REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

ACESITE (PHILIPPINES) HOTEL CORPORATION, Petitioner,	**CTA EB CASE NO. 946** (CTA AC No. 73)
- *versus* -	Present: *Del Rosario, P.J.* *Castañeda, Jr.,* *Bautista,* *Uy,* *Casanova,* *Fabon-Victorino,* *Mindaro-Grulla,* *Cotangco-Manalastas,* and *Ringpis-Liban, JJ.*
LIBERTY TOLEDO, IN HER CAPACITY AS CITY TREASURER OF MANILA, AND THE CITY OF MANILA, Respondents.	**Promulgated:** DEC 17 2013 Apolinario 9:00 a.m.

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DECISION

BAUTISTA, J.:

The Case

Before the Court *En Banc* is a Petition for Review,[1] filed on October 11, 2012, assailing the Decision dated May 24, 2012,[2] rendered by the then First Division of the Court ("Court in Division"), which dismissed the Petition for Review, docketed as CTA AC No. 73, on jurisdictional ground; and the Resolution dated September 19, 2012,[3] which denied the Motion for Reconsideration for lack of merit.

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[1] *Rollo*, CTA EB Case No. 946 (CTA AC No. 73), pp. 1-106, with Annexes.
[2] Penned by Associate Justice Esperanza R. Fabon-Victorino, with then Presiding Justice Ernesto D. Acosta, and Associate Justice Erlinda P. Uy, concurring; *Rollo*, pp. 35-55; *Annex "B."*
[3] *Rollo*, pp. 57-70; *Annex "C."*

The Antecedent Facts

The relevant antecedents are succinctly recited in the Decision dated May 24, 2012, as follows:

> "Petitioner Acesite is a duly organized domestic corporation with office address at the Manila Pavilion Hotel, United Nations Avenue, Ermita, Manila. It is into hostelry business and is the owner-operator of the Manila Pavilion Hotel. It leases to the Philippine Amusement and Gaming Corporation (PAGCOR) 7,017.43 square meters of its hotel premises for the conduct of the latter's business operations. In addition, it caters to the lodging, billeting, food and beverage requirements, among others, of PAGCOR's clients and employees. Out of the said contractual relation, it derives substantial revenues from PAGCOR.
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> On the other hand, respondent Liberty Toledo is the City Treasurer of the other respondent City of Manila, [which] is a municipal corporation constituting a political subdivision of the Republic of the Philippines vested with and exercising governmental functions. Both may be served notice at the City Hall Building, Manila.
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> On July 13, 2007, petitioner received a Demand Letter of even date with Notice of Assessment from respondent Toledo, demanding payment of accumulated business tax deficiency for its revenues derived from PAGCOR amounting to ₱45,575,011.72, covering the period from year 2004 to June 30, 2007.
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> On September 7, 2007, petitioner filed a Protest which respondent Toledo denied in a letter dated September 10, 2007, explaining the action taken in this wise:
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>> 'Relative thereto, this Office, much to our regret, has already held, in our letter dated April 14, 2004, 'that Acesite (Philippines) Hotel Corporation is not exempt from paying local taxes, fees and charges is not [*sic*] clearly granted by law and is derived [*sic*] only from the alleged exemption of the Philippine Amusement and Gaming Corporation, a government-owned and controlled corporation whose tax exemption has been effectively withdrawn by Section 193 of R.A. 7160, otherwise known as the Local Government Code of 1991.'

> Our position has been sustained by the Regional Trial Court, Branch 15, Manila, in Civil Case No. 04-109796, entitled *Acesite (Philippines) Hotel Corporation vs. Liberty Toledo, et al.*, wherein it was held in its Decision dated September 1, 2006 that 'Thus, by express provision of the law, PAGCOR as an instrumentality of the National Government, is beyond the reach of the local taxing power. However, the petitioner Acesite does not share this privilege. Concededly under PD 1869, the income of entities derived from transactions with PAGCOR were also exempted from the payment of taxes, xxx.
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> With the passage of the Local Government Code, however, privileges of entities not exempted has been withdrawn.'

The cited letter of denial was received by petitioner on September 12, 2010.

On October 26, 2007, petitioner assailed the denial of its Protest with the RTC, Branch 17 of Manila. The case entitled *Acesite (Philippines) Hotel Corporation v. Liberty Toledo, in her capacity as City Treasurer of Manila and City of Manila* was docketed as Civil Case No. 07-118174."[4]

The Ruling of the Regional Trial Court

The Regional Trial Court ("RTC"), Branch 17 of Manila, in a Decision dated December 7, 2010,[5] ruled as follows:

> "There is no question that PAGCOR is a government instrumentality under its charter. Its tax exempt status, however, which inures to the benefit of and extends to corporations, associations, agencies or individuals with whom PAGCOR has any contractual relationship in connection with the operations of the casinos authorized to be conducted under its Franchise is not absolute when it comes to local taxation.

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[4] *Ibid.*, pp. 36-38. Citations omitted.
[5] *Ibid.*, pp. 79-84; *Annex "G."*

A different ruling on the matter would downplay the power of local autonomy which was the reason for the enactment of Republic Act No. 7160 otherwise known as the Local Government Code of 1991.

The doctrine laid down in *Basco v. PAGCOR, G.R. No. 91649, May 14, 1991* is no longer controlling.

A drastic turn-around has been decreed by the Supreme Court in the case of *National Power Corporation v. City of Cabanatuan, G.R. No. 149110, April 9, 2003*, where it ruled, thus:

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The subsequent cases of *National Power Corporation v. City of Cabanatuan, G.R. No. 149110, April 9, 2003; Batangas Power Corporation v. Batangas City, et al., G.R. No. 152675, April 28, 2004; National Power Corporation v. Province of Isabela, et al., G.R. No. 165827, June 16, 2006;* and *GSIS v. City Assessor of Iloilo City, G.R. No. 147192, June 27, 2006*, among others, showed the trend of the Supreme Court in recognizing the removal of the blanket exclusion of government instrumentalities from local taxation as one of the most significant provisions of the 1991 LGC. Section 193 of the LGC was held to be an express; albeit general, repeal of all statutes granting exemptions from local taxes. It thus withdrew, subject to limited exceptions, the sweeping tax privileges previously enjoyed by private and public corporations.

The same ruling should thus be applied in this case.

At the core of the issue is Section 193 of the Local Government Code which provides:

xxx xxx xxx

It is a basic precept of statutory construction that the express mention of one person, thing, act, or consequence excludes all others as expressed in the familiar maxim *expressio unius est exclusio alterius*. Not being a local water district, a cooperative registered under R.A. No. 6938 or a non-stock and non-profit hospital or educational institution, petitioner (which derives its tax exemption from its contractual relationship with PAGCOR) clearly does not belong to the exception. It is therefore incumbent upon the petitioner to point to some provisions of the LGC that expressly grant it exemption from local taxes. But this would be an exercise in futility. Section 137 of the LGC clearly states that the LGUs can impose franchise tax '*notwithstanding any exemption granted by any law or other special law.*' This particular provision of the LGC does not admit any exception. (*National Power Corporation v. Province of Isabela, et al., G.R. No. 165827, June 16, 2006*)

No matter which way it argues, therefore, petitioner's claim to an absolute tax exempt privilege does not come close to shielding such privilege from the taxing powers of the local government.

Petitioner nonetheless cites *Commissioner of Internal Revenue v. Acesite (Philippines) Hotel Corporation, G.R. No. 147295, February 16, 2007,* in adducing that the exemption of PAGCOR from VAT likewise extends to Acesite; in the same manner that PAGCOR's tax-exempt privilege from local business tax should also extend to Acesite.

The premise is erroneous.

The imposition of VAT under Republic Act No. 8424 or the Tax Reform Act of 1997 is not an imposition of the local government. xxx.

Indeed, the legal effect of the constitutional grant to local governments simply means that in interpreting statutory provisions on municipal taxing powers doubts must be resolved in favor of municipal corporations. To begin with, tax exemptions are highly disfavored. xxx.

In fine, under these circumstances, the withdrawal of petitioner's tax exempt privilege should now be put into effect under [Section] 193 of the Local Government Code of 1991. Petitioner is thus liable to immediately pay the City of Manila its assessment of local tax deficiency in the amount of ₱45,575,011.72 for the period 2004 to June 30, 2007.

WHEREFORE, the *Appeal* filed by petitioner Acesite (Philippines) Hotel Corporation is **DISMISSED** for lack of merit.

SO ORDERED."[6]

Acting on the Motion for Reconsideration filed by petitioner, the RTC, Branch 17 of Manila, denied the same in an Order dated February 28, 2011.[7]

[6] *Ibid.*, pp. 81-84.
[7] *Ibid.*, pp. 85-86; *Annex "H."*

Hence, the Petition for Review filed before the Court in Division on April 8, 2011, docketed as CTA AC No. 73, arguing that:

> A.
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> PAGCOR IS STILL EXEMPT FROM PAYMENT OF LOCAL TAXES; REPUBLIC ACT 7160 DID NOT AMEND P.D. 1869; THERE IS A CLEAR LEGISLATIVE INTENT TO KEEP THE PROVISIONS OF THE PAGCOR CHARTER INTACT AND EFFECTIVE;
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> B.
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> PAGCOR IS EXEMPT AND INSULATED FROM DIRECT AND INDIRECT TAXES; [and]
>
> C.
>
> PETITIONER'S REVENUES DERIVED FROM ITS CONTRACTUAL RELATIONSHIP WITH PAGCOR IS EXEMPT FROM LOCAL TAXES; THE POSSIBLE BURDEN OF INDIRECT TAXATION CANNOT BE SHIFTED TO PAGCOR.

In her Comment filed on May 13, 2011, respondent moves to dismiss the case for lack of factual and legal bases.[8]

The Ruling of the Court in Division

The Court in Division issued a Decision dated May 24, 2012, ruling as follows:

> "**WHEREFORE,** the Petition for Review dated April 7, 2011 filed by Acesite (Philippines) Hotel Corporation, is hereby **DISMISSED**, on jurisdictional ground.
>
> **SO ORDERED.**"[9]

Aggrieved, petitioner filed a Motion for Reconsideration dated June 13, 2012, which was denied as well in a Resolution dated September 19, 2012.[10]

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[8] *Ibid.*, pp. 39-40.
[9] *Ibid.*, p. 54.
[10] *Supra*, note 3.

The Issues

Hence, the present Petition for Review, where petitioner argues based on the following grounds:

I. PETITIONER FILED ITS APPEAL WITH THE REGIONAL TRIAL COURT WITHIN THE REGLEMENTARY PERIOD AND THEREFORE, THE COURT *A QUO* HAD JURISDICTION TO DETERMINE AND DECIDE THE APPEAL FILED BY PETITIONER;

II. PAGCOR IS STILL EXEMPT FROM PAYMENT OF LOCAL TAXES, DIRECT AND INDIRECT TAXES; and

III. PETITIONER'S REVENUES DERIVED FROM ITS CONTRACTUAL RELATIONSHIP WITH PAGCOR IS EXEMPT FROM LOCAL TAXES; THE POSSIBLE BURDEN OF INDIRECT TAXATION CANNOT BE SHIFTED FROM PAGCOR.[11]

Petitioner's Arguments

Petitioner maintains that based on the records of the case – Proclamation No. 1397 dated October 12, 2007;[12] Postal Registry Receipt No. 1310 dated October 15, 2007; Postal Money Order Remitter's Receipt dated October 15, 2007; Certification dated June 6, 2012 issued by the Philippine Postal Corporation;[13] and Registry Return Receipts[14] – it filed the Petition before the RTC by registered mail within the reglementary period to file an appeal.

Petitioner also insists that Presidential Decree ("PD") No. 1869,[15] or the PAGCOR's Charter, provides for a comprehensive tax exemption,

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[11] *Rollo*, p. 6.
[12] *Ibid.*, p. 87; *Annex "I."*
[13] *Ibid.*, p. 105; *Annex "K."*
[14] *Ibid.*, p. 106; *Annex "L."*
[15] Consolidating and Amending Presidential Decree Nos. 1067-a, 1067-b, 1067-c, 1399 and 1632, Relative to the Franchise and Powers of the Philippine Amusement and Gaming Corporation (PAGCOR) dated July 11, 1983.

except for the five percent (5%) franchise tax, which similarly extends to persons connected with its casino operations. In the same vein that PAGCOR as an instrumentality of the government and thus has a tax-exempt status, with petitioner leasing a portion of its hotel premises to it, the local government has no power to impose tax on the revenues derived from such contractual relation, contrary to the withdrawal made by Republic Act ("RA") No. 7160,[16] or the Local Government Code.

Respondent's Counter-Arguments

On the other hand, respondent Toledo counters that the withdrawal of tax exemption privileges of government-owned and -controlled corporations by RA No. 7160 has long been settled.

Further, she asserts that in accordance with the ruling of the Supreme Court in the case of *Commissioner of Internal Revenue v. Acesite (Philippines) Hotel Corporation*,[17] the tax exemption that may be extended to petitioner pertains only to taxes under the National Internal Revenue Code, particularly value-added taxes, and not to local taxes.

The Ruling of the Court En Banc

The Petition for Review is bereft of merit.

In the assailed Decision, the dismissal of the case at bench has been stated as follows:

> "The Court finds the timeliness of filing of the appeal with the RTC a very crucial issue that must be addressed first. And Section 195 of the Local Government Code of 1991 (R.A. No. 7160) is categorical on the matter, thus:
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> xxx xxx xxx
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> Evident from the foregoing provision that an aggrieved taxpayer has thirty (30) days from receipt of the denial of his protest, or from the lapse of the sixty-day period for local treasurer to act on the protest,

[16] An Act Providing for a Local Government Code of 1991, dated October 10, 1991.
[17] G.R. No. 147295, February 16, 2007, 516 SCRA 93.

within which to appeal to the court of competent jurisdiction; failure to do so shall render the impugned assessment conclusive and unappealable. The provision is clear and unambiguous. It has been held that where the law speaks in clear and categorical language, there is no room for interpretation. There is only room for application.

There is no denying that petitioner received the adverse decision on its protest on September 12, 2007. Counting from the said date, petitioner had 30 days or until October 12, 2007, within which to file its appeal with the RTC. Petitioner explains that October 12, 2007 – the last day for filing the appeal with the RTC – fell on a Friday declared a national holiday in celebration of the Feast of Ramadan or Eid'l Fitr pursuant to Proclamation No. 1397 issued by then President Gloria Macapagal-Arroyo. So petitioner filed its appeal with the RTC through registered mail on the next working day October 15, 2007, a Monday. But mere allegation is not proof. The docket of the case, including those from the RTC reveals that there is no evidence to substantiate this contention. Note that timeliness of an appeal is a factual issue that requires a review or evaluation of evidence on when the case was actually mailed or filed and received by the appellate court.

Plain from the impugned RTC Decision of December 7, 2010 and from the record that the appeal was received by the court *a quo* on October 26, 2007 or way beyond the 30-day reglementary period for appeal. There is nothing on the record that shows that it was filed either personally or through mail on October 15, 2007 as claimed by petitioner. In the meantime, the subject assessment became final and unappealable depriving the RTC of competence to entertain it. In other words, the RTC no longer had jurisdiction to determine and decide petitioner's appeal."[18]

Upon filing of its Motion for Reconsideration, petitioner has attached several documents to prove that it had seasonably filed its appeal with the RTC. Nevertheless, the Court in Division ruled as follows:

"While it may seem that the appeal was seasonably filed with the RTC pursuant to Section 3, Rule 13 of the Rules of Court, it bears stressing that there was nothing in the record of the case that would indisputably show that it was timely filed and perfected on October 15, 2007. In fact, only in this level and upon the filing of the Motion for Reconsideration that documents on this crucial issue were submitted to the Court, precisely the Court's observation in the assailed Decision of

[18] *Rollo*, pp. 46-48. Citations omitted.

May 2[4], 2012 that no evidence was in the record to substantiate petitioner's contention that it timely took action to assail the adverse decision of respondents. Moreover, the documents appended to the Motion for Reconsideration were not testified to, identified or even referred to in any of the pleadings filed by petitioner.

The Court could not just recklessly take hook, line and sinker, absent any substantiation, petitioner's contention that the appeal with the RTC was seasonably taken. Not even the Order dated July 30, 2012, directing the parties to file their respective memoranda considering that only a legal issue was involved, could sway the Court to the opposite direction.

But even granting that the Petition with the RTC was instituted to assail the denial of petitioner's protest over the assessment of local tax, denial is still in order.

The Court is in agreement with the RTC that only a legal question is involved in the instant case - whether petitioner is exempt from paying direct or indirect tax for its revenues derived from its contractual relationship with PAGCOR amounting to ₱45,575,011.72, covering the period from 2004 to June 30, 2007.

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The alleged exemption of PAGCOR from local taxes is no longer a novel issue. Jurisprudence is replete with cases holding that government instrumentalities, such as PAGCOR, are no longer exempt from the assessment and payment of local taxes, in particular business or franchise tax, under Republic Act (R.A.) No. 7160, also known as the Local Government Code of the Philippines (LGC).

Indeed, Section 193 of the LGC has revoked the blanket exemption of government instrumentalities from the coverage of local taxation. Section 193 of the LGC provides, as follows:

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The application of Section 193 and the corresponding removal of the blanket exemption of government instrumentalities from the coverage of local taxation is the ruling of the Supreme Court in the case of *National Power Corporation vs. City of Cabanatuan*, which held, as follows:

xxx xxx xxx

It is plain therefore that PAGCOR, not being a local water district, a cooperative registered under R.A. No. 6938, or a non-stock and non-profit hospital or education institution, is definitely covered by the revocation of the blanket exemption of government instrumentalities from the coverage of local taxation.

Further, the business tax being imposed by respondent in the instant case is a franchise tax. Section 137 of the LGC provides sufficient legal basis for the imposition of the same by the local government units. The said provision reads as follows:

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The explicit language of Section 137 authorizing the province to impose franchise tax 'notwithstanding any exemption granted by any law or other special laws' is all-encompassing and clear. The franchise tax is imposable despite any exemption enjoyed under special laws. Aside from the national franchise tax, the franchisee is still liable to pay the local franchise tax, unless it is expressly and unequivocally exempted from the payment thereof under its legislative franchise. Although as a general rule, LGUs cannot impose taxes, fess or charges of any kind on the National Government, its agencies and instrumentalities, this rule admits of an exception, *i.e.*, when specific provisions of the LGC authorize the LGUs to impose taxes, fees or charges on the aforementioned entities. Section 137 of the LGC is one of those exceptions.

The right of local governments to impose franchise or business tax on government instrumentalities enjoying a franchise from the national government, such as PAGCOR, has been affirmed by the High Court, in this fashion:

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The foregoing case has likewise debunked the reliance of petitioner on the case of *Basco vs. Philippine Amusement and Gaming Corporation* (*Basco* case) to justify the exemption of PAGCOR from franchise or business tax. The inapplicability of the *Basco* case, as well as Section 133(o) of the LGC to justify PAGCOR's exemption from franchise tax, has also been affirmed by the Supreme Court, which held, as follows:

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> Finally, the cases cited by petitioner do not find application to the instant case in view of differing factual and legal milieu. The case of *Commissioner of Internal Revenue vs. Acesite* pertains to Value Added Tax (VAT) which is a national tax, and not local franchise tax. On the other hand, the cases of *Manila International Airport Authority vs. Court of Appeals, Manila International Airport Authority vs. City of Pasay,* and *Philippine Fisheries Development Authority (PFDA) vs. Central Board of Assessment Appeals,* pertain to real property taxes and not business or franchise tax, as in the instant case.
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> Thus, if PAGCOR is not exempt from the payment of local franchise or business tax under the law, with more reason with petitioner which merely claims derivative benefit from the previous blanket exemption granted unto PAGCOR. In fine, the right of respondent to demand from petitioner the payment of local tax should be upheld."[19]

With the foregoing, the Court *En Banc* notes that the Court in Division had thoroughly addressed each and every issue that has been raised by petitioner. For emphasis, the Court *En Banc,* thus, reiterates the following:

I. That while it may seem that the Petition filed with the RTC was made within the reglementary period, the documents attached to the Motion for Reconsideration failed to observe Section 34 of Rule 132 of the Revised Rules of Court;[20]

II. That government instrumentalities, such as PAGCOR, are no longer exempt from local taxes, in particular business or franchise tax, under RA No. 7160; and

III. That petitioner is liable for deficiency taxes assessed by the City of Manila.

In fine, the Court *En Banc* finds no compelling reason to warrant a reversal of the assailed Decision and Resolution.

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[19] *Ibid.*, pp. 59-69. Citations omitted.
[20] Section 34. *Offer of evidence.* – The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

WHEREFORE, the Petition for Review is hereby **DENIED** for lack of merit. The Decision dated May 24, 2012, and Resolution dated September 19, 2012 issued by then First Division of the Court are hereby **AFFIRMED** *in toto*.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ROMAN G. DEL ROSARIO
Presiding Justice