Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SPECIAL FIRST DIVISION

PREMIUMLEISURE AND AMUSEMENT, INC., Petitioner,	**CTA Case No. 9572** For: Refund
	Members:
-versus-	**DEL ROSARIO, P.J., *Chairperson*** **UY, and** **MINDARO-GRULLA, JJ.**
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUL 16 2019 ; 10:44 a.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision on August 14, 2018, is the Petition for Review filed by PremiumLeisure and Amusement, Inc. on April 11, 2017 seeking the refund or issuance of a tax credit certificate (TCC) in the amount of Four Million Eight Hundred Twelve Thousand Eighty Pesos (₱4,812,080.00), allegedly representing its erroneously paid income tax for calendar year (CY) 2014.

Petitioner PremiumLeisure and Amusement, Inc. is a domestic corporation duly organized and existing under the laws of the Philippines, with principal office at 10/F One E-Com Center, Harbor Drive, Mall of Asia Complex, CBP, 1A, Pasay City.[1] Its principal purpose is to acquire interest in gaming enterprises and franchised technologies.[2]

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[1] Par. 1, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, vol. II, p. 786.
[2] Exhibit "P-1", Docket, vol. III, p. 1262.

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On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On December 12, 2008, the Philippine Amusement and Gaming Corporation (PAGCOR) granted a Provisional License in favor of the consortium of petitioner with SM Investments Corporation (SMIC), SM Land, Inc., SM Hotels Corporation, SM Commercial Properties, Inc., and SM Development Corporation.[3]

Section 20 of Article IV of the Provisional License[4] provides that the consortium, as Licensee, shall pay PAGCOR License Fees. In lieu of all taxes, Section 20 provides:

> "SECTION 20. LICENSE FEE. As an essential condition for the License to be issued by PAGCOR to LICENSEE to establish and operate the Casino within the Project, LICENSEE must remit to PAGCOR on monthly basis, starting from the date the Casino commences operations, the following License Fees, in lieu of all taxes with reference to the Income Component of the Gross Gaming Revenues:
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> (a) 15% of Gross Gaming Revenues generated from High Roller tables;
> (b) 25% of Gross Gaming Revenues generated from non-High Roller tables;
> (c) 25% of Gross Gaming Revenues generated from slot machines and electronic gaming machines;
> (d) 15% of Gross Gaming Revenues generated from Junket Operation;"

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[3] Exhibit "P-4", Docket, vol. III, p. 1272.
[4] Exhibit "P-4", Docket, vol. III. p. 1288.

Section 21 of Article IV of the Provisional License[5] provides in part that PAGCOR shall pay the franchise tax on the gaming revenues of the Consortium, to wit:

> "SECTION 21. FRANCHISE TAX. PAGCOR shall pay the franchise tax on actual Gross Gaming Revenues generated by the Casino ('Franchise Tax'). The License Fees as stipulated under Section 20 hereof is inclusive of the Franchise Tax. As provided under the PAGCOR Charter, the Franchise Tax shall be due and payable quarterly to the national government by PAGCOR."

On January 28, 2013, PAGCOR issued an Amended Certificate of Affiliation and Provisional License certifying that the following companies will be considered as co-licensees and holders of the Provisional License: SMIC, MCE Leisure (Philippines) Corporation ("MCE Leisure" for brevity), MCE Holdings (Philippines) Corporation, MCE Holdings No. 2 (Philippines) Corporation, Belle Corporation, and petitioner.[6]

The Consortium subsequently entered into a Cooperation Agreement[7], which designated MCE Leisure as the special purpose entity with the exclusive management, operation and control of the casino.

On March 13, 2013, Belle Corporation, for its own behalf and that of petitioner and SMIC, entered into an Operating Agreement[8] with MCE Holdings No. 2 (Philippines) Corporation and MCE Leisure for the operation of the casino and hotel. Under the Operating Agreement, in consideration of its appointment as the special purpose entity, MCE Leisure agreed to distribute to petitioner a variable amount as the latter's share in the gaming revenues.[9] MCE Leisure shall likewise be liable for the payment of license fees and other payments to PAGCOR under the Provisional License.[10]

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[5] Exhibit "P-4", Docket, vol. III, p. 1289.
[6] Exhibit "P-5", Docket, vol. III, p. 1303.
[7] Exhibit "P-7", Docket, vol. III, pp. 1305-1511.
[8] Exhibits "P-8" and "P-8-a", Docket, vol. III, pp. 1512-1545.
[9] Exhibit "P-8", Docket, vol. III, p. 1521.
[10] Exhibit "P-8", Docket, vol. III, p. 1522.

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On April 29, 2015, PAGCOR issued a Gaming License[11] to the Consortium as co-licensees and holders of the Regular Casino Gaming License. The Gaming License specifically provides that the Licensee is entitled to the customs duties and tax exemptions specified under Section 13 of Title IV of Presidential Decree (PD) No. 1869 or the PAGCOR Charter.

The BIR issued Revenue Memorandum Circular (RMC) No. 33-2013[12] to clarify the income tax and franchise tax due from PAGCOR, its contractees and licensees, wherein the BIR opined that following the enactment of Republic Act (RA) No. 9337 amending the Tax Code, PAGCOR and its contractees and licensees should be subjected to the Regular Corporate Income Tax (RCIT).

Petitioner reported in its financial statements[13] gaming revenues in the amount of ₱38,809,095.00 for CY 2014, computed as follows:

Gaming Revenue Share (Gross)	₱ 45,674,116.00
Less: PAGCOR License Fee	6,865,021.00
Net Gaming Revenue Share	**₱38,809,095.00**[14]

Petitioner filed its Annual Income Tax Return (ITR) for CY 2014 on April 14, 2015 through the Electronic Filing and Payment System (eFPS).[15] It reported a gross income of ₱26,733,778.00, computed as follows:

Net Sales/Revenues/Receipts/Fees	₱ 38,809,095.00
Less: Cost of Sales/Services	12,075,317.00
Gross Income from Operation	**₱26,733,788.00**[16]

Based on the foregoing, petitioner reported and paid RCIT for TY 2014 amounting to ₱4,812,080.00, computed as follows:

Total Gross Income	₱ 26,733,778.00
Less: Optional Standard Deduction	10,693,511.00
Net Taxable Income	16,040,267.00

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[11] Exhibit "P-6", Docket, vol. III, p. 1304.
[12] Income Tax and Franchise Tax Due from the Philippine Amusement and Gaming Corporation (PAGCOR), its Contractees and Licensees.
[13] Exhibit "P-9", Docket, vol. III, pp. 1546-1579.
[14] Exhibit "P-9", Docket, vol. III, p. 1573.
[15] Exhibit "P-10", Docket, vol. III, pp. 1580-1592.
[16] Exhibit "P-10", Docket, vol. III, p. 1582.

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RCIT Due (30%)	4,812,080.00
Less: Tax Credits/Payements	0.00
Tax Overpayment	**(₱4,812,080.00)**[17]

On August 10, 2016, the Supreme Court promulgated its decision in the case of *Bloomberry Resorts and Hotels, Inc. vs. Bureau of Internal Revenue, represented by Commissioner Kim S. Jacinto-Henares* [18] ("*Bloomberry* Decision" for brevity) ruling that the contractees and licensees of PAGCOR are similarly liable for five percent (5%) franchise tax but are exempt from the payment of all other taxes, including the RCIT.

Hence, petitioner filed an administrative claim for the refund of erroneously paid income tax for CY 2014[19] with the BIR on February 27, 2017.

On March 20, 2017, the BIR Large Taxpayers Service (LTS) issued Letter of Authority (LOA) No. eLA201500034666[20] authorizing Revenue Officers Zenaida Paz, Maria Salud Maddela and Group Supervisor Edison Larin of Revenue District Office (RDO) No. 126 – Regular LT Division III to examine petitioner's books of accounts and accounting records for the period covering January 1, 2014 to December 31, 2014 in relation to its claim for refund of erroneously paid income tax for CY 2014.

Alleging inaction on the part of respondent, petitioner filed its Petition for Review on April 11, 2017.[21]

In his Answer[22] filed on June 16, 2017, respondent avers that petitioner is not entitled to a refund of alleged erroneously paid income taxes for the following reasons:

> "3.1 Taxes paid and collected are presumed to have been made in accordance with the law and implementing regulations.

[17] Exhibit "P-10", Docket, vol. III, p. 1581.
[18] G.R. No. 212530, August 10, 2016.
[19] Exhibit "P-14", Docket, vol. III, pp. 1601-1608.
[20] Exhibit "P-15", Docket, vol. III. p. 1609.
[21] Par. 21, Petition for Review, Docket, vol. I, p. 17.
[22] Docket, vol. I, pp. 361-365.

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3.2 The claim for refund is still under investigation and examination by the Respondent Bureau of Internal Revenue (BIR).

3.3 Tax refunds are in the nature of tax exemptions and are regarded as in derogation of sovereign authority to be construed *strictissimi juris* against the person or entity claiming the exemption.

3.4 Thus, the burden of proof is upon the petitioner to prove that it is entitled to the claim for refund and failure to discharge with the same is fatal to the claim.

3.5 The law is not only construed in *strictissimi juris* against the taxpayer, the pieces of evidence presented entitling a taxpayer to an exemption must be duly proven.

3.6 Petitioner's claim for refund/issuance of tax credit as allegedly erroneously paid income tax was not duly substantiated with proper documentary evidence.

3.7 Also, it should be stressed that petitioner herein is not party to the case of Bloomberry Resorts and Hotels, Inc. vs BIR. The, the decision therein is binding only between the parties to the case. Thus, petitioner cannot seek relief under the judgment.

3.8 Moreover, while the Supreme Court ruled in the case of that the contractees and licensees of PAGCOR, upon payment of the 5% franchise tax, are exempt from all other taxes, including corporate income tax realized from the operations of casinos, the Supreme Court likewise ruled that **<u>the same contractees and licensees of PAGCOR are subject to corporate income tax for income derived from such 'related services'.</u>**

3.9 Petitioner failed to allege that the amount claimed for refund relates solely to its income realized from operation of casinos.

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3.10 Further, in the petition, petitioner claimed that the gaming license was issued to the Consortium to which petitioner belongs. However, petitioner failed to allege that the amount it is claiming for refund or issuance of tax credit relates solely to it and nothing belongs to the other members of the consortium.

3.11 To reiterate, claims for refund are construed strictly against the claimant for the same partake of the nature of exemption from taxation and as such, they are looked upon with disfavor. This is so because exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from the common burden cannot be permitted to exist upon vague implications. The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted."

A Notice of Pre-Trial Conference[23] was issued by the Court on June 22, 2017, setting the case for pre-trial conference on August 24, 2017. Accordingly, respondent's Pre-Trial Brief[24] was filed on August 17, 2017; while petitioner's Pre-Trial Brief[25]was filed on August 18, 2017.

The parties submitted their Joint Stipulation of Facts and Issues[26] on September 13, 2017. Subsequently, the Court issued a Pre-Trial Order[27] on November 17, 2017.

Petitioner presented Mr. Jackson T. Ongsip, petitioner's Chief Financial Officer and Vice President of Finance, as its sole witness.[28] Thereafter, petitioner filed its Formal Offer of Evidence[29] on February 5, 2018 with respondent's Comment on Petitioner's Formal Offer of Evidence filed on February 14, 2018. In the Resolutions dated March

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[23] Docket, vol. I, pp. 366-367.
[24] Docket, vol. I, pp. 376-378.
[25] Docket, vol. I, pp. 380-397.
[26] Docket, vol II, pp. 786-797.
[27] Docket, vol. II, pp. 827-833.
[28] Order dated January 16, 2018, Docket, vol. III, pp. 1238-1239.
[29] Docket, vol. III, pp. 1247-1258.

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12, 2018 and June 14, 2018, the Court admitted all of petitioner's formally offered exhibits.[30]

Petitioner's admitted documentary exhibits are as follows:

Exhibit:	Description:
P-1	Petitioner's SEC Registration No. CS200817609 dated February 2, 2015, with attached Certificate of Filing of Amended Articles of Incorporation
P-2	Petitioner's Original BIR Certificate of Registration (BIR Form No. 2303) dated December 10, 2008
P-3	Petitioner's Amended BIR Certificate of Registration (BIR Form No. 2303) dated December 7, 2016
P-4	PAGCOR Provisional License granted to the Consortium dated December 12, 2008
P-5	PAGCOR Amended Certificate of Affiliation and Provisional License dated January 28, 2013
P-6	PAGCOR Gaming License issued on April 29, 2015
P-7	Cooperation Agreement between SM Investment Corporation, BELLE Corporation and Petitioner dated October 25, 2012
P-8	Operating Agreement between Belle Corporation, MCE Holdings, No.2 (Philippines) Corporation and MCE Leisure (Philippines) Corporation dated March 13, 2013
P-8-a	Schedule 2 attached to the Operation Agreement between Belle Corporation, MCE Holdings, No.2 (Philippines) Corporation and MCE Leisure (Philippines) Corporation
P-9	Petitioner's Audited Financial Statements for CY 2014
P-10	Petitioner's Annual ITR (BIR Form No. 1702) filed on April 14, 2015 with Filing Reference No. 121500011049834
P-10-a	Petitioner's Proof of Payment of Income Tax for CY 2014 filed through the BIR eFPS system dated April 14, 2015
P-11	Petitioner's Original Quarterly Income Tax Return for the 1st Quarter of CY 2014 filed on May 30, 2014, with Filing Reference No. 131400009069048
P-11-a	Petitioner's Amended Quarterly Income Tax Return for the 1st Quarter of CY 2014 filed on August 20, 2014, with Filing Reference No. 131400009510262
P-12	Petitioner's Quarterly Income Tax Return for the 2nd Quarter of CY 2014 filed on August 20, 2014, with Filing Reference No. 131400009510355
P-13	Petitioner's Quarterly Income Tax Return for the 3rd Quarter for CY 2014 filed on November 28, 2014, with Filing Reference No. 131400010045600

[30] Resolution dated March 12, 2018, Docket, vol. III, pp. 1631-1632; Resolution dated June 14, 2018, Docket, vol. III, pp. 1690-1691.

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P-14	Petitioner's Administrative Claim for Refund of Erroneously Paid Income Tax dated February 24, 2017
P-15	BIR Letter of Authority (LOA) No. eLA20150003466 issued on March 20, 2017
P-16	Certification issued by PAGCOR signed by Ramon Stephen R. Villaflor
P-18-a	Official Receipt (OR) No. 6703155 dated January 9, 2015 issued by the PAGCOR Corporate-FTD for the amount of Php46,959,091.57
P-18-b	OR No. 6703156 dated January 9, 2015 issued by the PAGCOR Corporate-FTD for the amount of Php231,727.50
P-19-b	Journal Voucher No. 022015-01 dated February 17, 2015
P-19-c	BDO Deposit Slip dated February 17, 2015 for the account of Petitioner in the amount of Php38,032,913.10
P-20-a	Acknowledgment Receipt No. 001 dated February 17, 2015 for the amount of Php38,032,913.10
P-20-b	OR No. 0000001 dated November 11, 2015 issued by Petitioner for the amount of Php38,809,913.10
P-22	Amended Sworn Statement of Mr. Jackson T. Ongsip dated January 10, 2018
P-22-a	Signature of Mr. Jackson T. Ongsip

Respondent presented Revenue Officer Zenaida Paz as his sole witness.[31] Afterwards, respondent formally offered its evidence on April 13, 2018, with petitioner's Comment (Re: Respondent's Formal Offer of Evidence)[32] filed on May 3, 2018. In a Resolution[33] issued on May 23, 2018, the Court admitted all of respondent's evidence, to wit:

Exhibit:	**Description:**
R-1	Letter of Authority SN:eLA201500034666 dated March 20, 2017
R-2	Denial Letter dated June 6, 2017
R-3	BIR Records consisting of one (1) folder
R-4	Judicial Affidavit of Revenue Officer Zenaida Paz
R-4-A	Signature of Zenaida Paz on her Judicial Affidavit

After the filing of respondent's Memorandum on June 27, 2018 and of petitioner's Memorandum on August 3, 2018, the Court declared the case submitted for decision on August 14, 2018.

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[31] Minutes of the Hearing dated April 10, 2018, Docket, vol. III, pp. 1638-1640.
[32] Docket, vol. III, pp. 1663-1665.
[33] Resolution dated May 23, 2018, Docket, vol. III, pp. 1684-1685.

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The parties stipulated on the following issue[34] for the Court's determination:

> Whether or not petitioner is entitled to its claim for refund of or issuance of TCC for the amount of ₱4,812,080.00 representing petitioner's erroneously paid income tax for CY 2014.

Pertinent to the resolution of the submitted issue are Sections 204(C) and 229 of the NIRC of 1997, as amended, which are quoted hereunder for ready reference:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –
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> xxx xxx xxx
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> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax** or penalty: *Provided, however*, that a return filed showing an overpayment shall be considered as a written claim for credit or refund."
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> "SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully

[34] Pre-Trial Order, Docket, vol. II, p. 828.

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collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however*, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." *(Emphasis supplied)*

Pursuant to the afore-quoted provisions, to be entitled to a refund of erroneously or illegally collected tax, the following requisites must be satisfied:

1. that the tax has been erroneously or illegally collected, or the penalty has been collected without authority, and/or any sum has been excessively or in any manner wrongfully collected; and

2. that the claim for refund or credit has been filed within two (2) years from the date of payment of tax, or penalty, regardless of any supervening cause that may arise after payment.

The Court finds it proper to determine first whether petitioner's claim for refund was timely filed.

The Supreme Court has consistently ruled that a claim for refund or credit with the BIR and the subsequent appeal to this Court must be filed within two (2) years from the date of payment of the tax.[35]

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[35] *Commissioner of Internal Revenue vs. Victorias Milling Co., Inc. and The Court of Tax Appeals*, G.R. No. L-24108, January 3, 1968.

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Based on the records of the case, petitioner filed its Annual ITR for CY 2014[36] and remitted[37] to the BIR the income tax due on April 14, 2015.

Counting two years from such date, petitioner had until April 14, 2017 within which to file its claim both in the administrative and judicial levels. Clearly, petitioner's administrative claim[38] filed on February 27, 2017 and the subsequent appeal before this Court on April 11, 2017 were filed within the two-year prescriptive period.

The Court will now proceed to determine the merits of the case.

Petitioner contends that by virtue of the Provisional License[39] granted by PAGCOR on December 12, 2008 in favor of the Consortium of petitioner with SM Investments Corporation (SMIC), SM Land, Inc., SM Hotels Corporation, SM Commercial Properties, Inc., and SM Development Corporation, as well as, the Amended Certificate of Affiliation and Provisional License[40] certifying that SMIC, MCE Leisure, MCE Holdings (Philippines) Corporation, MCE Holdings No. 2 (Philippines) Corporation, Belle Corporation, and petitioner are considered as co-licensees and holders of the Provisional License issued on December 12, 2008 by PAGCOR, the tax exemption privileges of PAGCOR extend to it pursuant to Section 13(2) of the PAGCOR Charter (Presidential Decree No. 1869) as amended by Republic Act No. 9487, the pertinent portion of which provides:

> "SECTION 13. *Exemptions.* –
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> xxx xxx xxx
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> (2) *Income and other taxes.* – (a) Franchise Holder: No tax of any kind or form, income or otherwise as well as fees, charges or levies of whatever nature, whether National or Local shall be assessed and collected under this Franchise from the Corporation; nor shall any form of tax or charge attach in any way to the earnings of the Corporation, except a Franchise Tax of five percent (5%)

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[36] Exhibit "P-10", Docket, vol. III, pp. 1580-1592.
[37] Exhibit "P-10-a", Docket, vol. III, pp. 1590-1592.
[38] Exhibit "P-14", Docket, vol. III, pp. 1601-1608.
[39] Exhibit "P-4", Docket, vol. III, pp. 1272-1302.
[40] Exhibit "P-5", Docket, vol. III, p. 1303.

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of the gross revenue or earnings derived by the Corporation from its operation under this Franchise. Such tax shall be due and payable quarterly to the National Government and shall be in lieu of all kinds of taxes, levies, fees or assessments of any kind, nature or description, levied, established or collected by any municipal, provincial or national government authority.

(b) *Others:* The exemptions herein granted for earnings derived from the operations conducted under the franchise specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, shall inure to the benefit of and extend to corporation(s), association(s), agency(ies), or individual(s) with whom the Corporation or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise and to those receiving compensation or other remuneration from the Corporation or operator as a result of essential facilities furnished and/or technical services rendered to the Corporation or operator."

Petitioner posits that based on the foregoing, the privilege granted to PAGCOR inures to the benefit of the following entities: (a) PAGCOR, as the franchise holder; (b) other entities with whom PAGCOR or an operator has any contractual relationship in connection with the operations of the casino authorized to be conducted under PAGCOR's franchise; and (c) the contractors or suppliers of essential facilities and technical services to PAGCOR or an operator.[41]

The Court agrees with petitioner.

In the case of *Philippine Amusement and Gaming Corporation (PAGCOR) vs. The Bureau of Internal Revenue, et al.*[42], the Supreme Court affirmed the tax exemption of PAGCOR in so far as its gaming revenues are concerned, to wit:

"***First.*** Under P.D. 1869, as amended, petitioner is subject to income tax only with respect to its operation of related services. Accordingly, the income tax exemption

[41] Par. 41, Petitioner's Memorandum, Docket, vol. III, p. 1716.
[42] G.R. No. 215427, December 10, 2014.

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ordained under Section 27 (c) of R.A. No. 8424 clearly pertains only to petitioner's income from operation of related services. Such income tax exemption could not have been applicable to petitioner's income from gaming operations as it is already exempt therefrom under P.D. 1869, as amended, to wit:

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As we see it, there is no conflict between P.D. 1869, as amended, and R.A. No. 9337. The former lays down the taxes imposable upon petitioner, as follows: (1) *a five percent (5%) franchise tax* of the gross revenues or earnings derived from its operations conducted under the Franchise, which shall be due and payable *in lieu* of all kinds of taxes, levies, fees or assessments of any kind, nature or description, levied established or collected by any municipal, provincial or national government authority; and (2) *income tax* for income realized from other necessary and related services, shows and entertainment of petitioner. With the enactment of R.A. No. 9337, which withdrew the income tax exemption under R.A. No. 8424, petitioner's tax liability on income from other related services was merely reinstated.

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In this regard, we agree with petitioner that if the lawmakers had intended to withdraw petitioner's tax exemption of its gaming income, then Section 13(2)(a) of P.D. 1869 should have been amended expressly in R.A. No. 9487, or the same, at the very least, should have been mentioned in the repealing clause of R.A. No. 9337. However, the repealing clause never mentioned petitioner's Charter as one of the laws being repealed. xxx"

Moreover, in the *Bloomberry* Decision[43], the Supreme Court categorically pronounced that like PAGCOR, its contractees and licensees remain exempted from the payment of corporate income tax and other taxes on their gaming operations:

[43] G.R. No. 212530, August 10, 2016.

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"Bearing in mind the parties involved and the similarities of the issues submitted in the present case, we are now presented with the prospect of finally resolving the confusion caused by the amendments introduced by RA No. 9337 to the NIRC of 1997, and the subsequent issuance of RMC No. 33-2013, affecting the tax regime not only of PAGCOR but also its *contractees and licensees* under the existing laws and prevailing jurisprudence.

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, quoted hereunder for ready reference:

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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 insures to their benefit.**

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As the PAGCOR Charter states in unequivocal terms that **exemptions 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 PAGCOR or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be**

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> **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.**
>
> For the same reasons that made us conclude in the 10 December 2014 Decision of the Court sitting in En Banc in G.R. No. 215427 that PAGCOR is subject to corporate income tax for 'other related services', we find it logical that its *contractees and licensees* shall likewise pay corporate income tax for income derived from such 'related services'.
>
> Simply then, in this case, we adhere to the principle that since the statute is clear and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This is the plain meaning rule or *verba legis*, as expressed in the maxim *index animi sermo* or speech is the index of intention.
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> 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.**" *(Emphasis supplied)*

Clearly, petitioner's income realized from gaming operations are not subject to income tax.

However, respondent argues that while the Supreme Court ruled that the contractees and licensees of PAGCOR, upon payment of the 5% franchise tax, are exempt from all other taxes, including corporate income tax realized from the operations of casinos, the Supreme Court likewise ruled that the same contractees and licensees of PAGCOR are subject to corporate income tax for income derived from such "related services".[44]

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[44] Respondent's Memorandum, Docket, vol. III, p. 1697.

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Respondent alleges that petitioner failed to prove that the amount claimed for refund relates solely to its income realized from operation of casinos. Further, petitioner purportedly failed to prove that the amount it is claiming for refund or issuance of tax credit relates solely to it and nothing belongs to the other members of the consortium.[45]

Petitioner submits that the revenues it earned during CY 2014 relates entirely to the gaming operations covered by the franchise from PAGCOR, and were duly subjected to 5% franchise tax.

Petitioner contends that it is duly organized and existing under Philippine laws and authorized, among others, to acquire interest in gaming enterprises and franchised technologies,[46] as stated in its Amended Articles of Incorporation, *viz*:[47]

> "xxx That the primary purpose of this corporation is
>
> To acquire interest in the gaming enterprises and franchised technologies; to purchase, subscribe for or otherwise acquire, own, hold, use, sell, assign, transfer, mortgage, pledge, exchange or dispose of real or personal properties of every kind and description, including shares of stock, whether listed in the stock exchange or not, voting trust certificates, certificates of participation, share warrants, option contract and other securities and to pay therefor, in whole or in part, cash, property or stock bonds and securities issued by this or another corporation; To receive, collect, and/or dispose dividends, interest or other income from real and personal properties and securities held or in respect thereof to possess and exercise all the rights, powers and privileges of ownership, including voting powers on stocks and to do every act and thing covered generally by the denomination 'holding corporation'; Provided, however company or securities broker or dealer nor exercise the functions of trust company."

Moreover, petitioner alleges that it has interest in gaming enterprise as a member of a Consortium that was granted a Provisional

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[45] Respondent's Memorandum, Docket, vol. III, pp. 1697-1698.
[46] Q&A6, Exhibit "P-22" (Amended Sworn Statement of Jackson T. Ongsip), Docket, vol. II, p. 847.
[47] Exhibit "P-1", Docket, vol. III, pp. 1259-1269.

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License[48] by PAGCOR on December 12, 2008. Under the Provisional License, the Consortium was licensed to establish and operate a casino within Bagong Nayong Pilipino Manila Bay Entertainment City, Parañaque City, and in the Newport City Integrated Resort, Pasay City, wherein petitioner was named as the special purpose entity to engage in the casino business and appoint operators therefor.[49]

Petitioner avers that on January 28, 2013, PAGCOR issued an Amended Certificate of Affiliation & Provisional License[50] certifying that the following companies will be considered as co-licensees and holders of the Provisional License: SMIC, MCE Leisure, MCE Holdings (Philippines) Corporation, MCE Holdings No. 2 (Philippines) Corporation, Belle Corporation, and petitioner (collectively, as the Consortium).[51]

According to petitioner, the Consortium subsequently entered into a Cooperation Agreement[52], which designated MCE Leisure as the special purpose entity with the exclusive management, operation and control of the casino.[53] Further, on March 13, 2013, Belle Corporation, for its own behalf and that of petitioner and SMIC, entered into an Operating Agreement with MCE Holdings No. 2 (Philippines) Corporation and MCE Leisure[54] for the operation of the casino and hotel. Under the Operating Agreement, in consideration of its appointment as the special purpose entity, MCE Leisure agreed to distribute to petitioner a variable amount as the latter's share in the gaming revenues. MCE leisure shall also be liable for the remittance of license fees and any other payments to PAGCOR under the Provisional License.[55]

Petitioner further avers that the license fee is payable to PAGCOR pursuant to Section 20 of Article IV of the Provisional License, to wit:

1. 15% of Gross Gaming Revenue generated from High Roller Tables;

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[48] Exhibit "P-4", Docket, vol. III, pp. 1272-1302.
[49] Q&A14, Exhibit "P-22", Docket, vol. II, p. 849.
[50] Exhibit "P-5", Docket, vol. III, p. 1303.
[51] Par. 7, Petitioner's Memorandum, Docket, vol. III, pp. 1706-1707.
[52] Exhibit "P-7", Docket, vol. III, pp. 1305-1511.
[53] Par. 8, Petitioner's Memorandum, Docket, vol. III, p. 1707.
[54] Exhibits "P-8" to "P-8-a", Docket, vol. III, pp. 1512-1545.
[55] Par. 9, Petitioner's Memorandum, Docket, vol. III, p. 1707; Q&A33, Exhibit "P-22", Docket, vol. II, p. 855.

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2. 25% of Gross Gaming Revenue generated from non-High Roller Tables;
3. 25% of Gross Gaming Revenues generated from slot machines and electronic gaming machines;
4. 15% of Gross Gaming Revenues generated from Junket Operation.

This amount is allegedly remitted to PAGCOR on a monthly basis, in lieu of all taxes with reference to the income component of the licensee's gross gaming revenues.[56]

Furthermore, Section 21 of Article IV of the Provisional License provides in part that PAGCOR shall pay the franchise tax on the gaming revenues of the Consortium:

> "SECTION 21. FRANCHISE TAX. PAGCOR shall pay the franchise tax on actual Gross Gaming Revenues generated by the Casino ('Franchise Tax'). The License Fees as stipulated under Section 20, hereof is inclusive of the Franchise Tax. As provided under the PAGCOR Charter, the Franchise Tax shall be due and payable quarterly to the national government by PAGCOR."

As a contractee and licensee of PAGCOR, petitioner allegedly earned gaming revenues in CY 2014 coming from its share in the operation of City of Dreams Manila. Pursuant to MCE Leisure's designation as the exclusive operator of the City of Dreams Manila, MCE Leisure distributes to petitioner a variable amount as the latter's share in the gaming revenues of the casino.[57]

The Court finds petitioner entitled to the present claim for refund or issuance of tax credit certificate.

In its Audited Financial Statements (AFS)[58] and Annual ITR for CY 2014, petitioner declared Gaming Revenue Share/Revenues in the amount of ₱38,809,095.00; and as stated under Note 9 of the AFS, petitioner started to realize its gaming revenue share following the soft opening of the City of Dreams Manila integrated resort and casino

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[56] Q&A32, Exhibit "P-22", Docket, vol. II, p. 855.
[57] Par. 12, Petitioner's Memorandum, Docket, vol. III, p. 1708.
[58] Exhibit "P-9", Docket vol. III, p. 1552.

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operations on December 14, 2014.[59] The gaming revenue share of ₱38,809,095.00 was computed as follows:

Gaming Revenue Share (Gross)	₱ 45,674,116.00
Less: PAGCOR License Fee	6,865,021.00
Net Gaming Revenue Share	**₱38,809,095.00**[60]

Petitioner submitted the following documents proving that the amount of gaming revenue in CY 2014 consists entirely of its revenue share from the operations of the casino:

Exhibit	Supporting Document
P-18-a[61]	Official Receipt No. 6703155 dated January 9, 2015 issued by PAGCOR Corporate-FTD for the amount of ₱46,959,091.57 to MCE Leisure (Philippines) Corporation, representing remittance of license fees for casino operations for the month of December 2014.
P-18-b[62]	Official Receipt No. 6703156 dated January 9, 2015 issued by PAGCOR Corporate-FTD for the amount of ₱231,727.50 to MCE Leisure (Philippines) Corporation, representing remittance of license fees for poker operations for the month of December 2014.
P-19-b[63]	Journal Voucher No. 022015-01 dated February 17, 2015, showing that petitioner properly recorded its gaming revenue share for the period December 14 to 31, 2014.
P-19-c[64]	BDO Deposit Slip dated 2/17/15 for the amount of ₱38,032,913.10, proving that petitioner received the same amount representing its share in the gaming revenues for the period December 14 to 31, 2014.
P-20-a[65]	Acknowledgement Receipt No. 001 dated February 17, 2015 for the amount of ₱38,032,913.10, proving that petitioner received the same amount representing its share in the gaming revenues for the period December 14 to 31, 2014.
P-20-b[66]	Official Receipt No. 0000001 dated November 11, 2015 for the amount of ₱38,032,913.10, proving that petitioner received the same amount representing its share in the gaming revenues for the period December 14 to 31, 2014.

The said gaming revenue share was then subjected to regular income tax rate of thirty percent (30%) of which the corresponding

[59] Docket, vol. II, p. 1573.
[60] Exhibit "P-9", Docket, vol. III, p. 1573.
[61] Docket, vol. III, p. 1611.
[62] Docket, vol. III, p. 1612.
[63] Docket, vol. III, p. 1614.
[64] Docket, vol. III, p. 1615.
[65] Docket, vol. III, p. 1616.
[66] Docket, vol. III, p. 1618.

income tax due of ₱4,812,080.00, as computed below, was paid by petitioner to the BIR on April 14, 2015 through the Electronic Filing and Payment System:[67]

Net Sales/ Revenues/ Receipts/ Fees	₱ 38,809,095.00
Less: Cost of Sales/Services	12,075,317.00
Gross Income from Operation	**₱26,733,778.00**
Less: Optional Deduction (40%)	10,693,511.00
Net Taxable Income	₱ 16,040,267.00
Income Tax Rate	30%
Income Tax Due other than MCIT	₱ 4,812,080.00
Minimum Corporate Income Tax (MCIT) *(2% of Gross Income)*	534,676.00
Total Income Tax Due *(Normal Income Tax or MCIT, whichever is higher)*	**₱ 4,812,080.00**

Considering that petitioner is exempted from paying income tax realized from its gaming revenues, the amount of ₱4,812,080.00 represents erroneously paid income tax for CY 2014, which is refundable pursuant to Sections 204(C) and 229 of the NIRC of 1997, as amended.

WHEREFORE, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in the amount of **₱4,812,080.00** in favor of petitioner, representing its erroneously paid income tax for CY 2014.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

[67] Exhibits "P-10" to "P-10-a", Docket, vol. III, pp. 1580-1592.

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
Chairperson, Special First Division