REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

I-CYBERWORLD BIZ INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondents.

CTA CASE NO. 11098

Members:

RINGPIS-LIBAN, *PJ & Chairperson,*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ.*

Promulgated:
JUL 2 8 2026

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DECISION

RINGPIS-LIBAN, *PJ.*:

THE CASE

The *Petition for Review* filed on March 15, 2023, prays for the cancellation of the assessment issued by the respondent against petitioner, for its alleged deficiency VAT in the amount of ₱33,138,475.88, inclusive of surcharges, interest, and compromise penalties, for taxable year 2019.[1]

THE PARTIES

Petitioner I-Cyberworld Biz, Inc. is a corporation organized and existing under the laws of the Philippines with office address at 4th Floor 3BB Building,

[1] Summary of the Case, Pre-Trial Order dated October 20, 2023, Docket – Vol. II, p. 721.

79 Kamuning Road, Barangay Kamuning, Quezon City, Metro Manila.[2] Its primary purpose is "to engage in the business of operating on-line gaming facilities and similar entertainment and amusement establishment as may be allowed by existing law."[3] It is registered with the Bureau of Internal Revenue (BIR) as a Large Taxpayer with Tax Identification No. (TIN) 216-720-387-000.[4] It is a holder of fourteen (14) *Gaming Licenses* issued by the Philippine Amusement and Gaming Corporation (PAGCOR) for its electronic games and Bingo games operations in various locations.[5]

Respondent is the duly appointed Commissioner of Internal Revenue who holds office at the Bureau of Internal Revenue (BIR) National Office Building located at BIR Road, Diliman, Quezon City, Metro Manila.[6]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

Respondent issued the *Letter of Authority* (LOA) No. eLA201700068713 (LOA-126-2020-00000119) dated July 16, 2020 to petitioner in connection with the investigation of petitioner's internal revenue tax liabilities for the taxable year 2019.[7] This LOA authorized Revenue Officer (RO) Val Langbayan and Group Supervisor (GS) Felina Guimbao of the BIR's Regular LT Audit Division 3 to examine the books of accounts and accounting records of petitioner for all its internal revenue taxes for the said period.[8]

Respondent later issued a *Notice of Discrepancy* (NOD) based on the result of investigation of petitioner's internal revenue taxes for taxable year 2019 pursuant to the said LOA.[9] The NOD was received by petitioner on January 18, 2021.[10]

On February 15, 2021, petitioner received the *Preliminary Assessment Notice* (PAN) dated March 15, 2021 issued by respondent.[11]

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[2] Par. 1, Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. II, p. 686.
[3] *Amended Articles of Incorporation dated July 19, 2022, Exhibit P-1-SO, Formal Offer of Evidence [Re: Application of Suspension Order]*, Docket - Vol. II, pp. 614 and 625; October 12, 2023 *Resolution*, Docket - Vol. II, p. 713.
[4] *Certificate of Registration, Exhibit P-3, Formal Offer of Evidence*, Docket, Vol. III, pp. 344 and 880; November 15, 2024 *Resolution*, Docket - Vol. III, p. 1048.
[5] Exhibits P-11 to P-11-13, *Formal Offer of Evidence*, Docket - Vol. III, pp. 847-849 and 880; November 15, 2024 *Resolution*, Docket, Vol. III, p. 1048.
[6] Par. 2, Stipulation of Facts, JSFI, Docket – Vol. II, p. 686.
[7] Par. 3, Stipulation of Facts, JSFI, Docket – Vol. II, p. 686.
[8] Exhibit "P-7", Docket – Vol. III, p. 897.
[9] Par. 4, Stipulation of Facts, JSFI, Docket – Vol. II, p. 687.
[10] Exhibit "P-9", BIR Records, pp. 371 to 372.
[11] Exhibits "P-10" and "R-8", BIR Records, pp. 404 to 412. Refer also to par. 5, Stipulation of Facts, JSFI, Docket – Vol. II, p. 687.

Thereafter, respondent issued LOA No. eLA20200003684 (LOA-126-2022-00000007) dated February 24, 2022 in connection with the investigation of petitioner's internal revenue tax liabilities for taxable year 2019.[12] This LOA authorized ROs Val Langbayan and Carlo Casan, and GS Joel Aguila of the BIR's Regular LT Audit Division 3 to examine the books of accounts and accounting records of petitioner for all its internal revenue taxes for the same period.[13]

On April 5, 2022, petitioner received the *Formal Letter of Demand,* with *Details of Discrepancies*, and *Final Assessment Notices*, all dated March 30, 2022, issued by respondent, assessing petitioner for deficiency income tax, value-added tax (VAT), withholding tax on compensation, expanded withholding tax, and documentary stamp tax, and miscellaneous tax for taxable year 2019.[14]

Thus, on May 2, 2022, petitioner filed its *Protest* with the BIR.[15]

Respondent then issued the *Final Decision on the Disputed Assessment* (FDDA) dated February 13, 2023, assessing deficiency VAT for CY 2019 on the following:[16]

Commission received from providers	138,716,973.05
Commission received from marketing incentives	8,490,986.22
Other taxable income	135,000.00
Commission income subject to VAT	18,635,097.23
Vatable receipts per investigation	**165,978,056.50**

PROCEEDINGS BEFORE THIS COURT

On March 15, 2023, petitioner filed the present *Petition for Review.*[17]

On April 11, 2023, the Court issued summons to respondents Office of the Solicitor General and Commissioner of Internal Revenue.[18]

Thereafter, petitioner filed an *Urgent Motion [For Suspension of Collection of Taxes]* on June 16, 2023,[19] to which respondent filed his *Comment/ Opposition (Re: Urgent Motion for Suspension of Collection of Taxes)* on July 17, 2023.[20]

[12] Par. 6, Stipulation of Facts, JSFI, Docket – Vol. II, p. 687.
[13] Exhibit "P-8", Docket – Vol. III, p. 898.
[14] Exhibits "P-5", "R-10", and "P-5-1" to "P-5-6", BIR Records, pp. 473 to 486. Refer also to par. 7, Stipulation of Facts, JSFI, Docket – Vol. II, p. 687.
[15] Exhibit "P-6", Docket – Vol. III, pp. 881 to 896.
[16] Exhibits "P-4" and "R-12", BIR Records, pp. 653 to 656. Refer also to par. 5, Stipulation of Facts, JSFI, Docket – Vol. II, p. 687.
[17] Docket – Vol. I, pp. 6 to 30.
[18] Docket – Vol. II, p. 375.
[19] Docket – Vol. II, pp. 381 to 392.

In the meantime, on June 19, 2023, respondent posted his *Answer*,[21] interposing the following special and affirmative defenses, to wit: (1) petitioner is not exempt from the deficiency taxes assessed against it; (2) petitioner failed to overcome the presumption of validity and correctness of the assessments; and (3) petitioner is liable for compromise penalties. Also, on June 27, 2023, respondent transmitted the *BIR Records* for this case, consisting of one (1) folder.[22]

During the Pre-trial Conference on July 18, 2023,[23] the hearing for the said *Urgent Motion [For Suspension of Collection of Taxes]* was also held wherein petitioner presented the testimony of its President, Ms. Jacqueline J. Guinto.[24] Prior thereto, *Respondent's Pre-Trial Brief*, and the *Pre-Trial Brief for Petitioner* were both filed on July 17, 2021.[25]

Petitioner's *Formal Offer of Evidence [Re. Application for suspension Order]* was filed on July 28, 2023,[26] to which respondent filed his *Comment Re: Petitioner's Formal Offer of Evidence* on August 8, 2023.[27] In a *Resolution* dated October 12, 2023,[28] the Court admitted petitioner's offered exhibits, granted its *Urgent Motion [For Suspension of Collection of Taxes]*, and dispensed with the required cash deposit or bond.

In the meantime, on August 17, 2023, the parties submitted their *Joint Stipulation of Facts and Issues*,[29] which was admitted and approved by the Court in its *Resolution* dated August 30, 2023,[30] which also terminated the Pre-Trial. The *Pre-Trial Order* dated October 20, 2023 was then issued.[31]

As trial ensued, the parties presented their respective testimonial and documentary evidence.

Petitioner offered the testimonies of the following individuals, namely: (1) Ms. Ma. Ethel M. Villanueva,[32] petitioner's Accounting Supervisor; (2) Ms.

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[20] Docket – Vol. II, pp. 574 to 584.
[21] Docket – Vol. II, pp. 531 to 545.
[22] *Compliance* dated June 26, 2023, Docket – Vol. II, pp. 560 to 562.
[23] Resolution dated July 4, 2024, Docket – Vol. II, pp. 565 to 566; Minutes of the hearing held on, and Order dated, July 18, 2021, Docket – Vol. II, pp. 599 to 603.
[24] Exhibit "P-8-Suspension", Docket – Vol. II, pp. 395 to 404; Minutes of the hearing held on, and Order dated, July 18, 2021, Docket – Vol. II, pp. 599 to 603.
[25] Docket – Vol. II, pp. 567 to 571, and 586 to 595, respectively.
[26] Docket – Vol. II, pp. 613 to 622.
[27] Docket – Vol. II, pp. 679 to 681.
[28] Docket – Vol. II, pp. 713 to 719.
[29] Docket – Vol. II, pp. 686 to 695.
[30] Docket – Vol. II, p. 711.
[31] Docket – Vol. II, pp. 721 to 726.
[32] Exhibit "P-21", Docket – Vol. II, pp. 746 to 754; Minutes of the hearing held on, and Order dated, April 11, 2024, Docket – Vol. II, pp. 806 to 807.

Jacqueline J. Guinto,[33] petitioner's current President; and (3) Mr. Rean G. Abalos,[34] the Court-commissioned Independent Certified Public Accountant (ICPA).[35]

The *Report* of the ICPA was submitted on March 18, 2024.[36]

On August 27, 2024, petitioner filed its *Formal Offer of Evidence*,[37] to which respondent filed his *Comment Re: Petitioner's Formal Offer of Evidence* on September 9, 2024.[38] In a *Resolution* dated November 15, 2024,[39] the Court admitted petitioner's offered exhibits, *except* Exhibit "P-39-7-11", for not being found in the records.

Respondent presented the testimony of RO Ryan Val Langbayan.[40]

On December 3, 2024, *Respondent's Formal Offer of Evidence* was filed,[41] to which petitioner filed its *Comment [Re: Respondent's Formal Offer of Evidence]* on December 6, 2024.[42] In a *Resolution* dated May 8, 2025,[43] the Court admitted all of respondent's offered exhibits.

In the meantime, on December 6, 2024, petitioner filed an *Omnibus Motion I. For Reconsideration of the Resolution dated November 15, 2024 with Manifestation II. To Admit ICPA Supplemental Certification filed on December 2, 2024 and attached Exhibits*,[44] to which respondent filed his *Manifestation In lieu of Comment to Petitioner's Omnibus Motion* on February 10, 2025.[45] In the Resolution dated May 8, 2025,[46] the Court granted petitioner's *Omnibus Motion*, and admitted Exhibit "P-39-7-11" and the *ICPA Supplemental Certification* as part of the ICPA Report.

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[33] Exhibit "P-20", Docket – Vol. I, pp. 134 to 148; Minutes of the hearing held on, and Order dated, January 18, 20124, Docket – Vol. II, pp. 769 and 771 to 772, respectively; Exhibit "P-57", and Docket – Vol. II, pp. 825 to 829; and Minutes of the hearing held on August 13, 2024, Docket – Vol. II, p. 839.
[34] Exhibits "P-19", Docket – Vol. I, pp. 799 to 805; Minutes of the hearing held on, and Order dated April 11, 2024, Docket - Vol. II, pp. 806 to 807.
[35] *Oath of Commission* dated January 18, 2024, Docket – Vol. II, p. 770; Minutes of the hearing held on, and Order dated, January 18, 2024, Docket – Vol. II, pp. 769 and 771 to 772, respectively.
[36] Exhibit "P-55", Docket – Vol. II, pp. 782 to 794.
[37] Docket – Vol. III, pp. 843 to 868.
[38] Docket – Vol. III, pp. 1042 to 1044.
[39] Docket – Vol. III, pp. 1048 to 1050.
[40] Exhibit "R-14", Docket – Vol. II, pp. 551 to 559; Minutes of the hearing held on, and Order dated, November 26, 2024, Docket – Vol. III, pp. 1053 to 1054.
[41] Docket – Vol. III, pp. 1072 to 1079.
[42] Docket – Vol. III, pp. 1083 to 1085.
[43] Docket – Vol. III, pp. 1107 to 1111.
[44] Docket – Vol. III, pp. 1088 to 1093.
[45] Docket – Vol. III, pp. 1101 to 1103.
[46] Docket – Vol. III, pp. 1107 to 1111.

On June 13, 2025, respondent filed his *Memorandum*;[47] while the *Memorandum for Petitioner* was submitted on June 19, 2025.[48]

The present case was considered submitted for decision on June 30, 2025.[49]

THE STIPULATED ISSUE

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

"A. WHETHER OR NOT PETITIONER IS LIABLE FOR ALLEGED DEFICIENCY VALUE-ADDED TAX FOR TAXABLE YEAR 2019 IN THE AGGREGATE AMOUNT OF P33,138,475.88, INCLUSIVE OF SURCHARGE, INTEREST, AND COMPROMISE PENALTIES."[50]

Petitioner's Arguments:

Petitioner argues that as a PAGCOR licensee, it is exempt from VAT on revenues from gaming operations pursuant to Section 13 of Presidential Decree (PD) No. 1869, or the PAGCOR Charter; and that the deficiency VAT assessments for taxable year 2019 has no factual and legal bases, hence, should be withdrawn and cancelled.

Respondent's Counter-Arguments:

Respondent contends that petitioner is liable for deficiency VAT assessed against it; that petitioner failed to submit documents to counter the assessments issued against it; that petitioner is not exempt from the deficiency taxes assessed against it; that the exemption granted to PAGCOR does not inure to the benefit of petitioner; that petitioner is liable for deficiency VAT from the commission received from marketing incentive; and that petitioner is liable for compromise penalties.

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47 Docket – Vol. III, pp. 1113 to 1141.
48 Docket – Vol. III, pp. 1145 to 1173.
49 Minute Resolution dated June 30, 2025, Docket – Vol. III, p. 1175.
50 Stipulation of Issues, JSFI, Docket – Vol. II, p. 687.

THE COURT'S RULING

The present *Petition for Review* has partial merit.

Notably, the propriety of the subject tax assessments hinges on whether tax exemption of the Philippine Amusement and Gaming Corporation (PAGCOR) inure to the benefit of, and extend to, petitioner.

The answer is in the negative.

The tax exemption privileges of PAGCOR under Section 13(2) of PD No. 1869 do not inure to the benefit of, or extend to, petitioner.

Pertinent to the resolution of this case is Section 13(2) of PD No. 1869,[51] which provides, in part:

> "SEC. 13. *Exemptions.* —
>
> xxx xxx xxx
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> (2) *Income and other taxes.* — (a) <u>Franchise Holder</u>: **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) <u>Others</u>: **The exemption herein granted for earnings derived from the operations conducted under the franchise specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, shall inure to the benefit of and extend to corporation(s), association(s), agency(ies), or individual(s) with whom the Corporation or operator has any contractual relationship <u>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>.**

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[51] 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).

> The fee or remuneration of foreign entertainers contracted by the Corporation or operator in pursuance of this provision shall be free of any tax.
>
> xxx xxx xxx." *(Emphases and underscoring added)*

Based on the foregoing provision, it is clear that PAGCOR is exempt from the payment of any tax, whether national or local, except for a franchise tax at the rate of 5% of the gross revenue or earning derived by it from its operation under PD No 1869; and that the said tax exemption inures to the benefit of and extend: (1) to corporations, associations, agencies, or individuals with whom PAGCOR or operator has any contractual relationship **in connection with the operation of casino(s) authorized under PD No. 1869**; and (2) to those receiving compensation or other remuneration from PAGCOR or operator as a result of essential facilities furnished and/or technical services rendered to PAGCOR or operator.

Specifically, under Section 13(2) of PD No. 1869, the inurement of benefit and extension of the tax exemption privileges of PAGCOR *"to corporation(s), association(s), agency(ies), or individual(s) with whom* [PAGCOR] *or operator has any contractual relationship"* or to its *"contractees and licenses"* do not simply occur or arise when there is simply a contractual relationship between PAGCOR and a concerned entity or person—it is still required that such contractual relationship be *"in connection with the operations of the casino(s) authorized to be conducted under* [PAGCOR's] *Franchise...*"

In this case, there is no indication that petitioner's contractual relationship with PAGCOR is in connection with the operations of a casino, or casinos, authorized to be conducted under PD No. 1869. In fact, for petitioner's license covering the year 2019, what has been established is merely that petitioner has been given by PAGCOR a *Gaming License* for its Electronic Games and Bingo operations,[52] and not an authority to operate a casino or casinos. We further note that petitioner submitted in evidence the *Gaming Site Regulatory Manual (Electronic Games)* (GSRM) from PAGCOR,[53] which does not involve the operation of a casino, but merely of a gaming site.

Correspondingly, since petitioner's contractual relationship with PAGCOR is <u>**not**</u> in connection with the operations of casino(s) under PD No. 1590, PAGCOR's tax exemption does not inure to the benefit of, and extend to, petitioner. Such being the case, the subject deficiency VAT assessment must be upheld.

The tax exemption must be expressed in the statute in clear language that leaves no doubt of the intention of the legislature to grant such exemption. And, even if it is granted, the exemption must be interpreted in *strictissimi*

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[52] Exhibit "P-11", inclusive of sub-markings, Docket – Vol. III, pp. 900 to 912.
[53] Exhibit "P-12", Docket – Vol. III, pp. 913 to 1033.

juris against the taxpayer and liberally in favor of the taxing authority.[54] The requirements for a tax exemption are strictly construed against the taxpayer because an exemption restricts the collection of taxes necessary for the existence of the government.[55]

In any event, petitioner invokes the ruling of the Supreme Court in *Bloomberry Resorts and Hotels, Inc. vs. Bureau of Internal Revenue* (*Bloomberry*),[56] to support its stance that PAGCOR's tax exemption under PD No. 169 extends to third parties having contractual relationships therewith, including entities issued a license by PAGCOR, such as petitioner. Such an invocation of the *Bloomberry* case, however, is untenable, since such case cannot be treated a precedent for this case.

Indeed, in the *Bloomberry* case, the Supreme Court made the following pronouncements, *viz.*:

> "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:
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> xxx xxx xxx
>
> As previously recognized, the above-quoted provision[57] 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 doubt that, like PAGCOR, its *contractees and licensees* remain exempted from the payment of corporate income tax and other taxes since the law is clear that said exemption inures to their benefit.**
>
> xxx xxx xxx
>
> **As the PAGCOR Charter states in unequivocal terms that exemptions granted for earnings derived from the operations conducted under the franchise specifically from the payment of any tax, income or otherwise, as well as any form of charges, fess or levies, *shall inure to the benefit of and extend to* corporation(s), association(s), agency(ies), or individual(s) <u>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</u>, so it must be that all *contractees and licensees* of PAGCOR, upon payment of the 5% franchise tax, shall likewise be exempted**

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[54] *Philippine Long Distance Telephone Company, Inc. vs. City of Bacolod, et al.*, G.R. No. 149179, July 15, 2005.
[55] *Commissioner of Internal Revenue vs. St. Luke's Medical Center, Inc. etseq.*, G.R. Nos. 195909 and 195960, September 26, 2012.
[56] G.R. No. 212530, August 10, 2016.
[57] Referring specifically to Section 13(2)(a) and (b), PD No. 1869.

from all other taxes, including corporate income tax realized from the operation of casinos." *(Emphases added)*

A simple and isolated reading of the pronouncement 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*", would likely support petitioner's case. However, such a pronouncement should be read in connection with the pronouncement that followed it, that the inurement of PAGCOR's tax benefit and the extension thereof must still be to certain persons *"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"*. Relative thereto, it must be emphasized that the foregoing jurisprudential pronouncements were made upon the factual basis that the petitioner in the *Bloomberry* case is operating a casino.[58] Thus, it is in this context that one should understand and apply the above-quoted pronouncements in the *Bloomberry* case.

Furthermore, in *Thunderbird Pilipinas Hotels and Resorts, Inc. v. Commissioner of Internal Revenue*,[59] the High Court has these to say:

> "**Strictly construed, Section 13(2)(b) of Presidential Decree No. 1869 means that the Philippine Amusement and Gaming Corporation (PAGCOR)'s income tax exemptions only extend to entities or individuals in a contractual relationship with PAGCOR <u>in connection with its casino operations</u>.** A PAGCOR licensee authorized to operate its own casino does not fall within the purview of Section 13(2)(b). Its income from its casino operations, therefore, is not tax-exempt.
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> xxx xxx xxx
>
> **...while the tax exemption under Section 13(2)(b) of Presidential Decree No. 1869 inures to the benefit of entities with whom PAGCOR has a contractual relationship, the <u>law adds a qualification: this contractual relationship must be 'in connection with the operations of the casino(s) authorized to be conducted under this Franchise[.]'</u> Stated differently, <u>the tax exemption is made only to those in a contractual relationship with PAGCOR in connection with PAGCOR's casino operations.</u>**
>
> We are not unmindful of *Bloomberry Resorts and Hotels, Inc. vs. Bureau of Internal Revenue*,[60] which declared that under Section 13(2)(b), all contractees and licensees of PAGCOR are likewise exempt from all other taxes, including corporate income tax, on earnings realized from operation of casinos.

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[58] In the *Bloomberry* case, the Supreme Court said: *"As narrated in the present petition, the factual antecedents of the case reveal that, on 8 April 2009, PAGCOR granted to petitioner a provisional license* ***to establish and operate an integrated resort and casino complex*** *at the Entertainment City project site of PAGCOR.* ***Petitioner and its parent company, Sureste Properties, Inc., own and operate Solaire Resort & Casino."*** *(Emphases added)*

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

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

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

xxx xxx xxx

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

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

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

A more deliberate reading of Section 13(2)(b) of Presidential Decree No. 1869 and the amendments under Republic Act No. 9487 provides more formidable support for the conclusion in this case. <u>Had Congress also intended to extend the tax exemptions to PAGCOR licensees, it could have easily done so by expanding Section 13(2)(b) and adding words such as 'licensees of PAGCOR' and the like</u>. <u>There must be a positive provision, not merely a vague implication, of the law creating that exemption</u>.

Presidential Decree No. 1869[61] was issued to centralize the operation of casinos into one corporate entity, PAGCOR. xxx

xxx xxx xxx

Thus, when the tax exemptions were granted under Section 13 of Presidential Decree No. 1869, the legislature contemplated a scenario where the casino operations would be centralized under the sole and exclusive authority of PAGCOR.

Under Section 13(2)(a), PAGCOR was granted tax exemption on earnings derived from its casino operations. <u>This tax exemption was, under Section 13(2)(b), also extended to entities that have a</u>

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[61] 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).

> **contractual relationship with PAGCOR in connection with its operation of casinos.**
>
> **In other words, the clause 'operations of the casino(s) authorized to be conducted under this Franchise' under Section 13(2)(b) referred to casinos operated by PAGCOR itself.**
>
> **The legislature, then, could not have envisioned that the clause would cover casinos operated by PAGCOR licensees since, at the time, PAGCOR had the sole and exclusive authority to operate casinos. Had that been its intention, Congress should have unequivocally provided in the amendatory law, Republic Act No. 9487, that tax exemptions extend to PAGCOR licensees.**
>
> As stated earlier, **it is a settled rule that tax exemptions are strictly construed and must be couched in clear language. This Court has held that 'if an exemption is found to exist, *it must not be enlarged by construction*, since the reasonable presumption is that the state has granted in express terms all it intended to grant at all[.]'"** *(Emphases and underscoring added)*

In fine, Section 13(2)(b) of PD No. 1869 is clear on the matter—the tax exemption shall inure to the benefit of and extend to persons with whom PAGCOR has a contractual relationship *"in connection with the operations of casinos authorized to be conducted under"* its franchise thereunder. To extend that tax exemption to petitioner would be to enlarge the same by construction.

The subject deficiency VAT assessment must be sustained.

The assessed deficiency VAT for taxable year 2019 in the amount of ₱33,088,475.88 was computed by respondent as follows:[62]

Vatable receipts subject to 12% per VAT returns		-
Add: Discrepancy per investigation		
Commission Received from Providers Not Subjected to VAT	₱138,716,973.05	
Commission Received from Marketing Incentive Not Subjected to VAT	8,490,986.22	
Other Taxable Income Not Subjected to VAT	135,000.00	
Commission Income Subject to VAT	18,635,097.23	₱ 165,978,056.50
Vatable receipts per investigation		165,978,056.50
Output Tax		₱ 19,917,366.78
Less: Net Creditable input tax, net of carry over		-
VAT Payable		₱ 19,917,366.78
Less: VAT payments per return		0
Basic tax due		₱ 19,917,366.78

[62] *Id.*, p. 656.

Add: 25% Surcharge	₱ 4,979,341.70	
12% Interest (01/26/2020 to 06/30/2023)	8,191,767.40	13,171,109.10
TOTAL AMOUNT DUE		**₱33,088,475.88**

The deficiency VAT assessment arose from the following items:

a. Commission Received from Providers Not Subjected to VAT	₱138,716,973.05
b. Commission Income Subject to VAT	18,635,097.23
c. Commission Received from Marketing Incentive Not Subjected to VAT	8,490,986.22
d. Other Taxable Income Not Subjected to VAT	135,000.00

a. Commission Received from Providers Not Subjected to VAT - ₱138,716,973.05

Petitioner argues that the commission received from providers amounting to ₱138,716,973.05 consists of the Operator Share from gaming revenues remitted through the service providers, Inter-active Entertainment Solutions Technologies, Inc. (IEST) and Orient Capital Ventures (OVC), from PAGCOR; that these gaming revenues were derived from the operation of electronic gaming sites pursuant to the Gaming Licenses and the Gaming Site Regulatory Manual (Electronic Games) Version 3.0 (GSRM) issued by PAGCOR; that PAGCOR'S exemption from taxes extends to the benefit of its contractees and licensees pursuant to PD No. 1869, as amended by Republic Act (RA) No. 9487; and that its receipt of Operator Share derived from electronic gaming operations licensed by PAGCOR, and remitted through its service providers, are not subject to VAT.

Concerning petitioner's alleged VAT exemption, the Court is *not* convinced.

As previously discussed, petitioner failed to prove that its contractual relationship with PAGCOR is in connection with the operations of casino(s) under PD No. 1869. Therefore, the tax exemption privileges of PAGCOR pursuant to Section 13(2) of PD No. 1869 do *not* inure to the benefit of petitioner. As such, its revenues derived from electronic gaming operations are *not* exempt from VAT. Hence, the succeeding discussion turns to the merits of petitioner's factual assertions and the supporting documents thereof.

Petitioner, as an Operator, was granted Gaming Licenses[63] by PAGCOR to operate Electronic Games in twelve (12) gaming sites. Part of the Gaming License issued by PAGCOR is the GSRM[64] which shall govern the establishment and operation of a gaming site.

[63] Exhibits "P-34-1-1" to "P-34-12-2", USB (Exhibit "P-55-2").
[64] Exhibit "P-35", USB (Exhibit "P-55-2").

Based on the ICPA's examination of records of petitioner, the latter's commission from Service Providers consists of the Operator Share from Electronic Games (e-games) and Sports Betting, which are covered by the Gaming Licenses issued to it by PAGCOR.

Electronic Games

In its ICPA Report,[65] the ICPA found that, for taxable year 2019, the electronic gaming technology along with its gaming system and game contents were provided by IEST, a Service Provider duly accredited by PAGCOR. The Service Provider prepares a *Settlement Report* which includes the Operator Share from each outlet or gaming site for each type of e-game. Petitioner prepares cash invoices[66] upon receipt of Settlement Report from the Service Provider and issues official receipts[67] to PAGCOR for the commission it received through IEST.

The Operator Share received by petitioner in 2019 amounting to ₱119,201,225.17, as accounted by the ICPA, together with the documentary exhibit references, is summarized as follows:[68]

INSTAWIN SETTLEMENT REPORT 2019					PBcom Deposit slip (Exh. No.)[69]
Period	**15-Jan**	**16-30/31**	**Total Commission Income**	**Exhibit No.**[70]	
January	₱ 5,081,057.41	₱ 5,651,537.67	₱ 10,732,595.08	"P-36-1-1" "P-36-1-3"	"P-36-1-2" "P-36-1-4"
February	5,259,008.29	3,358,511.31	8,617,519.60	"P-36-2-1" "P-36-2-3"	"P-36-2-2" "P-36-2-4"
March	4,662,988.35	5,752,449.79	10,415,438.14	"P-36-3-1" "P-36-3-3"	"P-36-3-2"
April	5,054,568.44	4,499,890.93	9,554,459.37	"P-36-4-1" "P-36-4-3"	"P-36-4-2" "P-36-4-4"
May	5,001,846.53	5,517,271.10	10,519,117.63	"P-36-5-1" "P-36-5-3"	"P-36-5-2" "P-36-5-4"
June	4,765,131.50	5,443,112.34	10,208,243.84	"P-36-6-1" "P-36-6-3"	"P-36-6-2" "P-36-6-4"
July	4,828,858.66	4,954,997.81	9,783,856.47	"P-36-7-1" "P-36-7-3"	"P-36-7-2" "P-36-7-4"
August	4,597,395.59	5,042,088.67	9,639,484.26	"P-36-8-1" "P-36-8-3"	"P-36-8-2" "P-36-8-4"
September	4,086,693.53	4,581,209.31	8,667,902.84	"P-36-9-1" "P-36-9-3"	"P-36-9-4"
October	4,912,191.93	5,020,885.89	9,933,077.82	"P-36-10-1" "P-36-10-3"	"P-36-10-2" "P-36-10-4"
November	5,329,268.09	5,094,952.77	10,424,220.86	"P-36-11-1"	"P-36-11-2"

[65] Exhibit "P-55", Docket – Vol. II, p. 786.
[66] Exhibits "P-38-1-1" to "P-38-12-2", USB (Exhibit "P-55-2").
[67] Exhibits "P-39-1-1" to "P-39-12-23", USB (Exhibit "P-55-2").
[68] Exhibit "P-55", Docket – Vol. II, p. 786.
[69] USB (Exhibit "P-55-2").
[70] *Ibid.*

INSTAWIN SETTLEMENT REPORT 2019					PBcom Deposit slip (Exh. No.)[69]
Period	**15-Jan**	**16-30/31**	**Total Commission Income**	**Exhibit No.[70]**	
				"P-36-11-3"	"P-36-11-4"
December	4,992,346.10	5,712,963.16	10,705,309.26	"P-36-12-1" "P-36-12-3"	"P-36-12-2" "P-36-12-4"
TOTAL	**₱58,571,354.42**	**₱60,629,870.75**	**₱119,201,225.17**		

<u>*Sports Betting*</u>

As discussed by the ICPA in its *Report*,[71] for petitioner's Sports Betting operations, Orient Capital Ventures (OVC), the Service Provider duly accredited by PAGCOR, prepares Monthly Fee Statement (MFS), which includes Gross Gaming Revenue (GGR) for the month and the corresponding share of the Operator, and deposits the corresponding share of the Operator through the latter's bank account. Upon receipt of cash deposits, petitioner as the Operator prepares cash invoices[72] and recognizes such receipt as revenue from Sports Betting.

Verification of the ICPA's findings and petitioner's supporting documents establish that the commission income earned by petitioner from Sports Betting in its licensed gaming sites amounted to ₱19,477,965.57, as detailed below:

Per Monthly Fee Summary/ Account Statement / MFS			
Period	**Exhibit No.[73]**	**Monthly Fee/ Profit Share**	**Total**
January	"P-40-1-1", "P-40-1-2"	₱ 667,634.23	
	"P-40-1-3", "P-40-1-4"	155,144.64	
	"P-40-1-5", "P-40-1-6"	144,137.11	
	"P-40-1-7", "P-40-1-8"	73,654.07	
	"P-40-1-9", "P-40-1-10"	222,796.19	₱ 1,263,366.24
February	"P-40-2-1", "P-40-2-2"	535,909.21	
	"P-40-2-3", "P-40-2-4"	80,624.32	
	"P-40-2-5", "P-40-2-6"	173,666.65	
	"P-40-2-7", "P-40-2-8"	83,636.39	
	"P-40-2-9", "P-40-2-10"	300,832.18	1,174,668.75
March	"P-40-3-1", "P-40-3-2"	583,339.45	
	"P-40-3-3", "P-40-3-4"	55,975.37	
	"P-40-3-5", "P-40-3-6"	243,113.32	
	"P-40-3-7", "P-40-3-8"	11,432.03	
	"P-40-3-9", "P-40-3-10"	257,593.63	1,151,453.80
April	"P-40-4-1", "P-40-4-2"	534,299.30	
	"P-40-4-3", "P-40-4-4"	102,412.40	
	"P-40-4-5", "P-40-4-6"	-	
	"P-40-4-7", "P-40-4-8"	88,111.35	874,304.57

[71] *Id.,* p. 787.
[72] Exhibits "P-41-1" to "P-41-11-6", USB (Exhibit "P-55-2").
[73] USB (Exhibit "P-55-2").

Per Monthly Fee Summary/ Account Statement / MFS			
	"P-40-4-9", "P-40-4-10"	149,481.52	
May	"P-40-5-1", "P-40-5-2"	685,199.90	
	"P-40-5-3", "P-40-5-4"	133,415.37	
	"P-40-5-5", "P-40-5-6"	254,805.88	
	"P-40-5-7", "P-40-5-8"	70,778.62	
	"P-40-5-9", "P-40-5-10"	303,257.00	1,447,456.77
June	"P-40-6-1", "P-40-6-2"	731,219.80	
	"P-40-6-3", "P-40-6-4"	-	
	"P-40-6-5", "P-40-6-6"	152,686.44	
	"P-40-6-7", "P-40-6-8"	39,300.98	
	"P-40-6-9", "P-40-6-10"	108,344.65	1,031,551.87
July	"P-40-7-1", "P-40-7-2"	724,790.32	
	"P-40-7-3", "P-40-7-4"	108,761.81	
	"P-40-7-5", "P-40-7-6"	136,526.71	
	"P-40-7-7", "P-40-7-8"	52,731.29	
	"P-40-7-9", "P-40-7-10"	200,872.03	1,223,682.16
August	"P-40-8-1", "P-40-8-2"	697,476.55	
	"P-40-8-3", "P-40-8-4"	173,796.43	
	"P-40-8-5", "P-40-8-6"	281,929.26	
	"P-40-8-7", "P-40-8-8"	173,894.38	
	"P-40-8-9", "P-40-8-10"	135,703.54	1,462,800.16
September	"P-40-9-1", "P-40-9-2"	730,646.66	
	"P-40-9-3", "P-40-9-4"	581,390.78	
	"P-40-9-5", "P-40-9-6"	396,022.98	
	"P-40-9-7", "P-40-9-8"	183,143.91	
	"P-40-9-9", "P-40-9-10"	266,775.94	2,157,980.27
October	"P-40-10-1", "P-40-10-2"	990,864.70	
	"P-40-10-3", "P-40-10-4"	738,888.61	
	"P-40-10-5", "P-40-10-6"	347,557.63	
	"P-40-10-7", "P-40-10-8"	130,115.67	
	"P-40-10-9", "P-40-10-10"	339,869.73	2,547,296.34
November	"P-40-11-1", "P-40-11-2"	1,045,216.08	
	"P-40-11-3", "P-40-11-4"	527,724.35	
	"P-40-11-5", "P-40-11-6"	474,545.36	
	"P-40-11-7", "P-40-11-8"	263,705.74	
	"P-40-11-9", "P-40-11-10"	443,388.36	
	"P-40-11-11", "P-40-11-12"	19,749.15	
	"P-40-11-13", "P-40-11-14"	14,541.54	2,788,870.58
December	"P-40-12-1", "P-40-12-2"	938,007.00	
	"P-40-12-3", "P-40-12-4"	249,293.45	
	"P-40-12-5", "P-40-12-6"	618,793.25	
	"P-40-12-7", "P-40-12-8"	630,998.23	
	"P-40-12-9", "P-40-12-10"	295,849.89	
	"P-40-12-11", "P-40-12-12"	216,095.30	
	"P-40-12-13", "P-40-12-14"	60,902.39	3,009,939.51
		Total	**₱20,133,371.02**
Less: Commission income from Gen. Trias 1 and Verde Oro (not included in gaming sites with PAGCOR license)			
January	"P-40-1-1", "P-40-1-2"	₱ 38,629.92	
February	"P-40-2-1", "P-40-2-2"	33,561.20	
March	"P-40-3-1", "P-40-3-2"	39,856.15	655,405.45

Per Monthly Fee Summary/ Account Statement / MFS			
April	"P-40-4-1", "P-40-4-2"	45,270.00	
June	"P-40-6-1", "P-40-6-2"	38,674.90	
July	"P-40-7-1", "P-40-7-2"	54,775.53	
August	"P-40-8-1", "P-40-8-2"	56,019.39	
September	"P-40-9-1", "P-40-9-2"	53,614.63	
October	"P-40-10-1", "P-40-10-2"	64,974.93	
November	"P-40-11-1", "P-40-11-2"	74,010.96	
	"P-40-11-11", "P-40-11-12"	19,749.15	
	"P-40-11-13", "P-40-11-14"	14,541.54	
December	"P-40-12-1", "P-40-12-2"	60,824.76	
	"P-40-12-13", "P-40-12-14"	60,902.39	
		Net Amount	**₱19,477,965.57**

Hence, for taxable year 2019, petitioner received commission income, through its Service Providers, IEST and OVC, derived from electronic gaming and sports betting operations duly licensed by PAGCOR.

However, a comparison between the ₱138,716,973.05 assessed commission income and the ₱138,679,190.74 total commission income earned shows a difference of ₱37,782.31, as shown below:

Commission income assessed per FDDA		₱138,716,973.05
Total commission income from PAGCOR licensed gaming operations		
Electronic Games	₱119,201,225.17	
Sports Betting	19,477,965.57	138,679,190.74
Unaccounted difference		**₱ 37,782.31**

The difference of ₱37,782.31, being unaccounted, is considered commission income generally subject to VAT, absent any evidence proving otherwise.

Moreover, considering that the commission income in the total amount of ₱138,679,190.74, albeit derived by petitioner, as an Operator, from its gaming operations under PAGCOR issued licenses, does *not* qualify for the VAT exemption under Section 13(2) of PD 1869, the same is considered as revenues from sale of services subject to VAT.

Thus, the assessed commission income from providers in the amount of ₱138,716,973.05 shall be upheld.

b. Commission Income Subject to VAT - ₱18,635,097.23

Petitioner states that the commission income subject to VAT in the amount of ₱18,635,097.23 consists of petitioner's share in the GGR from the operation of Electronic Bingo sites as licensed by PAGCOR, hence, *not* subject to VAT under PD No. 1869.

Petitioner's position on the alleged VAT exemption is *not* persuasive. Again, since petitioner failed to establish that its contract with PAGCOR relates to the operation of casino(s) under PD No. 1869, the tax exemption privileges of PAGCOR pursuant to Section 13(2) of PD 1869 do *not* extend to petitioner. Consequently, its revenues derived from Electronic Bingo operations are *not* exempt from VAT. Hence, the following discussion proceeds to examine the merits of petitioner's factual assertions and the supporting documents thereof.

To prove that it is an Operator duly licensed by PAGCOR to operate Electronic Bingo operations, petitioner presented the Gaming Licenses[74] granted to it by PAGCOR for the Bingo Games operations in two gaming sites (BF Homes and Riverside).

As borne out by the ICPA findings,[75] for e-Bingo operations, petitioner prepares a *PAGCOR Share Report* and submits the same to PAGCOR on a weekly basis. The accounts used by petitioner in recording the share of PAGCOR and the Service Provider are the *Advances from PAGCOR* and *Advances from FBM*, respectively, which are reversed upon remittance of the respective share. Based on PAGCOR Share Report, petitioner remits or deposits the share of PAGCOR, which is equivalent to 50% of GGR, plus the franchise tax of Operator and Service Provider, which is equivalent to 2.5% of GGR. In the case of Service Provider's share, which is 25% of GGR, petitioner remits the same twice a month. Then petitioner prepares check vouchers[76] in relation to the remittance of PAGCOR share and Service Provider share. The ICPA further explained that petitioner, as a licensed Operator of Electronic Bingo, retains the 25% share in GGR as revenue, and paid 5% franchise tax on the 50% of GGR, comprising of 25% share of petitioner and the 25% share of Service Provider, and remits the same to PAGCOR.

An examination of the *PAGCOR Share Report* reveals that petitioner's Share as Operator of e-Bingo Games amounted to ₱18,589,717.06, broken down below:

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[74] Exhibits "P-11-3" and "P-11-4", Docket – Vol. III, pp. 902 and 903, respectively.
[75] Exhibit "P-55", Docket – Vol. II, pp. 790 to 791.
[76] Exhibits "P-48"-1-1-1" to "P-48-1-12-4" and "P-49-1-1-1" to "P-49-1-10-2", USB (Exhibit "P-55-2").

Period	Per PAGCOR Share Report		25% Operator Share
	Exhibit No.[77]	GGR	
January	"P-47-2-1"	₱ 3,171,121.00	₱ 792,780.25
February	"P-47-2-2"	2,525,685.50	631,421.38
March	"P-47-2-3"	2,710,193.00	677,548.25
April	"P-47-2-4"	3,772,396.50	943,099.13
May	"P-47-2-5"	3,528,744.50	882,186.13
June	"P-47-2-6"	3,025,604.00	756,401.00
July	"P-47-2-7"	3,343,812.50	835,953.13
August	"P-47-2-8"	3,519,359.00	879,839.75
September	"P-47-2-9"	2,501,068.50	625,267.13
October	"P-47-2-10"	3,717,914.50	929,478.63
November	"P-47-2-11"	2,718,771.00	679,692.75
December	"P-47-2-12"	2,726,548.00	681,637.00
	Total for BF Homes	***₱37,261,218.00***	***₱ 9,315,304.50***
January	"P-47-1-1"	₱ 2,926,304.00	₱ 731,576.00
February	"P-47-1-2"	2,500,464.50	625,116.13
March	"P-47-1-3"	2,972,404.50	743,101.13
April	"P-47-1-4"	3,133,658.00	783,414.50
May	"P-47-1-5"	2,866,875.50	716,718.88
June	"P-47-1-6"	2,873,117.00	718,279.25
July	"P-47-1-7"	2,634,925.00	658,731.25
August	"P-47-1-8"	2,664,326.00	666,081.50
September	"P-47-1-9"	3,863,040.23	965,760.06
October	"P-47-1-10"	3,252,220.44	813,055.11
November	"P-47-1-11"	3,229,368.00	807,342.00
December	"P-47-1-12"	4,180,947.05	1,045,236.76
	Total for Riverside	***₱37,097,650.22***	***₱ 9,274,412.56***
	Grand Total	**₱74,358,868.22**	**₱18,589,717.06**

A comparison of the assessed amount of ₱18,635,097.23 as against the total amount per PAGCOR Share Report of ₱18,589,717.06, yields an *unsubstantiated difference* of ₱45,380.17. Said amount shall be considered commission income generally subject to VAT, absent any proof to the contrary.

Furthermore, the amount of ₱18,589,717.06, although derived by petitioner from its Bingo Games operations under PAGCOR-issued licenses, constitutes commission income from sale of services subject to VAT, since it does not qualify for the VAT exemption under Section 13(2) of PD No. 1869.

Thus, the assessed commission income subject to VAT in the amount of ₱18,635,097.23 shall be retained.

[77] USB (Exhibit "P-55-2").

c. Commission Received from Marketing Incentive Not Subjected to VAT - ₱8,490,986.22 &

d. Other Taxable Income Not Subjected to VAT - ₱135,000.00

Petitioner avers that the marketing incentives and other income are merely reimbursements for marketing and advertising costs incurred with no mark-up or profit element and that its receipt of reimbursement from the Service Providers being merely reimbursement-at-cost is *not* considered receipts subject to VAT.

The Court finds against petitioner.

As regards the alleged commission received from Marketing Incentive amounting to ₱8,490,986.22, petitioner's averment lacks merit. Pertinent to Marketing and Promotions, Regulation 19 of the GSRM states that:[78]

> "**MARKETING AND PROMOTIONS**
>
> The Operator shall conduct marketing activities and/or promotions necessary to promote and improve the performance of the gaming site.
>
> Section 1. Marketing activities and/or promotions
>
> xxx xxx xxx
>
> (d) All marketing costs to be incurred in any marketing and/or promotion shall be solely for the account of and shouldered by the Operator."

It is evident from the quoted provision that all costs to be incurred by petitioner, being an Operator, in the conduct of marketing and promotional activities to improve the performance of its gaming sites *shall be solely for its account.* Clearly therefore, petitioner is obligated to shoulder the costs and expenses for all the marketing and promotions related to its gaming operations and the alleged reimbursement-at-cost from its service providers finds no basis and is not provided for under the GSRM.

Moreover, the findings of the ICPA and the related supporting documents do not establish its claim that the Service Providers reimbursed petitioner for the actual marketing and advertising costs it incurred.

Per the ICPA Report,[79] petitioner allocates and advances the budget for marketing and promotions amounting to ₱132,000.00 to all its branches and

[78] Exhibit "P-35", p. 87, USB (Exhibit "P-55-2").

these advances are subject to liquidation. The ICPA further stated that petitioner regularly received from Service Provider a market support allocation which is equivalent to two (2%) percent of GGR on petitioner's 28% share; that this allocation is a reimbursement for the marketing and promotions incurred by petitioner as the Operator; and that on a monthly basis, the Service Provider deposits the marketing support to petitioner's bank account and sends the proof of deposits and BIR Form 2307, as support for the 2% withheld by Service Provider. The journal entries in petitioner's books for the advances, liquidation and receipt of marketing support are presented by the ICPA as follows:

Upon Allocation of budget for marketing and promotions to branch:

Dr	Advances to Branch Manager	xxx	
Cr	Cash		xxx

Upon liquidation of advances by branch:

Dr	Cash (pertains to remaining cash)	xxx	
Dr	Food for Players	xxx	
Dr	Others - supplies	xxx	
Cr	Advances to Branch Manager		xxx

Upon receipt of marketing support:

	Cash	xxx	
Dr			
Dr	Expanded withholding tax payable	xxx	
Cr	Marketing support (Revenue)		xxx

As can be understood from the journal entries above, petitioner records its expenses incurred upon liquidation of advances by its gaming outlets and records the receipt of marketing support from its Service Providers as revenue.

Further, a glance of the *Settlement Reports* for taxable year 2019 reveals that the alleged marketing support in the total amount of ₱8,490,986.22 is computed based on a percentage of petitioner's outlet commission, which is approximately 7%, as shown below:

Exhibit No.[80]	**Period**	**Outlet Commission** (a)	**Gross Marketing Amount** (b)	**% of Gross Marketing Amount**[81] (c = b / a)
"P-36-1-1"	January	₱10,732,595.08	₱766,061.46	0.07
"P-36-2-1"	February	8,617,519.60	614,133.30	0.07
"P-36-3-1"	March	10,415,438.14	744,863.27	0.07
"P-36-4-1"	April	9,554,459.37	681,419.87	0.07

[79] Exhibit "P-55", par. VII-B., Docket – Vol. II, 788 to 789.
[80] USB (Exhibit "P-55-2").
[81] Rounded off percentage.

Exhibit No.[80]	Period	Outlet Commission (a)	Gross Marketing Amount (b)	% of Gross Marketing Amount[81] (c = b / a)
"P-36-5-1"	May	10,519,117.63	751,687.29	0.07
"P-36-6-1"	June	10,208,243.84	723,858.21	0.07
"P-36-7-1"	July	9,783,856.47	693,841.91	0.07
"P-36-8-1"	August	9,639,484.26	686,865.57	0.07
"P-36-9-1"	September	8,667,902.84	619,092.35	0.07
"P-36-10-1"	October	9,933,077.82	708,060.79	0.07
"P-36-11-1"	November	10,424,220.86	737,449.00	0.07
"P-36-12-1"	December	10,705,309.26	763,653.20	0.07
	TOTAL	**₱119,201,225.17**	**₱8,490,986.22**	

Based on the foregoing, there is *no* showing that the receipt of marketing support represents reimbursement of actual costs incurred by petitioner for its Service Provider. Rather, it appears as payment or incentive for the services performed by petitioner and is recognized as revenue by the latter. Petitioner even failed to present documents substantiating the actual costs incurred for its marketing and advertising activities, which were allegedly reimbursed by its Service Provider. As clearly shown, the marketing amount received by petitioner were based on a percentage of the commission or Operator Share received by petitioner from its Service Provider and *not on the actual costs incurred by petitioner for its marketing and advertising activities.* Hence, it can be construed that the amount of ₱8,490,986.22 received by petitioner from its Service Provider constitutes payment for performing marketing and advertising services related to its gaming operations rather than reimbursement of specific costs incurred.

Considering that the assessed marketing incentive of ₱8,490,986.22 constitutes receipts for marketing services rendered by petitioner in relation to its gaming operations, the same is considered income from other related services, in the ordinary course of its trade or business, which is subject to VAT.

As to the alleged other taxable income amounting to ₱135,000.00, no document was submitted by petitioner to account for this amount and to prove its claim that it refers to mere reimbursement of costs.

Thus, the assessed marketing incentive and other taxable income in the respective amounts of ₱8,490,986.22 and ₱135,000.00 are sustained.

Considering the foregoing, petitioner is indeed liable to pay the basic deficiency VAT assessment for taxable year 2019, in the amount of ₱19,917,366.78.

However, the subject compromise penalty must be cancelled.

The assessed compromise penalty of ₱50,000 must be cancelled absent a showing that petitioner consented to the same.

It must be stressed that a compromise penalty is imposed to avoid prosecution for violation of the provisions of the Tax Code.[82] Pursuant to Revenue Memorandum Order (RMO) No. 01-90, as amended by RMO No. 19-2007, compromise penalties are only amounts suggested in settlement of criminal liability, and may not be imposed or exacted on the taxpayer in the event that a taxpayer refuses to pay the same. It is well-settled that this Court has no jurisdiction to compel a taxpayer to pay the compromise penalty because by its very nature, it implies a mutual agreement between the parties in respect to the thing or subject matter that is so compromised, and the choice of paying or not paying it distinctly belongs to the taxpayer. The imposition of the same without the conformity of the taxpayer is illegal and unauthorized.[83]

ACCORDINGLY, considering the foregoing considerations, the present *Petition for Review* is **PARTIALLY GRANTED**.

The assessment covering the compromise penalty for taxable year 2019 shall be **CANCELLED** and **SET ASIDE**.

However, the assessment issued against petitioner covering deficiency VAT for taxable year 2019 is **UPHELD**. Petitioner is, thus, **ORDERED TO PAY** respondent the aggregate amount of **₱30,704,940.04**, inclusive of the 25% surcharge, 12% deficiency interest imposed under Sections 248(A)(3) and 249(B) of the National Internal Revenue Code (NIRC) of 1997, as amended, computed as follows:

Basic Deficiency VAT Due	₱ 19,917,366.78
Add: 25% Surcharge	4,979,341.70
12% Deficiency Interest	
From January 26, 2020 to June 30, 2022 *[₱19,917,366.78 x 12% x 887/365 days]*	5,808,231.56
Total Amount Due, June 30, 2022[84]	**₱30,704,940.04**

[82] *The Philippines International Fair, Inc. vs. The Collector of Internal Revenue et. al.*, G.R. Nos. L-12928 and L-12932, March 31, 1962.

[83] *Commissioner of Internal Revenue vs. Lianga Bay Logging Co., Inc.* et al., G.R. No. L-35266, January 21, 1991.

[84] Due date for payment as indicated in the *Formal Letter of Demand* with attached *Final Assessment Notices* and *Details of Discrepancies* [Exhibit "P-5-2", BIR Records (Exhibit "R-13"), p. 477].

In addition, petitioner is **ORDERED TO PAY** respondent delinquency interest at the rate of twelve percent (12%) per annum on the total unpaid deficiency taxes due as of June 30, 2022, in the amount of ₱30,704,940.04 or equivalent to ₱10,094.77[85] per day, computed from July 1, 2022 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN) and as implemented by RR No. 21-2018.

Lastly, pursuant to Section 13 of RA No. 9282, considering that this decision is favorable to the national government, the BIR, through respondent, is hereby authorized to seize and distraint any goods, chattels, or effects, and the personal property, including stocks and other securities, debts, credits, bank accounts, and interests in and rights to personal property and/or levy the real property of petitioner in sufficient quantity to satisfy the tax or charge with any increment thereto incident to delinquency.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

WE CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
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.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

[85] ₱30,704,940.04x 12% / 365 days.