

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

EN BANC

**AB LEISURE EXPONENT,
INC. (doing business under
the name and style of Bingo
Bonanza),**

Petitioner,

- versus -

CTA EB NO. 2595
(CTA Case No. 9620)

Present:

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

**COMMISSIONER OF
INTERNAL REVENUE,**
Respondent.

Promulgated:

OC 04 2023

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DECISION

CUI-DAVID, J.:

Before the Court *En Banc* is a *Petition for Review*¹ filed under Section 2(a)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA), seeking to reverse and set aside the Decision² dated October 18, 2021 (assailed Decision) and the Resolution³ dated March 23, 2022 (assailed Resolution), both rendered by this Court's First Division (Court in Division) in CTA Case No. 9620 entitled "*AB Leisure Exponent, Inc. (doing business under the name and style of Bingo Bonanza) v. Commissioner of Internal Revenue.*"

¹ *En Banc (EB)* Docket, pp. 41-75.

² *EB* docket, pp. 84-99.

³ *EB* docket, pp. 102-117.

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The assailed Decision granted, *albeit* partially, petitioner's original *Petition for Review* by canceling the compromise penalties amounting to ₱55,000.00, and upholding with modifications the assessment for deficiency value-added tax (VAT) and documentary stamp tax (DST). On the other hand, the assailed Resolution denied petitioner's motion for reconsideration of the challenged Decision.

THE PARTIES

Petitioner AB Leisure Exponent, Inc. is a domestic corporation organized and existing under the laws of the Philippines.⁴ It is registered with the Securities and Exchange Commission under Company Registration No. AS094-0011753.⁵ It is also registered with the Bureau of Internal Revenue (BIR) Large Taxpayers Service Regular Large Taxpayers Audit Division III under Tax Identification Number (TIN) 004-472-121-00000.⁶

Respondent Commissioner of Internal Revenue is the head of the BIR, the government agency charged with implementing the National Internal Revenue Code (NIRC) and collecting all internal revenue taxes,⁷ with office at the BIR National Office Building, BIR Road, Diliman, Quezon City.⁸

THE FACTS AND THE PROCEEDINGS

The relevant facts,⁹ as found by the Court in Division, remain undisputed, to wit:

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


⁴ Exhibits "P-1" and "P-2", Division docket — Vol. 2, pp. 584 to 604.

⁵ Par. 1, Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Division docket — Vol. 1, p. 483; Exhibits "P-1" and "P-2". Docket — Vol. 2, pp. 584 to 604.

⁶ Par. 4, Stipulation of Facts, JSFI, Division docket — Vol. 1, p. 484; Exhibit "P-10", Docket — Vol. 2, p. 624.

⁷ Par. 2, Stipulation of Facts, JSFI, Division docket — Vol. 1, p. 483.

⁸ Par. 3, Stipulation of Facts, JSFI, Division docket — Vol. 1, p. 484.

⁹ Assailed Decision, *EB* docket, pp. 85-90.

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On April 7, 2015, petitioner received the Letter of Authority (LOA) SN: eLA201200004476/LOA-126-2015-00000047 dated March 27, 2015 issued by OIC-Assistant Commissioner (OIC-ACIR) of Large Taxpayers Service (LTS), Nestor S. Valeroso, authorizing Revenue Officers (ROs) Ma. Salud Maddela and Zenaida Paz, and Group Supervisor (GS) Merly Santiago of LT Regular Audit Division 3, to examine the books and other accounting records of petitioner for all internal revenue taxes, for the period covering January 1, 2013 to December 31, 2013.

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

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

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

On September 15, 2016, petitioner received the Formal Letter of Demand, with attached Details of Discrepancies and Schedules, and the Final Assessment Notices (FLD/FAN), all dated September 14, 2016, assessing petitioner for alleged deficiency income tax, WTC, EWT, VAT, FWT, and DST, for taxable year 2013.

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



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

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

Kind of Tax	Basic	Surcharge	Interest	Compromise penalty	Total
Income Tax	₱6,191,117.27		₱3,867,776.69	₱25,000.00	₱10,083,893.96
WTC	215,311.02		145,855.99	16,000.00	377,167.01
EWT	1,084,951.72		739,250.01	20,000.00	1,844,201.73
FWT	56,940.29		38,572.49	12,000.00	107,512.78
DST	1,843,126.21	460,781.55	1,253,528.57	25,000.00	3,582,436.33
VAT	575,350.80		143,837.70	366,644.51	1,085,853.01
Total					₱17,081,064.82

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

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

Respondent filed his Answer on August 23, 2017.

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

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

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

Trial then ensued.

During trial, petitioner presented documentary and testimonial evidence. Petitioner offered the testimony of the following individuals, namely: (1) Atty. Ma. Ruiza R. Hernane, the Legal and Internal Tax Counsel of petitioner; and (2) Antonio B. Cruz, Jr., petitioner's Marketing and Allied Business Manager and acting Operations Manager.



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

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

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

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

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

The Memorandum for Petitioner was filed on September 18, 2020; while respondent's Memorandum was posted on September 21, 2020.

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

On October 18, 2021, the Court in Division rendered the assailed Decision, the dispositive portion of which reads:

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

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

However, the assessments for deficiency VAT and DST are **UPHELD WITH MODIFICATIONS**. Accordingly, petitioner is **ORDERED TO PAY** respondent the aggregate amount of ₱611,588,231.44, inclusive of the 25% surcharge, 20% deficiency interest, and 20% delinquency interest, imposed under Sections 248 (A) (3), 249 (B) and (C) of the NIRC of 1997, as amended, respectively, computed until December 31, 2017, as follows:



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	VAT	DST	Total
Basic (Remaining) Deficiency Tax Due	₱146,659,175.52	₱122,238,863.53	₱268,898,039.05
25% Surcharge	36,664,793.88	30,559,715.88	67,224,509.76
Total	₱183,323,969.40	₱152,798,579.41	₱336,122,548.81
20% Deficiency Interest			
VAT: from January 25, 2014 to May 24, 2017			
(P146,659,175.52 x 20% x 1,215/365 Days)	97,638,848.36		97,638,848.36
DST: from January 5, 2014 to May 24, 2017			
(P122,238,863.53 x 20% x 1,235/365 Days)		82,720,546.01	82,720,546.01
Amount due as of May 24, 2017	₱280,962,817.76	₱235,519,125.42	₱516,481,943.18
20% Deficiency Interest from May 25, 2017 to December 31, 2017			
VAT; (P146,659,175.52 x 20% x 221/365 Days)	17,759,823.45		17,759,823.45
DST: (P122,238,863.53 x 20% x 221/365 Days)		14,802,624.02	14,802,624.02
20% Delinquency Interest from May 25, 2017 to December 31, 2017			
VAT: (P280,962,817.76 x 20% x 221/365 Days)	34,023,442.59		34,023,442.59
DST: (P235,519,125.42 x 20% x 221/365 Days)		28,520,398.20	28,520,398.20
Amount due as of December 31, 2017	₱332,746,083.80	₱278,842,147.64	₱611,588,231.44

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

SO ORDERED.

In partly granting petitioner’s *Petition*, the Court in Division ruled that the compromise penalties should not be imposed absent any showing that petitioner consented to the compromise penalty. The Court in Division explained that under RMO No. 19-2007,¹⁰ a compromise penalty is only an amount suggested in the settlement of criminal liability and may not be imposed or exacted on the taxpayer if a taxpayer refuses to pay

¹⁰ SUBJECT: *The Consolidated Revised Schedule of Compromise Penalties for Violations of the National Internal Revenue Code.*



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the same. On the other hand, in upholding the deficiency VAT and DST assessments, the Court in Division explained that there is no indication that petitioner's contractual relationship with Philippine Amusement and Gaming Corporation (PAGCOR) is in connection with the operations of a casino or casinos, authorized to be conducted under Presidential Decree (PD) No. 1869 (PAGCOR Charter).¹¹ Since petitioner's contractual relationship with PAGCOR is not in connection with the casino(s) operations under PD No. 1869, PAGCOR's tax exemption does not inure to the benefit of and extends to petitioner.

Unconvinced, petitioner filed a *Motion for Reconsideration*¹² of the aforesaid ruling of the Court in Division, but the same was denied in the equally assailed Resolution dated March 23, 2022.

Undeterred, petitioner filed a *Motion for Extension of Time to File Petition for Review*¹³ on April 21, 2022, praying before this Court *En Banc* for an extension period of fifteen (15) days from April 22, 2022, or until May 7, 2022, to file its *Petition for Review*, which the Court *En Banc* granted in a Minute Resolution¹⁴ dated April 25, 2022.

On May 10, 2022, petitioner filed the instant *Petition for Review*. Subsequently, in the Resolution¹⁵ dated June 1, 2022, the Court *En Banc* directed respondent to file his comment within ten (10) days from notice.

On June 17, 2022, respondent filed his *Comment/Opposition (to Petitioner's Petition for Review dated May 5, 2022)*,¹⁶ which the Court *En Banc* noted in the Resolution¹⁷ dated July 7, 2022. In the same Resolution, the Court *En Banc* referred the instant case to mediation in the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) under Section II of the *Interim Guidelines for Implementing Mediation in the Court of Tax Appeals*.

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¹¹ 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).

¹² Division Docket – Vol. 2, pp. 968-999.

¹³ EB docket, pp. 1-4.

¹⁴ EB docket, p. 38.

¹⁵ EB docket, pp. 130-131.

¹⁶ EB docket, pp. 165-173.

¹⁷ EB docket, pp. 176-177.

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On October 4, 2022, the instant case was submitted for decision considering the report¹⁸ of the PMC-CTA dated September 16, 2022, stating that the parties have decided not to have their case mediated by the PMC-CTA.

Hence, this Decision.

THE ISSUES

Petitioner submits the following issues for the resolution of the Court:

- A. WHETHER OR NOT PETITIONER, AS LICENSEE OF PAGCOR AUTHORIZED TO CONDUCT BINGO GAMES, IS EXEMPT FROM ALL TAXES, INCLUDING VAT AND DST.
- B. WHETHER OR NOT BINGO GAMES FALL UNDER "OTHER AUTHORIZED NUMBER GAMES" UNDER SECTION 190 OF THE NIRC.
- C. WHETHER OR NOT PETITIONER IS LIABLE FOR ALLEGED DEFICIENCY VAT AND DST IN RELATION TO REVENUES ARISING FROM BINGO GAMES, INCLUDING SURCHARGE AND INTEREST FOR TAXABLE YEAR 2013.

Petitioner's Arguments:

Petitioner avers that in the assailed Decision, the Court in Division ruled that the exemption under Section 13(2)(b) of PD No. 1869 is extended only to "*corporations, associations, agencies, or individuals with whom PAGCOR or operator has any contractual relationship in connection with the operation of casino(s) authorized to be conducted.*" The Court in Division allegedly emphasized that the tax exemption requires not only that the claimant has a contractual relationship with PAGCOR but also that the contract be in connection with the operation of casinos authorized to be conducted under PD No. 1869. Citing the case of *Thunderbird Pilipinas Hotels and Resorts, Inc. v. Commissioner of Internal Revenue*¹⁹ (*Thunderbird case*), the Court in Division further held that the tax exemption is made available only to those in a contractual relationship with PAGCOR in connection with PAGCOR's casino operations and does not include private entities that were merely licensed to operate their own casinos.

¹⁸ EB docket, p. 178.

¹⁹ G.R. No. 211327, November 11, 2020.



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Petitioner, however, disagrees.

According to petitioner, the application of the *Thunderbird* case in the case at bar is misplaced. Petitioner explains that the *Thunderbird* case is an interpretation of Section 13(2)(b) of PD No. 1869 prior to the amendments introduced by Republic Act (RA) No. 9487.²⁰ For petitioner, the *Thunderbird* case applies to tax liabilities before the effectivity of RA No. 9487 in 2007. Hence, considering that the instant case pertains to alleged tax liabilities for the taxable year 2013, which is after PD No. 1869 was amended by RA No. 9487, the decision of the Supreme Court in *Bloomberry Resorts and Hotels, Inc. v. Bureau of Internal Revenue*²¹ (*Bloomberry* case) applies.

As declared by the Supreme Court in the *Bloomberry* case, all contractees and licensees of PAGCOR are exempt from all other taxes on earnings realized from the operation of casinos. In the said case, the Supreme Court aptly explained that the 5% franchise tax payment takes the place of all other taxes.

As in the instant case, petitioner, being an entity that has a “contractual relationship in connection with the operation of the casino(s) authorized to be conducted, particularly bingo games operations, is thus not liable to pay VAT and DST for revenues derived from its bingo games operations. In fact, according to petitioner, no less than respondent himself, in BIR Ruling No. 138-98 dated September 25, 1998, confirmed that its contractual relationship with PAGCOR, by virtue of an *Authority* to operate bingo games, exempts the same from taxes, fees, and charges.

Thus, for petitioner, any exemption granted to PAGCOR 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 also inure to the benefit, and extend to, petitioner as PAGCOR’s licensee or grantee under Section 13(2)(b), in relation to Section 13(2)(a), of PD No. 1869, as amended.

Petitioner likewise argues that the phrase “operation of the casino(s),” used in PD No. 1869, covers the bingo games. For petitioner, it is a well-settled principle that the words of a statute will be interpreted in their natural, plain, and ordinary

²⁰ An Act Further Amending Presidential Decree No. 1869, Otherwise Known as PAGCOR Charter.

²¹ G.R. No. 212530, August 10, 2016.



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acceptation and signification, unless it is evident that the legislature intended a technical or special legal meaning to those words. Petitioner asserts that nowhere is “casino” defined in Section 13 of PD No. 1869 or any other section; thus, the term “casino” should be understood in its ordinary acceptance.

Merriam-Webster’s Dictionary defines “casino” as “a building or room used for social amusements, especially one used for gambling.” Likewise, the implementing rules and regulations of RA No. 9160²² define “casino” as a business authorized by the appropriate agency to engage in gaming operations.

Thus, the term “casino” used in PD No. 1869 should mean a business authorized to engage in social amusements and/or gaming operations. For petitioner, its contractual relationship with PAGCOR is in connection with the operations of the casino(s), particularly the operation of any and all kinds of bingo gaming activities evidenced by its license to operate. Petitioner also clarifies that PAGCOR’s authority to grant licenses to casino operators stems from its Franchise granted by PD No. 1869. As such, its bingo gaming operations, which are authorized by PAGCOR *via* a license to conduct bingo gaming, are covered by the “operation of casino(s)” referred to in the phrase “operation of casino(s) authorized to be conducted under this Franchise” under Section 13(2)(b) of PD No. 1869.

Assuming, for the sake of argument, that it is not subject to the tax benefit granted under Section 13(2)(b) of PD No. 1869, petitioner asserts that bingo cards and/or receipts from bingo games are not subject to DST under Section 190 of the NIRC, as these bingo cards and/or receipts do not fall within the contemplation of the law under “other authorized numbers of games.” According to petitioner, the term “other authorized numbers games” was not intended to include bingo games but refers to number games similar to lotteries. For petitioner, applying the principle of *ejusdem generis* to Section 190 of the NIRC, and taking into consideration the intention of the law, the phrase “other authorized numbers games” should be construed to be restricted to the category to which lotto, *jueteng*, and Small Town Lottery (STL) belong, which is numbers game.

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²² An Act Defining the Crime of Money Laundering, Providing Penalties Therefor and for Other Purposes.

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To further support its claim, petitioner points out that the nature and mechanics of bingo games do not involve the pre-selection of a number or numbers on which the player places a wager, which is an attribute of lotto games and other numbers games like *jueteng* and STL. And even assuming, without admitting, that bingo may be considered as an “other authorized numbers game” mentioned in Section 190 of the NIRC, online bingo, at the very least, cannot be subject to DST for the simple reason that there is no document or instrument to tax in such a case.

Finally, petitioner submits that since there are no valid VAT or DST deficiency assessments, imposing a 25% surcharge, deficiency interest, and delinquency interest on the alleged deficiency taxes is improper.

Respondent’s Counter-arguments:

Respondent submits that the instant *Petition* should be denied as it raised no points of contention that would merit reversing the assailed Decision and Resolution of the Court in Division.

While petitioner claims that as a PAGCOR licensee, it is granted tax exemption, respondent maintains that a mere licensee does not entitle petitioner to the tax exemptions granted under PD No. 1869. According to respondent, for a licensee to be granted tax exemption, said licensee must prove first that the revenues realized are related to the operation of casinos, which petitioner failed.

Further, petitioner erroneously contends that its bingo cards and/or receipts from bingo games do not fall under the term “other numbers of games.” According to respondent, just by looking at the face of the bingo cards and/or receipts from bingo games, it cannot be denied that bingo is a numbers game. The same imposition of DST is equally applied to electronic bingo, as DST is a transaction tax.

In closing, respondent maintains that petitioner is liable to pay the deficiency VAT and DST, including surcharge and compromise penalties, for taxable year 2013.



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THE COURT *EN BANC*'S RULING

The instant *Petition for Review* is impressed with merit.

The Court En Banc has jurisdiction over the instant Petition.

First, We determine whether the present *Petition for Review* was timely filed.

Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) states:

SEC. 3. *Who may appeal; period to file petition.* — xxx

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(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a ***petition for review within fifteen days from receipt of a copy of the questioned decision or resolution.*** Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. [*Emphasis and underscoring supplied*]

Records reveal that petitioner received the assailed Resolution on April 7, 2022. Thus, petitioner had fifteen (15) days from April 7, 2022, or until April 22, 2022, to file a *Petition for Review* before the Court *En Banc*.

On April 21, 2022, or before the expiration of the period to file an appeal, petitioner filed a *Motion for Extension of Time to File Petition for Review*²³ asking for an additional period of fifteen (15) days from April 22, 2022, or until May 7, 2022, to file its *Petition for Review*.

On April 25, 2022, through a Minute Resolution,²⁴ the Court *En Banc* granted petitioner's *Motion for Extension of Time to File Petition for Review*. Hence, petitioner had until May 7, 2022, to file its *Petition for Review*.

²³ *EB* docket, pp. 1-4.

²⁴ *EB* docket, p. 38.

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May 7, 2022, fell on a Saturday, while May 9, 2022, was declared a special (non-working) holiday for the National and Local Elections. Hence, the filing of petitioner's *Petition for Review* on May 10, 2022, the next working day, was on time.

Having settled that the instant *Petition for Review* was timely filed, We likewise rule that the CTA *En Banc* has validly acquired jurisdiction to take cognizance of this case under Section 2(a)(1), Rule 4²⁵ of the RRCTA.

Now, on the merits.

The crux of the controversy is petitioner's claimed entitlement to the tax exemption privileges of PAGCOR under Section 13(2)(b) of PD No. 1869, 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 operation of casino(s) authorized under PD No. 1869, as amended.

Petitioner maintains that as a licensee of PAGCOR authorized to conduct bingo games, it is exempt from all taxes, including VAT and DST, under PD No. 1869, as amended by RA No. 9487, and as held by the Supreme Court in the *Bloomberry* case.

Petitioner's bingo games operation is covered by the phrase "operations of casino(s)." Hence, PAGCOR's tax exemption privileges under PD No. 1869, as amended, inure to the benefit of, or extend to, petitioner.

Section 13(2)(a)(b) of PD No. 1869, as amended,²⁶ otherwise known as the PAGCOR Charter, provides for the exemption of PAGCOR and its *contractees and licensees* from the payment of income and other taxes, *viz.*:

²⁵ SEC. 2. *Cases within the jurisdiction of the Court en banc.* – The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:

(1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture; ...

²⁶ Amended by RA No. 9487.

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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.

XXX

XXX

XXX

(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 xxx. *[Emphasis and underscoring supplied]*

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 No. 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 No. 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.

In the assailed Decision, the Court in Division ruled that PAGCOR's tax exemption does not inure to the benefit of, and extend to, petitioner since there is no indication that its contractual relationship with PAGCOR is in connection with the operations of casino(s) under PD No. 1869. The Court in Division further ruled that:

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For petitioner's license covering the year 2013, what has been established in this case is merely that petitioner has been given by PAGCOR a *Renewal of the Term of the Authority to Operate Traditional and Electronic Bingo Games*²⁷ dated December 5, 2012 in certain malls in Metro Manila, and *not* an authority to operate a casino or casinos.

Unable to agree, petitioner counters that the phrase "operation of casino(s)" covers the bingo games operated by petitioner, and the term "casino" should be understood in its ordinary acceptance as nowhere is "casino" defined in Section 13 of PD No. 1869 or any other section thereof.

The Court *En Banc* agrees with petitioner.

Indeed, elementary is the principle that words should be construed in their ordinary and usual meaning. It is a well-settled principle of legal hermeneutics that words of a statute will be interpreted in their natural, plain, and ordinary acceptance and signification, unless it is evident that the legislature intended a technical or special legal meaning to those words.²⁸

Here, petitioner correctly pointed out that nowhere is "casino" defined in Section 13 of PD No. 1869 or any other section thereof. Hence, the term "casino" should be understood in its ordinary acceptance and signification: "*a building or room used for social meetings and public amusements specifically one used for gambling*".²⁹

PAGCOR, in its *Casino Regulatory Manual for Fiesta Casino Licensees Version 2.0*, defines "casino" or "casino premises" as "*the casino to be operated by the Licensee under the Provisional License or Authority to Operate whichever is applicable, in which all gaming activities shall take place. Casino or casino premises shall be made up of gaming areas and ancillary areas.*"

In the instant case, and under the *Renewal of the Term of the Authority to Operate Traditional and Electronic Bingo Games*³⁰ dated December 5, 2012, petitioner was authorized/licensed to operate bingo games at the following bingo venues:

²⁷ Exhibit P-3, Division Docket – Vol. 2, p. 606.

²⁸ *Romualdez v. The Honorable Sandiganbayan (Fifth Division), et al.*, G.R. No. 152259, July 29, 2004.

²⁹ Webster's Third New International Dictionary of the English Language Unabridged.

³⁰ Exhibit P-3, Division Docket – Vol. 2, p. 606.

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1. SM Megamall in Mandaluyong City;
2. Makati Cinema Square in Makati City;
3. Sta. Lucia East Grand Mall in Cainta, Rizal;
4. SM Southmall in Las Piñas City; and
5. SM City North EDSA in Quezon City.

The said *bingo venues/gaming site premises* are considered the “casino” or “casino premises” where all petitioner’s bingo gaming activities shall take place. Thus, in line with the foregoing principle and considering the ordinary acceptance and signification of the term “casino,” it is without a doubt that petitioner’s bingo gaming operations relate to the operations of casino(s) under PD No. 1869, as amended.

Besides, Section 10 of PD No. 1869, as amended, which provides for the nature and term of PAGCOR’s franchise, explicitly mentions “bingo.”

Further, in the assailed Resolution, the Court in Division stated that the clause “*operations of the casino(s) authorized to be conducted under this Franchise*” under Section 13(2)(b) of PD No. 1869 refers to casinos operated by PAGCOR itself. Citing the *Thunderbird* case, the Court in Division ruled that the tax exemption of PAGCOR extends only to those individuals or entities that have contracted with PAGCOR in connection with PAGCOR’s casino operations and that the exemption does *not* include private entities licensed to operate their own casinos.

Petitioner counters that the Court in Division’s application of the *Thunderbird* case to the present case is misplaced. It argues that the *Thunderbird* case is an interpretation of Section 13(2)(b) of PD No. 1869 before the amendments were introduced by RA No. 9487 on June 20, 2007. Thus, it applies to tax liabilities *before* RA No. 9487 took effect in 2007. Considering that the instant case pertains to petitioner’s tax liabilities for the taxable year 2013, which is after the said amendments, it is the decision of the Supreme Court in the *Bloomberry* case that applies, not in the *Thunderbird* case.

The Court *En Banc* finds merit in petitioner’s contention.



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It must be emphasized that the taxable year involved in the *Thunderbird* case was 2006, while the amendment to the PAGCOR charter happened in 2007, compared to the *Bloomberry* case, which occurred in 2009,³¹ and the instant case, which covered the taxable year 2013.

Before the enactment of RA No. 9487 in 2007, Section 10 of PD No. 1869 states:

SECTION 10. *Nature and term of franchise.* — Subject to the terms and conditions established in this Decree, the Corporation is hereby granted for a period of twenty-five (25) years, renewable for another twenty-five (25) years, **the rights, privileges and authority to operate and maintain gambling casinos, clubs, and other recreation or amusement places, sports, gaming pools, i.e., basketball, football, lotteries, etc. whether on land or sea, within the territorial jurisdiction of the Republic of the Philippines: xxx.** [*Emphasis and underscoring supplied*]

With the enactment of RA No. 9487, Section 10 of PD No. 1869 was amended and now reads:

SEC. 10. *Nature and Term of Franchise.* — Subject to the terms and conditions established in this Decree, the Corporation is hereby granted from the expiration of its original term on July 11, 2008, another period of twenty-five (25) years, renewable for another twenty-five (25) years, **the rights, privileges and authority to operate and license gambling casinos, gaming clubs and other similar recreation or amusement places, gaming pools, i.e., basketball, football, bingo, etc., except jai-alai, whether on land or sea, within the territorial jurisdiction of the Republic of the Philippines: xxx.** [*Emphasis and underscoring supplied*]

It is clear from the foregoing that *prior* to the amendment, PAGCOR had no authority to license casinos and other gaming operations. However, with the enactment of RA No. 9487, PAGCOR was given the power not only to “*operate and maintain*” but also to “*operate and license*” gambling casinos, gaming clubs, and other similar recreation or amusement places gaming pools like *bingo*.

Petitioner correctly pointed out that the *Thunderbird* case is an interpretation of Section 13(2)(b) of PD No. 1869 *prior* to its amendments. The Supreme Court explained, and We quote:

³¹ The factual antecedents of the case reveal that, on 8 April 2009, PAGCOR granted to petitioner a provisional license to establish and operate an integrated resort and casino complex at the Entertainment City project site of PAGCOR.



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“Nonetheless, while the tax exemption under Section 13 (2) (b) of Presidential Decree No. 1869 inures to the benefit of entities with whom PAGCOR has a contractual relationship, the law adds a qualification: this contractual relationship must be “in connection with the operations of the casino(s) authorized to be conducted under this Franchise[.]” Stated differently, the tax exemption is made available only to those in a contractual relationship with PAGCOR in connection with PAGCOR's casino operations.

In that case, Bloomberry, a grantee of a provisional license to operate a casino on **April 8, 2009**, was required by the Bureau of Internal Revenue to pay income tax pursuant to Revenue Memorandum Circular No. 33-2013. Bloomberry sought to annul Revenue Memorandum Circular No. 33-2013 in a petition for *certiorari* and prohibition directly filed before this Court. Ruling in Bloomberry's favor, this Court held that **PAGCOR contractees and licensees are exempt from taxes on income derived from their casino operations**, pursuant to Section 13 (2) (b) of Presidential Decree No. 1869. This Court stated:

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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 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.**

Accordingly, this Court in *Bloomberry* ordered the Commissioner of Internal Revenue to desist from implementing Revenue Memorandum Circular No. 33-2013 insofar as it imposed corporate income tax on *Bloomberry's* income derived from its **gaming operations**.

Bloomberry, however, is not squarely congruent with this case. **The facts in Bloomberry occurred after amendments to Presidential Decree No. 1869 were introduced by Republic Act No. 9487, which took effect in 2007. This case, on the other hand, pertains to petitioner's tax liabilities for taxable year 2006.**

Republic Act No. 9487, in amending Presidential Decree No. 1869, not only extended PAGCOR's franchise to operate casinos for another 25 years, but **also granted PAGCOR the authority to license casinos and other gaming operations**. Thus, although not specifically mentioned or explained, *Bloomberry* may have been resolved in light of this amendatory law." [Emphasis and underscoring supplied, citations omitted]

Truly, the Supreme Court clarified in the *Thunderbird* case that the clause "*operations of the casino(s) authorized to be conducted under this Franchise*," as stated under Section 13(2)(b) of PD No. 1869, refers to casinos operated by PAGCOR itself; and that the exemption does not include private entities that were licensed to operate their own casinos. However, what differentiates the *Thunderbird* case from the *Bloomberry* case is that *Thunderbird* is not considered a PAGCOR licensee for the taxable year involved because PAGCOR had no authority to issue a license to operate casinos and other gaming operations at that time. Thus, viewed from the circumstances *before* the



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amendments to the PAGCOR Charter, it was ruled in the *Thunderbird* case that the clause “operations of the casino(s) authorized to be conducted under this Franchise” under Section 13(2)(b) refers to casinos operated by PAGCOR itself.

Like the *Bloomberry* case, the facts in the instant case occurred *after* the 2007 amendments to the PAGCOR Charter. In the *Bloomberry* case, the Supreme Court aptly ruled thus:

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:

Sec. 13. Exemptions. —

xxx

xxx

xxx

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

(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 xxx.
(Emphasis and underlining in the original text)

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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 inures to their benefit.

XXX

XXX

XXX

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 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.

XXX

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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 and underscoring supplied*]

Based on the foregoing, it is well-settled 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 their **gaming operations** of gambling casinos, gaming clubs and other similar recreation or amusement places, gaming pools, and related operations.



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Petitioner's bingo games operation is likewise covered by the phrase "gaming operations."

The Supreme Court held in the *Bloomberry* case that the phrase "*gaming operations*" covers the operation of gambling casinos, gaming clubs and other similar recreation or amusement places, gaming pools, and related operations, to wit:

Thus, income derived by PAGCOR from its *gaming operations* such as the **operation and licensing of gambling casinos, gaming clubs and other similar recreation or amusement places, gaming pools and related operations** is subject only to 5% franchise tax, *in lieu* of all other taxes, including corporate income tax. [*Emphasis and underscoring supplied*]

"Bingo" is covered by the phrase gaming operations. Section 10 of PD No. 1869, as amended by RA No. 9487, provides:

SEC. 10. *Nature and Term of Franchise.* — Subject to the terms and conditions established in this Decree, the Corporation is hereby granted from the expiration of its original term on July 11, 2008, another period of twenty-five (25) years, renewable for another twenty-five (25) years, the rights, privileges and authority to **operate and license gambling casinos, gaming clubs and other similar recreation or amusement places, gaming pools, i.e., basketball, football, bingo, etc.,** except jai-alai, whether on land or sea, within the territorial jurisdiction of the Republic of the Philippines: *Provided*, That the corporation shall obtain the consent of the local government unit that has territorial jurisdiction over the area chosen as the site for any of its operations. xxx. [*Emphasis and underscoring supplied*]

The pronouncement in the *Bloomberry* case that **gaming operations** are subject only to a 5% franchise tax *in lieu* of all other taxes was echoed in the more recent case of *Saint Wealth Ltd. v. Bureau of Internal Revenue (Saint Wealth Ltd.)*, viz.:³²



³² G.R. No. 252965 & 254102, December 7, 2021.

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*The PAGCOR Charter Imposes a Franchise Tax upon its Licensees on Revenues Derived from **Gaming Operations** and Income Tax, VAT, and Other Applicable Taxes on Revenues Derived from Non-Gaming Operations.*

Under Section 13(2)(a) of the PAGCOR Charter, PAGCOR is exempt from the payment of any and all taxes on its income derived from **gaming operations**, except for a five percent (5%) franchise tax on its gross revenues or earning:

xxx xxx xxx

Considering the above-cited provisions, this Court clarified in *Bloomberry Resorts and Hotels, Inc. v. Bureau of Internal Revenue (Bloomberry)*, that PAGCOR's tax privilege of paying only a five percent (5%) franchise tax for income generated from its **gaming operations**, in lieu of all other taxes, **inures to the benefit of PAGCOR's licensees:**

xxx xxx xxx

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 and underscoring in the original text*)

Clearly, 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**. However, a plain reading of the PAGCOR Charter and the ruling in *Bloomberry* shows that the liability of paying the five percent (5%) franchise tax only applies to PAGCOR's licensees which are connected to the **operations of casinos and other related amusement places.** (*Emphasis in the original text*)

Indeed, PAGCOR's licensees, like petitioner, are only liable to pay a 5% franchise tax for income derived from their **gaming operations**.



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In *Highland Gaming Corporation v. Commissioner of Internal Revenue*,³³ this Court ruled that Highland Gaming Corporation’s income from its bingo gaming operations is exempt from any tax upon payment of the 5% franchise tax, to wit:

Being a franchise grantee of PAGCOR, petitioner's income from its bingo gaming operations at Baguio Center Mall and SM City-Baguio is exempt from any tax, upon payment of the 5% franchise tax in lieu of all other taxes. Consequently, the 5% franchise tax shall be imposed on petitioner's gross receipts from its bingo gaming operations.

xxx xxx xxx

Correspondingly, the Court finds that petitioner is not liable for any deficiency income tax. Such being the case, the assessment of deficiency income tax derived from petitioner's income due to bingo gaming operations for TY 2009 amounting to P20,092,214.00 should be cancelled. [*Emphasis supplied*]

Similarly, petitioner’s bingo games operations are covered by the phrase “*gaming operations*,” the income of which is subject only to a 5% franchise tax *in lieu* of all other taxes.

Moreover, in the instant case, petitioner’s *Authority to Operate Bingo Games* provides explicitly that it shall pay a five percent (5%) franchise tax.

The *Grant of Authority to Operate Bingo Games*,³⁴ with *Supplemental Grant of Authority to Operate Electronic Bingo Games*³⁵ dated October 24, 2008, issued to petitioner, states:

I. PROCEDURAL GUIDELINES AND GAMING RULES

All Bingo games including the sale of bingo cards, tickets and other similar paraphernalia and the award of prizes **shall be subject to the control and supervision of PAGCOR.**

xxx xxx xxx



³³ CTA Case No. 8730, January 17, 2019.
³⁴ Exhibit P-5, Division Docket – Vol. 2, pp. 608-611.
³⁵ Exhibit P-6, Division Docket – Vol. 2, pp. 612-615.

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II. SUPERVISION AND INSPECTION

PAGCOR shall designate its proper representatives, who shall be given a free hand in observing and monitoring the Bingo operations including access to premises and production of records and other documents necessary for them to be able to carry out their duties.

xxx

xxx

xxx

III. CONSIDERATION

In consideration of this Grant of Authority, **BBC shall pay** PAGCOR fifteen percent (15%) of its gross receipts from its bingo card sales (representing PAGCOR share) and **five percent (5%) of its gross revenue (i.e., gross sales less pay-out) representing BIR franchise tax**, which shall be remitted to PAGCOR twice weekly, every Monday (to cover the amount due to PAGCOR for Wednesday, Thursday, Friday and Saturday) and every Thursday (to cover the amount due to PAGCOR for Sunday, Monday and Tuesday), provided however xxx. [*Emphasis and underscoring supplied*]

Based on the foregoing, while petitioner was given the authority to operate bingo games, the same shall still be **subject to the control and supervision of PAGCOR**. This is because of the government's policy to centralize the operation of casinos into one corporate entity – the PAGCOR.³⁶

Further, the *Grant of Authority to Operate Bingo Games* provides that petitioner shall pay 5% of its gross revenues representing BIR franchise tax.

The *Grant of Authority to Operate Bingo Games*, including its *Supplemental Grant of Authority to Operate Electronic Bingo Games*, was renewed from September 8, 2012 to September 7, 2015 by virtue of the *Renewal of the Term of the Authority to Operate Traditional and Electronic Bingo Games*³⁷ issued by PAGCOR to petitioner on December 5, 2012. Said renewal covers the taxable year subject of the instant case.

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

³⁶ Section 1(a) of PD No. 1869, as amended.

³⁷ Exhibit P-3, Division Docket – Vol. 2, p. 606.



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imposed based on petitioner's gross revenue or earnings from its bingo gaming operations.

Conclusion:

The subject of the instant case is the deficiency VAT and DST assessments imposed on petitioner's gross receipts from traditional bingo, electronic bingo, and pull tabs, in the aggregate amount of ₱517,895,721.18,³⁸ computed as follows:

DEFICIENCY VAT

Sales Revenue per ITR/FS

Traditional Bingo	₱ 437,149,127.00
Gross receipts from rapid bingo	364,470,300.00
Gross receipts from e-bingo	416,918,309.00
Pull tabs	3,622,060.00
Amount subject to VAT	₱1,222,159,796.00
Deficiency VAT	₱ 146,659,175.52
Add: 25% Surcharge	36,664,793.88
20% Interest (1/21/14 to 5/31/17)	98,582,298.90
Compromise Penalty	30,000.00
TOTAL AMOUNT DUE	₱ 281,936,268.30

Deficiency DST

Traditional Bingo	₱ 437,377,966.00
Gross receipts from rapid bingo	416,918,309.28
Gross receipts from e-bingo	364,470,300.00
Pull tabs	3,622,060.00
Amount subject to DST	₱1,222,388,635.28
Deficiency DST	₱ 122,238,863.53
Add: 25% Surcharge	30,559,715.88
20% Interest (1/21/14 to 5/31/17)	83,135,873.47
Compromise Penalty	25,000.00
TOTAL AMOUNT DUE	₱ 235,959,452.88

TOTAL DISPUTED DEFICIENCY VAT & DST ASSESSMENTS ₱ 517,895,721.18

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 ₱517,895,721.18 for TY 2013, should be cancelled.

WHEREFORE, premises considered, the *Petition for Review* filed by AB Leisure Exponent, Inc. (doing business under the name and style of Bingo Bonanza) is **GRANTED**.



³⁸ Assailed Decision of October 18, 2021, p. 9.

DECISION

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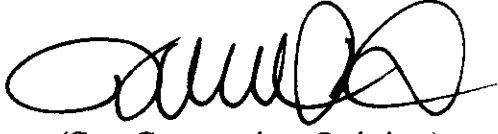
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The assailed Decision dated October 18, 2021, and Resolution dated March 23, 2022, are **REVERSED** and **SET ASIDE**. Accordingly, the deficiency VAT and DST assessments issued by the Commissioner of Internal Revenue against petitioner for the taxable year 2013 are **CANCELLED** and **SET ASIDE**.

SO ORDERED.

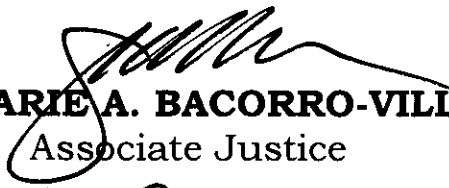

LANEE S. CUI-DAVID
Associate Justice

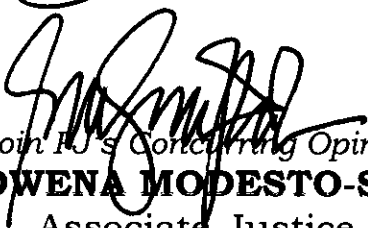
WE CONCUR:


(See Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice


(I join PJ's Concurring Opinion)
CATHERINE T. MANAHAN
Associate Justice


JEAN MARIE A. BACORRO-VILLENA
Associate Justice


(I join PJ's Concurring Opinion)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

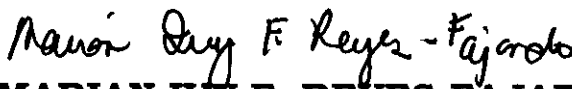
DECISION

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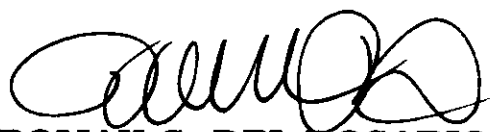

MARIAN IVY F. REYES-FAJARDO
Associate Justice


CORAZON G. FERRER-FLORES
Associate Justice

ON LEAVE
HENRY SUMAWAY ANGELES
Associate Justice

CERTIFICATION

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


ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

AB LEISURE EXPONENT INC.
(doing business under the
name and style of Bingo
Bonanza),

Petitioner,

- versus -

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

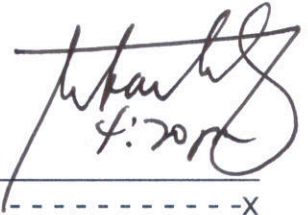
CTA EB No. 2595
(CTA Case No. 9620)

Present:

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

Promulgated:

OCT 04 2023



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CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur in the *ponencia* in granting the Petition for Review, and reversing and setting aside the assailed Decision dated October 18, 2021 and Resolution dated March 23, 2022, both rendered by the Court in Division.

I write this Concurring Opinion, however, to explain the reasons for the *reversal* of my concurrence in the assailed Decision and Resolution.

After a second hard look, and upon thorough examination of the applicable law and jurisprudence, I am of the position that petitioner enjoys the tax exemption privileges granted to licensees of the Philippine Amusement and Gaming Corporation (PAGCOR) in accordance with Section 13(2)(b) of Presidential Decree (PD) No. 1869, as amended by Republic Act No. 9487, or the PAGCOR Charter.

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CONCURRING OPINION

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In *The Commissioner of Internal Revenue vs. Acesite (Philippines) Hotel Corporation* ("Acesite"),¹ the Supreme Court held that the tax exemption privilege of PAGCOR under Section 13 of its charter extends to entities or individuals dealing with it.

The ruling in *Acesite* would be confirmed by the Supreme Court in *Bloomberry Resorts and Hotels, Inc. vs. Bureau of Internal Revenue, Represented by Commissioner Kim S. Jacinto-Henares* ("*Bloomberry*"),² where it was categorically ruled that:

"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 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." (*Boldfacing and underscoring supplied*)

Bloomberry would again be applied by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Travellers International Hotel Group, Inc.*,³ where the said Court held that the Court of Tax Appeals committed no reversible error when it ruled that the taxpayer, as a PAGCOR licensee, is exempt from payment of regular corporate income tax after payment of the 5% franchise tax under the PAGCOR Charter.

Then, in the more recent case of *Saint Wealth Ltd., et al. vs. Bureau of Internal Revenue, et al.* ("*Saint Wealth*"),⁴ the Supreme Court *En Banc* echoed the ruling in *Bloomberry* that the tax exemption of the PAGCOR, upon payment of the 5% franchise tax, inures to the benefit of **PAGCOR licensees**, viz.:

"Under Section 13(2)(a) of the PAGCOR Charter, PAGCOR is exempt from the payment of any and all taxes on its income derived from gaming operations, except for a five percent (5%) franchise tax on its gross revenues or earning:

¹ G.R. No. 147295, February 16, 2007.

² G.R. No. 212530, August 10, 2016.

³ G.R. No. 255487, May 3, 2021.

⁴ G.R. Nos. 252965 and 254102, December 7, 2021.

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Considering the above-cited provisions, this Court clarified in *Bloomberry Resorts and Hotels, Inc. v. Bureau of Internal Revenue (Bloomberry)*, that **PAGCOR's tax privilege of paying only a five percent (5%) franchise tax for income generated from its gaming operations, in lieu of all other taxes, inures to the benefit of PAGCOR's licensees**:

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Clearly, 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**. However, a plain reading of the PAGCOR Charter and the ruling in *Bloomberry* shows that the liability of paying the five percent (5%) franchise tax only applies to PAGCOR's licensees which are connected to the operations of casinos and other related amusement places." (*Boldfacing and underscoring supplied*)

The Supreme Court *En Banc*'s invocation of *Bloomberry* in *Saint Wealth* confirms the interpretation that the tax exemption privilege of the PAGCOR inures to the benefit of, and extends not only to its contractees, but also its **licensees**. The ruling in *Saint Wealth* was promulgated on December 7, 2021, but was only released on **September 21, 2022**.⁵ Thus, it was not yet publicly available at the time the assailed Decision and Resolution were promulgated.

As held in the *ponencia*, the citation by the Court in Division of the Supreme Court's ruling in *Thunderbird Pilipinas Hotels and Resorts, Inc. vs. Commissioner of Internal Revenue ("Thunderbird")*⁶ is misplaced, considering the difference in the factual milieu. The facts in *Thunderbird* involved a taxable year prior to the effectivity of RA No. 9487, which amended the PAGCOR Charter. Before the enactment of this amendatory law in 2007, PAGCOR was not permitted to issue licenses to private casino operators. However, Section 10 of the current PAGCOR Charter now authorizes PAGCOR to do so.

In this case, petitioner's license under its Renewal of the Term of the Authority to Operate Traditional and Electric Bingo Games was issued by the PAGCOR on December 5, 2012,⁷ and the taxable year subject of the assessment is 2013, all after the effectivity of RA No. 9487; thus, the precedent in *Thunderbird* is inapplicable.

⁵ Paolo Romero, *Senators: SC ruling on POGO 5% tax moot, academic*, Philippine Star, October 1, 2022, available at <https://www.philstar.com/headlines/2022/10/01/2213434/senators-sc-ruling-pogo-5-tax-moot-academic>, last accessed on September 21, 2023.

⁶ G.R. No. 211327, November 11, 2020.

⁷ Exhibit "P-8", Division Docket, Vol. II, p. 606.



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Further, the *ponencia* appropriately held that petitioner's bingo operation falls within the term "operations of casino(s)" under Section 13(2)(b) of the PAGCOR Charter. As there is no technical definition of the word "casino" in said law, its plain meaning shall be used,⁸ which is as follows:

"a building or room used for social amusements, specifically: one used for gambling"⁹

"a building where games, especially roulette and card games are played for money"¹⁰

"a casino is a building or room where people play gambling games such as roulette."¹¹

Verily, an establishment or facility which operates bingo games falls within the plain meaning of the word "casino". As the law did not distinguish what games may be played in a certain establishment to be considered a "casino", so too should the Court not distinguish. There should be no distinction in the application of law where none is indicated.¹²

Indeed, Section 10 of the PAGCOR Charter provides that the PAGCOR may issue licenses specifically to bingo gaming operators, to wit:

"SEC. 10. *Nature and Term of Franchise.* - Subject to the terms and conditions established in this Decree, the Corporation is hereby granted from the expiration of its original term on July 11, 2008, another period of twenty-five (25) years, renewable for another twenty-five (25) years, the rights, privileges and authority to **operate and license** gambling casinos, gaming clubs and other similar recreation or amusement places, gaming pools, *i.e.* basketball, football, bingo, etc. except jai-alai, whether on land or sea, within the territorial jurisdiction of the Republic of the Philippines: Provided, That the corporation shall obtain the consent of the local government unit that has territorial jurisdiction over the area chosen as the site for any of its operations." (*Boldfacing and underscoring supplied*)

⁸ *Norton Resources and Development Corporation vs. All Asia Bank Corporation*, G.R. No. 162523, November 25, 2009.

⁹ Merriam-Webster Dictionary, available at <https://www.merriam-webster.com/dictionary/casino>, last accessed on September 21, 2023.

¹⁰ Cambridge Dictionary, available at <https://dictionary.cambridge.org/us/dictionary/english/casino>, last accessed on September 21, 2023.

¹¹ Collins Dictionary, available at <https://www.collinsdictionary.com/dictionary/english/casino>, last accessed on September 21, 2023.

¹² *Intestate Estate of Manolita Gonzales Vda. de Carungcong vs. People of the Philippines and William Sato*, G.R. No. 181409, February 11, 2010.



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Thus, as a PAGCOR-licensed bingo operator, the tax exemption privileges granted under Section 13(2)(b) of the PAGCOR Charter inures to the benefit of petitioner.

Nevertheless, the PAGCOR Charter is clear that petitioner's tax exemption privileges would only be triggered if petitioner proved that it **paid the 5% franchise tax** for taxable year (TY) 2013.

Here, petitioner presented in evidence a Statement of Franchise Tax Remittances for the 1st Quarter Ending March 31, 2013 issued by PAGCOR, which showed that the former remitted to the latter the 5% franchise tax in the total amount of ₱6,486,500.41.¹³

For the remaining three (3) quarters of TY 2013, petitioner did not remit the 5% franchise tax to PAGCOR in line with the issuance of Revenue Memorandum Circular (RMC) No. 33-2013, which stated that "PAGCOR's contractees and licensees x x x are subject to income tax under the NIRC, as amended." This interpretation in RMC No. 33-2013 was subsequently overturned by the Supreme Court with the promulgation of *Bloomberry* in 2016, that is -- PAGCOR licensees are not subject to income tax. Notwithstanding, petitioner paid the regular income tax and filed the Quarterly¹⁴ and Annual¹⁵ Income Tax Returns covering the remaining three (3) quarters of TY 2013.

In fine, petitioner has sufficiently proven that it is exempt from payment of taxes for TY 2013, as such it is not liable for any deficiency tax under the subject assessment.

ALL TOLD, I *CONCUR* in the *ponencia*.


ROMAN G. DEL ROSARIO
Presiding Justice

¹³ Exhibit "P-23", Division Docket, Vol. II, p. 806.

¹⁴ Exhibits "P-16-a" and "P-16-b", Division Docket, Vol. II, pp. 707-712.

¹⁵ Exhibit "P-18", Division Docket, Vol. II, pp. 722-730.