REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR),
Respondent.

CTA *EB* No. 868
(CTA Case No. 7976)

x - x

PHILIPPINE AMUSEMENT AND GAMING CORPORATION

-*versus*-

THE COMMISSIONER OF INTERNAL REVENUE, AND THE HEAD REVENUE EXECUTIVE ASSISTANT, LARGE TAXPAYER SERVICE, in their official capacities as officers of the Bureau of Internal Revenue
Respondents.

CTA *EB* NO. 869
(CTA Case No. 7976)

Present:
DEL ROSARIO, *P.J.*,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:
DEC 11 2024 11:55 a.m.

x - x

RESOLUTION

CUI-DAVID, J.:

On December 22, 2023, the Court *En Banc*, acting upon the directive of the Supreme Court in **G.R. Nos. 210689-90** entitled *Philippine Amusement and Gaming Corporation (PAGCOR) v. The Commissioner of Internal Revenue and the Head Revenue Executive Assistant, Large Taxpayer Service, in their official capacities as Officers of the Bureau of Internal Revenue* and **G.R. Nos. 210704 and 210725** entitled *Commissioner of Internal Revenue v. Philippine Amusement and Gaming Corporation (PAGCOR)*, promulgated an Amended Decision.[1]

The Amended Decision was issued to determine the final amount due from PAGCOR for taxable years 2005 and 2006, the dispositive portion of which reads as follows:

> **WHEREFORE**, premises considered, the Decision rendered by this Court in these consolidated cases on July 23, 2013, is **MODIFIED** to read, as follows:
>
> > **WHEREFORE**, premises considered and following the directive of the Supreme Court in G.R. Nos. 210689-90, 210704 and 210725, the deficiency fringe benefits tax issued against PAGCOR for taxable years 2005 and 2006 are CANCELLED and SET ASIDE. PAGCOR, however, is **ORDERED TO PAY** the Commissioner of Internal Revenue the basic deficiency income tax for taxable years 2005 and 2006, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, 20% deficiency interest and 20% delinquency interest imposed under Section 249(B) and (C) of the same Code, respectively, computed until December 31, 2017, which is prior to its amendment under Republic Act (RA) No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN), taking into account the partial payments made by PAGCOR on December 28, 2011 in the amounts of ₱13,119,847.38 and ₱104,198,801.87, computed as follows:

Mr

[1] *En Banc (EB)* Docket, pp. 589–610.

	TY 2005	TY 2006	TOTAL
Basic Deficiency Income Tax	₱ 6,199,712.78	₱115,243,135.51	₱ 121,442,848.29
Surcharge	1,549,928.20	28,810,783.88	30,360,712.07
Deficiency Interest (20%) until December 31, 2008			
IT (TY 2005) 4/16/2006 to 12/31/2008 (₱6,199,712.78 x 20% x 991 days/365 days)	3,366,528.97		3,366,528.97
IT (TY 2006) 4/16/2007 to 12/31/2008 (₱115,243,135.51 x 20% x 626 days/365 days)		39,529,974.15	39,529,974.15
Total Amount Due - December 31, 2008	**11,116,169.94**	**183,583,893.54**	**194,700,063.49**
Deficiency Interest (20%) from January 1, 2009 to December 28, 2011			
IT (TY 2005) 1/1/2009 to 12/28/2011 (₱6,199,712.78 x 20% x 1,092 days/365 days)	3,709,636.36		3,709,636.36
IT (TY 2006) 1/1/2009 to 12/28/2011 (₱115,243,135.51 x 20% x 1,092 days/365 days)		68,956,440.54	68,956,440.54
Delinquency Interest (20%) from January 1, 2009 to December 28, 2011			
IT (TY 2005) 1/1/2009 to 12/28/2011 (₱11,116,169.94 x 20% x 1,092 days/365 days)	6,651,428.81		6,651,428.81
IT (TY 2006) 1/1/2009 to 12/28/2011 (₱183,583,893.54 x 20% x 1,092 days/365 days)		109,848,554.38	109,848,554.38
Total Amount Due as of December 28, 2011	**21,477,235.11**	**362,388,888.46**	**383,866,123.57**
Less: Payments on December 28, 2011	13,119,847.38	104,198,801.87	117,318,649.25
Total Amount Still Due as of December 28, 2011	**8,357,387.73**	**258,190,086.59**	**266,547,474.32**
Deficiency Interest (20%) from December 29, 2011 to December 31, 2017			
IT (TY 2006) 1/1/2009 to 12/28/2011 (₱115,243,135.51 - ₱104,198,801.87) = ₱11,044,333.64 x 20% x 2,195 days/365 days)		13,283,458.82	13,283,458.82
Delinquency Interest (20%) from December 29, 2011 to December 31, 2017			
IT (TY 2006) 12/29/2011 to 12/31/2017 [(₱183,583,893.54 – 104,198,801.87) = 79,385,091.67 x 20% x 2,195 days/365 days)]		95,479,603.41	95,479,603.41
Total Amount Due as of December 31, 2017	**₱8,357,387.73**	**₱366,953,148.82**	**₱375,310,536.57**

In addition, for taxable year 2006, PAGCOR is liable to pay delinquency interest at the rate of 12% on the total unpaid deficiency Income Tax as of December 31, 2008, net of payment, of ₱79,385,091.67, or equivalent to ₱26,099.21 per day, computed 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 (TRAIN) and as implemented by RR No. 21-2018.

SO ORDERED.

SO ORDERED.

Dissatisfied with the Amended Decision, PAGCOR filed a *Motion for Reconsideration (With Motion For Leave Of Court To Present Additional Evidence)* via registered mail on January 17, 2024, praying for the Court *En Banc*: (1) to RECONSIDER its Amended Decision dated 22 December 2023 ordering PAGCOR to pay ₱375,310,536.57 income tax liabilities for taxable years 2005 and 2006, inclusive of interest and surcharges and consider the same close and terminated; and (2) to ALLOW PAGCOR to present additional documentary evidence further proving full payment of the outstanding tax liabilities.

In support of its *motion*, PAGCOR interposed the following arguments:

A. ERRORS OF FACT HAVE BEEN COMMITTED PREJUDICIAL TO PAGCOR'S INTEREST CONSIDERING THAT PAGCOR HAS ALREADY VOLUNTARILY PAID AND FULLY SETTLED ITS CIT, INCLUDING SURCHARGES AND DEFICIENCY INTERESTS COVERING TYs 2005 AND 2006.

B. PAGCOR SHOULD NOT BE LIABLE FOR DELINQUENCY INTEREST GIVEN THAT IT SETTLED ITS TAX LIABILITIES SINCE 2011.

PAGCOR asserts that on December 28, 2011, it paid ₱13,119,847.38 and ₱104,198,801.87 for its 2005 and 2006 Corporate Income Tax (CIT), respectively, or for a total amount of ₱117,318,649.24. This amount was reflected in the Court's computation, where the ₱117,318,649.25 was deducted from PAGCOR's CIT liability under "Other Business Income." However, due to the imposition of a 25% surcharge and the 20% deficiency interest, PAGCOR remained liable for ₱266,547,474.34 as of December 28, 2011.

PAGCOR claims that the imposition of the surcharge, which is ancillary to any additional basic CIT, has no basis. It asserts that the ₱117,318,649.25 it paid in 2011 for CIT should be reasonably interpreted to include any applicable surcharges, considering the BIR's letter dated December 22, 2022, acknowledging PAGCOR's voluntary payment of its "self-assessed" CIT, which includes TYs 2005 and 2006. Moreover, the BIR has not assessed PAGCOR of deficiency CIT despite the

hr

qualification that PAGCOR's computation remained subject to validation.

As regards the imposition of the 20% deficiency interest, PAGCOR submits that it was erroneous as there were no declared deficiency tax liabilities to begin with.

Likewise, PAGCOR maintains that it should not be liable for delinquency interest since its CIT liabilities for TYs 2005 and 2006 were fully settled by December 28, 2011. PAGCOR also claims that had it been aware of any income tax deficiency for TYs 2005 and 2006, it would have taken proactive measures, such as applying for the BIR's tax amnesty program. In the absence of a new assessment or computation by the BIR, PAGCOR argues that it cannot be held liable for deficiency income tax, surcharges, deficiency, and delinquency interests.

As an alternative, PAGCOR asks for leave of court to present additional evidence.

Invoking Section 2, Rule 1 of the Revised Rules of the Court of Tax Appeals (RRCTA),[2] PAGCOR submits that although the pieces of evidence attached to its August 3, 2023 *Manifestation and Compliance* suffice to prove full payment of its tax liabilities for TYs 2005 and 2006, it intends to present additional evidence to satisfy the evidentiary requirements prescribed by the Court in the Amended Decision.

Attached to its *motion* as Annex "B" is a copy of the BIR-issued Certificate of Tax Delinquencies/Tax Liabilities dated December 5, 2019, as additional proof that only Fringe Benefit Tax for TYs 2004, 2005, and 2006 were found deficient. It also attached the Tax Clearance Certificates for 2019 and 2020 (Annexes "C" and "D," respectively), allegedly emphasizing that the BIR itself certified that only TYs 2003, 2015, and 2016 had outstanding tax liabilities. Lastly, PAGCOR wants to offer BIR's Letter of Denial dated December 4, 2023 (Annex "E"), which allegedly evinces BIR's denial of PAGCOR's reapplication for Tax Clearance Certificate (TCC) in connection with its application for Performance-Based Bonus, in which only PAGCOR's outstanding tax liability for 2023 was expressly mentioned.

hr

---

2 Sec. 2. *Liberal construction.* – The Rules shall be liberally construed in order to promote their objective of securing a just, speedy, and inexpensive determination of every action and proceeding before the Court.

Allegedly, in keeping with its avowed objective, which is the ascertainment of truth, the Court of Tax Appeals (CTA) has in the past allowed litigants to submit additional or supplemental evidence in a *Motion for Reconsideration* and consider such documents in reevaluating its decision. Thus, in the interest of substantial justice and to aid the Court in judiciously evaluating the merits of its *motion*, PAGCOR asks for leave of court to present the foregoing documents as additional evidence, considering that the BIR may also be able to verify and identify said documents originating from them.

By way of *Comment/Opposition [To Petitioner's Motion for Reconsideration (With Motion for Leave of Court to Present Additional Evidence)]* filed on March 26, 2024, respondent Commissioner of Internal Revenue (CIR) argued that PAGCOR's *Motion for Reconsideration (With Motion for Leave of Court to Present Additional Evidence)* does not warrant a reversal of the Amended Decision dated December 22, 2023.

Firstly, PAGCOR's payments made in 2011 cannot be construed to have included surcharges. According to respondent, there is no way that the payments of ₱13,119,847.38 and ₱104,198,801.87 – covering PAGCOR's deficiency tax assessments for TYs 2005 and 2006 – could have included surcharges, as these amounts are significantly lower than the basic deficiency tax assessment. Hence, PAGCOR's tax liabilities cannot be considered fully settled.

Secondly, the Court correctly imposed the 25% surcharge and 20% deficiency and delinquency interests, as these are mandatory under the law, as enunciated in *Hotel Specialist (Tagaytay), Inc. v. Commissioner of Internal Revenue.*[3]

Thirdly, in response to PAGCOR's argument that its tax liabilities were cleared by the omission of such liabilities from its Tax Clearance Certificates, the respondent asserts that this argument is misplaced. According to respondent, a taxpayer is cleared of its tax liabilities only upon the issuance of an Authority to Cancel Assessment (ATCA). The ATCA serves as official proof of the cancellation of assessments. In the absence of an ATCA, the taxpayer's liabilities remain outstanding. In this

[3] CTA Case No. 9349, January 18, 2019 [Per J. Manahan, Special Second Division].

case, no ATCA was issued to PAGCOR. Thus, its tax liabilities remain in effect.

Respondent also opposes PAGCOR's move to present additional evidence, arguing that PAGCOR is effectively seeking to reopen the case by invoking a liberal interpretation of the rules under the guise of substantial justice. However, PAGCOR's proposal to present additional evidence after resting its case and a decision rendered is obnoxious to a system of orderly procedure.

Respondent stresses that it is the duty of PAGCOR, as a party-litigant, to properly lay before the Court the evidence it relies upon in support of the relief it seeks during the presentation of its evidence. For respondent, to allow the reopening of the case is tantamount to sanctioning the presentation of piece-meal evidence, which is repugnant to orderly justice.

In its *Reply (to the BIR's Comment/Opposition to PAGCOR's Motion for Reconsideration)* filed *via* registered mail on April 28, 2024, and received by the Court on May 3, 2024, PAGCOR interposes the following arguments:

A. The Comment/Opposition was filed after the ten (10)-day period has already lapsed. Verily, it should be rightfully expunged from the records of the case.

B. PAGCOR has fully and voluntarily settled its Corporate Income Tax (CIT) for Taxable Years 2005 and 2006, inclusive of interest and surcharges.

C. PAGCOR's Motion for Leave of Court to present additional evidence should prosper since paramount consideration remains the ascertainment of truth.

On May 28, 2024, the Court issued a Resolution admitting the CIR's belatedly filed Comment/Opposition in the interest of substantial justice. In the same Resolution, the Court noted PAGCOR's *Reply (to the BIR's Comment/Opposition to PAGCOR's Motion for Reconsideration).*

We resolve.

After a careful examination of the records and a meticulous evaluation of the arguments presented by PAGCOR in its *Motion for Reconsideration (With Motion For Leave Of Court To Present Additional Evidence)*, as well as respondent's counter-arguments in his *Comment/Opposition*, and PAGCOR's *Reply*, the Court *En Banc* finds no cogent reason to warrant a reconsideration of the assailed Amended Decision dated December 22, 2023.

First, the imposition and collection of civil penalties, as additions to the tax, are mandated under Sections 247(a), 248 (A), and 249 of the 1997 NIRC, as amended, *viz.*:

> SEC. 247. General Provision. —
>
> (a) The **additions to the tax** or deficiency tax prescribed in this Chapter **shall apply to all taxes**, fees, and charges imposed in this Code. The amount so added to the tax shall be collected at the same time, in the same manner, and as part of the tax. . . . (*Emphasis supplied*)
>
> 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 supplied*)
>
> SEC. 249. Interest. —
>
> (A) *In General.* — There shall be assessed and collected **on any unpaid amount of tax**, interest at the rate of twenty percent (20%) per annum,[4] or such higher rate as may be prescribed by rules and regulations, **from the date prescribed for payment until the amount is fully paid.**
>
> (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, or upon the issuance of a notice and demand by the Commissioner of Internal Revenue, whichever comes earlier.
>
> (C) *Delinquency Interest.* — In case of failure to pay:
>
> (1) The amount of the tax due on any return to be filed, or
>
> (2) The amount of the tax due for which no return is required, or
>
> (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. (*Emphasis supplied*)

Section 247 treats surcharge and interest as additions to the tax, and the proviso that they shall be collected at the same time, in the same manner, and as part of the tax is merely to facilitate their collection.[5]

---

[4] Republic Act No. 10963 (or the TRAIN Law) amends the rate of interest from a fixed rate of 20% per annum to a rate which is double the legal interest for loans, in the absence of an express stipulations set by the Bangko Sentral ng Pilipinas.

[5] *Anderson v. Posadas, Jr.*, G.R. No. 44100, September 22, 1938 [Per J. Villa-Real, *En Banc*]: ". . . In providing that the fine should be added to the tax and collected at the same time and as a part thereof, the law had for its purpose merely to facilitate the collection of the fine or surcharge."

Section 248 (A), as implemented by Revenue Regulations (RR) No. 12-99,[6] dictates the imposition of surcharge in cases specifically enumerated therein. Section 248(A)(3) - which applies to PAGCOR – imposes a 25% surcharge when a taxpayer fails to pay the deficiency tax within the prescribed period stated in the Notice of Assessment.

On the other hand, Section 249 governs the assessment and collection of interest from the date prescribed for payment until the amount is fully paid. Specifically, Section 249(C)(3) – which applies to PAGCOR - states that delinquency interest shall accrue on any unpaid amount of tax due or any surcharge or interest appearing in the Notice and Demand until the amount is fully paid.

A fundamental rule of statutory construction holds that "where the terms of the statute are clear and unambiguous, no interpretation is called for, and the law is applied as written, for application is the first duty of courts, and interpretation [arises] only where literal application is impossible or inadequate."[7]

The law is clear: the imposition of surcharges and interests is mandatory, intended to discourage delays in the payment of taxes owed to the State. The delay in the payment of the deficiency tax within the time prescribed in the Notice of Assessment justifies the imposition of a 25% surcharge under Section 248(A)(3) of the NIRC of 1997, as amended. Furthermore, 20% deficiency and delinquency interests are properly imposed under Section 249 of the same Code.

Here, records reveal that PAGCOR failed to pay the assessed deficiency taxes within the period prescribed in the Assessment Notices. Hence, the imposition of the mandated civil penalties is justified.

---

6 RR No. 12-99. SEC. 4. Civil Penalties. —
4.1 Twenty-Five Percent (25%) Surcharge. — There shall be imposed, in addition to the basic tax required to be paid, a penalty equivalent to twenty-five percent (25%) thereof, in any of the following cases:
4.1.1 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
4.1.2 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
4.1.3 Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment; or
4.1.4 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.

7 *Thunderbird Pilipinas Hotels and Resorts, Inc. v. Commissioner of Internal Revenue*, G.R. No. 211327, November 11, 2020 [Per J. Leonen, Third Division], citing *Commissioner of Internal Revenue v. Limpan Investment Corporation*, G.R. Nos. L-28571 and L-28644, July 31, 1970 [Per J. Castro, *En Banc*].

Second, the Court disagrees with PAGCOR's assertion that it has fully paid its CIT for taxable years 2005 and 2006. As correctly pointed out by the CIR, a taxpayer's liabilities are deemed settled only upon the issuance of an ATCA. The ATCA serves as proof that the assessment has been cancelled. Without an ATCA, the taxpayer's liabilities remain outstanding.

Thus, even if the Court were to allow the presentation of the additional evidence proposed by PAGCOR, such evidence would still fail to prove that its tax liabilities for TYs 2005 and 2006 have been fully settled and cancelled. Besides, PAGCOR is fully aware that its tax liabilities for taxable years 2005 and 2006 **are not yet final** and remain subject to the Court's determination.

WHEREFORE, premises considered, PAGCOR's *Motion for Reconsideration (With Motion For Leave Of Court To Present Additional Evidence)* is **DENIED** for lack of merit.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ON LEAVE
MARIAN IVY F. REYES-FAJARDO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice