
DST[21]	1,843,126.21	460,781.55	1,253,528.57	25,000.00	3,582,436.33
VAT[22]	575,350.80		143,837.70	366,664.51	1,085,853.01
				Total	**₱17,081,064.82**

Subsequently, on June 2, 2017, petitioner paid interest relative to the VAT assessment amounting to ₱20,000.00.[23]

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[14] Par. 5, Stipulation of Facts, JSFI, Docket – Vol. 1, p. 484.
[15] Exhibit "P-12", Docket – Vol. 2, pp. 643 to 663.
[16] Exhibit "P-13", Docket – Vol. 2, pp. 664 to 675; Exhibit "R-10", BIR Records, pp. 1151 to 1162; Par. 6, Stipulation of Facts, JSFI, Docket – Vol. 1, p. 484.
[17] Exhibit "P-14", Docket – Vol. 2, pp. 676 to 679.
[18] Exhibit "P-14-a", Docket – Vol. 2, pp. 680 to 683.
[19] Exhibit "P-14-b", Docket – Vol. 2, pp. 684 to 687.
[20] Exhibit "P-14-c", Docket – Vol. 2, pp. 688 to 691.
[21] Exhibit "P-14-d", Docket – Vol. 2, pp. 692 to 695.
[22] Exhibit "P-14-e", Docket – Vol. 2, pp. 696 to 699.
[23] Exhibit "P-14-f", Docket – Vol. 2, pp. 700 to 703.

Petitioner filed the instant *Petition for Review* on June 22, 2017.[24] The petition was originally raffled to this Court's Third Division.

Respondent filed his *Answer* on August 23, 2017.[25]

The Pre-Trial Conference was set and held on January 30, 2018.[26] Prior thereto, *Respondent's Pre-Trial Brief* and *Pre-Trial Brief for Petitioner* were filed on January 15, 2018,[27] and January 25, 2018,[28] respectively.

In the meantime, on January 15, 2018, respondent filed its evenly dated *Compliance*, transmitting the *BIR Records* for the instant case.[29]

On February 19, 2018, the parties submitted their *Joint Stipulation of Facts and Issues*.[30] The Pre-Trial Order dated March 7, 2018 was then issued, deeming the termination of the Pre-Trial Conference.[31]

Trial then ensued.

During trial, petitioner presented documentary and testimonial evidence. Petitioner offered the testimony of the following individuals, namely: (1) Atty. Ma. Ruiza R. Hernane,[32] the Legal and Internal Tax Counsel of petitioner;

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[24] Docket – Vol. 1, pp. 10 to 31.
[25] Docket – Vol. 1, pp. 149 to 155.
[26] *Notice of Pre-Trial Conference* dated September 5, 2017, Docket – Vol. 1, pp. 160 to 161; Minutes of the hearing held on, and Order dated, January 30, 2018, Docket – Vol. I, pp. 469, 473 to 474, respectively.
[27] Docket – Vol. 1, pp. 178 to 181.
[28] Docket – Vol. 1, pp. 202 to 214.
[29] Docket – Vol. 1, pp. 198 to 199.
[30] Docket – Vol. 1, pp. 483 to 492.
[31] Docket – Vol. 1, pp. 497 to 504.
[32] Exhibits "P-27", and "P-28", Docket – Vols. 1 and 2, pp. 239 to 250, and 508 to 514, respectively; Minutes of the hearing held on, and Order dated, August 28, 2018, Docket – Vol. 2, pp. 550 to 551.

and (2) Antonio B. Cruz, Jr.,[33] petitioner's Marketing and Allied Business Manager and acting Operations Manager.

The instant case was transferred to this Court's First Division, pursuant to the Order dated September 19, 2018.[34]

Petitioner filed its *Formal Offer of Evidence* on March 1, 2019.[35] Respondent failed to file his comment thereon.[36] In the Resolution dated May 17, 2019,[37] the Court admitted petitioner's exhibits, *except* for Exhibit "P-15", for failure to present the original for comparison.

Petitioner then filed its *Motion for Partial Reconsideration [Of CTA Resolution dated May 17, 2019]* on June 4, 2019.[38] Respondent filed his *Opposition (Re: Motion for Partial Reconsideration dated 4 June 2019)* on July 2, 2019.[39] In the Resolution dated October 14, 2019,[40] the Court denied the said *Motion for Partial Reconsideration.*

Respondent likewise presented documentary and testimonial evidence. He proffered the lone testimony of RO Maria Salud J. Maddela.[41]

On February 24, 2020, *Respondent's Formal Offer of Evidence* was filed.[42] Petitioner filed its *Comment [on Respondent's Formal Offer of Evidence]* on March 13, 2020.[43] The Court admitted respondent's Exhibits in the Resolution dated July 28, 2020.[44]

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[33] Exhibit "P-30", Docket – Vol. 1, pp. 219 to 227; Minutes of the hearing held on, and Order dated, January 29, 2019, Docket – Vol. 2, pp. 561 to 564.
[34] Docket – Vol. 2, pp. 556 to 557.
[35] Docket – Vol. 2, pp. 571 to 583.
[36] Records Verification dated April 2, 2019 issued by the Judicial Records Division of this Court, Docket – Vol. 2, p. 819.
[37] Resolution dated May 17, 2019, Docket – Vol. 2, pp. 824 to 825.
[38] Docket – Vol. 2, pp. 831 to 839.
[39] Docket – Vol. 2, pp. 848 to 850.
[40] Resolution dated October 14, 2019, Docket – Vol. 2, pp. 863 to 867.
[41] Exhibit "R-12", Docket – Vol. 1, pp. 189 to 197; Minutes of the hearing held on, and Order dated, February 13, 2020, Docket – Vol. 2, pp. 878 to 884.
[42] Docket – Vol. 2, pp. 888 to 891.
[43] Docket – Vol. 2, pp. 893 to 895.
[44] Docket – Vol. 2, pp. 899 to 900.

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The *Memorandum for Petitioner* was filed on September 18, 2020;[45] while respondent's *Memorandum* was posted on September 21, 2020.[46]

On October 7, 2020, this case was submitted for decision.[47]

ISSUES

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

> "A. Whether petitioner's revenues arising from bingo games, such as traditional bingo, electronic bingo, rapid bingo and pull tabs, are exempt from VAT pursuant to PD 1869, as amended.
>
> B. Whether bingo games fall under 'other authorized numbers games' under Section 190 of the 1997 NIRC.
>
> C. Whether bingo cards and/or receipts from bingo operations are subject to DST under Section 190 of the 1997 NIRC.
>
> D. Whether petitioner is liable for alleged deficiency VAT and DST, including surcharge and compromise penalties, for taxable year 2013."[48]

Petitioner's arguments:

Petitioner argues that revenues from bingo games are not subject to 12% VAT, pursuant to Section 13(2)(b), in relation to Section 13(2)(a), of Presidential Decree (PD) No. 1869, as amended; that bingo cards and/or receipts from bingo games are not subject to DST, as they are not among those contemplated by the legislature as falling under "authorized number games"; that bingo games cannot be classified as

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[45] Docket – Vol. 2, pp. 901 to 936.
[46] Docket – Vol. 2, pp. 938 to 944.
[47] Resolution dated October 7, 2020, Docket – Vol. 2, p. 948.
[48] Stipulation of the Issues, JSFI, Docket – Vol. 1, p. 484.

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"other authorized number games" under Section 190 of the National Internal Revenue Code (NIRC) of 1997, as amended, by the principle of *ejusdem generis*; that assuming *arguendo* that bingo cards fall under Section 190 of NIRC of 1997, as amended, the same does not apply to electronic bingo as the game does not issue any card unlike in traditional bingo; and that the imposition of compromise penalty and 25% surcharge was improper.

Respondent's counter-arguments:

Respondent argues that petitioner is liable to pay the deficiency VAT and DST, including surcharge and compromise penalties, for taxable year 2013.

THE COURT'S RULING

The instant *Petition for Review* is partly meritorious.

As shown in the FDDA dated May 24, 2017,[49] petitioner was assessed of the following deficiency taxes for taxable year 2013 in the total amount of ₱534,996,786.00, broken down as follows:[50]

	Basic Tax	Surcharge	Interest	Compromise Penalty	Total Amount
Income Tax	₱ 6,191,117.27	₱ -	₱ 3,867,776.69	₱ 25,000.00	₱ 10,083,893.96
WTC	215,311.02	-	145,855.99	16,000.00	377,167.01
EWT	1,084,951.72	-	739,250.01	20,000.00	1,844,201.73
FWT	56,940.29	-	38,572.49	12,000.00	107,512.78
VAT	147,234,526.32	36,808,631.58	98,948,963.41	50,000.00	283,042,121.31
DST	1,843,126.21	460,781.55	1,253,528.57		
DST (Bingo-related)	122,238,863.53	30,559,715.88	83,135,873.04	50,000.00	239,541,889.21
Total	**₱278,864,836.36**	**₱67,829,129.01**	**₱188,129,820.63**	**₱173,000.00**	**₱534,996,786.00**

Of the ₱534,996,786.00 total assessments, petitioner paid on May 31, 2017 and June 2, 2017, the following deficiency taxes in the total amount of ₱17,101,064.82, to wit:

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[49] Exhibit "P-13", Docket – Vol. 2, pp. 664 to 675; Exhibit "R-10", BIR Records, pp. 1151 to 1162.
[50] Exhibit "P-13", Docket, Vol. 2, pp. 664 to 675.

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	Basic Tax	Surcharge	Interest	Compromise Penalty	Total Amount
Income tax[51]	₱6,191,117.27	₱ -	₱ 3,867,776.69	₱25,000.00	₱10,083,893.96
WTC[52]	215,311.02	-	145,855.99	16,000.00	377,167.01
EWT[53]	1,084,951.72	-	739,250.01	20,000.00	1,844,201.73
FWT[54]	56,940.29	-	38,572.49	12,000.00	107,512.78
VAT[55]	575,350.80	143,837.70	366,664.51	20,000.00	1,105,853.01
DST[56]	1,843,126.21	460,781.55	1,253,528.57	25,000.00	3,582,436.33
	₱9,966,797.31	**₱604,619.25**	**₱6,411,648.26**	**₱118,000.00**	**₱17,101,064.82**

The remaining unpaid deficiency tax assessments pertain to the deficiency VAT and deficiency DST on petitioner's gross receipts from traditional bingo, electronic bingo, and pull tabs, totaling ₱517,895,721.18, which is the subject of the present appeal and computed as follows:[57]

DEFICIENCY VAT		
Sales Revenue per ITR/FS		
	Traditional Bingo	₱ 437,149,127.00
	Gross Receipts from rapid bingo	364,470,300.00
	Gross receipts from e-bingo	416,918,309.00
	Pull tabs	3,622,060.00
Amount subject to VAT		₱122,215,9796.00
Deficiency VAT		₱ 146,659,175.52
Add:	25% Surcharge	36,664,793.88
	20% Interest (1/21/14 to 5/3/17)	98,582,298.90
	Compromise Penalty	30,000.00
TOTAL AMOUNT DUE		₱ 281,936,268.30

Deficiency DST		
	Traditional Bingo	₱ 437,377,966.00
	Gross Receipts from rapid bingo	416,918,309.28
	Gross receipts from e-bingo	364,470,300.00
	Pull tabs	3,622,060.00
Amount subject to DST		₱1,222,388,635.28

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[51] Exhibit "P-14", Docket – Vol. 2, pp. 676 to 679.
[52] Exhibit "P-14-a", Docket – Vol. 2, pp. 680 to 683.
[53] Exhibit "P-14-b", Docket – Vol. 2, pp. 684 to 687.
[54] Exhibit "P-14-c", Docket – Vol. 2, pp. 688 to 691.
[55] Exhibits "P-14-e" and "P-14-f", Docket – Vol. 2, pp. 696 to 703.
[56] Exhibit "P-14-d", Docket – Vol. 2, pp. 692 to 695.
[57] Exhibit "P-13", Docket – Vol. 2, pp. 665 to 666.

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Deficiency DST		₱ 122,238,863.53
Add:	25% Surcharge	30,559,715.88
	20% Interest (1/21/14 to 5/3/17)	83,135,873.47
	Compromise Penalty	25,000.00
TOTAL AMOUNT DUE		₱ 235,959,452.88
TOTAL DISPUTED DEFICIENCY VAT & DST ASSESSMENTS		₱ 517,895,721.18

The propriety of the above assessments hinges on whether PAGCOR's tax exemption inure to the benefit of, and extend to, petitioner.

The tax exemption privileges of PAGCOR under Section 13(2) of PD No. 1869 do not inure to the benefit of, or extend to, petitioner.

Pertinent to the resolution of this case is Section 13(2) of PD No. 1869[58], which provides, in part, as follows:

> "SEC. 13. *Exemptions.* —
>
> xxx xxx xxx
>
> (2) *Income and other taxes.* — (a) **Franchise Holder: No tax of any kind or form, income or otherwise, as well as fees, charges or levies of whatever nature, whether National or Local, shall be assessed and collected under this Franchise from the Corporation; nor shall any form of tax or charge attach in any way to the earnings of the Corporation, except a Franchise Tax of five (5%) percent of the gross revenue or earnings derived by the Corporation from its operation under this Franchise.** Such tax shall be due and payable quarterly to the National Government and shall be in lieu of all kinds of taxes, levies, fees or assessments of any kind, nature or description, levied, established or collected by any municipal, provincial, or national government authority.

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[58] 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).

> (b) **<u>Others</u>: 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 <u>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</u>.**
>
> The fee or remuneration of foreign entertainers contracted by the Corporation or operator in pursuance of this provision shall be free of any tax.
>
> xxx xxx xxx." *(Emphases and underscoring added)*

Based on the foregoing provision, it is clear that PAGCOR is exempt from the payment of any tax, whether national or local, except for a franchise tax at the rate of 5% of the gross revenue or earning derived by it from its operation under PD No. 1869; and that the said tax exemption inures to the benefit of and extend: (1) to corporations, associations, agencies, or individuals with whom PAGCOR or operator has any contractual relationship **in connection with the operation of casino(s) authorized under PD No. 1869**; and (2) to those receiving compensation or other remuneration from PAGCOR or operator as a result of essential facilities furnished and/or technical services rendered to PAGCOR or operator.

Specifically, in relation to this case, under Section 13(2) of PD No. 1869, the inurement of benefit and extension of the tax exemption privileges of PAGCOR *"to corporation(s), association(s), agency(ies), or individual(s) with whom* [PAGCOR] *or operator has any contractual relationship"* or to its *"contractees and licenses"* do not occur or arise when there is simply a contractual relationship between PAGCOR and a concerned entity or person, it is still required that such contractual relationship be *"in connection with the operations* *of the casino(s) authorized to be conducted under* [PAGCOR's] *Franchise...*"

In this case, there is no indication that petitioner's contractual relationship with PAGCOR is in connection with the operations of a casino, or casinos, authorized to be conducted under PD No. 1869. For petitioner's license covering the year 2013, what has been established in this case is merely that petitioner has been given by PAGCOR a *Renewal of the Term of the Authority To Operate Traditional And Electric Bingo Games* dated December 5, 2012 in certain malls in Metro Manila,[59] and not an authority to operate a casino or casinos.

Correspondingly, since petitioner's contractual relationship with PAGCOR is **not** in connection with the operations of casino(s) under PD No. 1869, PAGCOR's tax exemption does not inure to the benefit of, and extend to, petitioner. Such being the case, the subject deficiency VAT and DST assessments must be upheld.

The tax exemption must be expressed in the statute in clear language that leaves no doubt of the intention of the legislature to grant such exemption. And, even if it is granted, the exemption must be interpreted in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority.[60] The requirements for a tax exemption are strictly construed against the taxpayer because an exemption restricts the collection of taxes necessary for the existence of the government.[61]

The imposition of 25% surcharge on both the deficiency VAT and DST assessments was proper.

[59] Exhibit "P-3", Docket – Vol. 2, p. 606.
[60] *Philippine Long Distance Telephone Company, Inc. vs. City of Bacolod, et al.*, G.R. No. 149179, July 15, 2005.
[61] *Commissioner of Internal Revenue vs. St. Luke's Medical Center, Inc. etseq.*, G.R. Nos. 195909 and 195960, September 26, 2012.

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Section 248(A) of the NIRC of 1997, as amended, imposes a twenty-five percent (25%) surcharge for certain cases, to wit:

> "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:
>
> (1) **Failure to file any return and pay the tax due thereon as required under the provisions of this Code or rules and regulations on the date prescribed;** or
>
> (2) Unless otherwise authorized by the Commissioner, filing a return with an internal revenue officer other than those with whom the return is required to be filed; or
>
> (3) Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment; or
>
> (4) Failure to pay the full or part of the amount of tax shown on any return required to be filed under the provisions of this Code or rules and regulations, or the full amount of tax due for which no return is required to be filed, on or before the date prescribed for its payment." *(Emphasis added)*

Based on the foregoing provisions, considering that petitioner failed to file the pertinent VAT and DST returns, and pay the corresponding taxes due thereon as required under the provisions of the NIRC of 1997, the 25% surcharge must be imposed on the deficiency VAT and DST.

The compromise penalties should not be imposed.

As shown in the subject FDDA, petitioner was assessed with compromise penalties for deficiency VAT and DST for failure to pay correct amount of VAT and DST, citing as basis thereof Section 255 of the NIRC of 1997, as amended, and Revenue Memorandum Order (RMO) No. 19-2007.[62]

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[62] Exhibit "P-13", Docket – Vol. 2, p. 668.

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However, as earlier stated, on May 31, 2017 and June 2, 2017, petitioner partially paid the amount of ₱45,000.00, thus, leaving a balance of ₱55,000.00.

The Court cancels the said remaining imposition.

It must be stressed that a compromise penalty is imposed to avoid prosecution for violation of the provisions of the NIRC of 1997, as amended.[63] Under RMO No. 19-2007, a compromise penalty is only an amount suggested in settlement of criminal liability, and may not be imposed or exacted on the taxpayer in the event that a taxpayer refuses to pay the same. It is well-settled that the Court has no jurisdiction to compel a taxpayer to pay the compromise penalty because by its very nature, it implies a mutual agreement between the parties in respect to the thing or subject matter that is so compromised, and the choice of paying or not paying it distinctly belongs to the taxpayer.[64] Absent a showing that petitioner consented to the compromise penalty, its imposition should be deleted. The imposition of the same without the conformity of the taxpayer is illegal and unauthorized.[65]

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **PARTIALLY GRANTED**.

The assessments issued by respondent against petitioner for the taxable year ended December 31, 2013 covering compromise penalties amounting to ₱55,000.00 are **CANCELLED and SET ASIDE**.

However, the assessments for deficiency VAT and DST are **UPHELD WITH MODIFICATIONS**. Accordingly, petitioner is **ORDERED TO PAY** respondent the aggregate amount of **₱611,588,231.44**, inclusive of the 25% surcharge, 20% deficiency interest, and 20% delinquency interest, imposed

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[63] *The Philippine International Fair, Inc. vs. The Collector of Internal Revenue, et. al.* G.R. Nos. L-12928 and L-12932, March 31, 1962.

[64] *The Philippine International Fair, Inc. vs. The Collector of Internal Revenue*, G.R. Nos. L-12928 and L-12932, March 31, 1962, 4 SCRA 781.

[65] *Commissioner of Internal Revenue vs. Liangga Bay Logging Co., Inc.*, G.R. No. 35266, January 21, 1999, 193 SCRA 92-93.

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under Sections 248(A)(3), 249(B) and (C) of the NIRC of 1997, as amended, respectively, computed until December 31, 2017, as follows:

	VAT	DST	Total
Basic (Remaining) Deficiency Tax Due	₱ 146,659,175.52[66]	₱ 122,238,863.53	₱ 268,898,039.05
25% Surcharge	36,664,793.88[67]	30,559,715.88	67,224,509.76
Total	**₱183,323,969.40**	**₱152,798,579.41**	**₱336,122,548.81**
20% Deficiency Interest			
VAT: from January 25, 2014 to May 24, 2017			
(₱146,659,175.52x 20% x 1,215/365 Days)	97,638,848.36		97,638,848.36
DST: from January 5, 2014 to May 24, 2017			
(₱122,238,863.53x 20% x 1,235/365 Days)		82,720,546.01	82,720,546.01
Amount due as of May 24, 2017	**₱280,962,817.76**	**₱235,519,125.42**	**₱516,481,943.18**
20% Deficiency Interest from May 25, 2017 to December 31, 2017			
VAT: *(₱146,659,175.52x 20% x 221/365 Days)*	17,759,823.45		17,759,823.45
DST: *(₱122,238,863.53x 20% x 221/365 Days)*		14,802,624.02	14,802,624.02
20% Delinquency Interest from May 25, 2017 to December 31, 2017			
VAT: *(₱280,962,817.76x 20% x 221/365 Days)*	34,023,442.59		34,023,442.59
DST: *(₱235,519,125.42x 20% x 221/365 Days)*		28,520,398.20	28,520,398.20
Amount due as of December 31, 2017	**₱332,746,083.80**	**₱278,842,147.64**	**₱611,588,231.44**

In addition, petitioner is **ORDERED TO PAY** respondent delinquency interest at the rate of twelve percent (12%) on the total unpaid deficiency taxes due of ₱516,481,943.18 as of May 24, 2017, as determined above, or an amount of ₱283,003.80[68] per day, from January 1, 2018 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN), as implemented by Revenue Regulations No. 21-2018.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

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[66] ₱147,234,526.32 less ₱575,350.80.
[67] ₱36,808,631.58 less ₱143,837.70.
[68] ₱516,481,943.18 x 12%/365 days.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice