CTA Form No. 8

22-000121-0059

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CTA CASE NO. 10809

B-7 AMUSEMENTS CORPORATION,
Petitioner,

- versus -

THE HONORABLE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF DECISION

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. SLYVIA R. ALMA JOSE
ATTY. AYESHA HANIA B. GUILING-MATANOG
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

SADSAD TAMESIS LEGAL AND ACCOUNTANCY FIRM
7th Floor, Victoria Sports Tower
Station II EDSA, South Triangle
Quezon City

GREETINGS:

You are hereby notified by these presents that on **January 27, 2026,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **January 30, 2026.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
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B-7 AMUSEMENTS CORPORATION,
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- versus -

THE HONORABLE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10809

Members:

BACORRO-VILLENA, Acting *Chairperson, and*
CUI-DAVID, *JJ.*

Promulgated:

JAN 27 2026, 4:20PM

x - x

DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner B-7 Amusements Corporation (**petitioner**), pursuant to Section 3(a),[2] Rule 8 in relation to Section 3(a)(1),[3] Rule 4 of the Revised Rules of the Court of Tax Appeals (**RRCTA**).[4]

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1 Filed on 16 March 2022, Division Docket, Volume I, pp. 6-40.

2 **SEC. 3.** *Who may appeal; period to file petition.* —
(a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

3 **SEC. 3.** *Cases within the jurisdiction of the Court in Division.* — The Court in Division shall exercise:
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:
(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[.]

4 A.M. No. 05-11-07-CTA.

Petitioner prays for the cancellation of the assessments for deficiency final withholding value-added tax (**FWVAT**), documentary stamp tax (**DST**), and compromise penalty for taxable year (**TY**) 2015 amounting to ₱144,383,665.67, inclusive of surcharges and interests.[5]

PARTIES TO THE CASE

Petitioner is a corporation duly organized and existing under the laws of the Philippines, with principal address at K0101 Nova Stop Robinsons Place, Quirino Highway, Pasong Putik, Novaliches, Quezon City.[6] Its primary purpose is to establish and conduct general amusement enterprise and provide amusement to the general public.[7] In particular, petitioner operates bingo games as regulated and supervised by the Philippine Amusements and Gaming Corporation (**PAGCOR**).[8] Petitioner is registered with the Bureau of Internal Revenue (**BIR**) with Taxpayer Identification Number (**TIN**) 222-746-946-000 under the Large Taxpayers Service (**LTS**), Revenue District Office (**RDO**) No. 126, Regular Large Taxpayers Audit Division (**RLTAD**) III.[9]

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue (**respondent/CIR**) vested with the authority to carry out the functions, duties, and responsibilities of the said office including, *inter alia*, the power to decide disputed assessments, refunds of internal revenue taxes, fees, other charges, and penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (**NIRC**) of 1997, as amended, or other laws or portions thereof administered by the BIR.

FACTS OF THE CASE

On 21 December 2016, petitioner received Letter of Authority No. LOA-028-2016-00000514/SN:eLA201500017256 (**First LOA**) which authorized Revenue Officer (**RO**) Rynelle Liza (**Liza**) and Group

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5 See Prayer, Petition for Review, supra at note 1, p. 35.
6 See Paragraph 2.1, II. Parties, Petition for Review, supra at note 1, p. 7.
7 See Certificate of Filing of Amended Articles of Articles of Incorporation issued on 08 July 2013, Exhibit "P-1-c", id., pp. 506-517.
8 See Q&A No. 12, Judicial Affidavit of Johnson H. Yu, Exhibit "P-17", id., p. 367.
9 See BIR Certificate of Registration dated 27 February 2003, Exhibit "P-3-1", id., pp. 520-522.

Supervisor (**GS**) Minerva Dimaano (**Dimaano**) of RDO No. 28 to examine petitioner's books of accounts and other accounting records for TY 2015.[10] The First LOA was accompanied by a Checklist of Requirements (**Checklist**) that petitioner was required to submit.[11]

Petitioner complied, albeit partially, by submitting various returns.[12] As petitioner's compliance was incomplete, respondent reminded petitioner to submit and present for examination the documents in the Checklist.[13] When petitioner still failed to comply, respondent gave a warning that its continuous refusal will constrain respondent to issue a Subpoena *Duces Tecum* (**SDT**).[14]

In the meantime, petitioner was classified as a large taxpayer, causing its transfer from RDO No. 28 to RDO No. 126 of the LTS.[15]

On 25 April 2017, the LTS informed petitioner that the First LOA had been re-assigned to ROs Kimberly L. Granada (**Granada**), Maribel Serafica (**Serafica**), and GS Edison O. Larin (**Larin**) to replace RO Liza and GS Dimaano.[16] Following the reassignment, petitioner submitted various returns and documents to ROs Granada and Serafica.[17]

Later, on 15 August 2017, petitioner received LOA No. AUDM36/013230/2017/ SN: eLA201500089658 (**Second LOA**) authorizing RO Annabelle Bennett (**Bennett**) and GS Roberto Castro (**Castro**) of RDO No. 126 to examine petitioner's books of accounts and other accounting records for TY 2015.[18] Likewise, a list of requirements (**Second Checklist of Requirements**) accompanied the Second LOA.[19]

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10 BIR Records, p. 2.
11 See Checklist of Requirements dated 16 December 2016, id., p. 1.
12 See Transmittal Letter dated 04 January 2017, id., pp. 27-37.
13 See First Notice received by petitioner on 06 January 2017, id., p. 8.
14 See Second and Final Notice Before Issuance of Subpoena Duces Tecum received by petitioner on 18 January 2017, id., p. 9.
15 See Letter dated 21 December 2016 signed by then CIR Caesar R. Dulay, id., pp. 5-7. See also Indorsement dated 22 March 2017, id., pp. 16-21. See further 2nd Indorsement dated 12 April 2017, id., pp. 22-25.
16 See Letter dated 25 April 2017, id., p. 11.
17 See Transmittal Letter dated 27 June 2017, id., p. 240. See submitted documents, id., pp. 38-330.
18 See LOA No. AUDM36/013230/2017 / SN: eLA201500089658 dated 20 July 2017, Exhibit "R-1", id., p. 340.
19 Id., p. 339.

Considering that it had already complied with the First LOA's documentary requirements, petitioner returned the Second LOA to respondent. In response, respondent acknowledged the First LOA but clarified that the Second LOA was issued because petitioner was classified as a large taxpayer and after its transfer from RDO No. 28 to the RDO No. 126.[20] Respondent, thus, sent back the Second LOA to petitioner.[21] Thereafter, when petitioner received another notice, it requested for additional time to comply with the Second Checklist of Requirements.[22] It also waived the statute of limitations until 15 April 2019 (**First Waiver**).[23] Later, the parties agreed to further extend the statute of limitations until 31 December 2019 (**Second Waiver**).[24]

On 08 May 2019, petitioner received the Notice of Informal Conference (**NIC**), wherein it was invited to discuss the alleged discrepancies resulting in the findings of deficiency taxes for TY 2015 amounting to ₱417,627,091.48, computed as follows:[25]

Tax	Basic	Surcharge	Interest	Total
IT[26]	₱91,290.456.44	₱ -	₱ 46,749,842.74	₱138,040,299.18
IAET[27]	2,824,146.90	706,036.73	1,586,888.14	5,117,071.77
VAT[28]	68,846,939.13	17,211,734.78	38,306,436.93	124,365,110.84
FWVAT	11,101,278.24	2,775,319.56	6,268,891.82	20,145,4489.62
WTC[29]	104,195.04	-	58,547.19	162,742.23
EWT[30]	4,611,920.20	-	2,591,437.96	7,203,358.16
FWT[31]	12,866,341.62	-	7,229,597.36	20,095,938.98
DST	56,682,619.70	14,170,654.93	31,288,806.07	102,142,080.70
MT[32]	355,000.00	-	-	355,000.00
Total	₱248,682,897.27	₱34,863,746.00	₱134,080,448.21	₱417,627,091.48

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[20] See Letter dated 06 August 2018, id., p. 343.
[21] Id.
[22] See First Notice for the Presentation of Books of Accounts and Other Accounting Record received on 14 August 2018, Exhibit "R-2", id., p. 345.
[23] See Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code dated 29 August 2018, Exhibit "R-3", id., p. 355.
[24] See Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code dated 13 March 2019, Exhibit "R-4", id., p. 359.
[25] Exhibit "R-5", id., pp. 360-381.
[26] Income Tax.
[27] Improperly Accumulated Earnings Tax.
[28] Value-Added Tax.
[29] Withholding Tax on Compensation.
[30] Expanded Withholding Tax.
[31] Final Withholding Tax.
[32] Miscellaneous Taxes.

On 10 December 2019, petitioner received the Preliminary Assessment Notice[33] (**PAN**). In the PAN, petitioner was found liable for deficiency taxes for TY 2015 amounting to ₱368,799,330.81, computed as follows:

Tax	Basic	Surcharge	Interest	Total
IT	₱68,953,499.72	₱ -	₱39,462,087.88	₱108,415,587.60
VAT	68,536,423.80	17,134,105.95	42,259,558.92	127,930,088.67
WTC	104,195.04	-	64,819.73	169,014.77
EWT	3,949,285.08	-	2,456,850.25	6,406,135.33
FWVAT	10,790,682.00	2,697,670.50	6,743,097.18	20,231,449.68
DST	56,112,619.70	14,028,154.93	35,216,280.13	105,357,054.76
MT	290,000.00	-	-	290,000.00
Total	₱208,736,705.34	₱33,859,931.38	₱126,202,694.09	₱368,799,330.81

On 19 December 2019, petitioner filed its Reply to the PAN (**Reply**).[35] Four days later, the parties executed another waiver extending the statute of limitations until 31 March 2020 (**Third Waiver**).[36]

After considering the Reply, on 03 August 2020, respondent sent the Formal Letter of Demand[37] (**FLD**) and Final Assessment Notice[38] (**FAN**) reducing the assessment to ₱270,554,228.24, computed as follows:

Tax	Basic	Surcharge	Interest	Total
IT	₱2,751,986.67	₱ -	₱1,823,741.57	₱4,575,728.24
VAT	68,536,423.80	17,134,105.95	48,455,251.63	134,125,781.38
FWVAT	10,790,682.00	2,697,670.50	7,718,574.84	21,206,927.34
DST	56,100,503.70	14,025,125.93	40,280,161.65	110,405,791.28
MT	240,000.00	-	-	240,000.00
Total	₱138,419,596.17	₱33,856,902.38	₱98,277,729.69	₱270,554,228.24

Petitioner protested the FLD/FAN in a letter denominated as "Protest for Reconsideration" (**Protest**).[39]

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33 See Exhibit "R-7", PAN dated 10 December 2019, BIR Records, pp. 458-472.
35 Id., pp. 473-484.
36 See Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code dated 23 December 2019, Exhibit "R-8", id., p. 487.
37 Dated 27 July 2020, Exhibit "R-10", id., pp. 562-567.
38 Dated 27 July 2020, Exhibits "R-10-1", id., pp. 557-561.
39 Protest for Reconsideration dated 12 August 2020, id., pp. 571-573.

On 15 February 2022, petitioner received the FDDA[40] finding it liable for the reduced amount of ₱144,383,665.67, computed as follows:

Tax	Basic	Surcharge	Interest	Total
FWVAT	₱10,790,682.00	₱2,697,670.50	₱9,766,646.28	₱23,254,998.78
DST	56,100,503.70	14,025,125.93	50,928,037.26	121,053,666.89
Compromise	75,000.00	-	-	75,000.00
Total	₱66,966,185.70	₱16,722,796.43	₱60,694,683.54	₱ 144,383,665.67

PROCEEDINGS BEFORE THE COURT

On 16 March 2022 , petitioner filed the instant petition before the Court.[41] The case was docketed as CTA Case No. 10809 and raffled to the Court's Second Division.

In seeking the cancellation of the FDDA, petitioner argued essentially that petitioner's right to assess it has prescribed and that it is exempted from paying FWVAT and DST as a PAGCOR licensee. According to petitioner, the assessment for TY 2015 had already expired since respondent issued the FLD/FAN on 27 July 2020 when it had only until 31 December 2019 to do so.[42] Petitioner also argued that since it is a holder of a gaming license for its bingo games operations issued by PAGCOR, the exemption from taxes, fees, and charges enjoyed by PAGCOR is extended to it.[43] Thus, its prayer that the FDDA, insofar as it found petitioner liable for deficiency FWVAT, deficiency DST, and compromise penalty, be cancelled and set aside.[44]

After Summons was served on respondent and following the grant of a request for additional thirty (30) days to respond to the petition, respondent filed his or her Answer on 23 May 2022.[45]

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40 Final Decision on Disputed Assessment (FDDA) dated 14 February 2022, Exhibit "R-12", id., pp. 609-615.

41 Supra at note 1.

42 Division Docket, Volume I, pp. 10-16.

43 Id., pp. 16-34.

44 Id., p. 35.

45 See **(a)** Summons dated 21 March 2022, Division Docket, Volume I, p. 210; **(b)** Motion for Extension of Time to File Answer filed on 22 April 2022, id., pp. 233-236; **(c)** Order dated 26 April 2022, id., p. 238; and **(d)** Answer, id., pp. 240-249.

In the Answer, respondent claimed that the assessment had not prescribed because the waivers executed by petitioner are valid and binding.[46] Respondent likewise argued that petitioner is liable for deficiency FWVAT arising from its payments to a nonresident foreign corporation (**NRFC**) which supplied the machines for its bingo operations.[47] As to the deficiency DST, respondent averred that petitioner's gross earnings from traditional and electronic bingo games are subject to DST.[48] Lastly, respondent reiterated that petitioner is liable for compromise penalty due to its failure to pay the tax due.[49]

With the filing of the Answer and after the issues were joined, the pre-trial was scheduled on 07 September 2022.[50] In anticipation, petitioner filed its Pre-Trial Brief on 01 September 2022[51] while respondent filed his or her Pre-Trial Brief the day after.[52] Later, as directed, respondent also forwarded the BIR Records to the Court.[53]

During the pre-trial proceedings 07 September 2022, the parties manifested their intention to undergo mediation. As a result, the Court referred the case to the Philippine Mediation Center – Court of Tax Appeals (**PMC-CTA**).[54] Ironically, the parties retracted and opted to not proceed with the mediation meeting.[55] Accordingly, the pre-trial proceeded on 26 January 2023[56] wherein the parties likewise filed their Joint Stipulation of Facts and Issues[57] (**JSFI**). When the proceedings were terminated, the Court issued the Pre-Trial Order on 20 April 2023.[58]

Meanwhile, while waiting for the trial proper, Administrative Circular No. 01-2023 was issued reorganizing the different divisions of

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46 Id., pp. 241-245.
47 Id., pp. 245-246.
48 Id., p. 246.
49 Id., pp. 246-247.
50 See Notice of Pre-Trial Conference dated 09 June 2022, id., pp. 252-253.
51 Id., pp. 254-264.
52 Id., pp. 266-271.
53 See Compliance filed on 06 September 2022, id., pp. 274-276.
54 See Order dated 07 September 2022, id., pp. 294-295. See also Resolution dated 07 September 2022, id., p. 297.
55 See No Agreement to Mediate dated 24 October 2022, id., p. 300.
56 See Order dated 26 January 2023, id., pp. 303-304.
57 See Parties' Joint Manifestation filed on 15 March 2023, id., pp. 308-320.
58 Id., p. 334-340.

the Court. As a result, the instant case was transferred from the Second Division to the First Division.[59]

When the trial ensued, petitioner presented its lone witness, Johnson H. Yu (**Yu**), its Vice President.[60] According to him, petitioner did not execute any waiver aside from the two (2) waivers mentioned in the PAN. He added that during TY 2015, petitioner was under the regulation and supervision of PAGCOR as evidenced by *Renewal of the Term of Grant of Authority to Operate Bingo Games* dated 10 June 2010, as well as *Gaming License* dated 09 June 2015, both issued by PAGCOR. He explained that petitioner, through BIR Ruling No. 383-19 dated 12 July 2019, was able to get a confirmation from respondent that the income it derived from its bingo games operations is subject to five percent (5%) franchise tax, and is exempt from corporate income tax and VAT. As to petitioner's transaction with an NRFC, Yu avers that the activities under the contract (*i.e.*, the provisioning, supply, maintenance, and repair of electronic bingo devices) fall under the licensed activities authorized by PAGCOR. Lastly, he asserted that petitioner's exemption as a PAGCOR licensee covers DST.[61]

On cross-examination, Yu admitted that petitioner executed two (2) waivers extending the period of prescription until 15 April 2019 and 12 March 2019. However, he did not recall another waiver extending the period of prescription until 31 March 2020.[62]

Petitioner did not conduct redirect examination.[63]

Upon clarificatory questions from the Court, Yu stated that BIR Ruling No. 383-19 dated 12 July 2019, as mentioned in petitioner's Reply and BIR Ruling No. 1090-18 dated 16 July 2019, as mentioned in his Judicial Affidavit, are one and the same.

On 12 December 2023, petitioner filed its Formal Offer of Evidence[64] (**FOE**), offering Exhibits "P-1" to "P-17-1", inclusive of sub-

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[59] See Resolution dated 29 May 2023, id., p. 346. See also Administrative Circular No. 01-2023 (Reorganizing the Divisions of the Court) dated 23 May 2023.
[60] See Order dated 29 November 2023, id., pp. 355-356.
[61] See Judicial Affidavit of Johnson H. Yu, Exhibit "P-17", id., pp. 365-480.
[62] TSN dated 29 November 2023, pp. 12-13.
[63] Id., pp. 14.
[64] Division Docket, Volume I, pp. 481-487.

markings. Respondent interposed no objections to the FOE.[65] After review and consideration of the FOE, the Court admitted petitioner's exhibits, except Exhibits "P-6"[66] and "P-16"[67] due to petitioner's failure to present the originals for comparison.[68]

As for respondent, RO Bennett took the witness stand where she explained the factual basis of the assessment of tax deficiency against petitioner.[69] According to her, aside from the two (2) waivers mentioned in the PAN, petitioner executed another waiver extending the prescriptive period until 31 March 2020. She added that in March 2020, the CIR issued Revenue Memorandum Circular (**RMC**) 34-2020[70] suspending the assessment and collection of taxes due to the declaration of a National Emergency caused by the Covid-19 pandemic. She also narrated how the issuance of the assessment, from the NIC to the FDDA, was compliant with the audit procedures required under the NIRC of 1997, as amended.[71]

On cross-examination, RO Bennett claimed that she was allowed to handle petitioner's audit even though she was already transferred from RLTAD III to RLTAD II. She also confirmed that petitioner was a holder of a gaming license from PAGCOR.[72]

No redirect examination was conducted.[73]

Upon further clarification from the Court, RO Bennett testified that, aside from RMC No. 34-2020, there were several BIR issuances

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65 See Comment (Re: Petitioner's Formal Offer of Evidence) filed on 19 December 2023, id., pp. 673-675.
66 Respondent's Letter dated 21 December 2016.
67 Independent Auditor's Report & Financial Statements for the years ended 31 December 2014 and 2015.
68 See Resolution dated 12 March 2024, Division Docket, Volume II, pp. 683-684.
69 See Order dated 02 May 2024, id., pp. 689-690.
70 Suspending the Running of the Statute of Limitations in the Assessment and Collection of Taxes pursuant to Section 223 of the National Internal Revenue Code of 1997, as amended, Due to the Declaration of a National Emergency from the Corona Virus Disease 2019 (covid 19) Situation. Issued on 27 March 2020.
71 See Offer of Testimony of Revenue Officer Annabelle DG. Bennett (with Attached Judicial Affidavit of Revenue Officer DG Bennett) filed on 06 September 2022, id., Volume I, pp. 278-281. See also Judicial Affidavit of Revenue Officer Annabelle DG. Bennett executed on 02 September 2022, Exhibit "P-14", id., pp. 283-292.
72 TSN dated 02 May 2024, pp. 11-13.
73 Id., p. 13.

suspending the assessment and collection of taxes during the Covid-19 pandemic.[74]

Subsequently, on 10 May 2024, respondent filed his or her FOE offering Exhibits "R-1" to "R-13-1", with sub-markings.[75] The Court admitted the exhibits over petitioner's objections.[76]

Finally, petitioner filed its Memorandum on 17 October 2024.[77] Since respondent failed to file his or her Memorandum by the due date, the Court submitted the case for decision on 27 January 2025.[78]

ISSUES

As the parties agreed on during the pre-trial, the issues forwarded for the Court's resolution are —

I.

WHETHER PETITIONER B-7 AMUSEMENTS CORPORATION (PETITIONER) IS LIABLE TO PAY THE ALLEGED DEFICIENCY FINAL WITHHOLDING VALUE-ADDED TAX (FWVAT) AMOUNTING TO ₱23,254,998.78, DOCUMENTARY STAMP TAX (DST) AMOUNTING TO ₱121,053,666.89 AND COMPROMISE PENALTY INCLUDING ITS INCREMENTS AND INTEREST AMOUNTING TO ₱75,000.00 IN THE AGGREGATE AMOUNT OF ₱144,383,665.67 FOR TAXABLE YEAR (TY) 2015; AND

II.

WHETHER RESPONDENT'S RIGHT TO ASSESS PETITIONER FOR TY 2015 HAS ALREADY PRESCRIBED.[79]

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74 Id., pp. 14-15.

75 See Formal Offer of Evidence, Division Docket, Volume II, pp. 692-702.

76 See Resolution dated 06 September 2024, id., pp. 725-726. See also Comment/Objections (Re: Respondent's Formal Offer of Evidence) with Manifestation filed on 23 May 2024, id., pp. 710-713.

77 Id., pp. 734-762.

78 See Notice of Resolution dated 27 January 2025, id., p. 822.

79 See Pre-Trial Order dated 20 April 2023, id., Volume I, p. 336.

ARGUMENTS

In support of the petition, petitioner insists on the grounds below as reasons for the cancellation of the assessment against it.

First, petitioner claims that the assessment has already prescribed because the FLD/FAN was issued on 27 July 2020 when respondent only had until 31 December 2019 to assess.[80] Respondent's reliance on Revenue Regulations (**RR**) No. 11-2020[81] and RMC No. 136-2020[82] is misplaced since they were issued to extend the deadlines to file and pay taxes during the pandemic, and they were not meant to extend the statute of limitations for filings made in previous years.[83] Even assuming that these issuances extended the statute of limitations, they are inapplicable to cases where the statute of limitations were already extended by the parties by virtue of a waiver.[84]

Second, petitioner argues that as a holder of PAGCOR gaming license for its bingo games operations, it is covered by the same tax exemptions that PAGCOR itself enjoys.[85] Invoking BIR Ruling No. 383-19,[86] respondent maintains that "the exemption from taxes, fees and charges enjoyed by PAGCOR is extended to B7."[87]

Lastly, petitioner asserts that the imposition of compromise penalty has no basis since FWVAT and DST assessments are similarly devoid of any legal mooring.[88]

Rebuking petitioner's arguments, respondent upholds its right to assess the former. According to respondent, petitioner had executed waivers that effectively and validly extended the period to assess.[89]

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80 Petitioner's Memorandum, supra at note 77, pp. 739-744.

81 Amends Section 2 of Revenue Regulations No. 10-2020 Relative to the Extension of Statutory Deadlines and Timelines for the Filing and Submission of any Document and the Payment of Taxes Pursuant to Section 4(z) of Republic Act No. 11469, 29 April 2020, otherwise known as "Bayanihan to Heal as One Act".

82 Clarification on the Suspension of the Statute of Limitation Provided Under Revenue Regulations (RR) No. 11-2020, 07 December 2020.

83 Petitioner's Memorandum, supra at note 77, p. 744.

84 Id., pp. 744-745.

85 Id., pp. 745-757.

86 *Venturanza, Hostalero and Company, CPAs Auditing and Consultancy Services*, 16 July 2019.

87 Petitioner's Memorandum, supra at note 77, pp. 757-759.

88 Id., pp. 759-760.

89 Answer, supra at note 45, pp. 241-243.

Specifically, petitioner executed three (3) waivers of the defense of prescription which were valid until 15 April 2019, 31 December 2019, and 31 March 2020, respectively.[90] Respondent also points out RR No. 11-2020, RMC No. 34-2020, and RMC 136-2020 which collectively extended the statute of limitations during the relevant period for 137 days (*i.e.*, from 31 March 2020 to 15 August 2020).[91] With these, respondent insists that the FLD/FAN issued and served on 03 August 2020 on petitioner are valid.[92]

Respondent adds that petitioner is liable for deficiency FWVAT arising from its payments to an NRFC which supplied the machines for its bingo operations.[93] As to the deficiency DST, respondent claims that petitioner's gross earnings from traditional and electronic bingo games are subject to DST.[94] Respondent then reiterated his or her finding that petitioner is liable for compromise penalty for its failure to pay the tax due.[95]

Finally, respondent contends that it has long been settled that assessments are presumed correct and made in good faith. Thus, they should not be disturbed absent any showing of irregularities in the performance of their official duties. [96]

RULING OF THE COURT

Before delving into the merits of the case, the Court finds it proper to determine (at the outset) whether it has jurisdiction over the instant petition.

THE COURT HAS JURISDICTION OVER THE INSTANT PETITION.

The Court of Tax Appeals (**CTA**), being a court of special jurisdiction, can only take cognizance of matters which are clearly

90 Id.
91 Id., pp. 243-245.
92 Id.
93 Id., pp. 245-246.
94 Id., p. 246.
95 Id., pp. 246-247.
96 Id., p. 247.

within its jurisdiction.[97] In this connection, Section 11 of the Republic Act (**RA**) No. 1125,[98] as amended by RA 9282,[99] provides for the proper period during which a party may bring an appeal before the CTA, to wit:

> ...
>
> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* — Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.
>
> ...

Section 3(a), Rule 8 of the RRCTA reinforces the above provision in this wise:

> ...
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> SEC. 3. *Who may appeal; period to file petition.* — (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.
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> ...

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97 *Commissioner of Internal Revenue v. V.Y. Domingo Jewellers, Inc.*, G.R. No. 221780, 25 March 2019, citing *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 190021, 22 October 2014.

98 AN ACT CREATING THE COURT OF TAX APPEALS.

99 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 OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

On the other hand, Section 228 of the NIRC of 1997, as amended, outlines how a taxpayer may administratively protest an assessment issued by the CIR or his or her duly authorized representative and later on, if necessary, appeal the same to the CTA:

> ...
>
> Sec. 228. *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings[.] ...
>
> ...
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> 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.
>
> ...

In turn, Section 228 is implemented by RR No. 12-99,[100] as amended by RR No. 18-2013,[101] the relevant portions of which provides the taxpayer's options regarding disputed assessments, to wit:

> ...
>
> Sec. 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —

[100] Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

[101] Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

> ...
>
> Sec. 3.1.4. *Disputed Assessment.* — The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:
>
> > (i) *Request for reconsideration* — refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.
> >
> > (ii) *Request for reinvestigation* — refers to a plea of reevaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both.
> >
> > ...
>
> For request for reinvestigation, the taxpayer shall submit all relevant supporting documents in support of his protest within sixty (60) days from date of filing of his letter protest, otherwise, the assessment shall become final. ...
>
> ...
>
> If the protest is denied, in whole or in part, by the Commissioner's duly authorized representative, the taxpayer may either: (i) appeal to the Court of Tax Appeals (CTA) within thirty (30) days from date of receipt of the said decision; or (ii) elevate his protest through request for reconsideration to the Commissioner within thirty (30) days from date of receipt of the said decision.
>
> ...

Applying the foregoing rules, the Supreme Court explained that there are three (3) options by which a taxpayer may appeal the denial of its administrative protest, to wit:[102]

> ...
>
> Following the *verba legis* doctrine, the law must be applied exactly as worded since it is clear, plain, and unequivocal. A textual reading of Section 3.1.5 gives a protesting taxpayer like PAGCOR **only** three options:

---

[102] See *Philippine Amusement and Gaming Corporation v. Bureau of Internal Revenue, et al.*, G.R. No. 208731, 27 January 2016; Citations omitted and emphasis supplied. See also *Commissioner of Internal Revenue v. V.Y. Domingo Jewellers, Inc.*, supra at note 97.

> 1. If the protest is wholly or partially denied by the CIR **or** his authorized representative, then the taxpayer may appeal to the CTA within 30 days from receipt of the whole or partial denial of the protest.
>
> 2. If the protest is wholly or partially denied by the CIR's authorized representative, then the taxpayer may appeal to the CIR within 30 days from receipt of the whole or partial denial of the protest.
>
> 3. If the CIR or his authorized representative failed to act upon the protest within 180 days from submission of the required supporting documents, then the taxpayer may appeal to the CTA within 30 days from the lapse of the 180-day period.
>
> ...

Based on the foregoing provisions and jurisprudence, where the CIR denies a taxpayer's protest, the latter may appeal to the CTA within 30 days from the date of receipt of the CIR's decision.

In this case, the following are the pertinent dates and events in determining the timeliness of the Petition for Review:

Date	Event
03 August 2020	Petitioner received respondent's FLD/FAN.[103]
12 August 2020	Petitioner filed its Protest.[104]
15 February 2022	Petitioner received the FDDA issued by the CIR.[105]
16 March 2022	Petitioner filed the present Petition for Review before the Court within the 30-day reglementary period.[106]

Since the instant Petition for Review was timely filed on 16 March 2022, We have then validly acquired jurisdiction over the present case.

[103] Supra at notes 37 and 38.
[104] Supra at note 39.
[105] Supra at note 40.
[106] Supra at note 1.

RESPONDENT'S PERIOD TO ASSESS FOR TY 2015 HAS NOT PRESCRIBED.

We now turn to the issue of whether respondent issued the subject assessment within the prescriptive period provided by law. Pertinent to this issue are Sections 203 and 222(a) of the NIRC of 1997, as amended, which provide:

> ...
>
> SEC. 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-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.[107]
>
> ...
>
> SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* -
>
> (a) In the case of a false or fraudulent return with intent to evade tax or of **failure to file a return**, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, **at any time within ten (10) years after the discovery** of the falsity, fraud or omission: *Provided,* That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.[108]
>
> ...

In this case, the case records readily show that petitioner **did not file** any FWVAT and DST return for TY 2015 considering its view that its transactions are not subject to FWVAT and DST. Following Section 222, respondent had ten (10) years to assess petitioner with deficiency FWVAT and DST. As for the reckoning period, respondent should have discovered the non-filing of the FWVAT and DST returns as soon as the deadline thereof have lapsed, without petitioner filing the necessary returns.

---

[107] Emphasis supplied and italics in the original text.
[108] Emphasis supplied and italics in the original text.

Applying the foregoing, the applicable prescriptive periods for respondent's right to assess are outlined below:

Return/ Period Covered	Last Day Prescribed by Law to File the Return[109]	Last Day to Assess under Section 222
FWVAT		
January 2015	10 February 2015	10 February 2025
February 2015	10 March 2015	10 March 2025
March 2015	10 April 2015	10 April 2025
April 2015	11 May 2015	11 May 2025
May 2015	10 June 2015	10 June 2025
June 2015	10 July 2015	10 July 2025
July 2015	10 August 2015	10 August 2025
August 2015	10 September 2015	10 September 2025
September 2015	12 October 2015	12 October 2025
October 2015	10 November 2015	10 November 2025
November 2015	10 December 2015	10 December 2025
December 2015	11 January 2016	11 January 2026
DST		
January 2015	05 February 2015	05 February 2025
February 2015	05 March 2015	05 March 2025
March 2015	06 April 2015	06 April 2025
April 2015	05 May 2015	05 May 2025
May 2015	05 June 2015	05 June 2025
June 2015	06 July 2015	06 July 2025
July 2015	05 August 2015	05 August 2025
August 2015	07 September 2015	07 September 2025
September 2015	05 October 2015	05 October 2025
October 2015	05 November 2015	05 November 2025
November 2015	07 December 2015	07 December 2025
December 2015	05 January 2016	05 January 2026

Accordingly, the FLD/FAN which petitioner received on 03 August 2020 was issued well-within the prescriptive period.

109 For FWVAT returns see RR No. 2-98, Section 2.58(A)(2). For DST returns see RR No. 06-01.

RESPONDENT'S PERIOD TO COLLECT
HAS NOT PRESCRIBED.

As for the right to collect taxes, Section 203 of the NIRC of 1997, as amended, is the applicable provision. It reads:

> ...
>
> SEC. 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.[110]
>
> ...

In this connection, the Supreme Court clarified that when the BIR issues the assessment within the three(3)-year prescriptive period, it has another three (3) years, counted from the date the assessment notice is released, mailed or sent to the taxpayer, within which to collect the tax due by distraint, levy or court proceeding.[111] Accordingly, the period to collect the deficiency assessments started to run when the FLD/FAN was released to petitioner on 03 August 2020. Therefore, the three (3)-year period expired on 03 August 2023.

The Supreme Court further clarified that a "judicial-action for the collection of a tax may be initiated by the filing of a complaint with the proper regular trial court; or where the assessment is appealed to the CTA, by filing an answer to the taxpayer's petition for review wherein payment of the tax is prayed for".[112] Thus, respondent's filing of an Answer to the present Petition for Review constitutes a judicial action for the collection of tax.

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110 Emphasis supplied and italics in the original text.

111 See *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, 02 July 2014.

112 *Philippine National Oil Company v. The Hon. Court of Appeals, et al.*, G.R. Nos. 109976 & 112800, 26 April 2005.

Weaving the above premises together, respondent's period to collect the assessed tax has not prescribed since he or she filed the Answer on 23 May 2022, or prior to the expiration of the period to collect on 03 August 2023.[113]

AS PAGCOR'S LICENSEE, PETITIONER IS EXEMPT FROM INCOME TAX AND OTHER TAXES.

Section 13(2)(a) and (b) of Presidential Decree (**PD**) No. 1869,[114] as amended, provides that PAGCOR, including its contractees and licensees are exempt from the payment of income and other taxes, to wit:

> ...
> SEC. 13. *Exemptions.* —
>
> (2) *Income and other taxes* — (a) Franchise Holder: No tax of any kind or form, income or otherwise, as well as fees, charges or levies of whatever nature, whether National or Local, shall be assessed and collected under this Franchise from the Corporation, nor shall any form of tax or charge attach in any way to the earnings of the Corporation, except a Franchise Tax of five (5%) percent of the gross revenue or earnings derived by the Corporation from its operation under this Franchise. Such tax shall be due and payable quarterly to the National Government and shall be in lieu of all kinds of taxes, levies, fees or assessments of any kind, nature or description, levied, established or collected by any municipal, provincial, or national government authority.
> ...
>
> (b) Others: **The exemption herein granted for earnings derived from the operations conducted under the franchise, specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, shall inure to the benefit of and extend to corporation(s), association(s), agency(ies), or individual(s) with whom the Corporation or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise** and to those receiving compensation or other remuneration from the

113 See Answer, supra at note 45.
114 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), 11 July 1983.

> Corporation or operator as a result of essential facilities furnished and/or technical services rendered to the Corporation or operator.[115]
>
> ...

In fine, 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 revenues or earnings derived from its operation under PD 1869. Such exemption inures to the benefit of and extends to (1) corporations, associations, agencies, or individuals with whom PAGCOR or operator has any contractual relationship in connection with the operations of casino(s) authorized under PD 1869; and (2) 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.[116]

In *Bloomberry Resorts and Hotels, Inc. v. Bureau of Internal Revenue*[117] (**Bloomberry**), the Supreme Court exhaustively discussed the tax exemption of PAGCOR's contractees and licensees, to wit:

> ...
>
> Section 13 of PD No. 1869 evidently states that payment of the 5% franchise tax by PAGCOR and its *contractees and licensees* exempts them from payment of any other taxes, including corporate income tax[.]...
>
> ...
>
> As previously recognized, the above-quoted provision providing for the said exemption was neither amended nor repealed by any subsequent laws (*i.e.*, Section 1 of R.A. No. 9337 which amended Section 27(C) of the NIRC of 1997); thus, it is still in effect. Guided by the doctrinal teachings in resolving the case at bench, **it is without a doubt that, like PAGCOR, *its contractees and licensees* remain exempted from the payment of corporate income tax and other taxes since the law is clear that said exemption inures to their benefit.**
>
> ...
>
> As the PAGCOR Charter states in unequivocal terms that exemptions granted for earnings derived from the operations

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115 Emphasis supplied and italics in the original text.

116 *AB Leisure Exponent, Inc. v. Commissioner of Internal Revenue*, CTA EB No. 2595 (CTA Case No. 9620), 04 October 2023.

117 G.R. No. 212530, 16 August 2016; Italics in the original text, emphasis and underscoring supplied.

> 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 PAGCOR or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise, so it must be that all *contractees and licensees* of PAGCOR, upon payment of the 5% franchise tax, shall likewise be exempted from all other taxes, including corporate income tax realized from the operation of casinos.
>
> ...
>
> Plainly, too, upon payment of the 5% franchise tax, petitioner's income from its gaming operations of gambling casinos, gaming clubs and other similar recreation or amusement places, and gaming pools, defined within the purview of the aforesaid section, is not subject to corporate income tax.
>
> ...

In *Saint Wealth Ltd. v. Bureau of Internal Revenue, et al.*[119] (**Saint Wealth**), the Supreme Court affirmed *Bloomberry* and reiterated that "both law and jurisprudence mandate that PAGCOR's licensees are only liable to pay a five percent (5%) franchise tax for income derived from its gaming operations" and that this "five percent (5%) franchise tax only applies to PAGCOR's licensees which are connected to the operations of casinos and other related amusement places."

In this case, petitioner's status as PAGCOR's licensee during the relevant period is evidenced by the following pieces of evidence yielding from the case records, namely: (1) *Renewal of the Term of Grant of Authority to Operate Bingo Games* issued by PAGCOR effective from 25 June 2010 to 24 June 2015[120], and (2) *Gaming License* issued by PAGCOR issued on 09 June 2015 and valid until 24 June 2017.[121]

Respondent likewise recognized petitioner's tax exemptions when he or she issued BIR Ruling No. 383-19[122] on 16 July 2019. In the said BIR Ruling, respondent declared that:

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119 G.R. Nos. 252965 & 254102, 07 December 2021.
120 Exhibit "P-4-a", Division Docket, Volume I, p. 523.
121 Exhibit "P-4-b", id., pp. 524-525.
122 Exhibit "P-15", id., pp. 621-623.

> ...
>
> Premises considered, this Office hereby rules that since B7 is a holder of Gaming License for its Bingo Games operations issued by PAGCOR, the exemption from taxes, fees and charges enjoyed by PAGCOR is extended by B7 pursuant to Section 13 (2) (b) of PD 1869, as amended by RA No, 9487. Therefore, the income derived by B7 solely from its Bingo Games operations during the validity of its Gaming License, is subject only to the 5% franchise tax, and shall be exempted from corporate income tax and VAT.
>
> However, for the purpose of applying the 5% franchise tax, any income that may be realized by B7 from related services or such services not falling under gaming operations, shall be subject to corporate income tax and VAT.
>
> ...

With the foregoing disquisition, the Court could only thus conclude that petitioner, as PAGCOR's licensee, is exempted from the payment of corporate income tax and other taxes arising from its gaming (*i.e.*, bingo) operations.

The next pivotal issue to resolve is — whether the term "other taxes" covers the FWVAT and DST assessed against petitioner.

PETITIONER'S TAX EXEMPTION DOES NOT EXTEND TO FINAL WITHHOLDING VALUE-ADDED TAX (FWVAT).

In *Melco Resorts Leisure (PHP) Corporation v. Commissioner of Internal Revenue*[123] (**Melco**), the Supreme Court categorically ruled that the VAT passed on to a PAGCOR's licensee by its supplier is not an erroneously or illegally paid tax. Instead, such payment represented and formed part of the purchase price it paid to its suppliers.[124]

Moreover, in another case involving *Melco*[125], this Court, ruling *En Banc*, declared that a PAGCOR's licensee is not exempt from its duties as a withholding agent:

[123] G.R. No. 271261, 02 April 2025.

[124] Id.

[125] See *Melco Resorts Leisure (PHP) Corporation v. Commissioner of Internal Revenue*, CTA EB Nos. 2958 & 2959 (CTA Case Nos. 10236, 10271, 10294 & 10359), 04 December 2025; Citations omitted, underscoring and emphasis in the original text and supplied.

> ...
>
> Withholding tax is not an internal revenue or local tax, but a mode of collecting tax in advance. The nature of a withholding tax is explained in *LG Electronics Philippines, Inc. v. Commissioner of Internal Revenue*, viz.:
>
> > "In the operation of the withholding tax system, the payee is the taxpayer, the person on whom the tax is imposed, **while the payor, a separate entity, acts no more than <u>an agent of the government for the collection of the tax</u> in order to ensure its payment.** Obviously, the amount thereby used to settle the tax liability is deemed sourced from the proceeds constitutive of the tax base."
>
> **Not being a tax in the strictest sense, MRLC's tax-exempt status as a licensee of PAGCOR cannot excuse it from remitting VAT withheld from its non-resident suppliers.**
>
> Even PAGCOR's liability itself as a withholding agent is not covered by the tax exemptions under its Charter. This was the principle enunciated in the case of *Commissioner of Internal Revenue v. Secretary of Justice* where the assessment of Final Withholding Tax on Fringe Benefits ("FBT") was upheld. Withheld VAT from non-resident suppliers are akin to FBT which are treated as final taxes withheld by the payor for the payee.
>
> ...

In sum, petitioner's payments to its nonresident suppliers are subject to FWVAT with any input VAT arising thereon to form part of petitioner's cost for the nonresident's services. Consequently, petitioner is not exempt from FWVAT on its payments to its nonresident suppliers.

Here, petitioner was assessed with deficiency FWVAT amounting to ₱23,254,998.78, determined by respondent in this wise:[127]

> ...
>
> Verification disclosed that you have income payments made to Origins Participation S.A.R.L., a non-resident foreign corporation for the rental machines of your bingo operations. This transaction is subject to 12% Final VAT as provided in Section 4.114-2(b) of Revenue Regulations No. 16-2005 as amended which states that "The government or any of its political subdivisions, instrumentalities or

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[127] See FDDA, supra at note 38.

agencies, including government-owned or controlled corporations (GOCCs), as well as private corporations, individuals, estates and trusts, whether large or non-large taxpayers shall withhold twelve percent (12%) VAT starting February 1, 2006 with respect to the following payments: (1) Lease or use of properties or property rights owned by non-residents and (2) Other services rendered in the Philippines by non-residents."

In your protest letter, since you are a holder of a Gaming License, the income you derived from bingo games operations is subject only to 5% franchise tax, in lieu of all other taxes and fees, therefore, is exempted from final VAT withholding tax.

In our opinion during reconsideration, since you are considered [a] private withholding agent making payments to non-resident subject VAT, we reiterate our assessment pursuant to Section 57 (A) of the NIRC, as amended and Section 4.114-2(b) of Revenue Regulations No. 16-2005, as amended.

Accordingly, there was still found due from you deficiency Final VAT Withholding Tax amounting to ₱23,254,998.78 inclusive of surcharge and interest computed as follows:

Taxable Basis per Return		₱ -
Add: Adjustments		
Payment to [NRFC]		89,922,350.00
Taxable Basis per Audit		₱89,922,350.00
Final VAT Withholding Due		10,790,682.00
Less Tax Paid per Returns		-
Deficiency [FWVAT] Basic		10,790,682.00
Add: Increments		
25% Surcharge	₱2,697,670.50	
20% Interest p.a. (01.10.2016 – 12.31.2017)	4,263,398.46	
12% Interest p.a. (01.01.2018 – 03.31.2022)	5,503,247.82	12,464,316.78
Total Amount Due and Collectible		**₱23,254,998.78**

...

An examination of the Supply and Technical Assistance Agreement[128] (**STAA**) between petitioner and Origins Participation S.a.r.l. (**Origins**) shows that the latter is an entity registered with Luxembourg Trade and Companies Register under No. B159 250 with registered office at 16 rue Jean l'Aveugle, L-1148, Luxembourg. The STAA provides the scope of the contract as follows:

128 Exhibit "P-14", p. 600.

...

This Agreement shall cover the provisioning, supply, maintenance, and repair of [Electronic Bingo Devices] by OP S.a.r.l. and the making available to B7 ANTIPOLO by OP S.a.r.l. of the needed Technical Assistance in mutually identifiable Electronic Bingo Game venues. This shall include the supply to B7 ANTIPOLO of Gaming Devices, Signage (when applicable) Game Software, Machine Bases, Chairs, Stands, Spare Parts, In-house Progressive System and Operational Management Training.[129]

...

Based on petitioner's own evidence, it indeed contracted with Origins, an NRFC. This transaction is subject to FWVAT under Section 114(c)[130] of the NIRC of 1997, as amended, and as implemented by Section 4.114[131] of RR No. 02-98[132] and Section 4.114-2(b)(3) of RR No. 16-2005.[133] The latter provides:

...

SECTION 4.114-2. *Withholding of VAT on Government Money Payments and Payments to Non-Residents.* —

...

(b) The government or any of its political subdivisions, instrumentalities or agencies, including GOCCs, **as well as private corporations**, individuals, estates and trusts, whether large or non-large taxpayers, shall withhold ten percent[134] (10%) VAT with respect to the following payments:

...

[129] Id.

[130] SEC. 114. *Return and Payment of Value-added Tax.* —
(C) *Withholding of Creditable Value-added Tax.* — The Government or any of its political subdivisions, instrumentalities or agencies, including government-owned or -controlled corporations (GOCCs) shall, before making payment on account of each purchase of goods from sellers and services rendered by contractors which are subject to the value-added tax imposed in Sections 106 and 108 of this Code, deduct and withhold the value-added tax due at the rate of three percent (3%) of the gross payment for the purchase of goods and six percent (6%) on gross receipts for services rendered by contractors on every sale or installment payment which shall be creditable against the value-added tax liability of the seller or contractor: Provided, however, That in the case of government public works contractors, the withholding rate shall be eight and one-half percent (8.5%): Provided, further, That the payment for lease or use of properties or property rights to nonresident owners shall be subject to ten percent (10%) withholding tax at the time of payment. For this purpose, the payor or person in control of the payment shall be considered as the withholding agent.

[131] SEC. 4.114. Withholding of Creditable Value-Added Tax. In general, value-added tax due on sales of goods and services are not subject to withholding since the tax is not determinable at the time of sale. However, sale of goods and services to the government subject to VAT shall be subject to withholding pursuant to Sec. 114 (C) of RA 8424.

[132] Implementing Republic Act No. 8424, 17 April 1998.

[133] Consolidated Value-Added Tax Regulations of 2005, 01 September 2005.

[134] Increased to twelve percent (12%) effective 01 February 2006, pursuant to Section 4 of RA No. 9337 and RMC No. 07-06.

> (3) Other services rendered in the Philippines by non-residents.
>
> In remitting VAT withheld, the withholding agent **shall** use BIR Form No. 1600 Remittance Return of VAT and Other Percentage Taxes Withheld.[135]
>
> ...

Thus, petitioner's payments to Origins must have included a 12% input VAT, which amount will form part of petitioner's cost or expense for the said transaction. Moreover, the assessment for FWVAT pertains to the VAT liability of Origins and not that of petitioner.

Having determined that petitioner is liable for deficiency FWVAT, the Court shall proceed to verify respondent's computation thereof.

Based on available records, respondent was able to determine that petitioner made payments for "supplier's share" amounting to ₱92,510,652.00, and out of this amount, ₱89,922,350.00 is subject to FWVAT while the remaining ₱2,588,302.00 is subject to five percent (5%) EWT on rentals.[136]

Petitioner did not contradict the determination of the said amounts, its defense being limited to prescription and its tax exemption as a PAGCOR licensee. Petitioner's witness even confirmed that its total revenue for TY 2015 is net of twenty-five percent (25%) supplier's share amounting to ₱92,510,650.[137]

Lastly, the Court finds that petitioner was aware of its duties as a withholding agent since it filed and paid returns for WTC,[138] FWT,[139] and EWT[140] for TY 2015.

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135 Emphasis supplied.
136 See Schedule 1 attached to the FLD/FAN, Division Docket, Volume I, p. 83.
137 See Q&A No. 72, Judicial Affidavit of Johnson H. Yu, Exhibit "P-17", id., pp. 478-479.
138 BIR Records, pp. 127-163.
139 Id., pp. 45-68.
140 Id., pp. 69-97.

PETITIONER's TAX EXEMPTION COVERS DOCUMENTARY STAMP TAX (DST).

Respondent also found petitioner liable for deficiency DST amounting to ₱121,053,666.89, determined in this manner:[141]

> ...
> This represents the unpaid documentary stamp tax on traditional and electronic bingo games of ₱561,005,037.00, hence, was assessed pursuant to Section 190 of the NIRC, as amended.
>
> *In your protest letter, you contested likewise that in reference to above explanation that you are only subject to 5% franchise tax in lieu of all other taxes and fees for gaming operations, therefore, is also exempted from paying documentary stamp tax (DS).*
>
> After evaluation, said assessment shall be retained. Verification disclosed that gross earnings from traditional and electronic bingo games amounting to ₱561,005,037.00 were not subjected to DST; the display in the slot machines are also numbers which are included in the enumeration of Section 190 of the NIRC, as amended, hence were assessed.
>
> Accordingly, there was still found due from you Deficiency Stamp Tax amounting to ₱121,053,666.89 inclusive of surcharge and interest computed as follows:

DST per Return			₱ -
Add: Adjustments	Tax Base	DST Rate	
Traditional and Electronic Bingo Games	561,005,037.00	₱0.10/₱1.00	₱56,100,503.70
DST Due per Audit			₱56,100,503.70
Less Tax Paid per Returns			-
Deficiency DST - Basic			₱56,100,503.70
Add: Increments			
25% Surcharge		₱14,025,125.93	
20% Interest p.a.		22,316,780.37	
12% Interest p.a.		28,611,256.89	64,953,163.19
Total Amount Due and Collectible			₱121,053,666.89

> ...

As discussed in the *Bloomberry* and *Saint Wealth* cases, PAGCOR (including its contractees and licensees) is exempt from the payment of *any* tax, whether national or local, except for a franchise tax at the rate of five percent (5%) of the gross revenues or earnings derived from its operation under PD No. 1869. As such, in the case of *AB Leisure Exponent, Inc. v. Commissioner of Internal Revenue*,[142] this Court, sitting *En Banc*, and still citing *Bloomberry* and *Saint Wealth* cases, ruled that therein petitioner, being a PAGCOR licensee, is exempt from DST:

> ...
>
> Thus, being a PAGCOR grantee or licensee in connection with its "gaming operations," particularly its "bingo gaming operations," the Court finds that **petitioner is exempt from all other taxes, including VAT and DST**, upon payment of the 5% franchise tax. Consequently, the 5% franchise tax shall be imposed based on petitioner's gross revenue or earnings from its bingo gaming operations.
>
> ...
>
> Given the above disquisitions and following the pronouncement of the Supreme Court in the *Bloomberry* and *Saint Wealth Ltd.* cases, petitioner is exempt from VAT and DST on its bingo gaming operations upon payment of the 5% franchise tax. Accordingly, the subject deficiency VAT and DST assessments, including surcharge and interest, amounting to P517,895,721.18 for TY 2013, should be cancelled.
>
> ...

We, thus, find that respondent's assessment against petitioner for deficiency DST has no basis and must be cancelled.

PETITIONER IS NOT LIABLE FOR COMPROMISE PENALTY.

Lastly, respondent assessed petitioner of compromise fees amounting to ₱75,000.00 for the latter's alleged failure to pay the internal revenue tax (*i.e.*, FWVAT and DST) at the times required by law pursuant to Section 255[145] of the NIRC of 1997, as amended.

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[142] Supra at note 116; Emphasis supplied.

[145] SEC. 255. *Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.* — Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax, make a return, keep any record, or supply correct and accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.

We do not agree.

The nature of a compromise penalty is explained in the case of *Commissioner of Internal Revenue v. Armando L. Abad, et al.*:[146]

> ...
>
> [A] compromise implies **agreement**. One party cannot impose it upon the other. If an offer of compromise is rejected by the taxpayer, as in this case, the Commissioner of Internal Revenue should file a criminal action if he believes that the taxpayer is criminally liable for violation of the tax law as the only way to enforce a penalty. As penalty can be imposed only on a finding of criminal liability.
>
> ...

Clearly, there can be no compromise if there is no agreement between the parties. A compromise penalty *cannot* be imposed or collected without the agreement or conformity of the taxpayer.[147] A compromise, after all, by its nature, is *mutual* in essence.[148] It cannot be imposed in the absence of a preceding agreement. Thus, the fact that the taxpayer protested the assessment only signifies that there was no agreement to speak of.[149]

WHEREFORE, premises considered, the Petition for Review filed by petitioner B-7 Amusements Corporation is hereby **PARTIALLY GRANTED**. As a result, the assessment for deficiency final withholding VAT (FWVAT) is **UPHELD** while the assessments for deficiency documentary stamp tax and compromise penalties are **CANCELLED** and **WITHDRAWN**.

Accordingly, petitioner B-7 Amusements Corporation is **ORDERED TO PAY** respondent Commissioner of Internal Revenue the amount of **₱25,219,154.19**, representing the deficiency final withholding VAT, inclusive of the 25% surcharge, 20% deficiency interest imposed

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[146] G.R. No. L-19627, 27 June 1968; Citations omitted and emphasis supplied.

[147] *Wonder Mechanical Engineering Corporation v. The Hon. Court of Tax Appeals, et al.*, G.R. No. L-22805 & L-27858, 30 June 1975.

[148] *Dr. Felisa L. Vda. De San Agustin v. Commissioner of Internal Revenue*, G.R. No. 138485, 10 September 2001.

[149] See *Manila Bankers' Life Insurance Corporation v. Commissioner of Internal Revenue*, G.R. Nos. 199729-30 and 199732-33, 27 February 2019.

thereon under Section 249(B)[150] of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion (**TRAIN Law**) and as implemented by Revenue Regulations No. 21-2018,[151] as determined below:

Basic tax due	₱10,790,682.00
Add:	
Surcharge (25%)	2,697,670.50
Deficiency Interest (20%) from 11 February 2015[152] until 31 December 2017	6,231,988.40
Deficiency Interest (12%) from 01 January 2018 to 31 March 2022[153]	5,498,813.29
Total Amount Due as of 31 March 2022	**₱25,219,154.19**

In addition, petitioner is **ORDERED TO PAY** delinquency interest on ₱25,219,154.19 at the rate of 12%,[154] computed from 31 March 2022 until full payment thereof, pursuant to Section 249(C)[155] of the NIRC of 1997, as amended by the TRAIN Law.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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150 SEC. 249. *Interest.* —

...

(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 issuance of a notice and demand by the Commissioner of Internal Revenue, whichever comes earlier.

151 Regulations Implementing Section 249 (Interest) of the National Internal Revenue Code (NIRC) of 1997, as amended under Section 75 of the Republic Act (RA) No. 10963 or the Tax Reform for Acceleration and Inclusion (TRAIN Law).

152 Due date of the FWVAT return for January 2015.

153 Deadline for payment stated in the Assessment Notice attached to the FDDA, Exhibits "R-12", BIR Records, p. 611.

154 Supra at note 151.

155 SEC. 249. *Interest.* —s

...

(C) *Delinquency Interest.* — In case of failure to pay:

(1) The amount of the tax due on any return required 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.

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice

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.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Special 1st Division Acting Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Special 1st Division Acting 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.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice