REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

Present:

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

Promulgated:
MAY 03 2024 1:35p.m.

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RESOLUTION

CUI-DAVID, J.:

Before the Court *En Banc* is the *Motion for Reconsideration (Re: Decision dated 04 October 2023)*[1] filed by respondent on October 25, 2023, assailing the Decision promulgated on October 4, 2023 (*assailed Decision*), [2] the dispositive portion of which reads:

> **WHEREFORE**, premises considered, the *Petition for Review* filed by AB Leisure Exponent, Inc. (doing business under the name and style of Bingo Bonanza) is **GRANTED.**
>
> The assailed Decision dated October 18, 2021, and Resolution dated March 23, 2022, are hereby **REVERSED** and **SET ASIDE**. Accordingly, the deficiency VAT and DST assessments issued by the Commissioner of Internal

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[1] *En Banc (EB)* Docket, pp. 216-232.
[2] *EB* Docket, pp. 183-210.

> Revenue against petitioner for taxable year 2013 are **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED.**

The *assailed Decision* ordered the reversal and setting aside of the ruling of the Court in Division, which upheld with modifications respondent's assessments for deficiency value-added tax (VAT) and documentary stamp tax (DST) issued against petitioner for taxable year 2013.

In moving for the reconsideration of the *assailed Decision*, respondent raises the sole ground as follows:

> WITH ALL DUE RESPECT, THE HONORABLE COURT ERRED WHEN IT GRANTED PETITIONER'S PETITION FOR REVIEW AND CANCELLED AND SET ASIDE THE DEFICIENCY VAT AND DST ASSESSMENTS ISSUED BY THE COMMISSIONER OF INTERNAL REVENUE AGAINST PETITIONER FOR THE TAXABLE YEAR 2013.

Insisting on the application of the case of *Thunderbird Pilipinas Hotels and Resorts, Inc. v. Commissioner of Internal Revenue*[3] (*Thunderbird Decision*) in the case at bar, respondent contends that the tax exemption granted under Section 13(2)(b) of Presidential Decree (PD) No. 1869 shall inure only to those entities who provide necessary services to Philippine Amusement and Gaming Corporation (PAGCOR) in connection with the latter's operations of the casinos. According to respondent, this is clear when the law stated that "*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).*"

For respondent, this tax exemption does not benefit entities who are mere licensees of PAGCOR's franchise. Otherwise stated, the exemption is granted only to PAGCOR when it operates the casino by itself and extends to entities that provide necessary services to PAGCOR concerning its gaming operations. This tax exemption does not benefit the licensees whose operation and management of the gaming services are not under the control of the franchise holder – PAGCOR.

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[3] G.R. No. 211327, November 11, 2020.

By way of *Comment/Opposition*,[4] petitioner submits that the *assailed Decision* setting aside the Decision dated October 18, 2021, and Resolution dated March 23, 2022, issued by the Court in Division, is proper.

Petitioner contends that contrary to respondent's assertion, the *Thunderbird Decision* is inapplicable to the present case. Instead, the controlling authority is *Bloomberry Resorts and Hotels, Inc. v. Bureau of Internal Revenue* [5] (*Bloomberry Decision*), as affirmed by *Saint Wealth Ltd. v. Bureau of Internal Revenue*[6] (*Saint Wealth Decision*).

According to petitioner, the *Thunderbird Decision* is distinguishable due to its focus on the interpretation of Section 13(2)(b) of PD 1869, pre-dating the amendments introduced by Section 10 of Republic Act (RA) No. 9487 on June 20, 2007. Petitioner notes that the *Thunderbird Decision's* relevance pertains to tax liabilities before RA No. 9487 took effect in 2007. Given that the present case concerns petitioner's tax liabilities for taxable year 2013, post-dating these amendments, the *Thunderbird Decision* is inapplicable. Further, petitioner points out that the *Thunderbird Decision* acknowledges the inapplicability of said decision to assessments after 2007, a point emphasized by this Court in the *assailed Decision*.

In closing, petitioner submits that in interpreting PD No. 1869, as amended by RA No. 9487, both *Bloomberry* and *Saint Wealth Decisions* expressly and categorically recognize that licensees of PAGCOR are exempt from all taxes upon payment of the 5% franchise tax.

After reviewing the arguments outlined in the Motion for Reconsideration and the counter-arguments advanced by petitioner, the Court finds no compelling reason to deviate from its ruling in the *assailed Decision* of October 4, 2023. The *Motion for Reconsideration* has not raised any new or substantial ground that would justify a departure from the previous conclusion and finding of the Court *En Banc*. All the arguments raised had already been passed upon, amply discussed, and considered by the Court *En Banc* in the *assailed Decision*; thus, the Court *En Banc* sees no reasonable

[4] *EB* Docket, pp. 238-242.
[5] G.R. No. 212530, August 10, 2016.
[6] G.R. Nos. 252965 & 254102, December 7, 2021.

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ground to set aside or even modify its determination on the merits of the case.

WHEREFORE, the *Motion for Reconsideration (Re: Decision dated 04 October 2023)* filed by respondent Commissioner of Internal Revenue is **DENIED**, for lack of merit.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

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ON LEAVE
CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice