REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

MSCI HONG KONG LIMITED,
Respondent.

CTA EB NO. 2939
(CTA Case No. 9884)

Present:

RINGPIS-LIBAN, Acting *P.J.*,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:
NOV 19 2025

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DECISION

FERRER-FLORES, J.:

Before this Court is a **Petition for Review** filed on July 8, 2024 by the **Commissioner of Internal Revenue (CIR/petitioner)** against **MSCI Hong Kong Limited (MSCI Philippines /respondent)** seeking for the Court to reverse and set aside the Decision dated January 15, 2024 (assailed Decision)[1] and the Resolution dated May 28, 2024 (assailed Resolution),[2] both rendered by the Special First Division of this Court (Court in Division), which partially granted MSCI Philippines' claim for refund of or issuance of tax credit certificate (TCC) for its alleged excess and unutilized input VAT attributable

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[1] Penned by Associate Justice Catherine T. Manahan with the concurrence of Associate Justice Marian Ivy Reyes-Fajardo and with the Dissenting Opinion of Presiding Justice Roman G. Del Rosario (ret.); *Rollo*, pp. 29 to 64.

[2] *Rollo*, pp. 72 to 78.

attributable to its zero-rated sales for the four quarters of calendar year (CY) 2016 amounting to **₱8,465,995.22**.

The dispositive portions of the assailed Decision and Resolution read as follows:

Assailed Decision

> **WHEREFORE**, in light of the foregoing considerations, the present *Amended Petition for Review* is **PARTIALLY GRANTED**. Accordingly, respondent [herein petitioner] is **ORDERED** to refund in favor of petitioner [herein respondent] the reduced amount of **₱8,465,995.22**, representing the petitioner's [herein respondent's] unutilized input VAT attributable to its zero-rated sales for the calendar year 2016.
>
> **SO ORDERED.**

Assailed Resolution

> **WHEREFORE**, respondent's [herein petitioner's] *Motion for Reconsideration (Re: Decision dated 15 January 2024)* is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**

THE PARTIES

Petitioner is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), vested under the appropriate laws with the authority to carry out functions, duties, and responsibilities of his Office, including, *inter alia,* the duty to act upon and approve claims for refund or tax credit, pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, and other tax laws, rules and regulations.[3]

Respondent is the Philippine branch of a multinational company organized and existing under the laws of Hong Kong. It is licensed by the Philippine Securities and Exchange Commission (SEC) to establish its regional operating headquarters (ROHQ) in the Philippines to engage in index bench marking, portfolio risk and performance analytics and research support services. It is also registered with the BIR as a VAT taxpayer, with Tax Identification No. (TIN) 008-724-942.[4]

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3 Assailed Decision, *Rollo*, pp. 29 to 30.
4 *Id.*

THE ANTECEDENT FACTS

On March 28, 2018, MSCI Philippines initiated its administrative claim for refund through the filing with the BIR of the *Application for Tax Credits/Refunds* (BIR Form No. 1914), with the *Revised Checklist of Mandatory Requirements for Claims for VAT Refund* and the letter dated March 27, 2018. Respondent sought for the refund of ₱8,940,566.23 representing its excess and unutilized input VAT incurred on its purchases of goods and services during CY 2016, attributable to its zero-rated sales.

The CIR, however, allegedly did not act on the administrative claim for refund of the respondent within the period prescribed by the law.

THE PROCEEDINGS BEFORE THE COURT IN DIVISION

As detailed in the assailed Decision, the proceedings before the Court in Division are as follows:[5]

> Alleging inaction on the part of respondent [herein petitioner], petitioner [herein respondent] filed a *Petition for Review* before this Court on July 25, 2018. Respondent [herein Petitioner] then posted his *Answer (with Special and Affirmative Defenses)* on September 20, 2018.
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> Thereafter, on October 1, 2018, respondent [herein petitioner] transmitted to this Court the *BIR Records* of this case. Petitioner [herein Respondent] posted its *Comment/Opposition (Re: Respondent's Motion to Dismiss)* on February 18, 2018.
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> Meanwhile, petitioner [herein respondent] filed a *Motion for Leave to File Amended Petition for Review*, attaching thereto its *Amended Petition for Review*, on January 28, 2019. Respondent [herein Petitioner] then posted his *Comment/Opposition (on Motion for Leave to File Amended Petition for Review)* on March 21, 2019.
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> In the Resolution dated January 22, 2020, the Court: (1) denied respondent's [herein petitioner's] *Motion to Dismiss* for lack of merit; (2) granted petitioner's [herein respondent's] *Motion for Leave to File Amended Petition for Review;* and (3) admitted petitioner's [herein respondent's] *Amended Petition for Review*.
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> On February 7, 2020, respondent [herein petitioner] filed an *Amended Answer (Special and Affirmative Defenses)*, interposing the following special and affirmative defenses, to wit:
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> xxx xxx xxx

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[5] *Facts*, assailed Decision, *Rollo*, pp. 19 to 21; citations omitted.

On February 12, 2020, respondent [herein petitioner] filed a *Motion for Reconsideration (To the Resolution dated 22 January 2020),* praying for the Court to reconsider and set aside its Resolution dated January 22, 2020, and to dismiss the instant case due to lack of jurisdiction over the subject matter of the claim. Petitioner [herein Respondent] filed its *Comment/Opposition (Re: Respondent's Motion for Reconsideration Dated February 12, 2020)* on March 13, 2020.

The Pre-trial Conference was initially set on March 26, 2020. However, in the Resolution dated August 3, 2020, the Court denied respondent's [herein petitioner's] *Motion for Reconsideration (To the Resolution dated 22 January 2020),* and set the Pre-Trial Conference on October 8, 2020. Thus, the said Conference was held on such date. Prior thereto, *Respondent's Pre-Trial Brief* and *Petitioner's Pre-Trial Brief* were separately filed on October 1, 2020.

On October 27, 2020, the parties submitted their *Joint Stipulation of Facts and Issues,* which was approved in the Resolution dated November 20, 2020, thereby terminating the Pre-Trial proceedings. Subsequently, the Pre-Trial Order dated January 29, 2021 was issued.

Trial then ensued, with the parties presenting and offering their respective documentary and testimonial evidence.

Petitioner [herein Respondent] offered the testimonies of the following individuals, namely: (1) Ms. Nerissa Tolentino, petitioner's Vice President for Finance; and (2) Ms. Katherine O. Constantino, the Court-commissioned Independent Certified Public Accountant (ICPA).

The *Report* of the ICPA was submitted on January 5, 2021.

Petitioner [herein Respondent] filed its *Formal Offer of Exhibits* on February 3, 2021. Respondent [herein Petitioner] then posted his *Comment (to Petitioner's Formal Offer of Evidence)* on February 18, 2021. In the Resolution dated June 15, 2021, the Court admitted petitioner's [herein respondent's] offered exhibits, except for Exhibit "P-344", for not being found in the records.

On July 15, 2021, petitioner [herein respondent] filed a *Motion for Reconsideration (Re: Resolution dated June 15, 2021),* praying, among others, for the admission of Exhibit "P-344". Respondent [herein Petitioner], however, failed to file his comment thereon. In the Resolution dated April 20, 2022, the Court granted petitioner's [herein respondent's] *Motion for Reconsideration (Re: Resolution dated June 15, 2021)* and admitted Exhibit "P-344".

For his part, respondent [herein petitioner] offered the testimony of Revenue Officer II Gerald A. Guevara.

Subsequently, respondent [herein petitioner] submitted his *Formal Offer of Evidence* on August 22, 2022. Petitioner [herein respondent] filed its *Comment (Re: Respondent's Formal Offer of Evidence dated August 18, 2022)* on August 26, 2022. In the Resolution dated October 4, 2022, the Court admitted respondent's [herein petitioner's] offered exhibits.

> Petitioner [herein Respondent] filed its *Memorandum* on November 14, 2022, while respondent's [herein petitioner's] *Memorandum* was submitted on November 14, 2022.
>
> On December 5, 2022, the case was deemed submitted for decision.

On January 15, 2024, the Court in Division rendered the assailed Decision partially granting MSCI Philippines's *Amended Petition for Review*.[6] In the assailed Decision, the Court found that MSCI Philippines complied with the requisites for the refund/credit of input VAT attributable to its zero-rated sales to the extent of ₱8,465,995.22.

Aggrieved, the CIR filed his *Motion for Reconsideration (Re: Decision dated 15 January 2024)*[7] on February 5, 2024, to which MSCI Philippines filed its *Comment (Re: Motion for Reconsideration dated February 5, 2024)* on February 26, 2024.[8]

On May 28, 2024, the Court in Division promulgated the assailed Resolution, denying the CIR's *Motion for Reconsideration* for lack of merit.[9]

Hence, the instant *Petition for Review*.

THE PROCEEDINGS BEFORE THE COURT *EN BANC*

On June 20, 2024, the CIR filed a *Motion for Extension to File Petition for Review* requesting for an additional period of 15 days from June 21, 2024, or until July 6, 2024, to file his Petition for Review.[10] The said motion was granted by the Court on June 24, 2024, subject to the condition that the motion for extension was filed on time.[11]

Thereafter, on July 8, 2024,[12] the CIR filed the instant *Petition for Review*.[13]

In the Minute Resolution dated September 4, 2024, the Court ordered MSCI Philippines to file its comment on the present *Petition for Review*.[14]

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[6] *Rollo*, pp. 29 to 64.
[7] Division Docket – Vol. III, pp. 1312 to 1324.
[8] Division Docket – Vol. III, pp. 1328 to 1335.
[9] *Rollo*, pp. 72 to 78.
[10] *Rollo*, pp. 1 to 3.
[11] *Rollo*, p. 4.
[12] July 6, 2024 fell on a Saturday.
[13] *Rollo*, pp. 5 to 25.
[14] *Rollo*, p. 91.

MSCI Philippines filed its *Comment (Re: Petition for Review dated June 5, 2024)*[15] on May 28, 2024.

On October 30, 2024, the case was submitted for decision.[16]

THE ISSUE

In the instant *Petition for Review*, the CIR the following issue for resolution:

> Whether the Court in Division committed reversible error in partially granting MSCI Philippines' *Petition for Review* and ordering the refund or issuance of a TCC in favor of MSCI Philippines in the total amount of ₱8,465,995.22 representing its alleged excess and unutilized input VAT attributable to its zero-rated sales for the four quarters of CY 2016.

THE ARGUMENTS

The CIR's arguments:

The CIR claims that MSCI Philippines' judicial claim for refund was prematurely filed; thus, the Court in Division has no jurisdiction to act on its claim for refund/issuance of TCC. Particularly, the CIR insists that the 90-day period should have been reckoned from April 30, 2018, or the date when MSCI Philippines submitted its "complete documents" in support of its administrative claim, giving the CIR until July 29, 2018 to act on the same. As such, the judicial claim was allegedly prematurely filed on July 25, 2018, before the lapse of the 90-day period, thereby depriving the Court in Division of jurisdiction over the case.

The CIR likewise argues that the administrative claim for refund filed on March 28, 2018 pertains only to its alleged excess and unutilized input VAT attributable to MSCI Philippines' sales of service to its alleged affiliate, MSCI Inc. Hence, any excess/unutilized input VAT attributable to MSCI Philippines' alleged zero-rated sales of service to Investment Property Databank Limited (IPDL) should be disallowed.

Further, the CIR avers that MSCI Philippines failed to prove that it is engaged in zero-rated or effectively zero-rated sales of services during the

[15] *Rollo* – Vol. II, pp. 951 to 960.
[16] Minute Resolution dated October 30, 2024, *Rollo*, p. 113.

four quarters of CY 2016. According to the CIR, for MSCI Philippines' sales of services to qualify as zero-rated, the provision of services must be made exclusively to its affiliates, subsidiaries, or branches. MSCI Philippines, purportedly, did not present evidence proving the affiliate status of the recipients of services, MSCI Inc. and IPDL. In addition, the CIR also claims that the Memorandum/Articles of Incorporation and by-laws of the alleged recipient of services merely established their places of incorporation but not the place where these entities were actually conducting their respective businesses.

Finally, the CIR maintains that MSCI Philippines failed to comply with the invoicing requirements under the NIRC of 1997, as amended, considering that the official receipts (ORs) issued by MSCI Philippines do not show that: *(1)* the payment was for services indicated in the Service Agreement between MSCI Philippines and the nonresident foreign corporation (NRFC) clients; and, *(2)* the word "zero-rated" was not written or printed prominently on the subject ORs.

MSCI Philippines' counter-arguments:

Respondent posits that the *Petition for Review* should be dismissed on the bases of the following:

(a) The Court in Division committed no reversible error in ruling that it had jurisdiction over the case since its administrative and judicial claims were timely filed;

(b) respondent was able to present all ORs, invoices, and other documents in support of the claim for refund of excess and unutilized input VAT for CY 2016;

(c) respondent has adequately shown that the input taxes were attributable to its sales of services to both MSCI Inc. and IPDL. In any case, failure to submit documents in support of taxpayer's administrative claim for refund is not fatal to its judicial claim for refund;

(d) respondent has sufficiently proven that it is engaged in zero-rated or effectively zero-rated sales of service under Section 108(b)(2) of the NIRC of 1997, as amended; and,

(e) respondent complied with the invoicing requirements under the NIRC of 1997, as amended, and BIR rules and regulations.

THE RULING OF THE COURT *EN BANC*

The *Petition for Review* must be dismissed for being filed out of time.

Section 11 of Republic Act (R.A.) No. 1125,[17] as amended by R.A. No. 9282,[18] provides that "[a] party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration or new trial, may file a petition for review with the CTA *en banc*".

Section 3(b) of Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), which implements the above Section, provides:

> Sec. 3. Who may appeal; period to file petition. — xxx xxx xxx
>
> (b) **A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution**. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. *(Emphasis supplied)*

Based on the foregoing, petitioner had 15 days from receipt of the assailed Resolution within which to file its Petition for Review.

In his *Petition for Review*, the CIR reckoned the 15-day period to file the said petition from the receipt of the assailed Resolution by the Bureau of Internal Revenue (BIR) Revenue Region (RR) 8A – Makati City, Legal Division (BIR Legal Division), on **June 6, 2024**.[19] A scrutiny of the records would show, however, that the Office of the Solicitor General (OSG) received the assailed Resolution on **June 3, 2024**.[20] A question now arises on whether the 15-day period should be reckoned from the receipt of the BIR Legal Division or the OSG.

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[17] An Act Creating the Court of Tax Appeals (June 16, 1954).

[18] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes (March 30, 2004).

[19] Paragraph 6, Timeliness of the Petition, *Petition for Review*, *Rollo*, p. 6.

[20] *Notice of Resolution* dated May 29, 2024, Division Docket – Vol. III, p. 1338.

In *National Power Corp. vs. National Labor Relations Commission*,[21] the Supreme Court clarified that the proper basis for computing the reglementary period to file an appeal and for determining whether a decision had attained finality is service on the OSG. The Supreme Court further held that the OSG, the principal counsel therein, remains to be the principal counsel and the service of legal processes to it is decisive. In the recent case of *Claudine Monette Baldovino-Torres vs. Jasper A. Torres*,[22] the Supreme Court reiterated these rulings, viz.:

> The Court finds no merit in the contention that the OSG filed its Motion for Reconsideration out of time in the RTC. Admittedly, the public prosecutor in charge of the case, who was deputized by the OSG to appear on its behalf, received a copy of the RTC Decision on March 20, 2017. On the other hand, the OSG received its copy only on April 4, 2017.
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> In the case of *National Power Corporation v. National Labor Relations Commission* (NAPOCOR), the Court held that **the proper basis for computing the reglementary period to file an appeal and in determining whether a decision had attained finality is service on the OSG**. In holding so, the Court emphasized **that the lawyer deputized by the OSG is considered as a mere representative of the latter who retains supervision and control over the deputized lawyer**. As a consequence, **copies of orders and decisions served on the deputized counsel, acting as agent or representative of the Solicitor General, are <u>not</u> binding until they are actually received by the latter**.
>
> The *NAPOCOR* case was cited in the subsequent case of *Commissioner of Customs v. Court of Tax Appeals*, where it was reiterated that **although the OSG may have deputized the lawyers in a government agency represented by it, the OSG continues to be the principal counsel and, therefore, service on it of legal processes, and not that on the deputized lawyers, is decisive**.
>
> In the same vein, **the period to file a motion for reconsideration in the present case should be counted from the receipt by the OSG of a copy of the RTC Decision on April 4, 2017**. Consequently, the filing by the OSG of its Motion for Reconsideration questioning the RTC Decision on April 18, 2017 was well within the reglementary period for filing such motion. The **counting of the period for its filing should be reckoned from the date of receipt of the assailed decision by the OSG and not by the public prosecutor**. This is because the public prosecutor acted as a mere representative of the OSG which, in turn, retained supervision and control over the former. *(Emphasis and underscoring supplied; citations omitted)*

Based on the foregoing jurisprudential pronouncements, when the party is represented by several counsels, such as when the principal counsel (e.g., the OSG), deputizes another lawyer from the government agency it represents,

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[21] *National Power Corp. vs. National Labor Relations Commission*, G.R. Nos. 90933-61, May 29, 1997.
[22] G.R. No. 248675, July 20, 2022, citing the cases of *National Power Corp. vs. National Labor Relations Commission*, G.R. Nos. 90933-61, May 29, 1997 and *Commissioner of Customs vs. Court of Tax Appeals*, G.R. No. 132929, March 27, 2000.

it is the receipt of the principal counsel that is binding and the date from which the 15-day period is counted.

Records show that the assailed Resolution of the Court in Division was received by the CIR, through its principal counsel—the OSG—on June 3, 2024;[23] thus, the CIR had 15 days therefrom, or until **June 18, 2024**, to file his Petition for Review.

On **June 20, 2024**, the CIR filed his *Motion for Extension to File Petition for Review*[24] seeking an additional period of 15 days from June 21, 2024,[25] or until July 6, 2024, to file his Petition for Review, which was granted by this Court on June 24, 2024, <u>subject to the condition that the motion for extension is filed on time</u>. Notably, the CIR's motion for extension was not filed on time as the original period was only until June 18, 2024. As such, notwithstanding the initial grant of extension, the same was rendered ineffective for failure to comply with the condition of timeliness. In view thereof, without an effective extension, the *Petition for Review* filed on July 8, 2024 was filed out of time.

In this regard, the assailed Resolution has already attained finality. Consequently, the assailed Decision likewise has become final and unappealable.

A decision that has acquired finality becomes immutable and unalterable and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact or law and whether it was made by the court that rendered it or by the highest court of the land.[26]

Clearly, the present *Petition* is already beyond the jurisdiction of this Court.

Even assuming *arguendo* that the *Petition for Review* was timely filed, the same will still be denied for lack of merit.

A perusal of the arguments in the *Petition for Review* shows that the same are mere reiterations of the CIR's arguments in his pleadings and in his

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[23] Notice of Resolution dated May 29, 2024, Division Docket – Vol. III, p. 1338.

[24] *Rollo*. pp. 1 to 3.

[25] The BIR Legal Division received the assailed Resolution on June 6, 2024; hence, the CIR counted 15 days therefrom and reckoned the requested extended period from June 21, 2024. *See* Notice of Resolution dated May 29, 2024, Division Docket – Vol. III, p. 1338.

[26] *Roberto A. Torres, et al. vs. Antonia F. Aruego*, G.R. No. 201271, September 20, 2017.

Motion for Reconsideration in CTA Case No. 9884 which were already discussed and passed upon by the Court in Division in its assailed Decision and assailed Resolution; thus, the instant *Petition* still fails.

Nevertheless, if only to put the issues to rest, the Court shall again briefly address the issues raised to demonstrate the futility of the CIR's *Petition*.

The Court in Division did not err in ruling that it has jurisdiction over the judicial claim for refund.

The CIR argues that the judicial claim for refund was prematurely filed as the 90-day period should have been reckoned from April 30, 2018 when the "complete documents" were submitted. MSCI Philippines counters that its administrative and judicial claims for refund were timely filed.

Section 112 of the NIRC of 1997, as amended by R.A. No. 10963 or the Tax Reform for Acceleration and Inclusion (TRAIN) Law,[27] provides, in part, as follows:

> SEC. 112. Refunds or Tax Credits of Input Tax. —
>
> (A) *Zero-Rated or Effectively Zero-Rated Sales*. — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally*, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

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[27] An Act Amending Sections 5, 6, 24, 25, 27, 31, 32, 33, 34, 51, 52, 56, 57, 58, 74, 79, 84, 86, 90, 91, 97, 99, 100, 101, 106, 107, 108, 109, 110, 112, 114, 116, 127, 128, 129, 145, 148, 149, 151, 155, 171, 174, 175, 177, 178, 179, 180, 181, 182, 183, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 232, 236, 237, 249, 254, 264, 269, and 288; Creating New Sections 51-A, 148-A, 150-A, 150-B, 237-A, 264-A, 264-B, and 265-A; and Repealing Sections 35, 62, and 89; All Under Republic Act No. 8424, otherwise Known as the National Internal Revenue Code of 1997, As Amended, and For Other Purposes, Effective January 1, 2018.

> xxx xxx xxx
>
> (C) *Period within which Refund of Input Taxes shall be Made*. — In proper cases, **the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application** filed in accordance with Subsections (A) and (B) hereof: *Provided*, That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.
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> In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: *Provided, however*, That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code. *(Emphasis supplied)*

Based on the foregoing, the CIR is given 90 days from the submission of the official receipts or invoices and other documents in support of the application to act on the administrative claim for refund of input VAT under Section 112 of the NIRC of 1997, as amended.

Here, the dispute stems from when the 90-day period is reckoned. In the assailed Decision, the Court in Division held that the 90-day period should be reckoned from the filing of MSCI Philippines' application for refund with its supporting documents on March 28, 2018.

We agree with the Court in Division. We quote with approval the discussion of the Court in Division below:

> At the time of the filing of petitioner's [herein respondent's] administrative claim for tax credit or refund on March 28, 2018, RMC No. 17-2018 dated February 27, 2018, was already effective. The said RMC discussed the time frame to process VAT claims under Section 112 (A) and (B) of the 1997 NIRC, as amended, in this wise:
>
> "III. Time frame to process claims for VAT claims under Sections 112 (A) and (B) of the Tax Code, as amended further by R.A. No. 10963
>
> 1. The 90-day period prescribed under Section 112 (C) of the Tax Code, as amended, shall start from the actual date of filing of the application with complete documents duly received by the processing office.

> 2. The 90-day period shall be applied prospectively, i.e., for claims filed upon the effectivity of R.A. No. 10963".

Moreover, RMC No. 17-2018 categorically requires the submission of complete supporting documents upon the filing of the application for refund; otherwise, it shall result to non-acceptance of the application, to wit:

> "IV. Documents to be submitted by the taxpayer/claimant upon filing of the application for VAT refund:
>
> 1. The application must be accompanied by complete supporting documents enumerated in the Revised Checklist of Mandatory Requirements (Annex 'A.1') for claims filed pursuant to Sec. 112 (A) of the Tax Code, as amended, or Checklist of Documentary Requirements (Annex 'A.2') for claims filed under Sec. 112 (B) of the same Tax Code.
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> 2. The taxpayer-claimant shall also attach a notarized sworn certification (Annex 'B') attesting to the completeness and veracity of the documents submitted. Accordingly, the claim shall be processed based on the documents submitted, as well as the books of accounts and accounting records, presented by the taxpayer-claimant.
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> 3. Failure on the part of the taxpayer-claimant to submit the relevant vital document/s in support of his/its claim upon filing of the application shall result to non-acceptance of the application, and failure to present the books of accounts and accounting records relevant to the claim is a ground for its denial."

It is, thus, clear from the foregoing that there is a necessity to submit all supporting documents upon filing of its administrative claim. Otherwise, it will result to non-acceptance of its application for refund. Thus, upon submission of the administrative claim and its supporting documents, no other documents shall be accepted or required from the taxpayer. As such, the 90-day period should be reckoned from the actual date of filing of the application with complete documents duly received by the processing office, and not from the subsequent filing of other supporting documents, contrary to the claim of respondent [herein petitioner]. Moreover, the statement "[f]or pending claims which have not been acted upon by the investigating/processing office due to incomplete documentation, the taxpayer-claimants are given thirty (30) days within which to submit the documentary requirements x x x" in RMC No. 49-2003 can no longer be found in RMC No. 17-2018. Thus, respondent [herein petitioner] can no longer rely thereon to support its position.

Clearly, RMC No. 17-2018 applies to MSCI Philippines' application for refund. As such, on **March 28, 2018**, when its submission of its *Application for Tax Credits/Refunds* (BIR Form No. 1914), with the relevant documents required by RMC No. 17-2018, the 90-day period commenced to run. The CIR then had until **June 26, 2018** to act on MSCI Philippines' administrative claim for refund. Upon lapse of such period, MSCI Philippines had 30 days within which to file its judicial claim for refund. Hence, the *Petition for Review* filed on **July 25, 2018**, after June 26, 2018 and within 30 days therefrom, was seasonably filed.

<u>MSCI Philippines was able to prove its zero-rated sales of services to MSCI Inc. and IPDL.</u>

The CIR claims that the Court erred when it did not disallow MSCI Philippines' sale of services to IPDL alleging that MSCI Philippines' administrative claim for refund only pertained to its excess and unutilized input attributable to its zero-rated sales to MSCI Inc.

The Court is not convinced.

A perusal of the records reveals that, when MSCI Philippines filed its *Application for Tax Credits/Refunds* (BIR Form No. 1914), it also attached thereto the *Schedule of Zero-Rated Sales of Services*[28] and ORs[29] which included its sales of services to IPDL. Verily, its administrative claim included the purported zero-rated sales to IPDL.

In any case, even assuming that MSCI Philippines' sales to IPDL were not presented/included at the administrative level, the Court emphasizes that cases before the CTA are litigated *de novo*. In *Commissioner of Internal Revenue vs. Univation Motor Philippines, Inc. (formerly Nissan Motor Philippines, Inc.)*,[30] the Supreme Court clarified in this wise:

> In this case, it was the inaction of petitioner CIR which prompted respondent to seek judicial recourse with the CTA. Petitioner CIR did not send any written notice to respondent informing it that the documents it submitted were incomplete or at least require respondent to submit additional documents. As a matter of fact, petitioner CIR did not even render a Decision denying respondent's administrative claim on the ground that it had failed to submit all the required documents.

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28 BIR Records – Folder No. 1, pp. 207 to 210.
29 *Id.*, pp. 211 to 222.
30 *G.R. No. 231581, April 10, 2019.*

> Considering that the administrative claim was never acted upon, there was no decision for the CTA to review on appeal *per se*. However, this does not preclude the CTA from considering evidence that was not presented in the administrative claim with the BIR. Thus, RA No. 1125 states:
>
>> Section 8. *Court of record; seal; proceedings.* — The Court of Tax Appeals shall be a court of record and shall have a seal which shall be judicially noticed. It shall prescribe the form of its writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the business of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law, but such proceedings shall not be governed strictly by technical rules of evidence.
>
> The law creating the CTA specifically provides that proceedings before it shall not be governed strictly by the technical rules of evidence. The paramount consideration remains the ascertainment of truth. Thus, the CTA is not limited by the evidence presented in the administrative claim in the Bureau of Internal Revenue. The claimant may present new and additional evidence to the CTA to support its case for tax refund.
>
> Cases filed in the CTA are litigated *de novo* as such, respondent "should prove every minute aspect of its case by presenting, formally offering and submitting x x x to the Court of Tax Appeals all evidence x x x required for the successful prosecution of its administrative claim." Consequently, **the CTA may give credence to all evidence presented by respondent, including those that may not have been submitted to the CIR as the case is being essentially decided in the first instance.** *(Emphasis supplied)*

Considering the CIR's inaction on MSCI Philippines' administrative claim for refund, its judicial claim is being essentially decided in the first instance. As such, the Court may give credence to all evidence presented by MSCI Philippines, including those that may not have been submitted at the administrative level. Thus, for as long as MSCI Philippines was able to prove with evidence that its sales to IPDL qualify as valid zero-rated sales, the Court can then consider the same as valid zero-rated sales for purposes of computing the input VAT attributable to said sales.

As to the CIR's argument that MSCI Philippines failed to prove that the recipients of its qualified services are affiliates, subsidiaries, or branches, and that they are not engaged in business in the Philippines, the same fails to convince.

As aptly pointed out by the Court in Division, a scrutiny of Annex "A" of the Application of Multinational Company for Registration and License to Establish a Regional Operating Headquarters in the Philippines, attached to

Exhibit "P-1",[31] shows that MSCI Inc. and IPDL are listed as either affiliates, subsidiary or branch office of MSCI ROHQ.

With regard to the NRFC status of the clients, to prove the same, the taxpayer-claimant, at the very least, must present **both** the SEC *Certification of Non-Registration of Company*, **and** proof of incorporation or registration in a foreign country (*e.g., Articles/Certificate of Incorporation/Registration* and/or *Tax Residence Certificate*) of the foreign corporation.[32]

In this case, as correctly found by the Court in Division, MSCI Philippines sufficiently proved the NRFC status of its foreign clients through the evidence below:

Foreign Client	SEC Certification	Foreign Incorporation/ Registration/Association
MSCI Inc.	Exhibit "P-11"[33]	Exhibits "P-7",[34] "P-8",[35] "P-9"[36]
IPDL	Exhibit "P-12"[37]	Exhibit "P-10"[38]

The CIR still insists that the Memorandum/Articles of Incorporation and by-laws merely established the place of incorporation but not the place where their businesses are conducted.

Note that in *Commissioner of Internal Revenue vs. Deutsche Knowledge Services Pte. Ltd.*,[39] the Supreme Court held that the articles of association/certificates of incorporation stating that these affiliates are registered to operate in their respective home countries, outside the Philippines are **prima facie evidence that their clients are not engaged in trade or business in the Philippines**.

Based on the foregoing, absent any evidence to the contrary, the articles of association/certificates of incorporation presented by MSCI Philippines are prima facie evidence that its foreign clients are not doing business, or engaged in trade or business, in the Philippines.

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[31] Division Docket – Vol. III, pp. 985 to 988.

[32] Refer to *Commissioner of Internal Revenue vs. Deutsche Knowledge Services Pte. Ltd.*, G.R. No. 234445, July 15, 2020; and *Commissioner of Internal Revenue vs. BW Shipping, Inc.*, G.R. No. 261171, October 4, 2023.

[33] Division Docket – Vol. III, p. 1097.

[34] Division Docket – Vol. III, pp. 1024 to 1034.

[35] Division Docket – Vol. III, pp. 1035 to 1059.

[36] Division Docket – Vol. III, pp. 1060 to 1064.

[37] Division Docket – Vol. III, p. 1098.

[38] Division Docket – Vol. III, pp. 1065 to 1096.

[39] G.R. No. 234445, July 15, 2020.

MSCI Philippines' zero-rated sales are supported by ORs which are compliant with the invoicing requirements.

The CIR contends that, while the ORs issued by MSCI Philippines indicate that the payments were for "transfer pricing", there was no indication that the payments were for the services mentioned in MSCI Philippines' Service Agreements with its NRFC clients; thus, it cannot be determined with certainty that the payments as shown by the said ORs were for the sales of services qualified as zero-rated transactions under Section 108(B)(2) of the NIRC of 1997, as amended. Further, the CIR avers that MSCI Philippines failed to comply with the invoicing requirement under Section 113(B)(2)(c) of the NIRC of 1997, as amended, stating that the term "zero-rated sale" must be written or printed prominently on the invoice or receipt.

The CIR's position is untenable.

Contrary to the CIR's bare assertion, the Court in Division had painstakingly scrutinized the ORs offered by MSCI Philippines. Pertinent portions of the assailed Decision[40] disposing of this issue read as follows:

> As to the *fourth* essential element and in relation to the *fifth* requisite for the granting of the input VAT refund, petitioner presented the *Certificate of Inward Remittance* and bank credit memos from the Bank of America Merrill Lynch purportedly showing the remittances of its non-resident foreign clients for the CY 2016. It is noteworthy that the certification of inward remittances attests to the fact of payment *"in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP."*
>
> In any event, the foreign currency remittances referred to under Section 108(B)(2) must not only be duly accounted for in accordance with the rules and regulations of the BSP, but must also comply with the pertinent invoicing requirements, containing all the required information under Section 113(A) and (B) of the NIRC of 1997, as amended, to wit:
>
> xxx xxx xxx
>
> These provisions of the 1997 NIRC, as amended, are further implemented by Section 4.113-1(A) and (B) of Revenue Regulations (RR) No. 16-05, as amended, to wit:
>
> xxx xxx xxx
>
> In addition to the above requirements, the sales invoices and official receipts (ORs) must be duly registered with the BIR as prescribed under

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[40] *Rollo*, pp. 48 to 53.

> Section 237 in relation to Section 238 of the 1997 NIRC, as amended, to wit:
>
> xxx xxx xxx
>
> Since petitioner's reported sales are in the nature of sales of services under Section 108(B)(2) of the 1997 NIRC, as amended, petitioner is required to issue BIR-registered VAT ORs for the foreign currency proceeds of each sales transaction, the information contained therein must be in compliance with the applicable provisions previously cited, such as the word **"zero-rated"** and the taxpayer's TIN-VAT number.
>
> In the present claim, aside from the *Certificate of Inward Remittance* and *bank credit memos* from the Bank of America Merrill Lynch, petitioner also presented its *Summary List of Sales for CY 2016, Schedule of Zero-Rated Sale of Services, Comparison of Schedule of Zero-Rated Sales vs. Service Invoices, Comparison of Schedule of Zero-Rated Sales vs. Official Receipts, Summary of Findings–Zero-Rated Sales evidenced by Official Receipts, Comparison of Sales per Schedule of Zero-Rated Sales, Bank Credit Memo and Official Receipts,* and the corresponding VAT zero-rated ORs, proving that for services rendered to *MSCI Inc.* and *Investment Property Databank Limited* for the CY 2016, petitioner was paid in the aggregate amount of US$6,173,900.49, with the respective Philippine Peso equivalent of ₱293,021,075.98, to wit:
>
> xxx xxx xxx
>
> The Court finds that the ORs supporting the aforesaid amount of US$6,173,900.49 (equivalent to ₱293,021,075.98) are compliant with the invoicing requirements under the VAT law and regulations cited earlier, hence, petitioner satisfied the *fourth* essential element. *(Citations omitted; boldfacing and italics in the original)*

The above finding of the Court in Division should be accorded with highest degree of respect in the absence of clear showing of any abuse, arbitrariness, or capriciousness on the part of the court.[41]

With regard the requirement of writing or printing of the word "zero-rated" on the VAT ORs, Section 113 (B) of the NIRC of 1997, as amended, provides as follows:

> SEC. 113. *Invoicing and Accounting Requirements for VAT-registered Persons.* —
>
> xxx xxx xxx
>
> (B) *Information Contained in the VAT Invoice or VAT Official Receipt.* — The following information shall be indicated in the VAT invoice or VAT official receipt:

[41] *Heirs of Teresita Villanueva, et al. vs. Heirs of Petronila Syquia Mendoza, et al.*, G.R. No. 209132, June 5, 2017.

> (1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);
>
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: *Provided*, That:
>
> (a) The amount of the tax shall be shown as a separate item in the invoice or receipt;
>
> (b) If the sale is exempt from value-added tax, the term 'VAT-exempt sale' shall be written or printed prominently on the invoice or receipt;
>
> (c) If the sale is subject to zero percent (0%) value-added tax, **the term 'zero-rated sale' shall be written or printed prominently on the invoice or receipt**;
>
> (d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, **the invoice or receipt shall clearly indicate the breakdown of the sale price between its taxable, exempt and zero-rated components**, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt: *Provided*, **That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated component of the sale**. *(Emphasis supplied)*

In the present case, the following requirements in Section 113(B)(2) of the NIRC of 1997, as amended, are relevant: *(1)* Subparagraph (c)—that the term "zero-rated" shall be written or printed prominently on the invoice or receipt; and, *(2)* Subparagraph (d) thereof—in instances of mixed transactions, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components ("breakdown requirement" for brevity). Note that the breakdown requirement did not provide for any writing/printing of the term "zero-rated" in case a single document is to be issued for mixed transactions.

The issue before us is whether the ORs are compliant with the requirement under subparagraph (c) of Section 113(B)(2) of the NIRC of 1997, as amended.

The Court in Division found that the MSCI Philippines substantially complied with such requirement.

This Court agrees with the Court in Division. Upon scrutiny of the supporting ORs of MSCI Philippines' zero-rated sales, the Court observes that the term "zero-rated" appears in the breakdown portion of the ORs. Further, the amount of service fee in USD was clearly handwritten beside and aligning with the term "Zero Rated Sales" on the face of the OR. While it is true that the printing of a breakdown portion in the OR is in compliance with the breakdown requirement, it can also be said that the writing of the sales amount beside the term "Zero Rated Sales" is a substantial compliance with the requirement of writing/printing the term "zero-rated" on receipt. To the Court's mind, with such presentation, there is no other conclusion to be drawn other than that the amount pertains to zero-rated sales. Hence, the Court affirms the conclusion of the Court in Division that MSCI Philippines substantially complied with the requirement under Section 113(B)(2)(c) of the NIRC of 1997, as amended, through the presentation of the amounts aligned with the "Zero Rated Sales" in the breakdown portion of the ORs.

In view of the foregoing disquisitions, this Court holds that MSCI Philippines was able to comply with the invoicing requirements as found by the Court in Division.

All told, even if the Court can take jurisdiction over the present *Petition for Review*, this Court still finds no reversible error with the Court in Division's pronouncements.

WHEREFORE, premises considered, the *Petition for Review* filed on July 8, 2024 is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

HENRY S. ANGELES
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

MA. BELEN M. RINGPIS-LIBAN
Acting Presiding Justice