

## SECOND DIVISION

[ G.R. No. 208731, January 27, 2016 ]

**PHILIPPINE AMUSEMENT AND GAMING CORPORATION,  
PETITIONER, VS. BUREAU OF INTERNAL REVENUE,  
COMMISSIONER OF INTERNAL REVENUE, AND REGIONAL  
DIRECTOR, REVENUE REGION NO. 6, RESPONDENTS.**

### DECISION

**CARPIO, J.:**

#### The Case

G.R. No. 208731 is a petition for review<sup>[1]</sup> assailing the Decision<sup>[2]</sup> promulgated on 18 February 2013 as well as the Resolution<sup>[3]</sup> promulgated on 23 July 2013 by the Court of Tax Appeals En Banc (CTA En Banc) in CTA EB No. 844. The CTA EB affirmed the Decision dated 6 July 2011<sup>[4]</sup> and Resolution<sup>[5]</sup> dated 13 October 2011 of the Court of Tax Appeals' First Division (CTA 1<sup>st</sup> Division) in CTA Case No. 7880.

In its 6 July 2011 Decision, the CTA 1<sup>st</sup> Division ruled in favor of the Bureau of Internal Revenue (BIR), Commissioner of Internal Revenue (CIR), and the Regional Director of Revenue Region No. 6 (collectively, respondents) and against petitioner Philippine Amusement and Gaming Corporation (PAGCOR). The CTA 1<sup>st</sup> Division dismissed PAGCOR's petition for review seeking the cancellation of the Final Assessment Notice (FAN) dated 14 January 2008 which respondents issued for alleged deficiency fringe benefits tax in 2004. The CTA 1<sup>st</sup> Division ruled that PAGCOR's petition was filed out of time.

#### The Facts

The CTA 1<sup>st</sup> Division recited the facts as follows:

[PAGCOR] claims that it is a duly organized government-owned and controlled corporation existing under and by virtue of Presidential Decree No. 1869, as amended, with business address at the 6<sup>th</sup> Floor, Hyatt Hotel and Casino, Pedro Gil corner M.H. Del Pilar Streets, Malate, Manila. It was created to regulate, establish and operate clubs and casinos for amusement and recreation, including sports gaming pools, and such other forms of amusement and recreation.

Respondent [CIR], on the other hand, is the Head of the [BIR] with authority, among others, to resolve protests on assessments issued by her office or her authorized representatives. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

[PAGCOR] provides a car plan program to its qualified officers under which sixty percent (60%) of the car plan availment is shouldered by PAGCOR and the remaining forty percent (40%) for the account of the officer, payable in five (5) years.

On October 10, 2007, [PAGCOR] received a Post Reporting Notice dated September 28, 2007 from BIR Regional Director Alfredo Misajon [RD Misajon] of Revenue Region 6, Revenue District No. 33, for an informal conference to discuss the result of its investigation on [PAGCOR's] internal revenue taxes in 2004. The Post Reporting Notice shows that [PAGCOR] has deficiencies on Value Added Tax (VAT), Withholding Tax on VAT (WTV), Expanded Withholding Tax (EWT), and Fringe Benefits Tax (FBT).

Subsequently, the BIR abandoned the claim for deficiency assessments on VAT, WTV and EWT in the Letter to [PAGCOR] dated November 23, 2007 in view of the principles laid down in *Commissioner of Internal Revenue vs. Acesite Hotel Corporation* [G.R. No. 147295] exempting [PAGCOR] and its contractors from VAT. However, the assessment on deficiency FBT subsists and remains due to date.

On January 17, 2008, [PAGCOR] received a Final Assessment Notice [FAN] dated January 14, 2008, with demand for payment of deficiency FBT for taxable year 2004 in the amount of P48,589,507.65.

On January 24, 2008, [PAGCOR] filed a protest to the FAN addressed to [RD Misajon] of Revenue Region No. 6 of the BIR.

On August 14, 2008, [PAGCOR] elevated its protest to respondent CIR in a Letter dated August 13, 2008, there being no action taken thereon as of that date.

In a Letter dated September 23, 2008 received on September 25, 2008, [PAGCOR] was informed that the Legal Division of Revenue Region No. 6 sustained Revenue Officer Ma. Elena Llantada on the imposition of FBT against it based on the provisions of Revenue Regulations (RR) No. 3-98 and that its protest was forwarded to the Assessment Division for further action.

On November 19, 2008, [PAGCOR] received a letter from the OIC-Regional Director, Revenue Region No. 6 (Manila), stating that its letter protest was referred to Revenue District Office No. 33 for appropriate action.

On March 11, 2009, [PAGCOR] filed the instant Petition for Review alleging respondents' inaction in its protest on the disputed deficiency FBT.<sup>[6]</sup>

### **The CTA 1<sup>st</sup> Division's Ruling**

The CTA 1<sup>st</sup> Division issued the assailed decision dated 6 July 2011 and ruled in favor of respondents. The CTA 1<sup>st</sup> Division ruled that RD Misajon's issuance of the FAN was a valid delegation of authority, and PAGCOR's administrative protest was validly and seasonably filed on 24 January 2008. The petition for review filed with the CTA 1<sup>st</sup> Division, however, was filed out of time. The CTA 1<sup>st</sup> Division stated:

As earlier stated, [PAGCOR] timely filed its administrative protest on January 24, 2008. In accordance with Section 228 of the Tax Code, respondent CIR or her duly authorized representative had 180 days or until July 22, 2008 to act on the protest. After the expiration of the 180-day period without action on the protest, as in the instant case, the taxpayer, specifically [PAGCOR], had 30 days or until August 21, 2008 to assail the non-determination of its protest.

Clearly, the conclusion that the instant Petition for Review was filed beyond the reglementary period for appeal on March 11, 2009, effectively depriving the Court of jurisdiction over the petition, is inescapable.

And as provided in Section 228 of the NIRC, the failure of [PAGCOR] to appeal from an assessment on time rendered the same final, executory and demandable. Consequently, [PAGCOR] is already precluded from disputing the correctness of the assessment. The failure to comply with the 30-day statutory period would bar the appeal and deprive the Court of Tax Appeals of its jurisdiction to entertain and determine the correctness of the assessment.

Even assuming *in gratia argumenti* that the [CTA] has jurisdiction over the case as claimed by [PAGCOR], the petition must still fail on the ground that [PAGCOR] is not exempt from payment of the assessed FBT under its charter.

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Since the car plan provided by [PAGCOR] partakes of the nature of a personal expense attributable to its employees, it shall be treated as taxable fringe benefit of its employees, whether or not the same is duly receipted in the name of the employer. Therefore, [PAGCOR's] obligation as an agent of the government to withhold and remit the final tax on the fringe benefit received by its employees is personal and direct. The government's cause of action against [PAGCOR] is not for the collection of income tax, for which [PAGCOR] is exempted, but for the enforcement of the withholding provision of the 1997 NIRC, compliance of which is imposed on [PAGCOR] as the withholding agent, and not upon its employees. Consequently, [PAGCOR's] non-compliance with said obligation to withhold makes it personally liable for the tax arising from the breach of its legal duty.<sup>[7]</sup>

Decision of the CTA 1<sup>st</sup> Division. The CIR filed a comment,<sup>[8]</sup> and asked that PAGCOR be ordered to pay P48,589,507.65 representing deficiency fringe benefits tax for taxable year 2004 plus 25% surcharge and 20% delinquency interest from late payment beyond 15 February 2008 until fully paid, pursuant to Sections 248 and 249 of the National Internal Revenue Code (NIRC) of 1997.

In the meantime, the CIR sent PAGCOR a letter dated 18 July 2011.<sup>[9]</sup> The letter stated that PAGCOR should be subjected to the issuance of a Warrant of Dstraint and/or Levy and a Warrant of Garnishment because of its failure to pay its outstanding delinquent account in the amount of P46,589,507.65, which included surcharge and interest. Settlement of the tax liability is necessary to obviate the issuance of a Warrant of Dstraint and/or Levy and a Warrant of Garnishment.

Subsequently, PAGCOR filed a reply dated 28 September 2011 to ask that an order be issued directing respondents to hold in abeyance the execution of the Warrant of Dstraint and/or Levy and the Warrant of Garnishment, as well as to suspend the collection of tax insofar as the 2004 assessment is concerned. PAGCOR also asked for exemption from filing a bond or depositing the amount claimed by respondents.  
<sup>[10]</sup>

PAGCOR filed a petition for review with urgent motion to suspend tax collection<sup>[11]</sup> with the CTA En Banc on 23 November 2011.

### **The CTA En Banc's Ruling**

The CTA En Banc dismissed PAGCOR's petition for review and affirmed the CTA 1<sup>st</sup> Division's Decision and Resolution. The CTA En Banc ruled that the protest filed before the RD is a valid protest; hence, it was superfluous for PAGCOR to raise the protest before the CIR. When PAGCOR filed its administrative protest on 24 January 2008, the CIR or her duly authorized representative had 180 days or until 22 July 2008 to act on the protest. After the expiration of the 180 days, PAGCOR had 30 days or until 21 August 2008 to assail before the CTA the non-determination of its protest.

Moreover, Section 223 of the NIRC merely suspends the period within which the BIR can make assessments on a certain taxpayer. A taxpayer's request for reinvestigation only happens upon the BIR's issuance of an assessment within the three-year prescriptive period. The reinvestigation of the assessment suspends the prescriptive period for either a revised assessment or a retained assessment.

PAGCOR filed its Motion for Reconsideration on 22 March 2013, while respondents filed their Comment/Opposition on 3 June 2013.

The CTA En Banc denied PAGCOR's motion in a Resolution<sup>[12]</sup> dated 23 July 2013.

PAGCOR filed the present petition for review on 14 October 2013. Respondents filed their comment through the Office of the Solicitor General on 20 March 2014. On 23 April 2014, this Court required PAGCOR to file a reply to the comment within 10 days from notice. This period expired on 26 June 2014. On 15 September 2014, this Court issued another resolution denying PAGCOR's petition for failure to comply with its lawful order without any valid cause. On 31 October 2014, PAGCOR filed a

motion for reconsideration of the Court's 15 September 2014 Resolution. We granted PAGCOR's motion in a Resolution dated 10 December 2014.

### **The Issues**

PAGCOR presented the following issues in its petition:

1. Whether or not the CTA En Bane gravely erred in affirming the CTA 1st Division's Decision dismissing the Petition for Review for having been filed out of time.
2. Whether or not the CTA En Bane seriously erred when it affirmed the CTA 1st Division's failure to decide the case on substantive matters, i.e., the full import of PAGCOR's tax exemption under its charter which necessarily includes its exemption from the fringe benefits tax (FBT).
  - 2.1 Assuming that PAGCOR is not exempt from the FBT, whether or not the car plan extended to its officers inured to its benefit and it is required or necessary in the conduct of its business.
  - 2.2 Assuming that PAGCOR is subject to the alleged deficiency FBT, whether or not it is only liable for the basic tax, i.e., excluding surcharge and interest.<sup>[13]</sup>

In their Comment,<sup>[14]</sup> respondents argue that the CTA properly dismissed PAGCOR's petition because it was filed beyond the periods provided by law.

### **The Court's Ruling**

The petition has no merit. The CTA En Bane and 1<sup>st</sup> Division were correct in dismissing PAGCOR's petition. However, as we shall explain below, the dismissal should be on the ground of premature, rather than late, filing.

#### **Timeliness of PAGCOR's Petition before the CTA**

The CTA 1<sup>st</sup> Division and CTA En Bane both established that PAGCOR received a FAN on 17 January 2008, filed its protest to the FAN addressed to RD Misajon on 24 January 2008, filed yet another protest addressed to the CIR on 14 August 2008, and then filed a petition before the CTA on 11 March 2009. There was no action on PAGCOR's protests filed on 24 January 2008 and 14 August 2008. PAGCOR would like this Court to rule that its protest before the CIR starts a new period from which to determine the last day to file its petition before the CTA.

The CIR, on the other hand, denied PAGCOR's claims of exemption with the issuance of its 18 July 2011 letter. The letter asked PAGCOR to settle its obligation of P46,589,507.65, which consisted of tax, surcharge and interest. PAGCOR's failure to settle its obligation would result in the issuance of a Warrant of Distraint and/or Levy and a Warrant of Garnishment.