REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner, - versus - **PREMIUMLEISURE AND AMUSEMENT, INC. (PLAI),** Respondent.	**CTA EB NO. 2414** (CTA Case No. 9798) Present: **DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR.,** **UY,** **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA,** **MODESTO-SAN PEDRO,** **REYES-FAJARDO,** *and* **CUI-DAVID,** *JJ.* Promulgated: APR 12 2022 3:11 pm

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DECISION

RINGPIS-LIBAN, *J.*:

The Case

Before the Court is a Petition for Review seeking the nullification of the Decision[1] ("Assailed Decision") dated September 02, 2020 and Resolution[2] ("Assailed Resolution") dated January 05, 2021 of the Court of Tax Appeals First Division ("First Division"), partially granting Respondent's claim for refund or issuance of a Tax Credit Certificate ("TCC") in the amount of Php115,197,543.00 representing its erroneously paid income tax for the calendar year ("CY") 2015.

[1] Penned by Associate Justice Catherine T. Manahan, with Presiding Justice Roman G. del Rosario concurring. Docket, pp. 1915-1934.

[2] *Id.*, pp. 1950-1953.

The Parties

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

Respondent Premiumleisure and Amusement, Inc. (PLAI) is a domestic corporation duly organized and existing under the laws of the Philippines, with principal office at 10/F One E-Com Center, Harbor Drive, Mall of Asia Complex, CBP 1A, Pasay City.[4]

The Facts

The facts as found by the First Division are as follows:

> "On February 28, 2018, [Respondent] filed with the BIR its administrative claim *via* the letter dated February 26, 2018, accompanied by an Application for Tax Credits/Refunds (BIR Form No. 1914), requesting for the refund and/or issuance of TCC amounting to [Php]12,693,883.00, allegedly representing the annual income tax erroneously paid by it for CY 2015. However, [Respondent] subsequently filed an amendment to the said administrative claim on March 16, 2018, modifying the amount thereof to [Php]115,197,543.00.
>
> Thereafter, [Petitioner] issued the Letter of Authority No. eLA201500089691 dated July 20, 2017, which was received by [Respondent] on August 9, 2017.
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> [Respondent then] filed [a] Petition for Review on April 3, 2018.[5]

The Ruling of the First Division

On September 02, 2020, the First Division promulgated the Assailed Decision, the dispositive portion of which reads:

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3 *Id.*, Decision dated September 02, 2020, The Parties, pp. 1915-1916.
4 *Id.*, p. 1915.
5 *Id.*, Decision dated September 02, 2020, The Facts, p. 1916.

> "**WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is **GRANTED**. Accordingly, [Petitioner] is **ORDERED to REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in the amount of [Php]115,197,543.00 in favor of [Respondent], representing its erroneously paid income tax for the calendar year (CY) 2015.
>
> **SO ORDERED.**"[6]

Aggrieved, Petitioner filed a "Motion for Reconsideration (re: Decision dated September 2, 2020)"[7] on September 22, 2020 *via* registered mail, which the First Division denied in the Assailed Resolution, to wit:

> "**WHEREFORE**, premises considered, the instant *Motion for Reconsideration* is **DENIED** for lack of merit.
>
> **SO ORDERED.**"[8]

The Proceedings in the Court of Tax Appeals En Banc

On January 27, 2021, Petitioner filed a "Motion for Extension of Time to File Petition for Review"[9], praying that he be given an additional period of fifteen (15) days from January 28, 2021 or until February 12, 2021 within which to file his petition.

On January 28, 2021, the Court issued a Minute Resolution[10] granting Petitioner's motion.

On February 11, 2021, Petitioner filed the present "Petition for Review"[11].

On March 03, 2021, the Court issued a Resolution[12] ordering Respondent to comment on the Petition for Review within ten (10) days from notice.

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6 *Id.*, p. 1934.
7 *Id.*, pp. 1935-1943.
8 *Id.*, Resolution dated January 05, 2021, p. 1953.
9 Rollo, pp. 1-5. Record shows that Petitioner received the January 05, 2021 Resolution on January 13, 2021; Docket, p. 1948.
10 *Id.*, p. 6.
11 *Id.*, pp. 7-25.
12 *Id.*, pp. 51-52.

On March 18, 2021, Respondent filed its "Comment (Re: Petition for Review dated February 10, 2021)"[13] ("Comment").

On June 02, 2021, the Court issued a Resolution[14] submitting the instant case for decision.

Assignment of Errors

Petitioner raises the following grounds in support of its petition:

1. Whether or not the Honorable Court in Division erred in ruling that Respondent is entitled to the claim for refund of alleged erroneously paid income taxes for CY 2015; and

2. Whether or not the Honorable Court in Division erred in ruling that Respondent's petition is timely filed.[15]

The Arguments of Parties

Petitioner alleges that the tax exemption under Section 13(2)(b) of Presidential Decree ("PD") No. 1869[16] is granted only to Philippine Amusement and Gaming Corporation ("PAGCOR") when it operates the casino by itself, and extends to entities who provide necessary services to PAGCOR, in relation to its gaming operations. He maintains that the tax exemption does not inure to the benefit of entities who are mere licensees of PAGCOR's franchise, to which the operation and management of the gaming service is not under the control of the franchise holder, PAGCOR.

Petitioner stresses that there is nothing in PD No. 1869 which specifically states that a licensee of PAGCOR is exempt from tax. The mentioned entities in Section 13(2)(b) pertain to those who perform essential and technical services for PAGCOR in relation to the latter's operations of the casinos. It does not cover those entities not actually operated by PAGCOR itself, such as Respondent.

Petitioner also avers that even assuming *arguendo* that Respondent is included in the exemption as a co-licensee or grantee of PAGCOR, it still has not proven entitlement to the refund claimed, for it was not able to prove that PAGCOR paid for the franchise tax, which exempts its co-licensees and

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13 *Id.*, "Petition for Review" dated February 10, 2021, Assignment of Errors, p. 9.
14 *Id.*, pp. 67-68.
15 *Id.*, pp. 10-14.
16 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), July 11, 1983.

grantees from payment of income tax. Mere allegation is insufficient to prove entitlement to the refund claimed.

Lastly, assuming further that Respondent is entitled for an exemption from payment of income tax, Petitioner submits that the claim for refund was filed out of time. According to Petitioner, the two-year prescriptive period should be reckoned from the actual payment of the subject tax and not from the filing of the final adjustment return or Annual Income Tax Return ("AITR").

Petitioner believes that the doctrine laid down in *Metropolitan Bank & Trust Company v. The Commissioner of Internal Revenue*[17] ("*MBTC v. CIR*") – the reckoning of the claim for erroneously paid taxes would only be reckoned from the filing of the AITR, should only be applied when the error is due to adjustments or error in computation in estimation of payments, and not when the taxpayer claims to be wholly exempt from its payment as in the case at bar.

On the other hand, Respondent in its Comment asserts that the income tax privilege granted to PAGCOR inures to the benefit of the following entities: (a) PAGCOR, as the franchise holder, (b) other entities with whom the PAGCOR or an operator has any contractual relationship in connection with the operations of the casino authorized to be conducted under PAGCOR's franchise, and (c) the contractors or suppliers of essential facilities and technical services to PAGCOR or an operator. In fact, the same was affirmed in *Bloomberry Resorts and Hotels, Inc. v. Bureau of Internal Revenue, represented by Commissioner Kim S. Jacinto*[18] ("*Bloomberry v. BIR*"), *Thunderbird Pilipinas Hotels and Resorts, Inc. v. Commissioner of Internal Revenue*[19], and *Travellers International Hotel Group Inc. v. Commissioner of Internal Revenue*[20].

Additionally, Respondent's Gaming License specifically provides that the Licensee is entitled to the customs, duties, and tax exemptions specified under Title IV, Section 13 of PD No. 1869.

Respondent further contends that it was able to show that it paid to PAGCOR the applicable license fee which is inclusive of the franchise tax. Respondent submitted supporting documents (*i.e.,* general ledger, journal vouchers, acknowledgement receipts and official receipts) as well which proves that its income of Php756,237,938.72 consists entirely of its revenue share from the operation of casino.

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17 G.R. No. 182582, April 17, 2017.
18 G.R. No. 212530, August 10, 2016.
19 CTA Case No. 8612, September 06, 2018.
20 CTA Case No. 9168, November 08, 2018.

Finally, Respondent points out that Petitioner's assertion on prescription have already been carefully weighed and considered, and eventually dismissed by the court *a quo* in the Assailed Decision.

The Ruling of the Court

Timeliness of Petition

The Court in Division issued the Assailed Resolution, denying Petitioner's "Motion for Reconsideration (re: Decision dated September 2, 2020)", on January 05, 2021. Petitioner received said Resolution on January 13, 2021.[21] Pursuant to Rule 4, Section 2(a)(1)[22] in relation to Rule 8, Section 3(b)[23] of the Revised Rules of the Court of Tax Appeals[24] (RRCTA), Petitioner had fifteen (15) days from date of receipt of the resolution or until January 28, 2021 within which to file its petition for review.

On January 27, 2021, Petitioner filed a "Motion for Extension of Time to File Petition for Review", praying for an extension of fifteen (15) days from January 28, 2021 or until February 12, 2021 within which to file his petition. On January 28, 2021, a Minute Resolution was issued granting the same.

On February 11, 2021, Petitioner timely filed the present "Petition for Review". Hence, the Court *En Banc* validly acquired jurisdiction.

We now proceed to the merits of the case.

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[21] Docket, p. 1948.

[22] **Sec. 2.** *Cases within the jurisdiction of the Court en banc.* — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

> (a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:
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> xxx xxx xxx
>
> (1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture; x x x

[23] **Sec. 3.** *Who may appeal; period to file petition.* — x x x

> (b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (Rules of Court, Rule 42, sec. 1a)

[24] A.M. No. 05-11-07-CTA, November 22, 2005.

At the outset, Petitioner presents no new argument to persuade Us that it has a meritorious case. In fact, the grounds relied upon by Petitioner in the instant Petition for Review are the same contentions in Petitioner's "Motion for Reconsideration (re: Decision dated September 2, 2020)" filed *via* registered mail on September 22, 2020 before the First Division. They were already passed upon, addressed and resolved in the Assailed Decision and Assailed Resolution. Nevertheless, we will discuss, once again, the demerits of Petitioner's arguments which may serve as a guidepost in deciding issues of similar nature in the future.

Requisites for recovery of tax erroneously or illegally collected

Sections 204(C)[25] and 229[26] of the NIRC of 1997, as amended, govern refund claims of erroneously or illegally collected tax. Pursuant to the said provisions, the following pre-requisites must be satisfied for such claim to prosper:

1) that an administrative claim for refund or credit must be filed with the BIR before filing a judicial claim with this court, both within two (2) years from the date of payment of tax; and

2) that the subject tax paid is an *erroneous or illegal tax*, that is, "one levied without statutory authority, or upon property

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[25] **SEC. 204.** *Authority of the Commissioner to Compromise/Abate and Refund or Credit Taxes.* — The Commissioner may —

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(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: Provided, however, that a return filed showing an overpayment shall be considered as a written claim for credit or refund.

[26] **SEC. 229.** *Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

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

> not subject to taxation, or by some officer having no authority to levy the tax, or one which is some other similar aspect is illegal".[27]

We now determine whether or not Respondent was able to comply with the above-mentioned requirements.

The administrative and judicial claims were timely filed

For corporate income taxes, the two (2)-year prescriptive period should be reckoned from the time the final adjustment return or the AITR was filed, since it is only at that time that it would be possible to determine whether the corporate taxpayer had paid an amount exceeding its annual income tax liability. This is in line with the ruling in *ACCRA Investments Corporation v. The Honorable Court of Appeals, et al.*[28], *Commissioner of Internal Revenue v. TMX Sales, Inc., et al.*[29] and *Commissioner of Internal Revenue v. Philippine American Life Insurance Co., et al.*[30], which were all cited in *Commissioner of Internal Revenue v. Court of Appeals, et al.*[31], to wit:

> "The conclusions reached by the appellate court are contrary to the very rulings cited by it. In *Commissioner of Internal Revenue v. TMX Sales, Inc.,* this Court, in rejecting the contention that the period of prescription should be counted from the date of payment of the quarterly tax, held:
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> > . . . [T]he filing of a quarterly income tax return required in Section 85 [now Section 68] and implemented per BIR Form 1702-Q and payment of quarterly income tax should only be considered mere installments of the annual tax due. These quarterly tax payments which are computed based on the cumulative figures of gross receipts and deductions in order to arrive at a net taxable income, should be treated as advances or portions of the annual income tax due, to be adjusted at the end of the calendar or fiscal year. This is reinforced by Section 87 [now Section 69] which provides for the filing of adjustment returns and final payment of income tax.

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27 Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation, G.R. No. 188497, April 25, 2012, *citing* the definition provided in BLACK'S LAW DICTIONARY, Fifth Edition, p. 486.

28 G.R. No. 96322, December 20, 1991.

29 G.R. No. 83736, January 15, 1992.

30 G.R. No. 105208 May 29, 1995.

31 G.R. No. 117254 January 21, 1999.

> Consequently, the two-year prescriptive period provided in Section 292 [now Section 230 of the Tax Code] should be computed from the time of filing the Adjustment Return or Annual Income Tax Return and final payment of income tax.

On the other hand, in *ACCRA Invesments Corporation v. Court of Appeals*, where the question was whether the two-year period of prescription should be reckoned from the end of the taxable year (in that case December 31, 1981), we explained why the period should be counted from the filing of the final adjustment return, thus:

> Clearly, there is the need to file a return first before a claim for refund can prosper inasmuch as the respondent Commissioner by his own rules and regulations mandates that the corporate taxpayer opting to ask for a refund must show in its final adjustment return the income it received from all sources and the amount of withholding taxes remitted by its withholding agents to the Bureau of Internal Revenue. The petitioner corporation filed its final adjustment return for its 1981 taxable year on April 15, 1982. In our Resolution dated April 10, 1989 in the case of Commissioner of Internal Revenue v. Asia Australia Express, Ltd. (G.R. No. 85956), we ruled that the two-year prescriptive period within which to claim a refund commences to run, at the earliest, on the date of the filing of the adjusted final tax return. Hence, the petitioner corporation had until April 15, 1984 within which to file its claim for refund.
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> xxx xxx xxx
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> It bears emphasis at this point that the rationale in computing the two-year prescriptive period with respect to the petitioner corporation's claim for refund from the time it filed is final adjustment return is the fact that it was only then that ACCRAIN could ascertain whether it made profits or incurred losses in its business operations. The 'date of payment', therefore, in ACCRAIN's case was when its tax liability, if any, fell due upon its filing of its final adjustment return on April 15, 1982.

Finally, in *Commissioner of Internal Revenue v. Philippine American Life Insurance Co.*, we held:

> Clearly, the prescriptive period of two years should commence to run only from the time that the refund is ascertained, which can only be determined after a final adjustment return is accomplished. In the present case, this date is April 16, 1984, and two years from this date would be April 16, 1986. The record shows that the claim for refund was filed on December 10, 1985 and the petition for review was brought before the CTA on January 2, 1986. Both dates are within the two-year reglementary period. Private respondent being a corporation, Section 292 [now Section 230] cannot serve as the sole basis for determining the two-year prescriptive period for refunds. As we have earlier stated in the TMX Sales case. Sections 68, 69, and 70 on Quarterly Corporate Income Tax Payment and Section 321 should be construed in conjunction with it.
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> Thus, **it can be deduced from the foregoing that, in the context of §230, which provides for a two-year period of prescription counted 'from the date of payment of the tax' for actions for refund of corporate income tax, the two-year period should be computed from the time of actual filing of the Adjustment Return or Annual Income Tax Return. This is so because at that point, it can already be determined whether there has been an overpayment by the taxpayer. Moreover, under §49(a) of the NIRC, payment is made at the time the return is filed."**[32]

In *Metropolitan Bank & Trust Company v. The Commissioner of Internal Revenue*[33], the Supreme Court explained the *ratio decidendi* of its ruling in the cases cited above, *inter alia*, as follows:

> "...the cases cited by Metrobank involved corporate income taxes, in which the corporate taxpayer is required to file and pay income tax on a quarterly basis, with such payments being subject to an adjustment at the end of the taxable year. As aptly put in *CIR v. TMX Sales, Inc.*, 'payment of quarterly income tax should only be considered [as] mere installments of the annual tax

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32 *Emphasis and underscoring supplied.*
33 G.R. No. 182582, April 17, 2017.

> due. These quarterly tax payments which are computed based on the cumulative figures of gross receipts and deductions in order to arrive at a net taxable income, should be treated as advances or portions of the annual income tax due, to be adjusted at the end of the calendar or fiscal year. x x x Consequently, the two-year prescriptive period x x x should be computed from the time of filing of the Adjustment Return or Annual Income Tax Return and final payment of income tax.' **Verily, since quarterly income tax payments are treated as mere 'advance payments' of the annual corporate income tax, there may arise certain situations where such 'advance payments' would cover more than said corporate taxpayer's entire income tax liability for a specific taxable year. Thus, it is only logical to reckon the two (2)-year prescriptive period from the time the Final Adjustment Return or the Annual Income Tax Return was filed, since it is only at that time that it would be possible to determine whether the corporate taxpayer had paid an amount exceeding its annual income tax liability.**"[34]

Following the doctrine above, Respondent filed its AITR for CY 2015 on April 07, 2016 and paid the corresponding income tax due in the amount of Php12,693,883.00.[35] Thus, counting two (2) years from April 07, 2016, Respondent had until April 07, 2018, within which to file its claim, both in the administrative and judicial levels. Since Respondent filed its administrative claims on February 28, 2018[36] and March 16, 2018[37], and the judicial claim on April 03, 2018[38], the same were filed within the two-year prescriptive period.

Correspondingly, in this case, Respondent timely filed its administrative and judicial claims.

There was erroneous payment of income tax

Section 13(2) of PD No. 1869[39] as amended by Republic Act (RA) No. 9487[40], explicitly granted PAGCOR exemption from the payment of corporate income tax and other taxes, including any form of charges, fees and levies (with the exemption of the five percent franchise tax on gross revenues or earnings) with respect to its income from gaming operations.

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34 *Emphasis supplied.*
35 Docket, Exhibits "P-10" to P-10-a", pp. 1349-1361.
36 *Id.*, Exhibit "P-14", pp. 1375-1383.
37 *Id.*, Exhibit "P-15", pp. 1384-1386.
38 *Id.*, Petition for Review, pp. 10-20.
39 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), July 11, 1983.
40 An Act Further Amending Presidential Decree No. 1869, Otherwise Known As PAGCOR Charter, June 20, 2007.

"SECTION 13. Exemptions. —

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(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 of 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."**[41]

Unmistakably, such exemption inures to the benefit of and extend to other entities with whom PAGCOR operator has any contractual relationship in connection with the operations of the casinos authorized to be conducted under the former's charter. In other words, it is not only PAGCOR that is exempt from paying income taxes on its gaming operations, whether local of national, but also PAGCOR's licensees and franchisees.

This was the categorical pronouncement of the Supreme Court in *Bloomberry Resorts and Hotels, Inc. v. Bureau of Internal Revenue, represented by Commissioner Kim S. Jacinto-Henares*[42] (*Bloomberry v. BIR*), where it had the occasion to finally clarify the taxation of the income from gaming operations derived by PAGCOR's contractees and licensees, *viz.*:

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[41] *Emphasis supplied.*
[42] G.R. No. 212530, August 10, 2016.

"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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As previously recognized, the above-quoted provision providing for the said exemption was neither amended nor repealed by any subsequent laws (*i.e.,* Section 1 of R.A. No. 9337 which amended Section 27(C) of the NIRC of 1997); thus, it is still in effect. Guided by the doctrinal teachings in resolving the case at bench, it is without a doubt that, like PAGCOR, its *contractees and licensees* remain exempted from the payment of corporate income tax and other taxes since the law is clear that said exemption inures to their benefit.

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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* 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."

Unless and until modified, the doctrine laid down in *Bloomberry v. BIR* should be applied in determining the taxation of income from gaming operations derived by licensees and contractees of PAGCOR.

Indeed, this Court in *Commissioner of Internal Revenue v. Travellers International Hotel Group, Inc.*[43] and *Commissioner of Internal Revenue v. Premiumleisure and Amusement, Inc. (PLAI)*[44] has confirmed the same tax treatment for the licensees of PAGCOR (*i.e.*, five percent franchise tax in lieu of any and all taxes).

Accordingly, Petitioner's contention that there is nothing in PD No. 1869 which specifically states that a licensee of PAGCOR is exempt from income tax has no merit.

Additionally, Respondent was able to show that it is a licensee of PAGCOR and the income which is being subjected to income tax by Petitioner pertains to Respondent's income from gaming operations. As correctly ruled by the Court in Division in the Assailed Decision:

> "The Court finds that [Respondent] was able to show that it is a *contractee and licensee* of PAGCOR. Petitioner is part of, or is one of the corporations comprising, the Consortium, which was granted the *Gaming License* dated April 29, 2015 issued by PAGCOR for the period from December 12, 2008 until July 11, 2033.
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> Undoubtedly, [Respondent] was able to demonstrate that the said Consortium, through the co-licensee MCE Leisure (Philippines) Corporation, remitted **license fees** to PAGCOR in relation to the gaming revenues in CY 2015. Under the Provisional License granted by PAGCOR in favor of the Consortium particularly under Section thereto, the payment of franchise tax is the obligation of PAGCOR, to wit:
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> **'Section 21. FRANCHISE TAX.** — PAGCOR shall pay the franchise tax on actual Gross Gaming Revenues generated by the Casino

[43] CTA E.B. No. 2141 (CTA Case No. 9275), September 22, 2020.
[44] CTA E.B. No. 2226 (CTA Case No. 9572), June 14, 2021.

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

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

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

Furthermore, [Respondent's] gross income was indicated in its Annual Income Tax Return (BIR Form No. 1702-RT) with a paid tax due amounting to Php115,197,543.00, where quarterly income tax payments amounting to Php102,503,660.00 were deducted and the tax payable amounting to Php12,693,883.00 was paid through the electronic Filing and Payment System (eFPS). Also, there were official receipts issued by PAGCOR for the payment of the license fees by the Consortium as represented by MCE Leisure (Philippines) Corporation with [Respondent's] Acknowledgment/Official Receipts of its share in the gaming revenues issued to the latter. Hence, [Respondent] had fully substantiated its claim."[45]

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[45] Docket, Decision dated September 02, 2020, pp. 1929-1934.

Well-settled in this jurisdiction is the fact that actions for tax refund, as in this case, are in the nature of a claim for exemption and the law is construed in *strictissimi juris* against the taxpayer. The pieces of evidence presented entitling a taxpayer to an exemption are also *strictissimi* scrutinized and must be duly proven. In this case, Respondent was able to prove that it is entitled to a refund or issuance of a TCC for its erroneously paid income tax for CY 2015.

Considering all these pronouncements, We find no cogent reason to reverse or modify the assailed Decision and assailed Resolution of the Court *a quo*.

WHEREFORE, premises considered, the instant Petition for Review is **DENIED**. The Decision dated September 02, 2020 and the Resolution dated January 05, 2021 of the First Division in the case docketed as CTA Case No. 9798 are **AFFIRMED**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
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

LANEE S. CUI-DAVID
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