REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

First Division

PREMIUMLEISURE AND AMUSEMENT, INC. (PLAI), *Petitioner,*	**CTA Case No. 9798**
	Members:
-versus-	**DEL ROSARIO, *P.J.***, *Chairperson and* **MANAHAN**, *J.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: SEP 02 2020 10:15 am

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DECISION

MANAHAN, *J.:*

This case involves a *Petition for Review* filed on April 3, 2018 by petitioner Premiumleisure and Amusement, Inc. (PLAI) against respondent Commissioner of Internal Revenue, praying that the Court render judgment ordering respondent to refund or issue in favor of petitioner a tax credit certificate (TCC) in the amount of ₱115,197,543.00, representing petitioner's alleged erroneously paid income tax for the calendar year (CY) 2015.[1]

THE PARTIES

Petitioner PLAI is a domestic corporation duly organized and existing under the laws of the Philippines, with principal office at 10/F One E-Com Center, Harbor Drive, Mall of Asia Complex, CBP 1A, Pasay City.[2]

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue vested under the

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[1] Docket, CTA Case No. 9798, Vol. II, Statement of the Case, Pre-Trial Order dated October 10, 2018, p. 1004.

[2] *Id.*, Vol. II, Par. 1, Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), p. 963; Docket, Vol. III, Exhibit "P-1", pp. 1045 to 1071.

appropriate laws with the authority to carry out the functions, duties, and responsibilities of said Office, including *inter alia*, the power to refund internal revenue taxes, fees or other charges, penalties pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997 and other tax laws, rules, and regulations, with office address at the Bureau of Internal Revenue (BIR) National Office Building, BIR Road, Diliman, Quezon City.[3]

THE FACTS

On February 28, 2018, petitioner filed with the BIR its administrative claim via the letter dated February 26, 2018, accompanied by an *Application for Tax Credits / Refunds (BIR Form No. 1914)*,[4] requesting for the refund and/or issuance of TCC amounting to ₱12,693,883.00, allegedly representing the annual income tax erroneously paid by it for CY 2015. However, petitioner subsequently filed an amendment to the said administrative claim on March 16, 2018, modifying the amount thereof to ₱115,197,543.00.[5]

Thereafter, respondent issued the *Letter of Authority* No. eLA201500089691 dated July 20, 2017, which was received by petitioner on August 9, 2017.[6]

Petitioner filed the instant *Petition for Review* on April 3, 2018.[7]

In his *Answer* filed on June 25, 2018,[8] respondent raised the following special and affirmative defenses, to wit:

> "SPECIAL AND AFFIRMATIVE DEFENSES
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> 4. Respondent adopts the abovementioned admissions and denials as part of his special and affirmative defenses.
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> 5. Taxes paid and collected are presumed to have been made in accordance with the law and implementing regulations.

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[3] Docket, Vol. II, Par. 2, Admitted Facts, JSFI, p. 963.
[4] *Id.*, Vol. III, Exhibit "P-14", pp. 1375 to 1383.
[5] *Id.*, Vol. III, Exhibit "P-15", pp. 1384 to 1386.
[6] *Id.*, Vol. III, Exhibit "P-16", p. 1387.
[7] *Id.*, Vol. I, pp. 10 to 23.
[8] *Id.*, Vol. I, pp. 411 to 414.

6. The claim for refund is still under investigation and examination by the Respondent Bureau of Internal Revenue.

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

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

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

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

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

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

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

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

15. To reiterate, claims for refund are construed strictly against the claimant for the same partake of the nature of exemption from taxation and as such, they are looked upon with disfavor. This is so because exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from the

> common burden cannot be permitted to exist upon vague implications. The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted."

The *BIR Records* were transmitted to the Court on July 9, 2018.[9]

The pre-trial conference was set and held on August 9, 2018.[10] *Respondent's Pre-Trial Brief* was filed on July 31, 2018,[11] while *Petitioner's Pre-Trial Brief* was submitted on August 3, 2018.[12]

On August 29, 2018, the parties submitted their *Joint Stipulation of Facts and Issues* (JSFI).[13] In the Resolution dated September 5, 2018,[14] the Court approved the said JSFI, and deemed the pre-trial terminated. Thereafter, the Pre-Trial Order dated October 10, 2018 was issued.[15]

Trial of the case then proceeded.

During trial, petitioner presented its testimonial and documentary evidence. Petitioner offered the testimony of its sole witness, Mr. Jackson T. Ongsip,[16] petitioner's Chief Financial Officer and Vice President of Finance.

Petitioner filed its *Formal Offer of Evidence* on October 30, 2018.[17] On November 8, 2018, respondent submitted his *Comment/Opposition (to Petitioner's Formal Offer of Evidence) and Motion*,[18] wherein he, *inter alia*, manifested that in view of the confirmation of the office conducting an investigation/audit on petitioner's claim for refund that there is still no report thereon, respondent will no longer present his witness, but instead requests the Court to allow him to submit

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[9] Docket, Vol. I, *Compliance* dated July 9, 2018, pp. 419 to 421.
[10] *Id.*, Vol. I, *Notice of Pre-Trial Conference* dated July 11, 2018, pp. 423 to 424; Minutes of the hearing held on, and Order dated, August 9, 2018, Docket – Vol. II, pp. 948 to 953.
[11] *Id.*, Vol. I, pp. 427 to 430.
[12] *Id.*, Vol. I, pp. 434 to 449.
[13] *Id.*, Vol. II, pp. 963 to 975.
[14] *Id.*, Vol. II, p. 984.
[15] *Id.*, Vol. II, pp. 1004 to 1019.
[16] *Id.*, Vol. II, Exhibit "P-20", pp. 453 to 476; Minutes of the hearing held on, and Order dated, October 16, 2018, Docket – Vol. II, pp. 1020 to 1024.
[17] *Id.*, Vol. III, pp. 1027 to 1044.
[18] *Id.*, Vol. III, pp. 1463 to 1466.

his memorandum to further support his defense. In the Resolution dated January 11, 2019,[19] the Court: (1) admitted petitioner's Exhibits; (2) noted the said manifestation of respondent; and (3) gave the parties a period of thirty (30) from receipt thereof, within which to file their respective memorandum.

However, petitioner instead filed an *Urgent Omnibus Motion (I) To Re-open Trial; (II) For Leave of Court to Present Additional Evidence (III) To Recall Witness; and (III) To Defer Submission of Memoranda* on February 15, 2019.[20] Respondent submitted his *Opposition (To Petitioner's Urgent Omnibus Motion)* on March 15, 2019.[21]

Respondent, nevertheless, submitted his *Memorandum* on March 18, 2018.[22]

In the Resolution dated May 2, 2019,[23] the Court granted petitioner's *Urgent Omnibus Motion.* Thus, petitioner's witness, Mr. Jackson T. Ongsip, was called anew to the witness stand.[24]

Thereafter, petitioner filed its *Supplemental Formal Offer of Evidence* on July 5, 2019.[25] Thus, in the Resolution dated July 18, 2019,[26] the Court admitted petitioner's Exhibits offered in the said *Supplemental Formal Offer of Evidence.*

Petitioner's *Memorandum* was submitted on August 23, 2019.[27] Respondent filed its *Supplemental Memorandum* on August 23, 2019.[28]

On September 5, 2019, the instant case was submitted for decision.[29]

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[19] Docket, Vol. III, pp. 1471 to 1472.
[20] *Id.*, Vol. III, pp. 1477 to 1483.
[21] *Id.*, Vol. III, pp. 1498 to 1502.
[22] *Id.*, Vol. III, pp. 1504 to 1509.
[23] *Id.*, Vol. III, pp. 1515 to 1518.
[24] *Id.*, Vol. III, Exhibit "P-27", pp. 1522 to 1534; Minutes of the hearing held on, and Order dated, June 11, 2019, Docket – Vol. III, pp. 1685 to 1689.
[25] *Id.*, Vol. III, pp. 1702 to 1712.
[26] *Id.*, Vol. IV, Resolution dated July 18, 2019, pp. 1862 to 1863.
[27] *Id.*, Vol. IV, pp. 1864 to 1898.
[28] *Id.*, Vol. IV, pp. 1899 to 1909.
[29] *Id.*, Vol. IV, Resolution dated September 5, 2019, p. 1912.

ISSUE

The parties stipulated the following issue for this Court's resolution, to wit:

> "WHETHER OR NOT PETITIONER IS ENTITLED TO ITS CLAIM FOR REFUND OF OR ISSUANCE OF TAX CREDIT CERTIFICATE IN THE AMOUNT OF PHP115,197,543.00 REPRESENTING PETITIONER'S ERRONEOUSLY PAID INCOME TAX FOR CALENDAR YEAR 2015."[30]

Petitioner's Arguments[31]

Petitioner argues that it filed its administrative and judicial claims for refund within the prescriptive period fixed by law; that it erroneously paid income tax on its gaming revenues for CY 2015; that petitioner's reported revenues for CY 2015 are entirely from gaming revenues; that petitioner erroneously utilized its Creditable Withholding Tax amounting to ₱13,175,431.00 as payment for its reported income tax due for CY 2015; and that petitioner's reported revenues for CY 2015 were already subjected to five percent (5%) franchise tax.

Respondent's Arguments[32]

Respondent contends that the burden of proof is upon the petitioner to prove that it is entitled to the claim for refund and failure to discharge the same is fatal to the claim; that this is not a case of erroneously collected tax because it did not proceed from a mistake of fact; that there is no allegation or proof that the payment of the subject taxes proceeded from a mistake of fact, and thus, the payment of the income taxes cannot be considered as erroneous and not refundable; that petitioner's claim was not duly substantiated with proper documentary evidence; that petitioner herein is not a party to the case of *Bloomberry Resorts and Hotels, Inc. vs. Bureau of Internal Revenue, represented by Commissioner Kim S. Jacinto* ("*Bloomberry Resorts* case"),[33] and the decision therein is binding only between the parties thereto; that petitioner failed to prove that the amount claimed for refund relates solely to

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[30] Docket, Vol. II, Issues, JSFI, p. 964.
[31] *Supra.*, Note 27.
[32] *Supra.*, Note 28.
[33] G.R. No. 212530, August 10, 2016.

its income realized from operation of casinos; and that petitioner failed to prove that the amount it is claiming for refund or issuance of tax credit relates solely to it and nothing belongs to the other members of the Consortium.

Moreover, respondent avers that petitioner is not entitled to the refund or issuance of a TCC of alleged erroneously paid income taxes for taxable year 2015 because it has not proven its entitlement thereto; and that assuming further that petitioner can claim exemption from payment of income tax, it is submitted that its claim was filed out of time.

RULING OF THE COURT

The petition is meritorious.

Sections 204(C) and 229 of the NIRC of 1997, provide as follows, to wit:

> "SEC. 204. - *Authority of the Commissioner to Compromise, Abate, and Refund or Credit Taxes.* – The Commissioner may –
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty**: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund." *(Emphasis added)*
>
> xxx xxx xxx
>
> "SEC. 229. - *Recovery of Tax Erroneously or Illegally Collected.* – **No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner;** but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

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

The foregoing provisions apply only to instances of erroneous payment or illegal collection of internal revenue taxes.[34] Moreover, Section 229 states that judicial claims for refund must be filed within two (2) years from the date of payment of the tax or penalty, providing further that the same may not be maintained until a claim for refund or credit has been duly filed with respondent.[35] Plainly stated, the administrative and judicial claims for refund and/or TCC must be filed within the two-year prescriptive period starting from the date of payment of tax.[36]

Hence, petitioner must show not only that it timely filed its administrative and judicial claims, but also that there was an erroneous payment or illegal collection of income tax.

Petitioner timely filed its administrative and judicial claims.

It must be noted that it has been jurisprudentially settled that the two-year prescriptive period in Section 229 of the NIRC of 1997 should be computed from the time of filing the Final Adjustment Return or Annual Income Tax Return (ITR) and final payment of income tax.[37] This is so because at that point, it can already be determined whether there has been an overpayment by the taxpayer.[38] In the same vein, taxes

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[34] *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*, G.R. No. 184823, October 6, 2010.

[35] *Commissioner of Internal Revenue vs. Goodyear Philippines, Inc.*, G.R. No. 216130, August 3, 2016.

[36] Refer to *Commissioner of Internal Revenue vs. Team [Philippines] Operations Corporation [formerly Mirant (Phils) Operations Corporation]*, G.R. No. 179260, April 2, 2014.

[37] *Commissioner of Internal Revenue vs. TMX Sales, Inc., et al.*, G.R. No. 83736, January 15, 1992. Refer also to *ACCRA Investments Corporation vs. Court of Appeals, et al.*, G.R. No. 96322, December 20, 1991; *Commissioner of Internal Revenue vs. Court of Appeals, et al.*, G.R. No. 117254, January 21, 1999; and *Commissioner of Internal Revenue vs. The Philippine American Life Insurance Co., et al.*, G.R. No. 105208, May 29, 1995.

[38] *Commissioner of Internal Revenue vs. Court of Appeals, et al., Id.*

withheld on certain payments under the creditable withholding tax system are but intended to approximate the tax due from the payee. The withheld taxes remitted to the BIR are treated as deposits or advances on the actual tax liability of the taxpayer, subject to adjustments at the proper time when the actual tax liability can be fully and finally determined.[39]

Simply put, the prescriptive period of two (2) years should commence to run only from the time that the refund is ascertained, which can only be determined after a final adjustment return is accomplished.[40]

In this case, petitioner filed its Annual ITR for CY 2015 and paid the corresponding income tax due on April 7, 2016.[41] Thus, reckoned from the said date, petitioner had until April 7, 2018, within which to file its refund claim both at the administrative and judicial levels. Evidently, petitioner's administrative claim via the letters dated February 26, 2018 and March 16, 2018 filed with the BIR on February 28, 2018[42] and March 16, 2018[43], respectively, and the judicial claim via the instant *Petition for Review* filed on April 3, 2018,[44] were well within the two-year prescriptive period. Thus, both administrative and judicial claims were timely made.

We do not subscribe to respondent's contention that the two-year prescriptive should be reckoned from the filing of the Quarterly ITR and the payment of the corresponding income tax due, as declared therein, *i.e.*, on May 28, 2015,[45] August 25, 2015,[46] and November 27, 2015,[47] respectively. Specifically, respondent opines that the said two-year prescriptive period would only be reckoned from the filing of the annual income tax return when the error is due to adjustments, error in computation, or in estimation of payments, and *not* when the taxpayer claims to be wholly exempt from its payment.

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[39] *Commissioner of Internal Revenue vs. Ironcon Builders and Development Corporation*, G.R. No. 180042, February 8, 2010.
[40] *Commissioner of Internal Revenue vs. The Philippine American Life Insurance Co., et al., Id.*
[41] Docket - Vol. III, Exhibits "P-10" to "P-10-a", pp. 1349 to1361.
[42] *Id.*, Vol. III, Exhibit "P-14", pp. 1375 to 1383.
[43] *Id.*, Vol. III, Exhibit "P-15", pp. 1384 to 1386.
[44] *Id.*, Vol. I, *Petition for Review*, pp. 10 to 20.
[45] *Id.*, Vol. III, Exhibit "P-11", pp. 1362 to 1365.
[46] *Id.*, Vol. III, Exhibit "P-12", pp. 1366 to 1370.
[47] *Id.*, Vol. III, The date of filing for the Quarter ITR is November 24, 2015, per Exhibit "P-13", pp. 1371 to 1374.

Respondent's contention has no leg to stand on.

The case of *Metropolitan Bank & Trust Company vs. The Commissioner of Internal Revenue,*[48] —the jurisprudence being relied upon by respondent—does not support his contention. In the said case, the Supreme Court held as follows, to wit:

> "As correctly pointed out by the CIR, the cases cited by Metrobank involved corporate income taxes, in which the corporate taxpayer is required to file and pay income tax on a quarterly basis, with such payments being subject to an adjustment at the end of the taxable year. As aptly put in *CIR v. TMX Sales, Inc.*, **'payment of quarterly income tax should only be considered [as] mere installments of the annual tax due. These quarterly tax payments which are computed based on the cumulative figures of gross receipts and deductions in order to arrive at a net taxable income, should be treated as advances or portions of the annual income tax due, to be adjusted at the end of the calendar or fiscal year.** x x x **Consequently, the two-year prescriptive period** x x x **should be computed from the time of filing of the Adjustment Return or Annual Income Tax Return and final payment of income tax.'** Verily, **since quarterly income tax payments are treated as mere 'advance payments' of the annual corporate income tax, there may arise certain situations where such 'advance payments' would cover more than said corporate taxpayer's entire income tax liability for a specific taxable year. Thus, it is only logical to reckon the two (2)-year prescriptive period from the time the Final Adjustment Return or the Annual Income Tax Return was filed, since it is only at that time that it would be possible to determine whether the corporate taxpayer had paid an amount exceeding its annual income tax liability."** *(Emphases and underlining added)*

The foregoing jurisprudence is clear that for corporate income taxes, the reckoning of the two-year prescriptive period is *"from the time the Final Adjustment Return or the Annual Income Tax Return was filed"*; and that the quarterly tax payments are *"mere advance payments of the annual corporate income tax"*. It is noteworthy that nowhere in the said pronouncement was it qualified that the same two-year prescriptive period "would only be reckoned from the filing of the annual income tax return when the error is due to adjustments, error in computation or in estimation of

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[48] G.R. No. 182582, April 17, 2017.

payments, and *not* when the taxpayer claims to be wholly exempt from its payment."

Furthermore, the quarterly tax payments of petitioner remain as *"mere advance payments of the annual corporate income tax"*, even when it is claiming a whole income tax exemption in this case.

After finding the timeliness of the subject administrative and judicial claims, the Court shall proceed to determine whether there was an erroneous payment or illegal collection of income tax.

The exemption of PAGCOR from income tax on gaming revenues extends to its contractees and licensees.

Presidential Decree (PD) No. 1869[49] which amended the franchise and powers of the Philippine Amusement and Gaming Corporation (PAGCOR) is the legal centerpiece of this case. Petitioner's claim is anchored on Section 13(2) of PD No. 1869 which provides, to wit:

> "SEC. 13. *Exemptions*. —
>
> (1) xxx xxx xxx
>
> (2) *Income and other taxes*. — (a) Franchise Holder: <u>No tax of any kind or form</u>, income or otherwise, as well as fees, charges or levies of whatever nature, whether National or Local, <u>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</u>. 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*: <u>The exemptions herein granted</u> for earnings derived from the operations conducted under the franchise specifically <u>from the payment of any tax, income or otherwise</u>, as well as any form of charges, fees or levies, <u>shall</u>

[49] 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).

> inure to the benefit of and extend to corporation(s), association(s), agency(ies), or individual(s) with whom the Corporation or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise and to those receiving compensation or other remuneration from the Corporation or operator as a result of essential facilities furnished and/or technical services rendered to the Corporation or operator.
>
> The fee or remuneration of foreign entertainers contracted by the Corporation or operator in pursuance of this provision shall be free of any tax." (*Underscoring supplied*)

In the *Bloomberry Resorts* case,[50] the Supreme Court interpreted the said Section 13(2) of PD No. 1869, in relation to the NIRC of 1997, as amended by Republic Act No. 9337[51], and held as follows:

> "The determination of the submissions of petitioner will have to follow the pilot case of *PAGCOR v. The Bureau of Internal Revenue, et al.*, where this Court clarified its earlier ruling in G.R. No. 172087 involving the same parties, and expressed that: (i) Section 1 of RA No 9337, amending Section 27(C) of the NIRC of 1997, as amended, which excluded PAGCOR from the enumeration of GOCCs exempted from corporate income tax, is valid and constitutional; (ii) PAGCOR's tax privilege of paying five percent (5%) franchise tax *in lieu* of all other taxes with respect to its income from gaming operations is not repealed or amended by Section 1(c) of R.A. No. 9337; (iii) PAGCOR's income from gaming operations is subject to the 5% franchise tax only; and (iv) PAGCOR's income from other related services is subject to corporate income tax only.
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> xxx xxx xxx
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> The Court through Justice Diosdado M. Peralta, categorically followed what was simply provided under the PAGCOR Charter (PD No. 1869, as amended by RA No. 9487), by proclaiming that despite amendments to the NIRC of 1997, the said Charter remains in effect. **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**. The Court concluded that the CIR committed grave abuse of discretion amounting to lack or excess of jurisdiction when it issued RMC No. 33-2013

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[50] *Supra.*, Note 33.

[51] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

subjecting both income from gaming operations and other related services to corporate income tax and 5% franchise tax considering that it unduly expands the Court's Decision dated 15 March 2011 without due process, which creates additional burden upon PAGCOR.

Noticeably, however, the High Court in the abovementioned case intentionally did not rule on the issue of whether or not PAGCOR's tax privilege of paying only the 5% franchise tax in lieu of all other taxes inures to the benefit of third parties with contractual relationship with it in connection with the operation of casinos, such as petitioner herein. The Court sitting En Banc simply stated that:

> The resolution of the instant petition is limited to clarifying the tax treatment of [PAGCOR's] income *vis-à-vis* our Decision dated March 15, 2011. This Decision (dated 10 December 2014) is not meant to expand our original Decision (dated 15 March 2011) by delving into new issues involving [PAGCOR's] contractees and licensees. For one, the latter are not parties to the instant case, and may not therefore stand to benefit or bear the consequences if (sic) this resolution. For another, to answer the fourth issue raised by [PAGCOR] relative to its contractees and licensees would be downright premature and iniquitous as the same would effectively countenance sidesteps to judicial process.

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

Section 13 of PD No. 1869 evidently states that payment of the 5% franchise tax by PAGCOR and its contractees and licensees exempts them from payment of any other taxes, including corporate income tax, quoted hereunder for ready reference:

> "Sec. 13. Exemptions. –
>
> x x x x
>
> (2) <u>Income and other taxes.</u> – **(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, <u>except a Franchise Tax of five (5%)</u>**

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

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.**

We adhere to the cardinal rule in statutory construction that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. As has been our consistent ruling, where the law speaks in clear and categorical language, there is no occasion for interpretation; there is only room for application.

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** *an*

> **corporate income tax realized from the operation of casinos.**
>
> **For the same reasons that made us conclude in the 10 December 2014 Decision of the Court sitting En Banc in G.R. No. 215427 that PAGCOR is subject to corporate income tax for 'other related services', we find it logical that its *contractees and licensees* shall likewise pay corporate income tax for income derived from 'related services.'**
>
> Simply then, in this case, we adhere to the principle that since the statute is clear and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This is the plain meaning rule or *verba legis*, as expressed in the *maxim index animi sermo* or speech is the index of intention.
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> **Plainly, too, upon payment of the 5% franchise tax, petitioner's income from its gaming operations of gambling casinos, gaming clubs and other similar recreation or amusement places, and gaming pools, defined within the purview of the aforesaid section, is not subject to corporate income tax.**" *(Emphases and underlining added)*

Although the issue in the abovementioned case does not pertain to claim for refund, it must be noted that the High Court's ruling that the tax regime or incentive of PAGCOR inures to the benefit of and extend to **all its *contractees and licensees*** and thus, the binding effect thereof is not limited to Bloomberry Resorts and Hotels, Inc.—the party in the said case. Correspondingly, respondent's reasoning that the *Bloomberry Resorts* case is binding only between the parties thereto is specious.

In any event, to be entitled to the above-stated tax regime or incentive of PAGCOR, particularly, the exemption from corporate income tax, petitioner must primarily show *inter alia* that it is a *contractee and licensee* of PAGCOR.

To be sure, PAGCOR's *contractees and licensees* are entities duly authorized and licensed by PAGCOR to perform gambling casinos, gaming clubs and other similar recreation or amusement places, and gaming pools.[52]

The Court finds that petitioner was able to show that it is a *contractee and licensee* of PAGCOR. Petitioner is part of, or

[52] Part II, Revenue Memorandum Circular No. 33-2013 dated April 17, 2013.

is one of the corporations comprising, the Consortium, which was granted the *Gaming License* dated April 29, 2015 issued by PAGCOR for the period from December 12, 2008 until July 11, 2033.[53]

Undoubtedly, petitioner was able to demonstrate that the said Consortium, through the co-licensee MCE Leisure (Philippines) Corporation, remitted **license fees** to PAGCOR in relation to the gaming revenues in CY 2015.[54] Under the Provisional License granted by PAGCOR in favor of the Consortium particularly under Section 21 thereto, the payment of franchise tax is the obligation of PAGCOR, to wit:[55]

> "**Section 21. FRANCHISE TAX**. PAGCOR shall pay the franchise tax on actual Gross Gaming Revenues generated by the Casino ("Franchise Tax"). **The License Fees as stipulated under Section 20 hereof is inclusive of the Franchise Tax**. As provided under the PAGCOR Charter, the Franchise Tax shall be due and payable quarterly to the national government by PAGCOR. (*Emphasis supplied*)
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> If the LICENSEE is required to make any payment on account of the franchise tax, PAGCOR shall defend and hold LICENSEE harmless against such payment or liability, so that the LICENSEE shall only be liable for and pay the License Fees as contemplated under this License."

The terms and conditions, including the abovementioned provision, in the said Provisional License were also adopted in the permanent Gaming License[56] issued by PAGCOR to the Consortium of which petitioner is a member.

The Supreme Court Decision in Bloomberry Resort case renders petitioner's payment of Income Tax for CY 2015 erroneously paid taxes

It should be recalled that the main issue in the *Bloomberry Resort* case is the implementation of Revenue Memorandum Circular (RMC) No. 33-2013 dated April 17, 2013, otherwise known as "Income Tax and Franchise Tax

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[53] Docket, Vol. III, Exhibits "P-4", "P-5", "P-6", and "P-17", pp. 1074, 1075, 1076, and 1389, respectively.
[54] *Id.*, Vol. III, Exhibits "P-18-a" to "P-18-oo", pp. 1390 to 1430.
[55] *Id.*, Vol. I, Annex "C", p. 53.
[56] *Id.*, Vol. III, Exhibit "P-6", pp. 1076.

Due from the Philippine Amusement and Gaming Corporation (PAGCOR), its Contractees and Licensees."

In the said rules and regulation, PAGCOR's contractees and licensees were subjected to regular corporate income tax under the 1997 NIRC, as amended, which was the basis of petitioner's payment of its CY 2015 income tax.

In the earlier case of *Philippine Amusement and Gaming Corporation (PAGCOR) v. The Bureau of Internal Revenue, et al.* [57], the Supreme Court did not tackle the issue on whether the tax privilege of paying five percent (5%) franchise tax inures to the benefit of third parties with contractual relationship with PAGCOR.

However, in the *Bloomberry Resort* case, as abovementioned, the Supreme Court categorically ruled that "**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.**"

Thus, petitioner's payment of income tax for 2015 was erroneously paid in 2016 because its payment of the License Fees to PAGCOR was already inclusive of the 5% Franchise Tax which should be in lieu of any and all taxes[58], *i.e.*, 5% of its total gross income[59] of Php756,237,939.00. Respondent raised no objection whatsoever against this allegation.

Respondent's argument that the *Bloomberry Resorts* case is binding only between the parties thereto is not correct as the case law emanating therein also extends to those similarly situated. It must be emphasized that Bloomberry Resorts and Hotels, Inc. and the herein petitioner are both PAGCOR's contractees and licensees. Hence, the Supreme Court decision likewise applies to herein petitioner.

Respondent should be aware that this Court is mandated to take cognizance of the rulings which are promulgated by the

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[57] G.R. No. 215427, December 10, 2014.
[58] *Supra.*, Note 55.
[59] Docket, Vol. III, Exhibit "P-10", p. 1350.

Supreme Court as ruled in the case of *The Heirs of Felicidad Canque v. Court of Appeals, et al.*,[60] to wit:

> Clearly, the Court of Appeals committed a reversible error because it palpably failed to consider in its August 25, 1994 Decision the aforementioned ruling of the Supreme Court promulgated twenty months earlier on January 27, 1993. Unfortunately, this is not the first time for this Court to come upon such a slip. *Peltan Development vs. Court of Appeals* ruled that **every court must take cognizance of decisions this Court has rendered because they are proper subjects of mandatory judicial notice** xxx [and] **more importantly form part of the legal system**. We stress that **members of the bench have a responsibility to know and to apply the latest holdings of the Supreme Court**. The nature of their calling requires no less. (*Emphasis supplied*)

Such duty to follow the legal doctrine enunciated by the Supreme Court is not only pursuant to the doctrine of judicial notice but because it is the only institution which the courts should follow as pronounced in the case of *Manila Electric Company v. Philippine Consumers Foundation, Inc., et al.*,[61] to wit:

> A lower court cannot reverse or set aside decisions or orders of a superior court, especially of this Court, for to do so will negate the principle of hierarchy of courts and nullify the essence of review. A final judgment, albeit erroneous, is binding on the whole world. Thus, it is the duty of the lower courts to obey the Decisions of this Court and render obeisance to its status as the apex of the hierarchy of courts. "A becoming modesty of inferior courts demands conscious realization of the position that they occupy in the interrelation and operation of the integrated judicial system of the nation." "**There is only one Supreme Court from whose decisions all other courts should take their bearings**," as eloquently declared by Justice J. B. L. Reyes. (*Emphasis supplied*)

Further, it is well-settled that courts must be cognizant of the decisions of the Supreme Court because of the doctrine of *stare decisis* as amply explained in the case of *Amelia D. De Mesa et al. v. Pepsi Cola Products, Inc., et al.*,[62] to wit:

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[60] G.R. No. 119184, July 21, 1997.
[61] G.R. No. 101783, January 23, 2002.
[62] G.R. Nos. 153063-70, August 19, 2005.

> The principle of *stare decisis et non quieta movere* is entrenched in Article 8 of the Civil Code, to wit:
>
> > ART. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.
>
> It enjoins adherence to judicial precedents. It requires our courts to follow a rule already established in a final decision of the Supreme Court. That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land. **The doctrine of stare decisis is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument**. (emphasis supplied)

Petitioner's claim was duly substantiated by documentary and testimonial evidence

Respondent also argues that petitioner failed to prove that its income came solely from gaming operations and that its claim for refund pertained solely to its share and not to the other member of the Consortium.

As attested in petitioner's comparative Financial Statements ending December 31, 2015 and December 31, 2014, particularly in Notes 12 and 6, its income came from gaming operations and interest from bank deposits.[63] Such declaration was also corroborated by petitioner's witness, Mr. Jackson T. Ongsip, during the hearing without any further inquiry or objection from or cross-examination by the respondent.[64] Further, respondent failed to adduce any evidence to the contrary. Thus, such allegation was incorrect and unsubstantiated.

Furthermore, petitioner's gross income was indicated in its Annual Income Tax Return (BIR Form No. 1702-RT) with a paid tax due amounting to Php115,197,543.00,[65] where quarterly income tax payments[66] amounting to

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[63] Docket, Vol. III, Exhibit "P-9", pp. 1323, 1338, and 1341.
[64] Transcript of Stenographic Notes taken during the Hearing on October 16, 2018, pp. 13-14.
[65] Docket, Vol. III, Exhibit "P-10", pp. 1349-1356.
[66] *Id.*, Vol. III, Exhibits "P-11", "P-12", and "P-13", pp. 1362 to 1374.

Php102,503,660.00 were deducted and the tax payable amounting to Php12,693,883.00 was paid through the electronic Filing and Payment System[67] (eFPS). Also, there were official receipts[68] issued by PAGCOR for the payment of the license fees by the Consortium as represented by MCE Leisure (Philippines) Corporation with petitioner's Acknowledgment/Official Receipts[69] of its share in the gaming revenues issued to the latter. Hence, petitioner had fully substantiated its claim.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. Accordingly, respondent is **ORDERED** to **REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in the amount of **₱115,197,543.00** in favor of petitioner, representing its erroneously paid income tax for the calendar year (CY) 2015.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

ROMAN G. DEL ROSARIO
Presiding 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice

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[67] Docket, Vol. III, Exhibit "P-10-a", pp. 1359-1361.
[68] *Id.*, Vol. III, Exhibits "P-18-a" to "P-18-oo", pp. 1390 to 1430.
[69] *Id.*, Vol. III, Exhibits "P-20-a" to "P-20-t", pp. 1442 to 1461.