REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SPECIAL FIRST DIVISION

TRAVELLERS INTERNATIONAL HOTEL GROUP, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9168

Members:

DEL ROSARIO, *P.J., Chairperson,*
UY, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:
NOV 08 2018 ; 2:00 pm

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DECISION

***DEL ROSARIO, P.J.*:**

This Petition for Review was filed by petitioner Travellers International Hotel Group, Inc.[1] against respondent Commissioner of Internal Revenue, praying for the cancellation and withdrawal of respondent's assessment against petitioner for deficiency income tax in the total amount of Two Billion Seven Hundred Six Million Eight Hundred Eighty Thousand Nine Hundred Seventy Eight Pesos and Seventy Five Centavos (₱2,706,880,978.75), inclusive of penalties and interest for taxable year 2010.

THE PARTIES

Petitioner Travellers International Hotel Group, Inc. is a domestic corporation duly organized and existing under Philippine laws, with principal office at 10/F Newport Entertainment & Commercial Centre, Newport Boulevard, Newport Cybertourism Economic Zone, Pasay

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[1] The Petition for Review was filed pursuant to Section 3(a), Rule 8, Revised Rules of the Court of Tax Appeals.

City, Philippines.[2] It is authorized by the Philippine Amusement and Gaming Corporation ("PAGCOR") to establish and operate casinos within the latter's regulatory and licensing authority under Presidential Decree ("PD") No. 1869, as amended, otherwise known as the PAGCOR Charter.[3]

Respondent is the duly appointed Commissioner of Internal Revenue ("CIR") vested under appropriate laws with the authority to carry out the functions, duties and responsibilities of said office, including *inter alia*, the power to decide disputed assessments, cancel and abate tax liabilities pursuant to the provisions of the National Internal Revenue Code of 1997 ("NIRC"), as amended, and other tax laws, rules and regulations.[4]

THE FACTS

A Letter of Authority ("LOA") No. LOA-125-2011-00000160 dated December 5, 2011 was issued by OIC-Assistant Commissioner, Large Taxpayer Service, Alfredo V. Misajon, authorizing the examination of the books of accounts and other accounting records of petitioner for taxable year 2010, which was received by petitioner on the same date.[5]

The audit and examination of petitioner's records resulted in the issuance of Preliminary Assessment Notice ("PAN") dated February 13, 2014 from the Bureau of Internal Revenue ("BIR") - Large Taxpayers Service, which petitioner received on February 21, 2014. The PAN proposed to assess petitioner deficiency taxes for calendar year ending December 31, 2010 in the total amount of ₱3,033,089,473.59, computed as follows:[6]

Tax		**Amount of Deficiency, inclusive of interests and penalties**
Income Tax	P	2,938,815,146.65
VAT		13,715,257.95
EWT		68,202,681.01
WTC		4,340,859.33
DST		3,846,760.98
Final Tax		4,168,767.67
TOTAL	**P**	**3,033,089,473.59**

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[2] Exhibit "P-1", CTA Docket, pp. 1219-1241.
[3] Exhibit "P-3", including submarkings, CTA Docket, pp. 1246-1272.
[4] Stipulated Facts, Joint Stipulation of Facts and Issues (JSFI), CTA Docket, p. 1073.
[5] Exhibit "R-3", BIR Records, p. 689.
[6] Stipulated Facts, JSFI, CTA Docket, p. 1074.

On February 28, 2014, petitioner paid the amount of ₱13,521,657.75, representing a portion of the income tax assessment and the entire assessments for Value-added Tax ("VAT"), Expanded Withholding Tax ("EWT"), Withholding Tax on Compensation ("WTC"), Documentary Stamp Tax ("DST"), and Final Tax, inclusive of penalties and interests.[7]

The basis for imposing deficiency income tax as stated in the Details of Discrepancies incorporated in the PAN is as follows:[8]

> "It was provided under RMC No. 33-2013 that, "[P]ursuant to Section 1 of R.A. 9337, amending Section 27 (c) of the NIRC, as amended, PAGCOR is no longer exempt from corporate income tax as it has been effectively omitted from the list of government-owned or controlled corporations (GOCCs) that are exempt from income tax. Accordingly, PAGCOR's income from its operations and licensing of gambling casinos, gaming clubs and other similar recreation or amusement places, gaming pools, and other related operations are subject to corporate income tax under the NIRC, as amended."
>
> In view of the above cited provision, being an entity duly authorized and licensed by PAGCOR to perform gambling casinos, gaming clubs and other similar recreation or amusement places, and gaming pools, you are now subject to income tax under the NIRC, as amended. Thus, your net taxable income from Casino Wins in the amount of P4,929,445,675.12 was subjected to regular income tax pursuant to Section 27 (c) of the NIRC, as amended."

In a Letter dated March 10, 2014, petitioner informed respondent that it paid the assessed VAT, EWT, WTC, DST, Final Tax, and a portion of the income tax assessment in the total amount of ₱13,521,657.75. Petitioner, however, protested the proposed assessments set forth in the PAN (i.e. remaining deficiency income tax relating to disallowed salaries and allowances expense, disallowed expenses for income payments not subjected to EWT and gaming revenue) and requested that the same be cancelled for lack of factual and legal basis.[9]

On March 31, 2014, the Formal Assessment Notice ("FAN") with the attached Details of Discrepancies and the Assessment Notice (BIR Form 0401) No. IT-125-LA-00000160-10-14-0112 were issued by respondent and duly received by petitioner.[10]

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[7] Stipulated Facts, JSFI, CTA Docket, p. 1074.
[8] Stipulated Facts, JSFI, CTA Docket, p. 1074.
[9] Exhibit "P-7", CTA Docket, pp. 1313-1326.
[10] Stipulated Facts, JSFI, CTA Docket, p. 1074.

In the FAN dated March 31, 2014, with attached Details of Discrepancies and Assessment Notices, **the alleged deficiency income tax on petitioner's revenue from gaming operations,** inclusive of interest and compromise penalty, in the total amount of ₱2,378,338,721.62 was computed as follows:[11]

I. Income Tax

Taxable Income per Return				
Add: Adjustments			P	(1,495,452,600.00)
a. PAGCOR – CASINO WINS (taxable income pursuant to Sec. 27 (c), NIRC)			P	4,929,445,675.12
Taxable Income per investigation			P	4,929,445,675.12
Income Tax Rate				30%
Tax Due per audit/investigation			P	1,478,833,702.54
Minimum Corporate Income Tax (MCIT)	P	6,647,815.00		
Less: Payments per return				
Prior year's excess credits other than MCIT		(889,684.00)		
Tax Payments for the first three quarters		(2,115,695.00)		
Creditable tax withheld for the First three quarters		(2,224,764.00)		
CWT 4th quarter		(1,868,951.00)		
Total Tax credits/Payments		(451,279.00)		
Basic Income Tax Due			P	1,478,833,702.54
Add: Increments				
Surcharge	P	0.00		
Interests (4/16/2011-9/30/2014) 1,110 days		899,455,019.08		
Compromise (RMO 19-2007)		50,000.00		899,505,019.08
Total Income Tax Still Due per audit/investigation			**P**	**2,378,338,721.62**

On April 30, 2014, petitioner filed its protest to the FAN.[12]

On September 17, 2014, petitioner received respondent's Final Decision on Disputed Assessment ("FDDA") dated September 12, 2014 signed by Large Taxpayers Service OIC-Assistant Commissioner Nestor S. Valeroso. Based on the FDDA, petitioner's alleged deficiency income tax liability for taxable year 2010 amounted to ₱2,441,970,555.77, inclusive of interest and compromise penalties, computed as follows:[13]

II. Income Tax

Taxable Income per Return	P	(1,495,452,600.00)
Add: Adjustments		
b. PAGCOR – CASINO WINS (taxable income pursuant to Sec. 27 (c), NIRC)	P	4,929,445,675.12

[11] Stipulated Facts, JSFI, CTA Docket, p 1075.
[12] Stipulated Facts, JSFI, CTA Docket, p. 1075.
[13] Stipulated Facts, JSFI, CTA Docket, pp. 1075-1076.

Taxable Income per investigation			P	4,929,445,675.12
Less: Net Operating Loss Carry over from prior years (Year 2009)				95,219,621.00
Adjusted Taxable Income per Investigation			P	4,834,226,054.12
Income Tax Rate				30%
Tax Due per audit/investigation			P	1,450,267,816.24
Less: Payments per return				
Prior year's excess credits other than MCIT		(889,684.00)		
Tax Payments for the first three quarters		(2,115,695.00)		
Creditable tax withheld for the First three quarters		(2,224,764.00)		
CWT 4th quarter		(1,868,951.00)		
Total Tax credits/Payments		(7,099,094.00)		(7,099,094.00)
Basic Income Tax Due			**P**	**1,443,168,722.24**
Add: Increments				
Surcharge	P	0.00		
Interests (4/16/2011-9/30/2014) 1,263 days		998,751,833.53		
Compromise (RMO 19-2007)		50,000.00		998,801,833.53
Total Income Tax Still Due per audit/investigation			**P**	**2,441,970,555.77**

On October 16, 2014, petitioner filed a Request for Reconsideration of the ("FDDA").[14]

On April 13, 2014, petitioner filed a Supplemental Request for Reconsideration, citing the decision of the Supreme Court in *PAGCOR vs. Commissioner of Internal Revenue*, G.R. No. 215427, December 10, 2014.[15]

On September 15, 2015, petitioner received from respondent a Letter dated August 26, 2015 ("Final Decision") sustaining the FDDA and holding petitioner liable for deficiency income tax assessment in the amount of ₱2,706,880,978.75, including the accrued interest and penalties.[16]

The Final Decision's Details of Discrepancies provides the following basis for the income tax assessment:[17]

> "In reply, Supreme Court's ruling in PAGCOR is conclusive only as between the parties involved therein, the case being an action in personam, in accordance with the Rule 39 of the Rules of Court. Hence, any decision rendered therein only binds PAGCOR and not its Licensees. Other entities which are not parties to the case are not covered by, and therefore, not affected by the decision. As stated in the case under G.R. No. 215427, December 10, 2014 – Philippine Amusement and Gaming Corporation (PAGCOR), Petitioner vs. The Bureau of Internal Revenue, it was quoted, to wit:

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[14] Stipulated Facts, JSFI, CTA Docket, p. 1076.
[15] Stipulated Facts, JSFI, CTA Docket, p. 1076.
[16] Stipulated Facts, JSFI, CTA Docket, p. 1076.
[17] Stipulated Facts, JSFI, CTA Docket, p. 1076.

> 'The resolution of the instant petition is limited to clarifying the tax treatment of petitioner's income vis-à-vis our Decision dated March 15, 2011. This Decision is not meant to expand our original Decision by delving into new issues involving petitioner'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 of this resolution. For another, to answer the fourth issue raised by petitioner relative to its contractees and licensees would be downright premature and iniquitous as the same would effectively countenance sidesteps to judicial process.'"

On October 15, 2015, petitioner filed the subject Petition for Review before this Court.[18]

On January 11, 2016, respondent filed his "Answer (to the Petition for Review dated 14 October 2015)",[19] interposing the following special and affirmative defenses:

1) Petitioner was never denied due process. It was accorded every opportunity allowed by law and the rules to refute the audit findings of respondent;

2) The assessment against petitioner for deficiency income tax for taxable year 2010 has bases both in fact and in law; and

3) The LOA, PAN, FLD, FAN, and FDDA were issued in accordance with law, rules and jurisprudence.

On February 24, 2016, respondent filed his Pre-Trial Brief,[20] while petitioner filed its Pre-Trial Brief on February 29, 2016. [21]

On July 22, 2016, the parties filed their Joint Stipulation of Facts and Issues[22] which was approved by the Court in a Resolution promulgated on August 1, 2016.[23] The Court terminated the Pre-Trial and issued a Pre-Trial Order on September 21, 2016.[24]

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[18] CTA Docket, pp. 10-229.
[19] CTA Docket, pp. 244-258.
[20] CTA Docket, pp. 269-278.
[21] CTA Docket, pp. 665-680.
[22] CTA Docket, pp. 1073-1088.
[23] CTA Docket, p. 1091.
[24] CTA Docket, pp. 1153-1168.

During trial, both parties presented their respective evidence. On November 11, 2016, petitioner filed its "Formal Offer of Evidence (with Motion to Re-Mark Exhibit)",[25] with respondent's "Comment (Re: Petitioner's Formal Offer of Evidence)" filed on November 29, 2016.[26] Petitioner's motion to re-mark its exhibit was granted and its formally offered pieces of evidence, save for Exhibit "P-18-C", were admitted in the Court's Resolution dated January 10, 2017.[27]

On January 26, 2017, petitioner filed a "Motion for Partial Reconsideration (Re: Resolution dated January 10, 2017)",[28] to which respondent filed a "Comment (Re: Petitioner's Motion for Partial Reconsideration dated 26 January 2017)."[29]

On March 20, 2017, the Court issued a Resolution granting petitioner's prayer for the setting of a Commissioner's Hearing and held in abeyance the resolution of petitioner's "Motion for Partial Reconsideration."[30]

On May 3, 2017, petitioner filed a "Manifestation" praying that the Court issue an order admitting Exhibit "P-18."[31]

On June 21, 2017, the Court issued a Resolution granting petitioner's Motion for Partial Reconsideration and accordingly admitted Exhibit "P-18."[32]

On October 23, 2017, respondent filed his "Formal Offer of Evidence";[33] petitioner in turn filed its "Comment (Re: Respondent's Formal Offer of Evidence dated October 19, 2017)."[34]

On December 7, 2017, the Court issued a Resolution admitting all the exhibits offered by respondent.[35]

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[25] CTA Docket, pp. 1201-1218.
[26] CTA Docket, pp. 1646-1649.
[27] CTA Docket, pp. 1655-1656.
[28] CTA Docket, pp. 1657-1661.
[29] CTA Docket, pp. 1687-1690.
[30] CTA Docket, pp. 1696-1697.
[31] CTA Docket, pp. 1702-1704.
[32] CTA Docket, pp. 1722-1724.
[33] CTA Docket, pp. 1737-1747.
[34] CTA Docket, pp. 1748-1750.
[35] CTA Docket, pp. 1755-1756.

With the filing of respondent's "Memorandum" on January 5, 2018[36] and petitioner's "Memorandum" on February 12, 2018,[37] the case was submitted for decision on February 19, 2018.[38]

THE ISSUE

In their Joint Stipulation of Facts and Issues,[39] the parties submitted for resolution the sole issue of whether petitioner is liable to pay the total amount of ₱2,706,880,978.75 for deficiency Income Tax, including Compromise Penalty for taxable year 2010, as well as 25% and 50% surcharge, 20% deficiency and delinquency interests pursuant to Sections 248 and 249 of the National Internal Revenue Code ("NIRC") of 1997, as amended.

PETITIONER'S ARGUMENTS

Petitioner claims that the assessment was issued in violation of petitioner's right to due process, as evidenced by the following:[40]

1. The assessment failed to state the facts and the law upon which the deficiency income tax assessment was based;

2. The FAN failed to properly state the factual and legal basis of the assessment contrary to the strict requirement of Section 228 of the NIRC of 1997, as amended;

3. The FAN failed to make a clear and categorical demand for payment of the alleged income tax liability;

4. Petitioner was deprived of due process when respondent, in issuing the Final Decision, changed the legal basis of the assessment as stated in the FAN and FDDA; and,

5. Revenue Officer ("RO") Larah N. Vito does not have valid authority to examine petitioner relative to the alleged deficiency taxes for taxable year 2010.

Petitioner also contends that the income tax assessment for taxable year 2010 lacks legal and factual basis on the following grounds:[41]

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[36] CTA Docket, pp. 1757-1766.
[37] CTA Docket, pp. 1777-1813.
[38] CTA Docket, p. 1816.
[39] CTA Docket, p. 1077.
[40] CTA Docket, pp-1784-1799.
[41] CTA Docket, pp. 1799-1812.

1. The FAN erroneously based the income tax assessment on RMC No. 33-2013, contrary to settled legal principles;

   a. Respondent's issuance of RMC No. 33-2013 effectively altered the contract between petitioner and PAGCOR, in violation of the non-impairment clause of the Philippine Constitution;

   b. RMC No. 33-2013, which was issued on April 23, 2013, cannot apply retroactively to taxable year 2010;

   c. RMC No. 33-2013 failed to take into consideration the effect of the re-enactment of PAGCOR Charter through the passage of RA No. 9487 in 2007;

2. PAGCOR's exemption from income tax on its gaming revenues extends to its licensees and contractees;

   a. Petitioner's tax exemption is statutory. The law is clear that PAGCOR's income tax exemption extends to third parties with which it has contractual relations in connection with its gaming activities;

   b. The Supreme Court in PAGCOR II has affirmed the legal basis of the exemption of petitioner from income tax on its gaming activities;

3. Assuming, without conceding that the assessment is valid, petitioner's alleged tax liability was erroneously and improperly computed;

   a. Petitioner's net loss for taxable year 2010 amounted to ₱1,495,452,600.00;

   b. Respondent failed to take into account that petitioner had available net-operating loss carry-over (NOLCO) for taxable year 2007 and 2008, in addition to the NOLCO for CY 2009 that was considered the Final Decision;

   c. Petitioner's gaming revenue has already been subjected to the five percent (5%) Franchise Tax;

   d. Petitioner is not liable for compromise penalty as it is consensual in nature and cannot be imposed or collected without agreement and conformity of the taxpayer.

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RESPONDENT'S ARGUMENTS

On the other hand, respondent asserts the following:[42]

1. Petitioner was never denied due process. It was accorded every opportunity allowed by law and the rules to refute the audit findings of respondent;

2. The assessments against petitioner for deficiency income tax for taxable year 2010 has bases both in fact and in law, *viz.*:

    a. Petitioner is indirectly attacking the validity of the RMC in the same petition which questions the validity of a tax assessment. The CTA is bereft of any jurisdiction to rule on the legality or validity of an administrative issuance;

    b. Reliance of petitioner on the case of *Philippine Amusement and Gaming Corporation (PAGCOR) vs. The Bureau of Internal Revenue* is misplaced since the said Supreme Court decision is conclusive only between the parties involved, the case being an action *in personam*, so much so that a judgment therein is binding only upon the parties properly impleaded and duly heard or given an opportunity to be heard;

    c. Pursuant to Section 1 of Republic Act (RA) No. 9337, amending Section 27 (c) of the NIRC of 1997, PAGCOR is no longer exempt from corporate income tax as it has been effectively omitted from the list of government-owned or controlled corporations (GOCCs) that are exempt from income tax. Being an entity duly authorized and licensed by PAGCOR to perform gambling casinos, gaming clubs and other similar recreation or amusement places, and gaming pools, petitioner is subject to income tax under the NIRC of 1997, as amended. Thus, the net taxable income from Casino Wins in the amount of ₱4,929,445,675.12 is subject to regular income tax pursuant to Section 27(C) of the NIRC of 1997, as amended.

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[42] CTA Docket, pp. 1758-1763.

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THE COURT'S RULING

Timeliness of the Petition for Review

Section 228 of the NIRC, as amended provides:

> "SEC. 228. Protesting of Assessment - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided*, however, That a preassessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the **taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period**; otherwise, the decision shall become final, executory and demandable." (Emphasis supplied)

Based on the afore-quoted provision, petitioner had thirty (30) days from the receipt of the Final Decision sustaining the FDDA within which to file an appeal with this Court. Considering that petitioner received the Final Decision on September 15, 2015,[43] it had until October 15, 2015 to file the Petition for Review.

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[43] Stipulated Facts, JSFI, CTA Docket, p. 1076.

Since the subject Petition for Review was filed on October 15, 2015,[44] the Petition for Review was timely filed within the thirty-day reglementary period provided under Section 228 of the NIRC of 1997, as amended.

Revenue Officer who conducted audit of petitioner was not authorized by a valid Letter of Authority (LOA)

Petitioner claims that Revenue Officer Larah N. Vito did not have valid authority to examine petitioner relative to the alleged deficiency taxes for taxable year 2010.

Records disclose that LOA No. 125-2011-00000160 dated December 5, 2011 issued by Alfredo V. Misajon in his capacity as OIC-Assistant Commissioner, Large Taxpayer Service, specifically authorized **Revenue Officer ("RO") Malik Dimakuta and Group Supervisor ("GS") Oscar Sable**, to examine the books of accounts and other accounting records of petitioner for all internal revenue taxes for the period January 1, 2010 to December 31, 2010.[45]

In a Letter dated April 16, 2013, signed by Edwin T. Guzman, OIC-Chief, Regular LT Audit Division (RLTAD) II,[46] respondent informed petitioner that the examination of its internal revenue tax liabilities for the period of January 1, 2010 to December 31, 2010 under LOA No. 125-2011-00000160 dated December 5, 2011 was reassigned to **RO Larah N. Vito**, under **GS Ma. Amable Tan** for the continuation of the investigation, pursuant to **Memorandum of Assignment ("MOA") No. LN-125-2013-23** which was signed *only* by Mr. Guzman as OIC-Chief of RLTAD II.[47]

There is, however, nothing in the parties' Joint Stipulation of Facts and Issues, the Pre-Trial Order, and the Exhibits submitted by the parties which would show the fact that a **new LOA** was issued in favor of RO Vito and GS Tan. In fact, this was confirmed in the testimony of RO Vito, *viz.*:

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[44] CTA Docket, pp. 10-229.
[45] Exhibit "R-3", BIR Records, p. 689.
[46] Exhibit "R-2", BIR Records, p. 718.
[47] Exhibit "R-1", BIR Records, p. 717.

> "9Q: You mentioned that you were tasked to audit petitioner for taxable year 2010, under what authority were you tasked to conduct the audit and examination of petitioner?
>
> 9A: **I was authorized under a Memorandum of Assignment (MOA) No. LN-125-2013-23 dated 05 April 2013**."[48] (Emphasis supplied)

The importance of an LOA issued by the **CIR or his duly authorized representative** authorizing an RO to conduct the audit cannot be overemphasized as it goes into the issue of the validity of the assessment. In *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*,[49] the Supreme Court declared an assessment void for want of a valid LOA:

> "In sum, and considering the foregoing premises, we find no cogent reason to overturn the assailed decision and resolution of the CTA. As the CTA decreed, Assessment Notice LTAID II IT-98-00007, dated 11 October 2002, in the amount of P6,466,065.50 for deficiency income tax should be cancelled and set aside. **The assessment is void for being issued without valid authority.** Furthermore, there is no legal justification for the disallowance of Lancaster's expenses for the purchase of tobacco in February and March 1998." (Emphasis supplied)

The Supreme Court's pronouncement in *Medicard Philippines Inc. vs. Commissioner of Internal Revenue*[50] on the significance of an LOA on the audit and examination of the taxpayer is also instructive, *viz.*:

> "***The absence of an LOA violated MEDICARD's right to due process***
>
> **An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions.** It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. **An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives.** Section 6 of the NIRC clearly provides as follows:
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>> 'SEC. 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. —

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[48] Judicial Affidavit of Revenue Officer Larah N. Vito, CTA Docket, pp. 286-300; 287.
[49] G.R. No. 183408, July 12, 2017.
[50] G.R. No. 222743, April 5, 2017.

> (A) *Examination of Return and Determination of Tax Due.* — After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax: *Provided, however*, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
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> xxx xxx xxx' (Emphasis and underlining ours)

Based on the afore-quoted provision, it is clear that unless authorized by the CIR himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken. The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. **Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority.**

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In the case of *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*, the Court said that:

> 'Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. xxx. **In the absence of such an authority, the assessment or examination is a nullity**.' (Emphasis and underlining ours)

xxx xxx xxx

xxx xxx xxx In fact, apart from being a statutory requirement, an LOA is equally needed even under the BIR's RELIEF System because the rationale of requirement is the same whether or not the CIR conducts a physical examination of the taxpayer's records: **to prevent undue harassment of a taxpayer and level the playing field between the government's vast resources for tax assessment, collection and enforcement, on one hand, and the solitary taxpayer's dual need to prosecute its business while at the same time responding to the BIR exercise of its statutory powers. The balance between these is achieved by ensuring that any examination of the taxpayer by the BIR's revenue officers is properly authorized in the first place by those to whom the discretion to exercise the power of examination is given by the statute.**

That the BIR officials herein were not shown to have acted unreasonably is beside the point because the issue of

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> **their lack of authority was only brought up during the trial of the case. What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives. Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void."** (Emphases supplied)

To be sure, a BIR officer cannot simply subject a taxpayer to audit without a valid LOA issued for that purpose. Section 13 of the NIRC of 1997, as amended, provides:

> "SEC. 13. Authority of a Revenue Officer. - Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, **a Revenue Officer assigned to perform assessment functions** in any district may, **pursuant to a Letter of Authority** issued by the **Revenue Regional Director**, examine taxpayers within the jurisdiction of the district in order **to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due** in the same manner that the said acts could have been performed by the Revenue Regional Director himself." (Emphases supplied)

RMO No. 43-90 specifies the policy guidelines in the issuance of LOAs to audit. It likewise identifies and limits the BIR Officials who are authorized to issue LOAs, *viz.*:

> "D. Preparation and issuance of L/As.
>
> xxx xxx xxx
>
> 4. **For the proper monitoring and coordination of the issuance of Letter of Authority, the only BIR officials authorized to issue and sign Letters of Authority are the Regional Directors, the Deputy Commissioners and the Commissioner.** For the exigencies of the service, **other officials may be authorized to issue and sign Letters of Authority but only upon prior authorization by the Commissioner himself**." (Emphases supplied)

RMO No. 43-90 is explicit that the continuation of audit by a revenue officer other than the officer named in a previous LOA, requires the issuance of a new LOA:

> "C. Other policies for issuance of L/As.
>
> 1. **All audits/investigations, whether field or office audit, should be conducted under a Letter of Authority.**
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> xxx xxx xxx

> 5. **Any re-assignment/transfer of cases to another RO(s),** and revalidation of L/As which have already expired, **shall require the issuance of a new L/A, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As.**" (Emphases supplied)

More specifically, for taxpayers under the Large Taxpayers Service, RMO No. 29-07 enumerates the BIR Officials who have the authority to issue and approve LOAs for the conduct of the audit, *viz.*:

> "II. AUDIT POLICIES AND GUIDELINES
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> 1. The Chief, Large Taxpayers Audit & Investigation Divisions/LTDOs shall draw a list of taxpayers selected for audit under its current selection criteria. The list shall state the name of taxpayer selected for audit, the nature of business, the amount of gross sales/receipts, the selection code, the PSIC code, and the corresponding amount of tax paid for the period. The said list shall be submitted to the Assistant Commissioner/Head Revenue Executive Assistant, Large Taxpayers Service for approval, copy furnished the Commissioner of Internal Revenue.
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> 2. **All Letters of Authority (LOAs) shall be issued and approved by the Assistant Commissioner/Head Revenue Executive Assistants.**" (Emphasis supplied)

Had the Memorandum of Assignment been accorded the same legal effect as an LOA itself, then RMO No. 43-90 would not have categorically stated that *"revalidation of L/As ... shall require the issuance of a new L/A."* The use of the phrase "*shall require the issuance of new L/A*" emphasizes the mandatory nature of the said requirement. Needless to say, the BIR has the duty of exacting compliance therewith as it has the burden of ensuring that the right of the government to assess and collect tax deficiencies would not be defeated by its failure to comply with its own rules.

In the present case, while the Memorandum of Assignment cannot be treated as an LOA as precisely, any re-assignment of cases requires the issuance of a new LOA, its fatal infirmity is further highlighted by the fact that it was signed and issued by the OIC-Chief of RLTAD II and not by the Assistant Commissioner of the Large Taxpayer Service.

The issuance of LOAs is not a just a plain ministerial act but calls for the exercise of discretion by the Assistant Commissioner of the Large Taxpayer Service. The authority to issue LOAs, which was delegated to the Assistant Commissioner by the CIR under RMO No.

29-07, cannot be further delegated to the OIC-Chief of RLTAD II. Truth to tell, **there is nothing on record which shows that the Assistant Commissioner has the power to further delegate the duty of issuing LOAs for taxpayers under the Large Taxpayer Service or to substitute another in his place**. On this point, the pronouncement in *NPC Drivers and Mechanics Association, (NPC DAMA) vs. The National Power Corporation*[51] is instructive, *viz.*:

> "We agree with petitioners. In enumerating under Section 48 those who shall compose the National Power Board of Directors, the legislature has vested upon these persons the power to exercise their judgment and discretion in running the affairs of the NPC. Xxx xxx xxx. It is to be presumed that in naming the respective department heads as members of the board of directors, the legislature chose these secretaries of the various executive departments on the basis of their personal qualifications and acumen which made them eligible to occupy their present positions as department heads. **Thus, the department secretaries cannot delegate their duties as members of the NPB, much less their power to vote and approve board resolutions, because it is their personal judgment that must be exercised in the fulfillment of such responsibility**.
>
> Xxx, the rule enunciated in the case of *Binamira v. Garrucho* is relevant in the present controversy, to wit:
>
>> **An officer to whom a discretion is entrusted cannot delegate it to another, the presumption being that he was chosen because he was deemed fit and competent to exercise that judgment and discretion, and unless the power to substitute another in his place has been given to him, he cannot delegate his duties to another**.
>
> Xxx." *(Citations omitted; Boldfacing supplied)*

In fine, there is no denying that no new LOA was issued to RO Vito by the Assistant Commissioner of the Large Taxpayer Service in relation to her investigation of petitioner's tax liability for taxable year 2010. This procedural lapse, or the absence of a new LOA, rendered the assessment issued pursuant thereto void. Being a void assessment, the same bears no fruit[52] and must be slain at sight.

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[51] G.R. No. 156208, September 26, 2006.
[52] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.,* G.R. No. 185371, December 8, 2010.

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PAGCOR's contractees and licensees are exempt from income tax on its gaming operations

Even assuming *arguendo* that RO Vito was authorized, by means of a valid LOA, to conduct the audit of petitioner for the taxable year 2010, the FAN issued against petitioner, assessing it for income tax on income derived from its gaming operations, is still void.

A contractee and licensee of PAGCOR, is exempt from income tax on its gaming operations pursuant to PD No. 1869, as amended, otherwise known as PAGCOR Charter. This was the categorical pronouncement of the Supreme Court in *Bloomberry Resorts and Hotels, Inc. vs. Bureau of Internal Revenue, represented by Commissioner Kim. S. Jacinto-Henares.*[53]

In *Bloomberry*, PAGCOR granted Bloomberry Resorts and Hotels, Inc. a provisional license to establish and operate an integrated resort and casino complex at the Entertainment City project site of PAGCOR. Being a licensee of PAGCOR, Bloomberry Resorts and Hotels, Inc. pays PAGCOR license fees in lieu of all taxes, as contained in its provisional license and consistent with the PAGCOR Charter, which provides for the exemption from taxes of persons or entities contracting with PAGCOR in casino operations. With the enactment of Republic Act (RA) No. 9337, the BIR issued Revenue Memorandum Circular (RMC) No. 33-2013, which declares, among others, that PAGCOR, in addition to the five percent (5%) franchise tax on its gross revenues, and its contractees and licensees, are subject to the corporate income tax under the NIRC of 1997, as amended.

Bloomberry Resorts and Hotels, Inc. was being held liable to pay corporate income tax, in addition to the five percent (5%) franchise tax. Thus, it immediately elevated the matter before the Supreme Court through a petition for *certiorari* and prohibition. The Supreme Court had the occasion to finally clarify the taxation of the income from *gaming operations* derived by PAGCOR's contractees and licensees, *viz.*:

> "Bearing in mind the parties involved and the similarities of the issues submitted in the present case, we are now presented with the prospect of finally resolving the confusion caused by the amendments introduced by RA No. 9337 to the NIRC of 1997, and the subsequent issuance of RMC No. 33-2013, affecting the tax

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

regime not only of PAGCOR but also its *contractees and licensees* under the existing laws and prevailing jurisprudence.

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

> Sec. 13. Exemptions.
>
> xxx
>
> **(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%) percent of the gross revenue or earnings derived by the Corporation from its operation</u> 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, <u>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</u>**. (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, **<u>like PAGCOR, its *contractees and licensees* remain exempted from the payment of corporate</u>**

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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 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 such "related services."

Simply then, in this case, we adhere to the principle that since the statute is clear and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This is the plain meaning rule or *verba legis*, as expressed in the *maxim index animi sermo* or speech is the index of intention.

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 supplied)

Unless and until modified by the Supreme Court *En Banc*, the doctrine laid down in *Bloomberry* should be applied in determining the taxation of income from gaming operations derived by licensees and contractees of PAGCOR. Indeed, the Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is; it is the final arbiter of any justiciable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.[54]

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[54] *Braulio Conde vs. Intermediate Appellate Court*, G.R. No. 70443, September 15, 1986, citing *Tugade v. Court of Appeals* (85 SCRA 226, 230-231)

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In the present case, it is undisputed that the income which is being subjected to corporate income tax by respondent pertains to petitioner's income from gaming operations (Casino Wins) as it is among the facts stipulated by the parties as contained in their Joint Stipulation of Facts and Issues.[55] Records also show that petitioner, having been authorized by PAGCOR to establish and operate casinos in line with the latter's regulatory and licensing authority under the PAGCOR Charter,[56] paid the five percent (5%) franchise tax due on its gross receipts as franchisee (licensed casino) and gross receipts as franchisee (poker), in the amounts of ₱769,686,469.43 and ₱4,388,823.65, respectively, as evidenced by the PAGCOR Certification dated April 11, 2014 and the attached Statements of Franchise Tax Remittances for CY 2010. [57]

Being a licensee of PAGCOR and having paid the five percent (5%) franchise tax on its gross gaming revenues, petitioner is clearly exempt from tax on its income generated from its gaming operations.

In sum, the payment by petitioner of the five percent (5%) franchise tax on its gaming operations exempts it from the payment of any other taxes, including the corporate income tax imposed under the NIRC of 1997, as amended.

WHEREFORE, premises considered, the Petition for Review is hereby **GRANTED**. Accordingly, the Letter (Final Decision) dated August 26, 2015 holding petitioner liable for deficiency income tax in the total amount of ₱2,706,880,978.75 for taxable year 2010, the Final Decision on Disputed Assessment dated September 12, 2014, and the Assessment Notice No. IT-125-LA-00000160-10-14-0112 are hereby **DECLARED VOID, CANCELLED** and **WITHDRAWN.**

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

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[55] Nos. 4, 5, 6, 8 and 12, Stipulated Facts, JSFI, CTA Docket, pp. 1074-1076.
[56] Exhibit "P-3", CTA Docket, pp. 1246-1272.
[57] Exhibit "P-4", CTA Docket, pp. 1273-1275.

WE CONCUR:

ERLINDA P. UY
Associate Justice

CIELITO N. MINDARO-GRULLA
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