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FIRST DIVISION

[G.R. No. 177387. November 9, 2016]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **SECRETARY OF JUSTICE, and PHILIPPINE AMUSEMENT AND GAMING CORPORATION,** *respondents.*

SYLLABUS

1. TAXATION; REPUBLIC ACT NO. 1125 *VIS-Á-VIS* P.D. NO. 242; THE COURT OF TAX APPEALS HAS EXCLUSIVE APPELLATE JURISDICTION TO REVIEW THE DECISIONS OF THE COMMISSIONER OF INTERNAL REVENUE IN CASES INVOLVING DISPUTED ASSESSMENTS; FAILURE OF THE SECRETARY OF JUSTICE TO DESIST FROM EXERCISING JURISDICTION DESPITE BECOMING AWARE OF THE PRONOUNCEMENT OF THE SUPREME COURT RESOLVING THE INCONSISTENCY OR CONFLICT BETWEEN R.A. 1125 AND P.D. 242 CONSTITUTES GRAVE ABUSE OF DISCRETION; DOCTRINE OF *STARE DECISIS* REQUIRES ADHERENCE TO THE RULING OF THE COURT.— PAGCOR filed its appeals in the DOJ on January 5, 2004 and August 4, 2004, *Philippine National Oil Company v. Court of Appeals* was promulgated on April 26, 2006. The Secretary of Justice resolved the petitions on December 22, 2006. Under the circumstances, the Secretary of Justice had ample opportunity to abide by the prevailing rule and should have referred the case to the CTA because judicial decisions applying or interpreting the law formed part of the legal system of the country, and are for that reason to be held in obedience by all, including the Secretary of Justice and his Department. Upon becoming aware of the new proper construction of P.D. No. 242 in relation to R.A. No. 1125 pronounced in *Philippine National Oil Company v. Court of Appeals*, therefore, the Secretary of Justice should have desisted from dealing with the petitions, and referred them to the CTA, instead of insisting on exercising jurisdiction thereon. Therein lay the grave abuse of discretion amounting to lack or excess of jurisdiction on the

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part of the Secretary of Justice, for he thereby acted arbitrarily and capriciously in ignoring the pronouncement in *Philippine National Oil Company v. Court of Appeals*. Indeed, the doctrine of *stare decisis* required him to adhere to the ruling of the Court, which by tradition and conformably with our system of judicial administration speaks the last word on what the law is, and stands as the final arbiter of any justiciable controversy. In other words, there is only one Supreme Court from whose decisions all other courts and everyone else should take their bearings.

2. **ID.; REPUBLIC ACT NO. 7716; PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR) IS EXEMPT FROM THE PAYMENT OF VALUE-ADDED TAX (VAT); RA 7716 DID NOT EXPRESSLY REPEAL PAGCOR'S CHARTER AND DID NOT EXCLUDE PAGCOR'S EXEMPTION UNDER ITS CHARTER, P.D. 1869, FROM THE GRANT OF EXEMPTION FROM VAT.—** [A] basic rule in statutory construction is that a special law cannot be repealed or modified by a subsequently enacted general law in the absence of any express provision in the latter law to that effect. A special law must be interpreted to constitute an exception to the general law in the absence of special circumstances warranting a contrary conclusion. R.A. No. 7716, a general law, did not provide for the express repeal of PAGCOR's Charter, which is a special law; hence, the general repealing clause under Section 20 of R.A. No. 7716 must pertain only to franchises of electric, gas, and water utilities, while the term *other franchises* in Section 102 of the NIRC should refer only to transport, communications and utilities, exclusive of PAGCOR's casino operations. x x x R.A. No. 7716 indicates that Congress has not intended to repeal PAGCOR's privilege to enjoy the 5% franchise tax in lieu of all other taxes. A contrary construction would be unwarranted and myopic nitpicking. x x x Unlike the case of PAL, however, R.A. No. 7716 does not specifically exclude PAGCOR's exemption under P.D. No. 1869 from the grant of exemptions from VAT; hence, the petitioner's contention that R.A. No. 7716 expressly amended PAGCOR's franchise has no leg to stand on. Moreover, PAGCOR's exemption from VAT, whether under R.A. No. 7716 or its amendments, has been settled in *Philippine Amusement and Gaming Corporation (PAGCOR) v. The Bureau of Internal*

Revenue, whereby the Court, citing *Commissioner of Internal Revenue v. Acesite (Philippines) Hotel Corporation*, has declared: **Petitioner is exempt from the payment of VAT, because PAGCORs charter, P.D. No. 1869, is a special law that grants petitioner exemption from taxes.**

3. ID.; NATIONAL INTERNAL REVENUE CODE (NIRC); WITHHOLDING TAX; PAGCOR IS LIABLE TO PAY FINAL WITHHOLDING TAX ON FRINGE BENEFITS (FBT); CAR PLAN PROVIDED BY PAGCOR TO QUALIFIED OFFICERS IS CONSIDERED FRINGE BENEFIT BUT NOT THE PAYMENT OF MEMBERSHIP DUES AND FEES.— FBT is treated as a final income tax on the employee that shall be withheld and paid by the employer on a calendar quarterly basis. As such, PAGCOR is a mere withholding agent inasmuch as the FBT is imposed on PAGCOR's employees who receive the fringe benefit. PAGCOR's liability as a withholding agent is not covered by the tax exemptions under its Charter. The car plan extended by PAGCOR to its qualified officers is evidently considered a fringe benefit as defined under Section 33 of the NIRC. To avoid the imposition of the FBT on the benefit received by the employee, and, consequently, to avoid the withholding of the payment thereof by the employer, PAGCOR must sufficiently establish that the fringe benefit is required by the nature of, or is necessary to the trade, business or profession of the employer, or when the fringe benefit is for the convenience or advantage of the employer. PAGCOR asserted that the car plan was granted "not only because it was necessary to the nature of the trade of PAGCOR but it was also granted for its convenience." The records are lacking in proof as to whether such benefit granted to PAGCOR's officers were, in fact, necessary for PAGCOR's business or for its convenience and advantage. Accordingly, PAGCOR should have withheld the FBT from the officers who have availed themselves of the benefits of the car plan and remitted the same to the BIR. As for the payment of the membership dues and fees, the Court finds that this is not considered a fringe benefit that is subject to FBT and which holds PAGCOR liable for final withholding tax. x x x Considering that the payments of membership dues and fees are not borne by PAGCOR for its employees, they cannot be considered as fringe benefits which are subject to FBT under Section 33 of

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the NIRC. Hence, PAGCOR is not liable to withhold FBT from its employees.

4. ID.; ID.; ID.; COMPENSATION INCOME THAT PAGCOR PAID TO ITS CONTRACTUAL, CASUAL, CLERICAL, AND MESSENGERIAL EMPLOYEES IS SUBJECT TO EXPANDED WITHHOLDING TAX.— Other than the ₱4,243,977.96 payments made to COA, the remainder of ₱71,611,563.60 compensation income that PAGCOR paid for the services of its contractual, casual, clerical and messengerial employees are clearly subject to expanded withholding tax by virtue of Section 79 (A) of the NIRC[.]

5. ID.; ASSESSMENT; PRESUMPTION IN FAVOR OF THE CORRECTNESS OF TAX ASSESSMENTS, APPLIED.— It is settled that all presumptions are in favor of the correctness of tax assessments. The good faith of the tax assessors and the validity of their actions are thus presumed. They will be presumed to have taken into consideration all the facts to which their attention was called. Hence, it is incumbent upon the taxpayer to credibly show that the assessment was erroneous in order to relieve himself from the liability it imposes. PAGCOR failed in this regard. Hence, except for the assessment for deficiency expanded withholding taxes pertaining to the payments made to the COA for its audit services and for the prizes and other promo items, the Court upholds the BIR's assessment for deficiency expanded withholding taxes.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Office of the Government Corporate Counsel for respondents.

D E C I S I O N

BERSAMIN, *J.*:

Petitioner Commissioner of Internal Revenue (CIR) commenced this special civil action for *certiorari* to annul the December 22, 2006 resolution[1] and the March 12, 2007

[1] *Rollo*, pp. 40-53.

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resolution,[2] both issued by the Secretary of Justice in OSJ Case No. 2004-1, alleging that respondent Secretary of Justice acted without or in excess of his jurisdiction, or in grave abuse of discretion amounting to lack or excess of jurisdiction.

The dispositive portion of the assailed December 22, 2006 resolution states:

> **WHEREFORE**, premises considered, PAGCOR is declared exempt from payment [of] all taxes, save for the franchise tax as provided for under Section 13 of PD 1869, as amended, the presidential issuance not having been expressly repealed by RA 7716.[3]

while the March 12, 2007 resolution denied the CIR's motion for reconsideration of the December 22, 2006 resolution.

Antecedents

Respondent Philippine Amusement and Gaming Corporation (PAGCOR) has operated under a legislative franchise granted by Presidential Decree No. 1869 (P.D. No. 1869), its Charter,[4] whose Section 13(2) provides that:

> **(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 percent (5%) 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. (bold emphasis supplied)

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[2] *Id*. at 54-59.

[3] *Id*. at 53.

[4] *Consolidating and Amending Presidential Decree Nos. 1067-A, 2067-B, 1067-C, 1339 and 1632, Relative to the Franchise and Powers of the Philippine Amusement and Gaming Corporation (PAGCOR).*

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Notwithstanding the aforesaid 5% franchise tax imposed, the Bureau of Internal Revenue (BIR) issued several assessments against PAGCOR for alleged deficiency value-added tax (VAT), final withholding tax on fringe benefits, and expanded withholding tax, as follows:

ASSESSMENT	DATE ISSUED	PERIOD COVERED	TOTAL AMOUNT DUE(inclusive of interest, surcharge and compromise penalty)
No. 33-1996/1997/1998 (for deficiency VAT)[5]	November 14, 2002	1996/1997/1998	₱4,078,476,977.26
No. 33-99 (for deficiency VAT, final withholding tax on fringe benefits, and expanded withholding tax)[6]	November 25, 2002	1999	₱6,678,346,966.49
No. 33-2000 (for deficiency VAT and final withholding tax on fringe benefits)[7]	March 18, 2003	2000	₱2,953,321,685.92
		TOTAL	**₱13,710,145,629.67**

[5] *Rollo*, pp. 60-67, 70 (the BIR required PAGCOR to pay the assessed amount not later than December 27, 2002).

[6] *Id*. at 68, 71-74, 76 (the assessment consists of the following unpaid taxes, inclusive of interest, surcharge and compromise penalty, namely: (1) VAT - ₱1,946,079,965.21; (2) Final withholding tax on fringe benefits - ₱941,350,192.12; Expanded withholding tax - ₱3,790,916,809.16; the BIR required PAGCOR to pay the foregoing assessment on or before January 20, 2003).

[7] *Id*. at 75-81 (the assessment covers: (1) deficiency VAT - ₱2,097,426,943.63, inclusive of interest, surcharge and compromise penalty; and (2) deficiency final withholding tax on fringe benefits ₱855.894,742.29, inclusive of interest, surcharge and compromise penalty; PAGCOR was required to pay the assessed deficiency taxes by April 30, 2003).

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On December 18, 2002, PAGCOR filed a letter-protest with the BIR against Assessment Notice No. 33-1996/1997/1998 and Assessment Notice No. 33-99.[8]

On March 31, 2003, PAGCOR filed a letter-protest against Assessment Notice No. 33-2000, in which it reiterated the assetions made in its December 18, 2002 letter-protest.[9]

In reply to both letters-protest, the BIR requested PAGCOR to submit additional documents to enable the conduct of the reinvestigation.[10]

The CIR did not act on PAGCOR's letter-protest against Assessment Notice No. 33-1996/1997/1998 and Assessment Notice No. 33-99 within the 180-day period from the latter's submission of additional documents.[11] Hence, PAGCOR filed an appeal with the Secretary of Justice on January 5, 2004 relative to Assessment Notice No. 33-1996/1997/1998 and Assessment Notice No. 33-99.[12]

Meanwhile, in response to PAGCOR's letter-protest dated March 31, 2003, BIR Regional Director Teodorica Arcega issued a letter dated December 15, 2003 reiterating the assessment for deficiency VAT for taxable year 2000,[13] stating thusly:

> In a memorandum to the Regional Director dated December 15, 2003 the Chief Legal Division, this Region, confirmed the taxability of PAGCOR under Section 108(A) of the 1997 Tax Code, as amended, effective Jan. 1, 1996 (VAT Review Committee Ruling No. 041-2001).
>
> In view of the confirmation of the Legal Division we hereby reiterate the assessments forwarded to your office under Final Assessment No. 33-2000 dated March 18, 2003 amounting to ₱2,097,426,943.00.

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[8] *Id*. at 9-11; 42.

[9] *Id*. at 11, 42.

[10] *Id*. at 10-11, 42-43.

[11] *Id*. at 11.

[12] *Id*. at 82-104.

[13] *Id*. at 108-109.

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However, the BIR only recomputed the deficiency final withholding tax on thnge benefits and expanded withholding tax, and reduced the assessments to ₱12,212,199.85 and ₱6,959,525.10, respectively.[14]

PAGCOR elevated its protest against Assessment Notice No. 33-2000 to the CIR, but the 180-day period prescribed by law also lapsed without any action on the part of the CIR.[15] Consequently, on August 4, 2004, PAGCOR brought another appeal to the Secretary of Justice covering Assessment Notice No. 33-2000.[16]

The Secretary of Justice consolidated PAGCOR's two appeals.

After the parties traded pleadings, the Secretary of Justice summoned them to a preliminary conference to discuss, *inter alia*, any possible settlement or compromise.[17] When no amicable settlement was reached, the consolidated appeals were considered submitted for resolution.[18]

On December 22, 2006, Secretary of Justice Raul M. Gonzales rendered the first assailed resolution declaring PAGCOR exempt from the payment of all taxes except the 5% franchise tax provided in its Charter.[19]

On March 12, 2007, Secretary Gonzales issued the second assailed resolution denying the CIR's motion for reconsideration.[20]

Hence, this special civil action for *certiorari*.

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[14] *Id*. at 108-109.

[15] *Id*. at 11.

[16] *Id*. at 110-129.

[17] *Id*. at 45.

[18] *Id*.

[19] *Supra* note 1.

[20] *Supra* note 2.

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Issues

The grounds for the petition for *certiorari* are as follows:

I

RESPONDENT SECRETARY OF JUSTICE ACTED WITHOUT OR IN EXCESS OF HIS JURISDICTION AND GRAVELY ABUSED HIS DISCRETION IN ASSUMING JURISDICTION OVER THE PETITION ON DISPUTED TAX ASSESSMENTS FILED BY RESPONDENT PAGCOR.

II

RESPONDENT SECRETARY OF JUSTICE ACTED WITHOUT OR IN EXCESS OF HIS JURISDICTION AND GRAVELY ABUSED HIS DISCRETION IN HOLDING THAT R.A. NO. 7716 (VAT LAW) DID NOT REPEAL P.D. NO. 1869 (CHARTER OF PAGCOR); HENCE, PAGCOR HAS NOT BECOME LIABLE FOR THE PAYMENT OF THE 10% VAT IN LIEU OF THE 5% FRANCHISE TAX.

III

RESPONDENT SECRETARY OF JUSTICE ACTED WITHOUT OR IN EXCESS OF HIS JURISDICTION AND GRAVELY ABUSED HIS DISCRETION IN ABSOLVING PAGCOR OF ITS DUTY AND RESPONSIBILITY AS WITHHOLDING AGENT TO WITHHOLD AND REMIT FRINGE BENEFITS TAX, FINAL WITHHOLDING TAX AND EXPANDED WITHHOLDING TAX.[21]

Otherwise put, the issues to be resolved are: (1) whether or not the Secretary of Justice has jurisdiction to review the disputed assessments; (2) whether or not PAGCOR is liable for the payment of VAT; and (3) whether or not PAGCOR is liable for the payment of withholding taxes.

Ruling

The petition for *certiorari* is partly granted.

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[21] *Id*. at 15.

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1.

The Secretary of Justice has no jurisdiction to review the disputed assessments

The petitioner contends that it is the Court of Tax Appeals (CTA), not the Secretary of Justice, that has the exclusive appellate jurisdiction in this case, pursuant to Section 7(1) of Republic Act No. 1125 (R.A. No. 1125), which grants the CTA the exclusive appellate jurisdiction to review, among others, the decisions of the Commissioner of Internal Revenue "in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (NIRC) or other law or part of law administered by the Bureau of Internal Revenue."

PAGCOR counters, however, that it is the Secretary of Justice who should adjudicate the dispute by virtue of Chapter 14 of the *Revised Administrative Code of 1987*, which provides:

CHAPTER 14. CONTROVERSIES AMONG GOVERNMENT OFFICES AND CORPORATIONS.

SEC. 66. *How settled*. - All disputes/claims and controversies, solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including government-owned and controlled corporations, such as those arising from the interpretation and application of statues, contracts or agreements shall be administratively settled or adjudicated in the manner provided for in this Chapter. This Chapter shall, however, not apply to disputes involving the Congress, the Supreme Court, the Constitutional Commission and local governments.

SEC. 67. *Disputes Involving Questions of Law*. - All cases involving only questions of law shall be submitted to and settled or adjudicated by the Secretary of Justice as Attorney-General of the National Government and as ex-officio legal adviser of all government-owned or controlled corporations. His ruling or decision thereon shall be conclusive and binding on all the parties concerned.

SEC. 68. *Disputes Involving Questions of Fact and Law*. - Cases involving mixed questions of law and of fact or only factual issues shall be submitted to and settled or adjudicated by:

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(1) The Solicitor General, if the dispute, claim or controversy involves only departments, bureaus, offices and other agencies of the National Government as well as government-owned or controlled corporations or entities of whom he is the principal law officer or general counsel; and

(2) The Secretary of Justice, in all other cases not falling under paragraph (1).

Although acknowledging the validity of the petitioner's contention, the Secretary of Justice still resolved the disputed assessments on the basis that the prevailing doctrine at the time of the filing of the petitions in the Department of Justice (DOJ) on January 5, 2004 was that enunciated in *Development Bank of the Philippines v. Court of Appeals*,[22] whereby the Court ruled that:

x x x (T)here is an "irreconcilable repugnancy x x x between Section 7(2) of R.A. NO. 1125 and P.D. No. 242," and hence, that the latter enactment (P.D. No. 242), being the latest expression of the legislative will, should prevail over the earlier.

Later on, the Court reversed itself in *Philippine National Oil Company v. Court of Appeals*,[23] and held as follows:

Following the rule on statutory construction involving a general and a special law previously discussed, then P.D. No. 242 should not affect R.A. No. 1125. R.A. No. 1125, specifically Section 7 thereof on the jurisdiction of the CTA, constitutes an exception to P.D. No. 242. Disputes, claims and controversies, falling under Section 7 of R.A. No. 1125, even though solely among government offices, agencies, and instrumentalities, including government-owned and controlled corporations, remain in the exclusive appellate jurisdiction of the CTA. Such a construction resolves the alleged inconsistency or conflict between the two statutes, x x x.

Despite the shift in the construction of P.D. No. 242 in relation to R.A. No. 1125, the Secretary of Justice still resolved PAGCOR's petitions on the merits, stating that:

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[22] G.R. No. 86625, December 22, 1989, 180 SCRA 609, 617.

[23] G.R. Nos. 109976 and 112800, April 26, 2005, 457 SCRA 32, 81.

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While this ruling (DBP) has been superseded by the ruling in *Philippine National Oil Company vs. CA*, in view of the prospective application of the PNOC ruling, we (the DOJ) are of the view that this Office can continue to assume jurisdiction over this case which was filed and has been pending with this Office since January 5, 2004 and rule on the merits of the case.[24]

We disagree with the action of the Secretary of Justice.

PAGCOR filed its appeals in the DOJ on January 5, 2004 and August 4, 2004.[25] *Philippine National Oil Company v. Court of Appeals* was promulgated on April 26, 2006. The Secretary of Justice resolved the petitions on December 22, 2006. Under the circumstances, the Secretary of Justice had ample opportunity to abide by the prevailing rule and should have referred the case to the CTA because judicial decisions applying or interpreting the law formed part of the legal system of the country,[26] and are for that reason to be held in obedience by all, including the Secretary of Justice and his Department. Upon becoming aware of the new proper construction of P.D. No. 242 in relation to R.A. No. 1125 pronounced in *Philippine National Oil Company v. Court of Appeals*, therefore, the Secretary of Justice should have desisted from dealing with the petitions, and referred them to the CTA, instead of insisting on exercising jurisdiction thereon. Therein lay the grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Secretary of Justice, for he thereby acted arbitrarily and capriciously in ignoring the pronouncement in *Philippine National Oil Company v. Court of Appeals*. Indeed, the doctrine of *stare decisis* required him to adhere to the ruling of the Court, which by tradition and conformably with our system of judicial administration speaks the last word on what the law is, and stands as the final arbiter of any justiciable controversy. In other words, there is only one Supreme Court from whose

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[24] *Rollo*, p. 50.

[25] *Id*. at 82-104 & 110-129.

[26] Article 8, *Civil Code*.

decisions all other courts and everyone else should take their bearings.[27]

Nonetheless, the Secretary of Justice should not be taken to task for initially entertaining the petitions considering that the prevailing interpretation of the law on jurisdiction at the time of their filing was that he had jurisdiction. Neither should PAGCOR to blame in bringing its appeal to the DOJ on January 5, 2004 and August 4, 2004 because the prevailing rule then was the interpretation in *Development Bank of the Philippines v. Court of Appeals*. The emergence of the later ruling was beyond PAGCOR's control. Accordingly, the lapse of the period within which to appeal the disputed assessments to the CTA could not be taken against PAGCOR. While a judicial interpretation becomes a part of the law as of the date that the law was originally passed, the reversal of the interpretation cannot be given retroactive effect to the prejudice of parties who may have relied on the first interpretation.[28]

The Court now undertakes to settle the controversy because of the urgent need to promptly decide it. We cannot lose sight of the fact that PAGCOR is among the most prolific income-generating institutions that contribute immensely to the country's developing economy. Any controversy involving PAGCOR should be resolved expeditiously considering the underlying public interest in the matter at hand. To dismiss the petitions in order to have PAGCOR bring a similar petition in the CTA would not serve the interest of justice.[29] On previous occasions, the Court has overruled the defense of jurisdiction in the interest of public welfare and for the advancement of public policy whenever, as in this case, an extraordinary situation existed.[30]

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[27] *Ang Ping v. Regional Trial Court, Br. 40*, G.R. No. 75860, September 17, 1987, 154 SCRA 77, 86.

[28] See *People v. Jabinal*, L-30061, February 27, 1974, 55 SCRA 607, 612.

[29] *Ramos v. Central Bank of the Philippines*, G.R. No. L-29352, October 4, 1971, 41 SCRA 565, 584.

[30] *Id*. at 584, citing *Yu Cong Eng v. Trinidad*, 47 Phil. 385 (1925); *People v. Zulueta*, 89 Phil. 752 (1951); *Botelho Shipping Corporation v. Leuterio*, L-20420, May 30, 1963, 8 SCRA 121.

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2.
PAGCOR is exempt from payment of VAT

The CIR insists that under VAT Ruling No. 04-96 (dated May 14, 1996), VAT Ruling No. 030-99 (dated March 18, 1999), and VAT Ruling No. 067-01 (dated October 8, 2001), R.A. No. 7716[31] has expressly repealed, amended, or withdrawn the 5% franchise tax provision in PAGCOR's Charter; hence, PAGCOR was liable for the 10% VAT.[32]

The relevant provisions of R.A. No. 7716 on which the insistence has been anchored are the following:

SEC. 3. Section 102 of the National Internal Revenue Code, as amended, is hereby further amended to read as follows:

"SEC. 102. Value-added tax on sale of services and use or lease of properties. - (a) Rate and base of tax. - There shall be levied, assessed and collected, a value-added tax equivalent to 10% of gross receipts derived from the sale or exchange of services, including the use or lease of properties.

"The phrase 'sale or exchange of services' means the performance of all kinds of service in the Philippines for others for a fee, remuneration or consideration, including x x x service of franchise grantees of telephone and telegraph, radio and television broadcasting and all other franchise grantees except those under Section 117 of this Code; x x x"

SEC. 12. Section 117 of the National Internal revenue Code, as amended, is hereby further amended further to read as follows:

"SEC. 117. Tax on Franchises.- Any provision of general or special law to the contrary notwithstanding, there shall be levied, assessed and collected in respect to all franchises on electric, gas and water utilities a tax of two percent (2%) on the gross

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[31] *An Act Restructuring the Value Added Tax (VAT) System, Widening its Tax Base and Enhancing its Administration, and for these Purposes Amending and Repealing the Relevant Provisions of the National Internal Revenue Code, as Amended, and For Other Purposes*; effective January 1, 1996.

[32] *Rollo*, p. 25.

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receipts derived from the business covered by the law granting the franchise. x x x"

SEC. 20. Repealing Clauses. - The provisions of any special law relative to the rate of franchise taxes are hereby expressly repealed. x x x

The CIR argues that PAGCOR's gambling operations are embraced under the phrase *sale or exchange of services, including the use or lease of properties*; that such operations are not among those expressly exempted from the 10% VAT under Section 3 of R.A. No. 7716; and that the legislative purpose to withdraw PAGCOR's 5% franchise tax was manifested by the language used in Section 20 of R.A. No. 7716.

The CIR's arguments lack merit.

Firstly, a basic rule in statutory construction is that a special law cannot be repealed or modified by a subsequently enacted general law in the absence of any express provision in the latter law to that effect. A special law must be interpreted to constitute an exception to the general law in the absence of special circumstances warranting a contrary conclusion.[33] R.A. No. 7716, a general law, did not provide for the express repeal of PAGCOR's Charter, which is a special law; hence, the general repealing clause under Section 20 of R.A. No. 7716 must pertain only to franchises of electric, gas, and water utilities, while the term *other franchises* in Section 102 of the NIRC should refer only to transport, communications and utilities, exclusive of PAGCOR's casino operations.

Secondly, R.A. No. 7716 indicates that Congress has not intended to repeal PAGCOR's privilege to enjoy the 5% franchise tax in lieu of all other taxes. A contrary construction would be unwarranted and myopic nitpicking. In this regard, we should follow the following apt reminder uttered in *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue*:[34]

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[33] See *National Power Corp. v. Presiding Judge, RTC Branch XXV*, G.R. No. 72477, October 16, 1990, 190 SCRA 477, 482.

[34] G.R. No. 170680, October 2, 2009, 602 SCRA 159, 164-165.

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A law must not be read in truncated parts: its provisions must be read in relation to the whole law. It is the cardinal rule in statutory construction that a statute's clauses and phrases must not be taken as detached and isolated expressions. but the whole and every part thereof must be considered in fixing the meaning of any of its parts in order to produce a harmonious whole. Every part of the statute must be interpreted with reference to the context. *i.e.*, that every part of the statute must be considered together with other parts of the statute and kept subservient to the general intent of the whole enactment.

In construing a statute, courts have to take the thought conveyed by the statute as a whole; construe the constituent parts together; ascertain the legislative intent from the whole act; consider each and every provision thereof in the light of the general purpose of the statute; and endeavor to make every part effective, harmonious and sensible.

Although Section 3 of R.A. No. 7716 imposes 10% VAT on the sale or exchange of services, including the use or lease of properties, the provision also considers transactions that are subject to 0% VAT.[35] On the other hand, Section 4 of R.A. No. 7716 enumerates the transactions exempt from VAT, *viz*.:

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[35] SEC. 3. Section 102 of the National Internal Revenue Code, as amended, is hereby further amended to read as follows:

SEC. 102. Value-added tax on sale of service and use or lease of properties. – x x x

(b) *Transaction subject to zero-rate*. - The following services performed in the Philippines by Vat-registered persons shall be subject to 0%:

(1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP).

(2) Services other than those mentioned in the preceding sub-paragraph, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP).

(3) Services rendered to persons or entities whose exemptions under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero rate.

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SEC. 4. Section 103 of the National Internal Revenue Code, as amended, is hereby further amended to read as follows:

"SEC. 103. Exempt transactions. - **The following shall be exempt from the value-added tax**:

x x x x

"(q) **Transactions which are exempt under special laws**, except those granted under Presidential Decree Nos. 66, 529, 972, 1491, and 1590, and nonelectric cooperatives under republic Act No. 6938, or international agreements to which the Philippines is a signatory;

x x x x" (bold emphasis supplied.)

Anent the effect of R.A. No. 7716 on franchises, the Court has observed in *Tolentino v. The Secretary of Finance*[36] that:

Among the provisions of the NIRC amended is § 103, which originally read:

§103. *Exempt transactions*. - The following shall be exempt from the value-added tax:

.....

(q) Transactions which are exempt under special laws or international agreements to which the Philippines is a signatory.

Among the transactions exempted from the VAT were those of PAL because it was exempted under its franchise (P.D. No. 1590) from the payment of all "other taxes ... now or in the near future," in consideration of the payment by it either of the corporate income tax or a franchise tax of 2%.

As a result of its amendment by Republic Act No. 7716, §103 of the NIRC now provides:

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(4) Services rendered to vessels, engaged exclusively in international shipping; and

(5) Services performed by subcontractors and/or contractors in processing, converting, or manufacturing goods for an enterprise whose export sales exceed seventy percent (70%) of total annual production.

[36] G.R. No. 115455, August 25, 1994, 235 SCRA 630.

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> §103. *Exempt transactions*. - The following shall be exempt from the value-added tax:
>
> .....
>
> (q) Transactions which are exempt under special laws, except those granted under Presidential Decree Nos. 66, 529, 972, 1491, 1590 .....
>
> The effect of the amendment is to remove the exemption granted to PAL, as far as the VAT is concerned.
>
> x x x x
>
> x x x Republic Act No. 7716 expressly amends PAL's franchise (P.D. No. 1590) by specifically excepting from the grant of exemptions from the VAT PAL's exemption under P.D. No. 1590. This is within the power of Congress to do under Art. XII, § 11 of the Constitution, which provides that the grant of a franchise for the operation of a public utility is subject to amendment, alteration or repeal by Congress when the common good so requires.[37]

Unlike the case of PAL, however, R.A. No. 7716 does not specifically exclude PAGCOR's exemption under P.D. No. 1869 from the grant of exemptions from VAT; hence, the petitioner's contention that R.A. No. 7716 expressly amended PAGCOR's franchise has no leg to stand on.

Moreover, PAGCOR's exemption from VAT, whether under R.A. No. 7716 or its amendments, has been settled in *Philippine Amusement and Gaming Corporation (PAGCOR) v. The Bureau of Internal Revenue*,[38] whereby the Court, citing *Commissioner of Internal Revenue v. Acesite (Philippines) Hotel Corporation*,[39] has declared:

> **Petitioner is exempt from the payment of VAT, because PAGCORs charter, P.D. No. 1869, is a special law that grants petitioner exemption from taxes.**

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[37] *Id*. at 673-675.

[38] G.R. No. 172087, March 15, 2011, 645 SCRA 338.

[39] G.R. No. 147295, February 16, 2007, 516 SCRA 93.

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Moreover, the exemption of PAGCOR from VAT is supported by Section 6 of R.A. No. 9337, which retained Section 108 (B) (3) of R.A. No. 8424, thus:

> [R.A. No. 9337], SEC. 6. Section 108 of the same Code (R.A. No. 8424), as amended, is hereby further amended to read as follows:
>
> SEC. 108. *Value-Added Tax on Sale of Services and Use or Lease of Properties*.
>
> (A) *Rate and Base of Tax*. There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties: x x x
>
> x x x x
>
> **(B)** ***Transactions Subject to Zero Percent (0%) Rate***. The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate;
>
> x x x x
>
> (3) **Services rendered to persons or entities whose exemption under special laws** or international agreements to which the Philippines is a signatory effectively **subjects the supply of such services to zero percent (0%) rate**;
>
> x x x x
>
> As pointed out by petitioner, although R.A. No. 9337 introduced amendments to Section 108 of R.A. No. 8424 by imposing VAT on other services not previously covered, it did not amend the portion of Section 108 (B) (3) that subjects to zero percent rate services performed by VAT-registered persons to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to 0% rate.

Petitioner's exemption from VAT under Section 108 (B) (3) of R.A. No. 8424 has been thoroughly and extensively discussed in *Commissioner of Internal Revenue v. Acesite (Philippines) Hotel Corporation*. x x x The Court ruled that PAGCOR and Acesite were both exempt from paying VAT, thus:

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x x x x

PAGCOR is exempt from payment of indirect taxes

It is undisputed that P.D. 1869, the charter creating PAGCOR, grants the latter an exemption from the payment of taxes. Section 13 of P.D. 1869 pertinently provides:

Sec. 13. *Exemptions*.

x x x x

> (2) *Income and other taxes*. - (a) Franchise Holder: No tax of any kind or form, income or otherwise, as well as fees, charges or levies of whatever nature, whether National or Local, shall be assessed and collected under this Franchise from the Corporation; nor shall any form of tax or charge attach in any way to the earnings of the Corporation, except a Franchise Tax of five (5%) percent of the gross revenue or earnings derived by the Corporation from its operation under this Franchise. Such tax shall be due and payable quarterly to the National Government and shall be in lieu of all kinds of taxes, levies, fees or assessments of any kind, nature or description, levied, established or collected by any municipal, provincial, or national government authority.
>
> (b) *Others*: The exemptions herein granted for earnings derived from the operations conducted under the franchise specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, shall inure to the benefit of and extend to corporation(s), association(s), agency(ies), or individual(s) with whom the Corporation or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise and to those receiving compensation or other remuneration from the Corporation or operator as a result of essential facilities furnished and/or technical services rendered to the Corporation or operator.

Petitioner contends that the above tax exemption refers only to PAGCOR's direct tax liability and not to indirect taxes, like the VAT.

We disagree.

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A close scrutiny of the above provisos clearly gives PAGCOR a blanket exemption to taxes with no distinction on whether the taxes are direct or indirect. We are one with the CA ruling that PAGCOR is also exempt from indirect taxes, like VAT, as follows:

> Under the above provision [Section 13 (2) (b) of P.D. 1869], the term "Corporation" or operator refers to PAGCOR. Although the law does not specifically mention PAGCOR's exemption from indirect taxes,**PAGCOR is undoubtedly exempt from such taxes because the law exempts from taxes persons or entities contracting with PAGCOR in casino operations**. Although, differently worded, the provision clearly exempts PAGCOR from indirect taxes. **In fact, it goes one step further by granting tax exempt status to persons dealing with PAGCOR in casino operations.** The unmistakable conclusion is that PAGCOR is not liable for the ₱30,152,892.02 VAT and neither is Acesite as the latter is effectively subject to zero percent rate under Sec. 108 B (3), R.A. 8424. (Emphasis supplied.)

Indeed, by extending the exemption to entities or individuals dealing with PAGCOR, the legislature clearly granted exemption also from indirect taxes. It must be noted that the indirect tax of VAT, as in the instant case, can be shifted or passed to the buyer, transferee, or lessee of the goods, properties, or services subject to VAT. **Thus, by extending the tax exemption to entities or individuals dealing with PAGCOR in casino operations, it is exempting PAGCOR from being liable to indirect taxes.**

The manner of charging VAT does not make PAGCOR liable to said tax.

It is true that VAT can either be incorporated in the value of the goods, properties, or services sold or leased, in which case it is computed as 1/11 of such value, or charged as an additional 10% to the value. Verily, the seller or lessor has the option to follow either way in charging its clients and customer. In the instant case, Acesite followed the latter method, that is, charging an additional 10% of the gross sales and rentals. Be that as it may, the use of either method, and in particular, the

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first method, does not denigrate the fact that PAGCOR is exempt from an indirect tax, like VAT.

VAT exemption extends to Acesite

Thus, while it was proper for PAGCOR not to pay the 10% VAT charged by Acesite, the latter is not liable for the payment of it as it is exempt in this particular transaction by operation of law to pay the indirect tax. Such exemption falls within the former Section 102 (b) (3) of the 1977 Tax Code, as amended (**now Sec. 108 [b] [3] of R.A. 8424**), which provides:

> Section 102. *Value-added tax on sale of services*. - (a) Rate and base of tax - There shall be levied, assessed and collected, a value-added tax equivalent to 10% of gross receipts derived by any person engaged in the sale of services x x x; Provided, that the following services performed in the Philippines by VAT registered persons shall be subject to 0%.
>
> x x x x
>
> (3) **Services rendered to persons or entities whose exemption under special laws** or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero (0%) rate (emphasis supplied).

The rationale for the exemption from indirect taxes provided for in P.D. 1869 and the extension of such exemption to entities or individuals dealing with PAGCOR in casino operations are best elucidated from the 1987 case of *Commissioner of Internal Revenue v. John Gotamco & Sons, Inc.*, where the absolute tax exemption of the World Health Organization (WHO) upon an international agreement was upheld. We held in said case that the exemption of contractee WHO should be implemented to mean that the entity or person exempt is the contractor itself who constructed the building owned by contractee WHO, and such does not violate the rule that tax exemptions are personal because the manifest intention of the agreement is to exempt the contractor so that no contractor's tax may be shifted to the contractee WHO. **Thus, the proviso in P.D. 1869, extending the exemption to entities or individuals dealing with PAGCOR in casino operations, is clearly to proscribe any indirect tax, like VAT, that may be shifted to PAGCOR.**

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Although the basis of the exemption of PAGCOR and Acesite from VAT in the case of *The Commissioner of Internal Revenue v. Acesite (Philippines) Hotel Corporation* was Section 102 (b) of the 1977 Tax Code, as amended, which section was retained as Section 108 (B) (3) in R.A. No. 8424, it is still applicable to this case, since the provision relied upon has been retained in R.A. No. 9337.[40]

Clearly, the assessments for deficiency VAT issued against PAGCOR should be cancelled for lack of legal basis.

The Court also deems it warranted to cancel the assessments for deficiency withholding VAT pertaining to the payments made by PAGCOR to its catering service contractor.

In two separate letters dated December 12, 2003[41] and December 15, 2003,[42] the BIR conceded that the unmonetized meal allowances of PAGCOR's employees were not subject to fringe benefits tax (FBT). However, the BIR held PAGCOR liable for expanded withholding VAT for the payments made to its catering service contractor who provided the meals for its employees. Accordingly, the BIR assessed PAGCOR with deficiency withholding VAT for taxable year 1999 in the amount of ₱4,077,667.40, inclusive of interest and compromise penalty; and for taxable year 2000 in the amount of ₱12,212,199.85, exclusive of interest and penalties.

The payments made by PAGCOR to its catering service contractor are subject to zero-rated (0%) VAT in accordance with Section 13(2) of P.D. No. 1869 in relation to Section 3 of R.A. No. 7716, *viz*.:

SEC. 13. Exemptions. -

(1) x x x

(2) (a) x x x

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[40] *Supra* note 38, at 359-364.

[41] *Rollo*, pp. 361-365.

[42] *Id*. at 367-368.

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> (b) Others: 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 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 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.
>
> x x x x
>
> SEC. 3. Section 102 of the National Internal Revenue Code, as amended. is hereby further amended to read as follows:
>
> "SEC.102. *Value-added tax on sale of service and use or lease of properties*. - x x x
>
> "(b) *Transaction subject to zero-rate*. - The following services performed in the Philippines by Vat-registered persons shall be subject to 0%:
>
> "x x x x
>
> "(3) Services rendered to persons or entities whose exemptions under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero rate.

As such, the catering service contractor, who is presumably a VAT -registered person, shall impose a zero rate (0%) output tax on its sale or lease of goods, services or properties to PAGCOR. Consequently, no withholding tax is due on such transaction.

3.

PAGCOR is liable for the payment of withholding taxes

Through the letters dated December 12, 2003[43] and December 15, 2003,[44] the BIR recomputed the assessments for deficiency

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[43] *Id*. at 361-365.

[44] *Id*. at 366-368.

final withholding taxes on fringe benefits under Assessment No. 33-99 and Assessment No. 33-2000, respectively, as follows:

	Period Covered	Recomputed Amount
Assessment No. 33-99		
Final Withholding Tax on Fringe Benefits	1999	₱13,337,414.58, inclusive of penalty and interest
Assessment No. 33-2000		
Final Withholding Tax on Fringe Benefits	2000	₱12,212,199.85, exclusive of penalty and interest

The amount of the assessment for deficiency expanded withholding tax under Assessment No. 33-99 remained at ₱3,790,916,809.16.

We now resolve the validity of the foregoing assessments.

a. Final Withholding Tax on Fringe Benefits

The recomputed assessment for deficiency final withholding taxes related to the car plan granted to PAGCOR's employees and for its payment of membership dues and fees.

Under Section 33 of the NIRC, FBT is imposed as:

A final tax of thirty-four percent (34%) effective January 1, 1998; thirty-three percent (33%) effective January 1, 1999; and thirty-two percent (32%) effective January 1, 2000 and thereafter, is hereby imposed on the grossed-up monetary value of fringe benefit furnished or granted to the employee (except rank and file employees as defined herein) by the employer, whether an individual or a corporation (unless the fringe benefit is required by the nature of, or necessary to the trade, business or profession of the employer, or when the fringe benefit is for the convenience or advantage of the employer). The tax herein imposed is payable by the employer which tax shall be paid in the same manner as provided for under Section 57 (A) of this Code.

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FBT is treated as a final income tax on the employee that shall be withheld and paid by the employer on a calendar quarterly basis.[45] As such, PAGCOR is a mere withholding agent inasmuch as the FBT is imposed on PAGCOR's employees who receive the fringe benefit. PAGCOR's liability as a withholding agent is not covered by the tax exemptions under its Charter.

The car plan extended by PAGCOR to its qualified officers is evidently considered a fringe benefit[46] as defined under Section 33 of the NIRC. To avoid the imposition of the FBT on the benefit received by the employee, and, consequently, to avoid the withholding of the payment thereof by the employer, PAGCOR must sufficiently establish that the fringe benefit is required by the nature of, or is necessary to the trade, business or profession of the employer, or when the fringe benefit is for the convenience or advantage of the employer.

PAGCOR asserted that the car plan was granted "not only because it was necessary to the nature of the trade of PAGCOR

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[45] Section 2.33[A], Revenue Regulations 3-98.

[46] SEC. 33. Special Treatment of Fringe Benefit. -

(A) x x x

(B) Fringe Benefit defined. - For purposes of this Section. the term 'fringe benefit' means any good service or other benefit furnished or granted in cash or in kind by an employer to an individual employee (except rank and file employees as defined herein) such as, but not limited to the following:

(1) Housing;

(2) Expense account;

(3) Vehicle of any kind;

(4) Household personnel such as maid, driver and others;

(5) Interest on loan at less than market rate to the extent of the difference between the market rate and actual rate granted;

(6) Membership fees, dues and other expenses borne by the employer for the employee in social and athletic clubs or other similar organizations;

(7) Expenses for foreign travel;

(8) Holiday and vacation expenses;

(9) Educational assistance to the employee or his dependents; and

(10) Life or health insurance and other non-life insurance premiums or similar amounts in excess of what the law allows.

but it was also granted for its convenience."[47] The records are lacking in proof as to whether such benefit granted to PAGCOR's officers were, in fact, necessary for PAGCOR's business or for its convenience and advantage. Accordingly, PAGCOR should have withheld the FBT from the officers who have availed themselves of the benefits of the car plan and remitted the same to the BIR.

As for the payment of the membership dues and fees, the Court finds that this is not considered a fringe benefit that is subject to FBT and which hold PAGCOR liable for final withholding tax. According to PAGCOR, the membership dues and fees are:

> 57. x x x expenses borne by [respondent] to cover various memberships in social, athletic clubs and similar organizations. x x x
>
> 58. Respondent's nature of business is casino operations and it derives business from its customers who play at the casinos. In furtherance of its business, PAGCOR usually attends its VIP customers, amenities such as playing rights to golf clubs. The membership of PAGCOR to these golf clubs and other organizations are intended to benefit respondent's customers and not its employees. Aside from this, the membership is under the name of PAGCOR, and as such, cannot be considered as fringe benefits because it is the customers and not the employees of PAGCOR who benefit from such memberships.[48]

Considering that the payments of membership dues and fees are not borne by PAGCOR for its employees, they cannot be considered as fringe benefits which are subject to FBT under Section 33 of the NIRC. Hence, PAGCOR is not liable to withhold FBT from its employees.

b. Expanded Withholding Tax

The BIR assessed PAGCOR with deficiency expanded withholding tax for the year 1999 under Assessment No. 33-

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[47] *Rollo*, pp. 122, 274-275.

[48] *Id*. at 275.

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99 amounting to ₱3,790,916,809.16, inclusive of surcharge and interest, which was computed as follows:[49]

Taxable Basis per Investigation	₱	2,441,948,878.00
Expanded Withholding Tax due per investigation		45,762,839.60
Less: Tax paid		43,490,484.05
Deficiency Expanded Withholding Tax Due	₱	2,398,458,393.95
Add: 25% surcharge		
20% interest per annum from __ 12-20-02		1,392,433,415.21
Compromise Penalty		
TOTAL AMOUNT DUE & COLLECTIBLE	₱	3,790,891,809.16

Later, BIR issued a letter dated December 12, 2003 showing therein a recomputation of the assessment, to wit:[50]

Taxable Basis per Investigation		₱	2,441,948,878.00
EWT due per investigation			45,762,839.60
Less: Tax paid			43,490,484.05
Def. EWT		₱	2,272,355.55
Add: Interest 1-26-00 to 12-26-03	P1,780,311.85		
Compromise	25,000.00		1,805,311.85
Def. EWT		₱	4,077,667.40

PAGCOR submits that the BIR erroneously assessed it for the deficiency expanded withholding taxes, explaining thusly:

> 44. The computation made by the revenue officers for the year 1999 for expanded withholding taxes against respondent are also not correct because it included payments amounting to ₱682,120,262 which should not be subjected to withholding tax;
>
> 45. Of the said amount, ₱194,999,366 cover importations or various items for the sole and exclusive use of the casinos x x x:
>
> x x x x x x x x x

---

[49] *Id*. at 73.

[50] *Id*. at 364.

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46. The breakdown of respondent's payments which were assessed expanded withholding tax by the BIR but which should not have been made subject thereto are as follows:

a) Taxable Compensation Income amounting to ₱71,611,563.60, representing salaries of contractuals and casuals, clerical and messengerial and other services, cost of COA services and unclaimed salaries and other benefits recognized as income but subsequently claimed **(attached as Annexes "10" to "18" and made integral parts hereof)**;

b) Prizes and other promo items amounting to ₱16,185,936.61 which were already subjected to 20% final withholding tax. Pursuant to Revenue Regulations 2-98, prizes and promo items shall be subject only to 20% final tax **(attached as Annexes "19" to "51" and made integral parts hereof)**;

c) Reimbursements amounting to ₱18,246,090.35 which were paid directly by agents/employees as over the counter purchases subsequently liquidated/reimbursed by PAGCOR pursuant to BIR rulings 129-92 and 345-88;

d) Taxes amounting to ₱6,679,807.53, the amount of which should not be subjected to expanded withholding tax for obvious reasons;

e) Security Deposit amounting to ₱3,450,000.00 which was written off after the Regional Trial Court, Branch 226 of Quezon City through Presiding Judge, Leah S. Domingo-Regala, rendered a decision based on a compromise agreement in Civil Case No. 097-31299 entitled "Felina Rodriguez-Luna, et al vs. Philippine Amusement and Gaming Corporation" **(attached as Annex "52" and made an integral part hereof)**;[51]

PAGCOR's submission is partly meritorious. The Court finds that PAGCOR is not liable for deficiency expanded withholding tax on its payment for: (1) audit services rendered by the Commission on Audit (COA), amounting to ₱4,243,977.96,[52] and (2) prizes and other promo items amounting to ₱16,185,936.61.[53]

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[51] *Id*. at 272-273.

[52] *Id*. at 316-321.

[53] *Id*. at 97.

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PAGCOR's payment to the COA for its audit services is exempted from withholding tax pursuant to Sec. 2.57.5 (A) of Revenue Regulation (RR) 2-98, which states:

SEC. 2.57.5. ***Exemption from Withholding Tax*** - The withholding of creditable withholding tax prescribed in these Regulations shall not apply to income payments made to the following:

(A) National government and its instrumentalities, including provincial, city or municipal governments;

On the other hand, the prizes and other promo items amounting to ₱16,185,936.61 were already subjected to the 20% final withholding tax[54] pursuant to Section 24(B)(1) of the NIRC.[55] To impose another tax on these items would amount to obnoxious or prohibited double taxation because the taxpayer would be taxed twice by the same jurisdiction for the same purpose.[56]

Hence, except for the foregoing, the Court uphold the validity of the assessment against PAGCOR for deficiency expanded withholding tax.

We explain.

Other than the ₱4,243,977.96 payments made to COA, the remainder of the ₱71,611,563.60 compensation income that PAGCOR paid for the services of its contractual, casual, clerical and messengerial employees are clearly subject to expanded

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[54] *Id*. at 98 and 272.

[55] SEC. 24. Income Tax Rates.

(A) x x x

(B) Rate of Tax on Certain Passive Income.

(1) Interests, Royalties, Prizes, and Other Winnings. - A final tax at the rate of twenty percent (20%) is hereby imposed upon x x x; prizes (except prizes amounting to Ten thousand pesos (₱10,000) or less which shall be subject to tax under Subsection (A) of Section 24; and other winnings (except Philippine Charity Sweepstakes and Lotto winnings), derived from sources within the Philippines: x x x

[56] *Pepsi Cola Bottling Co. of the Philippines, Inc. v. Municipality of Tanauan, Leyte*, G.R. No. L-31156, February 27, 1976, 69 SCRA 460, 466-467.

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withholding tax by virtue of Section 79 (A) of the NIRC which reads:

> Sec. 79 Income Tax Collected at Source. —
>
> (A) Requirement of Withholding. - Every employer making payment of wages shall deduct and withhold upon such wages a tax determined in accordance with the rules and regulations to be prescribed by the *Secretary of Finance*, upon recommendation of the Commissioner: Provided, however, That no withholding of a tax shall be required where the total compensation income of an individual does not exceed the statutory minimum wage, or Five thousand pesos (₱5,000) per month, whichever is higher.

In addition, Section 2.57.3(C) of RR 2-98 states that:

> SEC. 2.57.3 Persons Required to Deduct and Withhold. - The following persons are hereby constituted as withholding agents for purposes of the creditable tax required to be withheld on income payments enumerated in Section 2.57.2:
>
> x x x x x x x x x
>
> (c) All government offices including government-owned or controlled corporations, as well as provincial, city and municipal governments.

As for the rest of the assessment for deficiency expanded withholding tax arising from PAGCOR's (1) reimbursement for over-the-counter purchases by its agents amounting to ₱18,246,090.34; (2) tax payments of ₱6,679,807.53; (3) security deposit totalling ₱3,450,000.00; and (4) importations worth ₱194,999,366.00, the Court observes that PAGCOR did not present sufficient and convincing proof to establish its non-liability.

With regard to the reimbursement for over-the-counter purchases by its agents, PAGCOR merely relied on BIR Ruling Nos. 129-92 and 345-88 to support its claim that it should not be liable to withhold taxes on these payments without submitting any proof to show that there were really actual payments made.[57]

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[57] *Rollo*, p. 273.

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There is also nothing in the records to show that the amount of ₱6,679,807.53 really represented PAGCOR's tax payments,[58] or that the amount of ₱194,999,366.00 were, in fact, paid for PAGCOR's importations of various items in furtherance of its business.

Even the ₱3,450,000.00 security deposit that it claims to have been written-off based on the compromise agreement in Civil Case No. 097-31299 was not sufficiently proved to be tax exempt. The only document presented by PAGCOR to support its contention was a copy of the trial court's decision in the civil case. However, nowhere in the decision mentioned the security deposit.

It is settled that all presumptions are in favor of the correctness of tax assessments. The good faith of the tax assessors and the validity of their actions are thus presumed. They will be presumed to have taken into consideration all the facts to which their attention was called.[59] Hence, it is incumbent upon the taxpayer to credibly show that the assessment was erroneous in order to relieve himself from the liability it imposes. PAGCOR failed in this regard. Hence, except for the assessment for deficiency expanded withholding taxes pertaining to the payments made to the COA for its audit services and for the prizes and other promo items, the Court uphold the BIR's assessment for deficiency expanded withholding taxes.

WHEREFORE, the Court **PARTIALLY GRANTS** the petition for *certiorari*; **ANNULS** and **SETS ASIDE** the Resolutions dated December 22, 2006 and March 12, 2007 of the Secretary of Justice in OSJ Case No. 2004-1 **FOR LACK OF JURISDICTION; DECLARES** that Republic Act No. 7716 did not repeal Section 13(2) of Presidential Decree 1869, and, **ACCORDINGLY**, the **PHILIPPINE AMUSEMENT AND GAMING CORPORATION** is **EXEMPT** from value-added tax.

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[58] *Id*.

[59] *Collector of Internal Revenue v. Bohol Land Trans. Co.*, 107 Phil. 965, 974 (1960).

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The Court **FURTHER RESOLVES** to:

(1) **CANCEL** Assessment No. 33-1996/1997/1998 dated November 14, 2002, which assessed **PHILIPPINE AMUSEMENT AND GAMING CORPORATION** for deficiency value-added tax;

(2) **CANCEL** Assessment No. 33-99 dated November 25, 2002, insofar as it assessed **PHILIPPINE AMUSEMENT AND GAMING CORPORATION** for deficiency —

(a) value-added tax;

(b) expanded withholding value-added tax on payments made by **PHILIPPINE AMUSEMENT AND GAMING CORPORATION** to its catering service contractor;

(c) final withholding tax on fringe benefits relating to the membership fees and dues paid by **PHILIPPINE AMUSEMENT AND GAMING CORPORATION** for the benefit of its clients and customers; and

(d) expanded withholding tax on compensation income paid by **PHILIPPINE AMUSEMENT AND GAMING CORPORATION** to the Commission on Audit for its audit services, and expanded withholding tax on the prizes and other promo items, which were already subjected to the 20% final withholding tax;

(3) **CANCEL** Assessment No. 33-2000 dated March 18, 2003, insofar as it assessed **PHILIPPINE AMUSEMENT AND GAMING CORPORATION** for deficiency —

(a) value-added tax;

(b) expanded withholding value-added tax on payments made by **PHILIPPINE AMUSEMENT AND GAMING CORPORATION** to its catering service contractor; and

(c) final withholding tax on fringe benefits relating to the membership fees and dues paid by **PHILIPPINE AMUSEMENT AND GAMING CORPORATION** for the benefit of its clients and customers;

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Respondent **PHILIPPINE AMUSEMENT AND GAMING CORPORATION** is **DIRECTED TO PAY** to the Bureau of Internal Revenue:

(1) its deficiency final withholding tax on fringe benefits arising from the car plan it granted to its qualified officers and employees under Assessment No. 33-99 and Assessment No. 33-2000; and

(2) its deficiency expanded withholding tax under Assessment No. 33-99, except on compensation income paid to the Commission on Audit for its audit services and on prizes and other promo items.

Upon receipt of respondent **PHILIPPINE AMUSEMENT AND GAMING CORPORATION**'s payment for the foregoing tax deficiencies, the Bureau of Internal Revenue is **DIRECTED TO WITHHOLD** 5% thereof and **TO REMIT** the same to the Office of the Solicitor General pursuant to Section 11(1)[60] of Republic Act No. 9417 (*An Act to Strengthen the Office of the Solicitor General, by Expanding and Streamlining its Bureaucracy, Upgrading Employee Skills and Augmenting Benefits, and Appropriating Funds Therefor and for Other Purposes*).

No pronouncement on costs of suit.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Perlas-Bernabe, and *Caguioa, JJ.*, concur.

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[60] Sec. 11 *Funding*. - The funds required for the implementation of this Act, including those for health care services, insurance premiums, professional, educational, registration fees, contracted transportation benefits, and other benefits above, shall be taken from:

(i) five percent (5%) of monetary awards given by the Courts to client departments, agencies and instrumentalities of the Government, including those under court-approved compromise agreements; x x x