

## THIRD DIVISION

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

**THUNDERBIRD PILIPINAS HOTELS AND RESORTS, INC.,  
PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE,  
RESPONDENT.**

### DECISION

**LEONEN, J.:**

Strictly construed, Section 13(2)(b) of Presidential Decree No. 1869 means that the Philippine Amusement and Gaming Corporation (PAGCOR)'s income tax exemptions only extend to entities or individuals in a contractual relationship with PAGCOR in connection with its casino operations. A PAGCOR licensee authorized to operate its own casino does not fall within the purview of Section 13(2)(b). Its income from its casino operations, therefore, is not tax-exempt.

This Court resolves a Petition for Review on Certiorari<sup>[1]</sup> assailing the Decision<sup>[2]</sup> of the Court of Tax Appeals *En Banc*, which affirmed the Decision<sup>[3]</sup> and Resolution<sup>[4]</sup> of the First Division. The Court of Tax Appeals found Thunderbird Pilipinas Hotels and Resorts, Inc. (Thunderbird Pilipinas) liable for deficiency income and expanded withholding taxes totaling P17,929,817.09, inclusive of surcharge and interest, plus delinquency interest of 20% from April 10, 2009 until full payment.

Thunderbird Pilipinas is a domestic corporation with address at VOA Pennsylvania Avenue, Poro Point, San Fernando City, La Union. It is registered with the Poro Point Management Corporation as a Poro Point Special Economic and Freeport Zone enterprise.<sup>[5]</sup>

Thunderbird Pilipinas operates a casino and resort complex within the Poro Point Special Economic and Freeport Zone in San Fernando City, La Union by virtue of the Memorandum of Agreement<sup>[6]</sup> dated April 11, 2006 and the License<sup>[7]</sup> dated October 31, 2006 issued by PAGCOR.

On April 16, 2007, Thunderbird Pilipinas filed its annual income tax return for taxable year 2006 with the BIR RDO No. 3, Revenue Region No. 1. Its 2006 income tax return showed a deferred rent expense of P14,201,733.00 as a reconciling item on the company's net income per books against its taxable income.<sup>[8]</sup>

On November 19, 2008, the Bureau of Internal Revenue, through the Office of the Regional Director, Revenue Region No. 1 (Calasiao, Pangasinan), issued Assessment Notice Nos. IT-03-06-241-973-218 and WE-03-06-241-973-218 for deficiency income tax and expanded withholding tax, respectively, together with a Formal Letter of Demand against Thunderbird Pilipinas.<sup>[9]</sup>

The Bureau of Internal Revenue assessed Thunderbird Pilipinas for deficiency taxes in the aggregate amount of P15,331,711.00, inclusive of interest and penalties,<sup>[10]</sup> computed as follows:

<b>I. Income Tax</b>		
Gross taxable income per Return		P 151,683,405.43
Add: Purchases Paid not in the name of Thunderbird		11,068,373.43
Taxable Income		162,751,778.43
Tax Due		8,137,588.92
Less: Basic Tax Paid		553,418.67
Basic Income Tax Deficiency		7,584,170.25
Interest (4.16.07 to 10.30.08)		2,333,431.01
<b>Total Deficiency Income Tax</b>		<b>9,917,601.26</b>
<b>II. Expanded Withholding Tax</b>		
Deficiency Withholding Tax on Outside Services		38,305.93
Deficiency Withholding Tax on Rent		1,134,402.22
Deficiency Withholding Tax on Legal and Professional Fees		759,895.33
Deficiency Withholding Tax on Marketing and Promotions		62,761.90
Deficiency Withholding Tax on Director's Fee		10,279.99
Deficiency Withholding Tax on Management Fee		1,979,199.86
Total Expanded Withholding Tax Deficiency		3,984,845.23
Add: Interest (1.16.07 to 10.30.08)	P 1,425,264.51	
Compromise Penalty (No January to March 1601-E and 1604-E with Alphabetical List of Payees)	4,000.00	1,429,264.51
<b>Total Deficiency Expanded Withholding Tax</b>		<b>P 5,414,109.74</b>
<b>Total Tax Deficiency</b>		<b>P 15,331,711.00<sup>[11]</sup></b>

Thunderbird Pilipinas protested the assessments through a letter dated December 23, 2008 and a supplemental protest dated February 18, 2009. The protest was denied by the Regional Director.<sup>[12]</sup>

On March 30, 2009, Thunderbird Pilipinas received a collection letter from the Revenue District Officer of San Fernando City, La Union, directing the payment of the assessed tax within 10 days from receipt. Thunderbird Pilipinas replied on April 1, 2009 that it would appeal the Regional Director's decision to the Court of Tax Appeals and requested for deferment of the collection.<sup>[13]</sup>

On April 3, 2009, Thunderbird Pilipinas filed its Petition for Review before the Court of Tax Appeals,<sup>[14]</sup> seeking to cancel the deficiency income and expanded

withholding tax assessments for 2006.<sup>[15]</sup>

In his Answer, the Commissioner of Internal Revenue interposed the following defenses, among others:

1. Thunderbird Pilipinas failed to submit the documents as required in the letters dated September 21, 2007, October 23, 2007, and December 17, 2007;<sup>[16]</sup>
2. Thunderbird Pilipinas was assessed deficiency income and expanded withholding taxes based on the best evidence obtainable;<sup>[17]</sup>
3. Its protest on the assessments was denied for lack of supporting documentary evidence;<sup>[18]</sup> and
4. It was afforded due process in the assessment of its tax liabilities for 2006.<sup>[19]</sup>

Upon motion and posting of surety bond, the Court of Tax Appeals on November 13, 2009 enjoined the Commissioner of Internal Revenue from collecting the deficiency taxes.<sup>[20]</sup>

Trial followed. Both parties presented their respective evidence and memoranda, and the case was later submitted for decision.<sup>[21]</sup>

On July 18, 2012, the Court of Tax Appeals First Division rendered its Decision,<sup>[22]</sup> finding Thunderbird Pilipinas liable for deficiency income and expanded withholding taxes. It held that since PAGCOR was no longer exempt from income tax, pursuant to the rulings in *Abakada Guro Party List v. Ermita*<sup>[23]</sup> and *PAGCOR v. Bureau of Internal Revenue*,<sup>[24]</sup> Thunderbird Pilipinas-a the licensee/contractee of PAGCOR-is likewise subject to income tax from its casino operations.<sup>[25]</sup> For lack of evidence, it also rejected Thunderbird Pilipinas's contention that it was not liable for deficiency expanded withholding tax.<sup>[26]</sup> The dispositive portion of its Decision reads:

**WHEREFORE**, premises considered, the assessments against petitioner covering deficiency income tax and EWT for taxable year 2006 are hereby **AFFIRMED** with some modifications.

Accordingly, petitioner is hereby **ORDERED** to pay respondent deficiency income tax and EWT for taxable year 2006 in the respective amounts of **P12,488,946.65 and P5,440,870.44**, inclusive of 25% surcharge and 20% deficiency interest imposed pursuant to Section 248(A)(3) and 249(B) of the NIRC of 1997, computed as follows:

Deficiency Income Tax		
	Basic Tax Due	P 7,584,170.25
	Add: 25% Surcharge	1,896,042.56
	20% Interest (04/16/07 to 04/09/09)	3,008,733.84
	<b>Total Amount Due</b>	<b>P 12,488,946.65</b>
Deficiency EWT		
	Basic Tax Due	P3,208,008.58

Add: 25% Surcharge	802,002.15
20% Interest (01/16/07 to 04/09/09)	1,430,859.72
<b>Total Amount Due</b>	<b>P 5,440,870.44</b>
<b>GRAND TOTAL - DEFICIENCY INCOME TAX AND EWT</b>	<b>P 17,929,817.09</b>

Likewise, petitioner is **ORDERED** to pay delinquency interest at the rate of 20% per annum on the total deficiency taxes of **P17,929,817.09** computed from April 10, 2009 until full payment thereof pursuant to Section 249(C)(3) of the 1997 NIRC.

**SO ORDERED.**<sup>[27]</sup> (Emphasis in the original)

Thunderbird Pilipinas moved for reconsideration, but the First Division denied it in a December 11, 2012 Resolution.<sup>[28]</sup>

On appeal, the Court of Tax Appeals *En Banc* affirmed in its January 29, 2014 Decision<sup>[29]</sup> the First Division's rulings.

Hence, Thunderbird Pilipinas filed this Petition. In compliance with this Court's July 9, 2014 Resolution,<sup>[30]</sup> respondent Commissioner of Internal Revenue filed a Comment,<sup>[31]</sup> to which petitioner filed its Reply.<sup>[32]</sup>

Petitioner argues that the 2005 case of *Abakada Guro Party List v. Ermita*<sup>[33]</sup> and the 2011 case of *PAGCOR v. Bureau of Internal Revenue*<sup>[34]</sup> did not effectively repeal the tax exemptions of PAGCOR under Presidential Decree No. 1869.<sup>[35]</sup>

It asserts that the opinion in *Abakada* that PAGCOR was no longer exempt from income tax is a mere *obiter dictum*, and thus, not binding.<sup>[36]</sup> As for *PAGCOR*, it claims that the ruling must be revisited,<sup>[37]</sup> because Republic Act No. 9337 is not the proper legislative procedure to repeal PAGCOR's income tax exemption privilege.<sup>[38]</sup> It argues that Republic Act No. 9337, a general law on the income taxation of all government-owned or controlled corporations, did not repeal Presidential Decree No. 1869, a special law referring only to PAGCOR.<sup>[39]</sup> It finds no clear repugnancy between the two laws,<sup>[40]</sup> noting that Republic Act No. 9937 did not include the pertinent provisions of Presidential Decree No. 1869 in the list of laws it repeals.<sup>[41]</sup>

Even if the ruling in the *PAGCOR* case were to be upheld, petitioner argues that it must be applied prospectively,<sup>[42]</sup> because it reversed the standing doctrine in *Commissioner of Internal Revenue v. Acesite (Philippines) Hotel Corporation*<sup>[43]</sup> on the blanket exemption of PAGCOR from taxes.<sup>[44]</sup> Petitioner insists that at the time it filed its 2006 tax returns, the controlling ruling was *Acesite*, which was promulgated in 2007 after the enactment of Republic Act No. 9337 in 2005.<sup>[45]</sup>

Furthermore, petitioner asserts that it is not affected by the 2011 *PAGCOR* ruling, because it was not a party to the case, and it is a mere PAGCOR contractee.<sup>[46]</sup> Petitioner points out that it was only in Revenue Memorandum Circular No. 33-2013,

[47] effective April 17, 2013, where the licensees and contractees of PAGCOR were declared liable for income tax.[48] If at all, petitioner contends, PAGCOR should be the one to pay the deficiency income tax, based on their Memorandum of Agreement.[49]

Assuming that it was liable for income tax, petitioner says it is only liable to pay 3% of its gross income to the national government, instead of 5%, as it is registered as a Poro Point Special Economic and Freeport Zone enterprise. In any case, it submits that its payment to PAGCOR of 25% license fee on gross gaming revenue for the period from April 28 to December 31, 2006 is essentially payment of the 5% gross income earned.[50]

Finally, petitioner claims that it is not liable for deficiency expanded withholding tax on payments of fees to Fortun Narvasa & Salazar Law Firm and Punongbayan & Araullo, rental fees to Poro Point Management Corporation, and management fees for services rendered by Thunderbird Resorts, Inc. It also maintains that the 25% surcharge imposed by the Court of Tax Appeals has no basis in law and in fact.[51]

In her Comment,[52] respondent asserts that the pronouncement in the 2011 *PAGCOR* case merely interpreted Section 1 of Republic Act No. 9337, specifically the removal of PAGCOR's exemption from income tax.[53] Hence, it is deemed part of the law as of the date of its passage.[54] Respondent further asserts that petitioner failed to present substantial evidence to show: (1) that the payment of 25% license fee is inclusive of the 5% income tax;[55] and (2) that petitioner is not subject to deficiency expanded withholding taxes on rental payments, legal and professional fees, and management fees.[56]

For resolution are the following issues:

First, whether or not the Decision in the 2011 case of *PAGCOR v. Bureau of Internal Revenue* should be applied prospectively;

Second, assuming that the 2011 *PAGCOR* case may be applied retroactively, whether or not it is binding on petitioner Thunderbird Pilipinas Hotels and Resorts, Inc., a licensee of PAGCOR;

Third, whether petitioner Thunderbird Pilipinas Hotels and Resorts, Inc. is liable for deficiency income tax for taxable year 2006;

Fourth, assuming that petitioner Thunderbird Pilipinas Hotels and Resorts, Inc. is subject to income tax, whether or not it is liable to pay only 3% of its gross income to the national government instead of 5% pursuant to its registration as a Poro Point Special Economic and Freeport Zone enterprise;

Fifth, whether or not its payment to PAGCOR of 25% of its gross gaming revenue can be applied against its deficiency income tax;

Sixth, whether or not petitioner Thunderbird Pilipinas Hotels and Resorts, Inc. is liable for deficiency expanded withholding tax on legal fees paid to Fortun Narvasa & Salazar Law Office and Punongbayan & Araullo, rental payments to Poro Point