REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PRIME INVESTMENT KOREA INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 2129
(CTA Case No. 9573)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO, *and*
REYES-FAJARDO, *JJ.*

Promulgated:
OCT 21 2021 1:05pm

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RESOLUTION

BACORRO-VILLENA, J.:

At bar is a Motion for Reconsideration[1] (**MR**) filed by petitioner Prime Investment Korea Inc. (**petitioner**) on this Court *En Banc*'s Decision[2] promulgated on 08 January 2021. The dispositive portion of the Decision reads:

> ...
>
> **WHEREFORE**, premises considered, the instant Petition for Review filed by petitioner Prime Investment Korea Inc. is **DENIED** for lack of merit. Accordingly, the Decision and Resolution dated 31 May 2019 and 20 August 2019, respectively, of the Special Second

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1 Filed on 28 January 2021, *Rollo*, pp. 204-225.
2 Id., pp. 194-203.

Division in CTA Case No. 9573, entitled *Prime Investment Korea Inc. v. Commissioner of Internal Revenue,* are hereby **AFFIRMED**.

SO ORDERED.

...

In denying petitioner's Petition for Review[3], the Court *En Banc* ratiocinated that petitioner's income derived from junket operations is subject to corporate income tax pursuant to Presidential Decree (**PD**) No. 1869[4] and Revenue Memorandum Circular (**RMC**) No. 33-2013.[5] The pertinent portion of the assailed Decision reads, thus:

> ...
>
> Evidently from the foregoing, the income from junket operations is classified under "other related services" subject to corporate income tax and not franchise tax. Such treatment extends to petitioner as contractee/licensee pursuant to the Junket Agreement...
>
> ...
>
> The language of the law is too plain and unambiguous to be construed. It is a basic tenet in statutory construction that when the statute is clear, it must be given its literal meaning and applied without any attempted interpretation.
>
> Considering that petitioner's income from junket operations is subject to corporate income tax, its claim for refund or issuance of TCC arising from alleged erroneous payment of taxes has no legal mooring. Accordingly, We affirm that petitioner is not entitled to the refund or issuance of TCC for the taxes paid for TY 2014.[6]
>
> ...

Aggrieved by the Court *En Banc*'s ruling, petitioner filed the instant motion ascribing the following errors, to wit:

I.

THE HONORABLE COURT ERRED IN CLASSIFYING PETITIONER PRIME INVESTMENT KOREA, INC.'S INCOME FROM JUNKET GAMING OPERATIONS AS INCOME FROM "OTHER RELATED SOURCES".

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3 Filed on 03 October 2020, id., pp. 31-64.

4 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).

5 Income Tax and Franchise Tax Due From the Philippine Amusement and Gaming Corporation (PAGCOR), Its Contractees and Licensees.

6 *Rollo*, pp. 201-202; Citation omitted.

II.
THE HONORABLE COURT'S RELIANCE ON RMC NO. 33-2013 IS MISPLACED.[7]

In advancing these contentions, petitioner argues that its income derived from junket operations is subject to 5% franchise tax in lieu of all other taxes pursuant to Section 13(2) of PD 1869 which states:

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

Hence, petitioner maintains that its income as junket operator is not subject to corporate income tax for which it had been assessed by the Bureau of Internal Revenue (**BIR**).

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[7] Id., p. 205.

On another note, petitioner further argues that RMC No. 33-2013 expanded the scope of PD 1869 when it declared taxable the income of PAGCOR's contractees and licensees despite the above exemption. According to petitioner, this misclassification extends to the aforementioned circular's inclusion of income derived from licensees under "other related operations". Thus, petitioner insists on an apparent conflict between the provisions of PD 1869 and RMC No. 13-2013.

We resolve.

The instant motion presents a mere rehash of petitioner's arguments raised in its Petition for Review that the Court *En Banc* previously resolved. At the risk of mere reiteration, the Court *En Banc* shall take this opportunity to emphasize the *ratio* behind its assailed ruling. In so doing, the Supreme Court's ruling in *Philippine Amusement Gaming Corporation v. The Bureau of Internal Revenue, et al.*[8] (**PAGCOR**), as cited in the assailed Decision must again be revisited. In said case, the Supreme Court distinguished the sources of PAGCOR's income and the taxes applicable thereon, to wit:

> ...
>
> For clarity, it is worthy to note that under P.D. 1869, as amended, PAGCOR's income is classified into two: (1) income from its operations conducted under its Franchise, pursuant to Section 13(2) (b) thereof (*income from gaming operations*); and (2) income from its operation of necessary and related services under Section 14(5) thereof (*income from other related services*). In RMC No. 33-2013, respondent further classified the aforesaid income as follows:
>
> > 1. PAGCOR's ***income from its operations and licensing of gambling casinos, gaming clubs and other similar recreation or amusement places, gaming pools***, includes, among others:
> >
> > > (a) Income from its casino operations;
> > > (b) Income from dollar pit operations;
> > > (c) Income from regular bingo operations; and
> > > (d) Income from mobile bingo operations operated by it, with agents on commission basis. Provided, however, that the agents' commission income shall be subject to regular income tax, and consequently, to withholding tax under existing regulations.
> >
> > 2. ***Income from "other related operations" includes***, but is not limited to:

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[8] G.R. No. 215427, 10 December 2014; Citation omitted, emphasis and italics in the original text and supplied.

(a) Income from licensed private casinos covered by authorities to operate issued to private operators;
(b) Income from traditional bingo, electronic bingo and other bingo variations covered by authorities to operate issued to private operators;
(c) Income from private internet casino gaming, internet sports betting and private mobile gaming operations;
(d) Income from private poker operations;
(e) Income from junket operations;
(f) Income from SM demo units; and
(g) Income from other necessary and related services, shows and entertainment.

After a thorough study of the arguments and points raised by the parties, and in accordance with our Decision dated March 15, 2011, we sustain petitioner's contention that its income from gaming operations is subject only to five percent (5%) franchise tax under P.D. 1869, as amended, while its income from other related services is subject to corporate income tax pursuant to P.D. 1869, as amended, as well as R.A. No. 9337. This is demonstrable.

...

The foregoing ruling makes it unmistakable that the income derived from junket operations is considered as income from "other related operations". Such income is taxable pursuant to Section 14(5) of PD 1869, *wiz*:

...

Sec. 14. *Other Conditions.* —

...

(5) Operation of related services. — The Corporation is authorized to operate such necessary and related services, shows and entertainment. Any income that may be realized from these related services shall not be included as part of the income of the Corporation for the purpose of applying the franchise tax, but the same shall be considered as a separate income of the Corporation and shall be subject to income tax.

...

Echoing the above provision, RMC No. 33-2013 provides:

...

...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...

...

Lastly, in the latter case of *Bloomberry Resorts and Hotels, Inc. v. Bureau of Internal Revenue*[9], the Supreme Court clarified the applicability of tax burdens imposed by PD 1869 to PAGCOR's contractees and licensees. There the Supreme Court explains:

> . . .
>
> 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."
>
> . . .

The foregoing provisions and the PAGCOR ruling are very clear. Any inconsistency perceived by petitioner between RMC No. 33-2013 and PD 1869 thus proves to be more illusory than real.

Finally, even if this Court were to assume that the circumstances that would render RMC No. 33-2013 void are attendant, the present action is hardly the proper forum for such determination. Without surrendering this Court's apparent authority to rule on such matters, the Commissioner of Internal Revenue (**CIR**) retains original jurisdiction over issues regarding the interpretation of tax statutes. Section 4 of the National Internal Revenue Code (**NIRC**) of 1997, as amended, provides:

> . . .
>
> **Sec. 4.** *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.* – **The power to interpret the provisions of this Code and other tax laws shall be under the**

9 G.R. No. 212530, 10 August 2016; Emphasis and italics in the original text.

> **exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.**
>
> The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.[10]
>
> . . .

With the above said, any ruling of the Court *En Banc* on this matter would pre-empt the statutory authority of the CIR and the Secretary of Finance to rectify these inconsistencies alleged by petitioner.

WHEREFORE, the foregoing considered, the Motion for Reconsideration filed by petitioner Prime Investment Korea, Inc. on 28 January 2021 is hereby **DENIED** for lack of merit. Accordingly, the Decision of the Court *En Banc* dated 08 January 2021 is hereby **AFFIRMED**.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

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

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

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10 Emphasis supplied.

x - x

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
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COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: OCT 21 2021 1:05pm

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SEPARATE CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* in denying the Motion for Reconsideration filed by petitioner Prime Investment Korea, Inc. on the ground that petitioner's income derived from junket operations is subject to corporate income tax pursuant to Presidential Decree (PD) No. 1869 and Revenue Memorandum Circular (RMC) No. 33-2013. **I likewise give my assent to the *ponencia*'s conclusion that any inconsistency perceived by petitioner between RMC No. 33-2013 and PD No. 1869 is more illusory than real.**

Anent the Court's jurisdiction to pass upon the validity of RMC No. 33-2013, it is my view that the Court of Tax Appeals has jurisdiction to rule on the validity of a ruling or revenue issuances of the Commissioner of Internal Revenue issued in the exercise of his power to interpret and implement the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, when said ruling or revenue issuance is the very *lis mota* of the case. On this point, the declaration *in Banco de Oro, et al. vs. Republic of the Philippines, et al.*[1] is enlightening:

> "The Court of Tax Appeals has undoubted jurisdiction to pass upon the constitutionality or validity of a tax law or regulation when raised by the taxpayer as a defense in disputing or contesting an assessment or claiming a refund. It is only in the lawful exercise of its power to pass upon all matters brought before it, as sanctioned by Section 7 of Republic Act No. 1125, as amended."

I submit that the Court has jurisdiction to pass upon the issue of the validity of RMC No. 33-2013 as it is inextricably related to the issue of whether or not petitioner is entitled to the refund of the income tax paid on income generated from its junket operations.

All told, I CONCUR in the denial of petitioner's Motion for Reconsideration for lack of merit.

ROMAN G. DEL ROSARIO
Presiding Justice

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[1] G.R. No. 198756, August 16, 2016; see also Bloomberry Resorts and Hotels, Inc. vs. Bureau of Internal Revenue, represented by Commissioner Kim S. Jacinto-Henares, G.R. No. 21250, August 10, 2016, which cited The Philippine American Life and General Insurance Company vs. Secretary of Finance, G.R. No. 210987, November 24, 2014, which, in turn, cited City of Manila vs. Grecia-Cuerdo, G.R. No. 175723, February 4, 2014.