

THIRD DIVISION

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

**BLOOMBERRY RESORTS AND HOTELS, INC., PETITIONER, VS.
BUREAU OF INTERNAL REVENUE, REPRESENTED BY
COMMISSIONER KIM S. JACINTO-HENARES, RESPONDENT.**

DECISION

PEREZ, J.:

This is a Petition for *Certiorari* and Prohibition under Rule 65 of the Rules on Court seeking: (a) to annul the issuance by the Commissioner of Internal Revenue (CIR) of an alleged unlawful governmental regulation, specifically the provision of Revenue Memorandum Circular (RMC) No. 33-2013^[1] dated 17 April 2013 subjecting *contractees and licensees* of the Philippine Amusement and Gaming Corporation (PAGCOR) to income tax under the National Internal Revenue Code (NIRC) of 1997, as amended; and (b) to enjoin respondent CIR from implementing the assailed provision of RMC No. 33-2013.^[2]

The Facts

As narrated in the present petition, the factual antecedents of the case reveal that, on 8 April 2009, PAGCOR granted to petitioner a provisional license to establish and operate an integrated resort and casino complex at the Entertainment City project site of PAGCOR. Petitioner and its parent company, Sureste Properties, Inc., own and operate Solaire Resort & Casino. Thus, being one of its licensees, petitioner only pays PAGCOR license fees, *in lieu* of all taxes, as contained in its provisional license and consistent with the PAGCOR Charter or Presidential Decree (PD) No. 1869,^[3] which provides the exemption from taxes of persons or entities contracting with PAGCOR in casino operations.

However, when Republic Act (R.A.) No. 9337 took effect^[4], it amended Section 27(C) of the NIRC of 1997, which excluded PAGCOR from the enumeration of government-owned or controlled corporations (GOCCs) exempt from paying corporate income tax. The enactment of the law led to the case of *PAGCOR v. The Bureau of Internal Revenue, et al.*,^[5] where PAGCOR questioned the validity or constitutionality of R.A. No. 9337 removing its exemption from paying corporate income tax, and therefore alleging the same to be void for being repugnant to the equal protection and the non-impairment clauses embodied in the 1987 Philippine Constitution. Subsequently, the Court articulated that Section 1 of RA No. 9337, amending Section 27(C) of the NIRC of 1997, which removed PAGCOR's exemption from corporate income tax, was indeed valid and constitutional.

Consequently, in implementing the aforesaid amendments made by R.A. No. 9337, respondent issued RMC No. 33-2013 dated 17 April 2013 declaring that PAGCOR, in

addition to the five percent (5%) franchise tax of its gross revenue under Section 13(2)(a) of PD No. 1869, is now subject to corporate income tax under the NIRC of 1997, as amended. In addition, a provision therein states that PAGCOR's *contractees and licensees*, being entities duly authorized and licensed by it to perform gambling casinos, gaming clubs and other similar recreation or amusement places, and gaming pools, are likewise subject to income tax under the NIRC of 1997, as amended.

Aggrieved, as it is now being considered liable to pay corporate income tax in addition to the 5% franchise tax, petitioner immediately elevated the matter through a petition for *certiorari* and prohibition before this Court asserting the following arguments: (i) PD No. 1869, as amended by R.A. No. 9487, is an existing valid law, and expressly and clearly exempts the *contractees and licensees* of PAGCOR from the payment of all kinds of taxes except the 5% franchise tax on its gross gaming revenue; (ii) This clear exemption from taxes of PAGCOR's contracting parties under Section 13(2)(b) of PD No. 1869, as amended by R.A. No. 9487, was not repealed by the deletion of PAGCOR in the list of tax-exempt entities under the NIRC; (iii) Respondent CIR acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction when she issued the assailed provision in RMC No. 33-2013 which, in effect, repealed or amended PD No. 1869; and (iv) Respondent CIR, in issuing the assailed provision in RMC No. 33-2013, will adversely affect an industry which seeks to create income for the government, promote tourism and generate jobs for the Filipino people.^[6]

To rationalize its direct recourse before this Court, petitioner submits the following justification:

- (a) What is involved is a pure question of law, *i.e.* whether or not petitioner is exempted from payment of all taxes, national or local, except the 5% franchise tax by virtue of Section 13(2)(b) of PD No. 1869, as amended;
- (b) The rule on exhaustion of administrative remedies is disregarded, among others, when: (i) the administrative action is patently illegal amounting to lack or excess of jurisdiction; (ii) to require exhaustion of administrative remedies would be unreasonable; and (iii) it would amount to nullification of a claim;
- (c) The gaming business funded by private investors under license by PAGCOR is a new industry which involves national interest. Hence, the inclusion of the assailed provision in RMC No. 33-2013 which implements income taxes on PAGCOR's licensees and operators when an exemption for such is specifically provided for by PD No. 1869, as amended, being unlawful and unwarranted legislation by the respondent, seriously affects national interest as it effectively curtails the basis for the investments in the industry and resulting tourist interest and jobs generated by the industry; and
- (d) The assailed provision of RMC No. 33-2013 affects not only petitioner or other locators and PAGCOR licensees in Entertainment City, Parañaque City, but also the rest of private casinos licensed by PAGCOR operating in economic zones. Thus, in order to prevent

multiplicity of suits and to avoid a situation when different local courts issue differing opinions on one question of law, direct recourse to this Court is likewise sought.^[7]

It is the contention of petitioner that although Section 4 of the NIRC of 1997, as amended, gives respondent CIR the power to interpret the provisions of tax laws through administrative issuances, she cannot, in the exercise of such power, issue administrative rulings or circulars not consistent with the law sought to be applied since administrative issuances must not override, supplant or modify the law, but must remain consistent with the law they intend to carry out. Since the assailed provision in RMC No. 33-2013 subjecting the *contractees and licensees* of PAGCOR to income tax under the NIRC of 1997, as amended, contravenes the provision of the PAGCOR Charter granting tax exemptions to corporations, associations, agencies, or individuals with whom PAGCOR has any contractual relationship in connection with the operations of the casinos authorized to be conducted under the PAGCOR Charter, it is petitioner's position that the assailed provision was issued by respondent CIR with grave abuse of discretion amounting to lack or excess of jurisdiction.

Respondent, in her Comment filed on 18 December 2014,^[8] counters that there was no grave abuse of discretion on her part when she issued the subject revenue memorandum circular since it did not alter, modify or amend the intent and meaning of Section 13(2)(b) of PD No. 1869, as amended, insofar as the imposition is concerned, considering that it merely clarified the taxability of PAGCOR and its *contractees and licensees* for income tax purposes as well as other franchise grantees similarly situated under prevailing laws; that prohibition will not lie to restrain a purely administrative act, nor enjoin acts already done, being a preventive remedy; and that tax exemptions are strictly construed against the taxpayer.

The Issues

Hence, we are now presented with the following issues for our consideration and resolution: (i) whether or not the assailed provision of RMC No. 33-2013 subjecting the *contractees and licensees* of PAGCOR to income tax under the NIRC of 1997, as amended, was issued by respondent CIR with grave abuse of discretion amounting to lack or excess of jurisdiction; and (ii) whether or not said provision is valid or constitutional considering that Section 13(2)(b) of PD No. 1869, as amended (PAGCOR Charter), grants tax exemptions to such *contractees and licensees*.

Our Ruling

At the outset, although it is true that direct recourse before this Court is occasionally allowed in exceptional cases without strict observance of the rules on hierarchy of courts and on exhaustion of administrative remedies, we find the imperious need to first determine whether or not this case falls within the said exceptions, before we delve into the merits of the instant petition.

We thus find the need to look back at the dispositions rendered in *Asia International Auctioneers, Inc., et al. v. Parayno, Jr.*,^[9] wherein we ruled that revenue memorandum circulars^[10] are considered administrative rulings issued from time to time by the CIR. It has been explained that these are actually rulings or opinions of

the CIR issued pursuant to her power under Section 4^[11] of the NIRC of 1997, as amended, to make rulings or opinions in connection with the implementation of the provisions of internal revenue laws, including ruling on the classification of articles of sales and similar purposes. Therefore, it was held that under R.A. No. 1125,^[12] which was thereafter amended by RA No. 9282,^[13] such rulings of the CIR (including revenue memorandum circulars) are appealable to the Court of Tax Appeals (CTA), and not to any other courts.

In the same case, we further declared that "failure to ask the CIR for a reconsideration of the assailed revenue regulations and RMCs is another reason why a case directly filed before us should be dismissed. It is settled that the premature invocation of the court's intervention is fatal to one's cause of action. If a remedy within the administrative machinery can still be resorted to by giving the administrative officer every opportunity to decide on a matter that comes within his jurisdiction, then such remedy must first be exhausted before the court's power of judicial review can be sought. The party with an administrative remedy must not only initiate the prescribed administrative procedure to obtain relief but also to pursue it to its appropriate conclusion before seeking judicial intervention in order to give the administrative agency an opportunity to decide the matter itself correctly and prevent unnecessary and premature resort to the court."^[14]

Then, in *The Philippine American Life and General Insurance Company v. Secretary of Finance*,^[15] we had the occasion to elucidate that the CIR's power to interpret the provisions of the Tax Code and other tax laws is subject to the review by the Secretary of Finance; and thereafter, the latter's ruling may be appealed to the CTA, having the technical knowledge over the subject controversies. Also, the Court held that "the power of the CTA includes that of determining whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the [regional trial court] in issuing an interlocutory order in cases falling within the exclusive appellate jurisdiction of the tax court. It, thus, follows that the CTA, by constitutional mandate, is vested with jurisdiction to issue writs of certiorari in these cases."^[16] Stated differently, the CTA "can now rule not only on the propriety of an assessment or tax treatment of a certain transaction, but also on the validity of the revenue regulation or revenue memorandum circular on which the said assessment is based."^[17] From the foregoing jurisprudential pronouncements, it would appear that in questioning the validity of the subject revenue memorandum circular, petitioner should not have resorted directly before this Court considering that it appears to have failed to comply with the doctrine of exhaustion of administrative remedies and the rule on hierarchy of courts, a clear indication that the case was not yet ripe for judicial remedy. Notably, however, in addition to the justifiable grounds relied upon by petitioner for its immediate recourse (*i.e.* pure question of law, patently illegal act by the BIR, national interest, and prevention of multiplicity of suits), we intend to avail of our jurisdictional prerogative in order not to further delay the disposition of the issues at hand, and also to promote the vital interest of substantial justice. To add, in recent years, this Court has consistently acted on direct actions assailing the validity of various revenue regulations, revenue memorandum circulars, and the likes, issued by the CIR. The position we now take is more in accord with latest jurisprudence. Upon the exercise of this prerogative, we are ushered into the merits of the case.

The determination of the submissions of petitioner will have to follow the pilot case of *PAGCOR v. The Bureau of Internal Revenue, et al.*,^[18] where this Court clarified its earlier ruling in G.R. No. 172087^[19] involving the same parties, and expressed that: (i) Section 1 of RA No. 9337, amending Section 27(C) of the NIRC of 1997, as amended, which excluded PAGCOR from the enumeration of GOCCs exempted from corporate income tax, is valid and constitutional; (ii) PAGCOR's tax privilege of paying five percent (5%) franchise tax *in lieu* of all other taxes with respect to its income from gaming operations is not repealed or amended by Section I(c) of R.A. No. 9337; (iii) PAGCOR's income from gaming operations is subject to the 5% franchise tax only; and (iv) PAGCOR's income from other related services is subject to corporate income tax only.

The Court sitting En Banc expounded on the matter in this wise:

After a thorough study of the arguments and points raised by the parties, and in accordance with our Decision dated March 15, 2011, we sustain [PAGCOR's] contention that its **income from gaming operations is subject only to five percent (5%) franchise tax under P.D. No. 1869, as amended**, while its income from other related services is subject to corporate income tax pursuant to P.D. No. 1869, as amended, as well as R.A. No. 9337. This is demonstrable.

First. Under P.D. No. 1869, as amended, [PAGCOR] is subject to income tax only with respect to its operation of related services. Accordingly, the income tax exemption ordained under Section 27(c) of R.A. No. 8424 clearly pertains only to [PAGCOR's] income from operation of related services. **Such income tax exemption could not have been applicable to [PAGCOR's] income from gaming operations as it is already exempt therefrom under P.D. No. 1869, as amended**, to wit:

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.

Indeed, the grant of tax exemption or the withdrawal thereof assumes that the person or entity involved is subject to tax. This is the most