Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 1156** (CTA Case No. 8180)
	Present: DEL ROSARIO, P.J., CASTAÑEDA, JR., BAUTISTA,
-versus-	UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, and RINGPIS-LIBAN, JJ.
SUTHERLAND GLOBAL SERVICES PHILIPPINES, INC., *Respondent.*	Promulgated: OCT 28 2015 3:25 p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision is a Petition for Review for the Court *en banc* under *Section 2(a)(1), Rule 4*, in relation to *Section 4(b), Rule 8 of the 2005 Revised Rules of the Court of Tax* Appeals (RRCTA), *as amended*, seeking the reversal of the Decision[1] and Resolution[2] rendered by the Third Division of this Court on January 13, 2014 and March 24, 2014, respectively, which partially granted respondent's claim for refund in the reduced amount of ₱11,916,827.02, representing its erroneously paid 5% gross income tax for the fiscal year ending June 30, 2008.

The antecedent facts taken from the assailed Decision of the Third Division of this Court read as follows:

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[1] Penned by Associate Justice Esperanza R. Fabon-Victorino and concurred in by Associate Justices Lovell R. Bautista and Ma. Belen M. Ringpis-Liban; *En Banc* Docket, pp. 13-34.
[2] *Id.*, at 36-38.

"[Respondent] Sutherland Global Services Philippines, Inc. is an existing, non-pioneer Information Technology (IT) locator enterprise registered as an ECOZONE IT Enterprise by virtue of the Philippine Economic Zone Authority (PEZA) Certificates of Registration Nos. 05-10-IT and 06-90-IT. It is also registered with the Clark Development Corporation (CDC) prior to the proclamation of the Clark Special Economic Zone as a PEZA Special Economic Zone.

[Petitioner] is the Commissioner of the Bureau of Internal Revenue (BIR), with authority to act on claims for refund or tax credit of overpaid or erroneously paid or collected internal revenue taxes, with office at the BIR National Office Building, Diliman, Quezon City.

On December 20, 2006, a Registration Agreement dated November 22, 2006 was executed authorizing the [respondent] to conduct and operate its business inside the Clark Special Economic Zone (CSEZ). Under the Agreement, PEZA also granted [respondent] tax incentives under Republic Act (RA) No. 7916, as amended, more particularly, to 'pay 5% tax on gross income, in lieu of all national and local taxes, subject to PEZA and BIR rules and regulations' and 'Tax and duty exemption on importation of capital equipment, raw materials and supplies'.

On January 18, 2007, the PEZA Board passed Resolution No. 07-037 approving the grant of full PEZA Incentives to CSEZ export-oriented and IT locator enterprises that registered with CDC after the proclamation of CSEZ as a PEZA Special Economic Zone.

On February 2, 2007, a Supplemental Agreement was executed which formed part of the original Agreement, entitling [respondent] to a four (4)-year Income Tax Holiday (ITH) under non-pioneer status. Upon the expiration of the ITH incentive, [respondent] shall enjoy 5% gross income tax (GIT) incentive and other incentives under the PEZA Law.

On March 20, 2007, Republic Act No. 9400 was enacted, Section 7 thereof states:

> SECTION 7. Business enterprises presently registered and granted with tax and duty incentives by the Clark Development Corporation (CDC), Poro Point Management Corporation (PPMC), JHMC, and Bataan Technological Park Incorporated (BTPI), including such governing bodies, shall be entitled to the same incentives until the

expiration of their contracts entered into prior to the effectivity of this Act.

In relation to the foregoing, [respondent] claims that during fiscal year July 1, 2007 to June 30, 2008, it had erroneously paid 5% preferential tax granted to it under the Registration Agreement on its gross income in the total amount of P12,147,471.73 instead of the ITH given under the Supplemental Agreement.

On October 12, 2010, [respondent] filed an administrative claim for refund with [petitioner] through BIR Revenue Region No. 8.

On October 15, 2010, or three (3) days after the filing of its administrative claim, [respondent] filed the instant Petition for Review with this Court claiming inaction on the part of [petitioner].

On December 3, 2010, [petitioner] filed her Answer essentially stating that [respondent] must first prove its entitlement to the claim for refund/tax credit. In any event, [respondent] failed to exhaust administrative remedies having filed the instant Petition for Review only three (3) days after it lodged its administrative claim virtually depriving respondent of the opportunity to determine the merits of its claim.

After the pre-trial conference or on February 25, 2011, the parties filed their Joint Stipulation of Facts and Issues.

[Respondent] presented its Tax Manager Alteza Alindogan Dy who testified that [respondent] was organized under the laws of Cayman Islands. It was registered with the Securities and Exchange Commission (SEC) on May 27, 2005 for the purpose of establishing a branch office in the Philippines.

[Respondent] is into consulting services, account management services, technical support/help desk services, customer care services, and back office processing center. It is a non-pioneer Information Technology (IT) locator enterprise registered as an Ecozone IT Enterprise by virtue of PEZA Certificate of Registration No. 05-10-IT and as a Clark Special Economic Zone by virtue of PEZA Certificate of Registration No. 06-90-IT. It is also registered with the BIR.

On December 20, 2006, [respondent] entered into a Registration Agreement with PEZA entitling it to operate its business inside the Clark Special Economic Zone. The same Agreement granted [respondent] tax incentives under Republic Act (R.A.) 7916, as amended, and under the PEZA IT Guidelines. The tax incentives allow [respondent] to pay 5% tax on gross income in lieu of all national and local taxes, subject to PEZA and BIR rules and regulations, and tax and duty exemption on importation of capital equipment, raw materials and supplies.

A Supplemental Registration Agreement was executed on February 2, 2007 which entitled [respondent] to a four (4)-year Income Tax Holiday (ITH) under its non-pioneer status. Upon the expiration of the 4-year ITH, [respondent] shall be entitled to the 5% gross income incentive in lieu of all tax incentives.

[Respondent] commenced its commercial operations on August 9, 2006. For fiscal year July 1, 2007 to June 30, 2008, it erroneously paid and remitted to the BIR the five percent (5%) preferential tax rate on its gross income in the amount of P12,147,471.73, as indicated in its Annual Income Tax Return and Amended Income Tax Return for the said fiscal year. This payment was erroneous since under the Supplemental Agreement, [respondent] is entitled to a 4-year ITH and would only be liable for 5% gross income tax upon the expiration of the 4-year ITH. Hence, on October 12, 2009, it filed an administrative claim for refund with the BIR.

In the Resolution of July 19, 2011, [respondent] was deemed to have rested its case.

During the presentation of evidence for [petitioner], her counsel manifested that no investigation and final report on the administrative claim was submitted, hence, [petitioner] would not present any.

After the case was deemed submitted for decision, the Court in the Resolution dated June 7, 2012, granted [respondent's] Motion for Leave to Admit Reply Memorandum and Motion to Re-Open the Case to Present Additional Evidence.

During the reopening of the case, [respondent] recalled its Tax Manager, Alteza Alindogan Dy. She testified that the P12,147,471.73 representing the 5% gross income tax erroneously remitted to the BIR subject of the instant claim for refund, was derived from the total taxable income from petitioner's PEZA registered activities conducted inside the Clark Special Economic Zone as indicated in its Amended Annual Income Tax Return for fiscal year July 1, 2007 to June 30, 2008 and a document denominated as Electronic Breakdown showing the list of [respondent's] total revenue from its business conducted

> in the CSEZ in connection with its PEZA registered activities.
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> [Respondent] also presented Abbet R. Barce, the Court-commissioned Independent Certified Public Accountant (ICPA), who identified his Final Report submitted to the Court on October 31, 2012. The Final Report states that the 5% gross income tax paid by [respondent] for the taxable year 2008, which was in lieu of all national and local taxes subject to PEZA and BIR rules and regulations and subject of the claim for refund, consist of 2% taxes due to the Local Government Unit (LGU), and 3% to the BIR. It also states that the amount of the claim as declared in the instant Petition matches the amount as declared in [respondent's] Income Tax Return (ITR).
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> He further testified that the total revenue reported by [respondent] under the 5% Special Rate in the amount of P1,167,424,834.69 was substantiated by documents showing that the same were earned by [respondent] from its PEZA registered activities. From the said amount was the income tax erroneously paid to the BIR in the amount of P12,086,926.52 properly supported by proof of tax payments.
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> After the parties filed their respective memoranda, the case was deemed submitted for decision."[3]

On January 13, 2014, the Court *a quo* promulgated a Decision[4] partially granting respondent's claim for refund in the reduced amount of ₱11,916,827.02, representing respondent's erroneously paid 5% gross income tax for the fiscal year ending June 30, 2008.

Petitioner thereafter filed a "Motion for Reconsideration"[5] which was denied by the Court *a quo* in a Resolution[6] dated March 24, 2014 for lack of merit.

Hence, the instant Petition for Review filed by the petitioner.

Petitioner raises the following arguments, to wit:[7]

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[3] *En Banc* Docket, pp. 13-18.
[4] *Supra* note 1.
[5] Posted on January 29, 2014; Division Docket, Vol. 2, pp. 676-682.
[6] *Supra* note 2.

1. Whether the Honorable Third Division of the CTA erred in partially granting respondent's Petition for Review and ordering the refund in the amount of ₱11,916,827.02, representing respondent's erroneously paid 5% gross income tax for the fiscal year ending June 30, 2008.

2. Whether the Honorable Third Division of the CTA erred in denying herein petitioner's Motion for Reconsideration.

The principal issue to be resolved in this case is whether respondent is entitled to a tax refund of its alleged erroneous payment of 5% gross income tax for the fiscal year ending June 30, 2008 in the reduced amount of ₱11,916,827.02.

Petitioner reiterates her argument that respondent's claim for refund must be denied for failure to establish that its income is actually derived from its PEZA-registered business activities within the CSEZ. Petitioner opines that the documents presented by respondent such as (1) the various computer-generated billing invoices it issued to non-resident customers; (2) debit memo; (3) the breakdown of time and cost charges, and (4) schedule of revenue for the Company's facility in the CSEZ are not enough proof to substantiate its claim that its income is actually derived from its PEZA-registered business activities within the CSEZ.

Petitioner further restates that in order for respondent to be exempt from the payment of income tax by virtue of the Income Tax Holiday, it must present proof of payment of other taxes such as Value-Added Tax (VAT) or Percentage Tax, and filing of the corresponding VAT/Percentage Tax returns.

In its comment,[8] respondent counter-argues that it is entitled to its claim for refund in the amount of ₱12,147,471.88, representing the 5% gross income tax

[7] *En Banc* Docket, p. 4.
[8] Filed on June 30, 2014; *En Banc* Docket, pp. 66-128.

erroneously paid to the BIR for the period July 1, 2007 and June 30, 2008. Respondent states that petitioner's assertions are entirely baseless as she has not presented any evidence to rebut respondent's claim for refund. Thus, respondent concludes that it has sufficiently established that its income for the fiscal year ending June 30, 2008 was actually derived from its PEZA-registered activities.

Respondent further asseverates that its filing of an Income Tax Return is not an admission that it is not exempt from payment of income taxes. Moreover, it has no duty to present evidence of payment of VAT and other taxes as the same has no relation to its claim for refund of income taxes erroneously paid.

The instant petition is bereft of merit for the reasons herein stated:

First. Respondent timely filed its administrative and judicial claims for refund pursuant to Sections 204(C) and 229 of the National Internal Revenue Code (NIRC) of 1997, as amended, which read:

> **SEC. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.** — The Commissioner may —
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> xxx
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> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty**: Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund. xxx
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> **SEC. 229. Recovery of Tax Erroneously or Illegally Collected.** — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any

penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, **no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment**; Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." [Emphasis supplied.]

Notably, the afore-mentioned provisions set a two-year prescriptive period, reckoned from date of payment of the tax or penalty, for the filing of a claim of refund or tax credit.[9] It is significant to emphasize that both provisions apply only to instances of erroneous payment or illegal collection of internal revenue taxes.[10]

Corollary thereto, it is well-settled that in claims for refund of erroneously or illegally paid corporate income tax, the two-year prescriptive period should be computed from the time of filing of the Adjustment Return or Annual Income Tax Return and final payment of income tax because it is only on such date that the taxpayer would know whether a tax is still due or a refund can be claimed based on the adjusted and audited figures.[11] Correspondingly, Section 77 (B) and (C) of the NIRC of 1997, as amended,[12] provides

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[9] *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.,* G.R. No. 184823, October 6, 2010.
[10] *Id.*
[11] *Commissioner of Internal Revenue v. TMX Sales, Inc., et al.,* G.R. No. 83736, January 15, 1992.
[12] SEC. 77. Place and Time of Filing and Payment of Quarterly Corporate Income Tax. —

xxx

(B) Time of Filing the Income Tax Return. — The corporate quarterly declaration shall be filed within sixty (60) days following the close of each of the first three (3) quarters of the taxable year. The final adjustment return shall be filed on or before the fifteenth (15th) day of April, or on or before the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year, as the case may be.

(C) Time of Payment of the Income Tax. — The income tax due on the corporate quarterly returns and the final adjustment income tax returns computed in accordance with Sections 75 and 76 shall be paid at the time the declaration or return is filed in a manner prescribed by the Commissioner.

that the final adjustment return shall be filed and paid on or before the fifteenth (15^{th}) day of April, or on or before the 15^{th} day of the fourth (4^{th}) month following the close of the fiscal year, as the case may be.

In the instant case, respondent filed its original[13] and amended[14] Annual Income Tax Returns on October 15, 2008 and November 28, 2008, respectively, and paid the corresponding 5% preferential tax rate on its gross income in the total amount of P12,147,471.73 for fiscal year July 1, 2007 to June 30, 2008. Consequently, counting the two-year prescriptive period from the date when respondent filed and paid its original Annual Income Tax Return pursuant to Sections 204(C) and 229 of the NIRC of 1997, as amended, or on October 15, 2008, it is clear that respondent timely filed its administrative claim before the petitioner on October 12, 2010[15] and its judicial appeal before this Court on October 15, 2010.[16]

Second. As a PEZA-registered enterprise, respondent has the option to choose between two sets of fiscal incentives pursuant to Section 23[17] of Republic Act (RA) No. 7916, as amended,[18] otherwise known as "The Special Economic Zone Act of 1995," to wit: (a) The five percent (5%) preferential tax rate on its gross income under RA No. 7916, as amended; and (b) the income tax holiday provided under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, as amended.

To be precise, Section 24 of RA No. 7916 provides a five percent (5%) preferential rate on gross income earned by all business enterprises within the ECOZONE in lieu of all national and local taxes, thus: *C*

[13] Exhibit "H", Division Docket, Vol. 1, p. 233.
[14] Exhibit "I", Division Docket, Vol. 1, p. 236.
[15] Exhibit "J", Division Docket, Vol. 1, pp. 238-264.
[16] Petition for Review, Division Docket, Vol. 1, pp. 1-37.
[17] SEC. 23. Fiscal Incentives. – Business establishments operating within the ECOZONES shall be entitled to the fiscal incentives as provided for under Presidential Decree No. 66, the law creating the Export Processing Zone Authority, or those provided under Book VI of Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987.
[18] An Act Providing For The Legal Framework And Mechanisms For The Creation, Operaton, Administration, And Coordination Of Special Economic Zones In The Philippines, Creating For This Purpose, The Philippine Economic Zone Authority (Peza), And For Other Purposes.

SEC. 24. Exemption from National and Local Taxes.- Except for real property taxes on land owned by developers, no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE. In lieu thereof, five percent (5%) of the gross income earned by all business enterprises within the ECOZONE shall be paid and remitted as follows:

(a) Three percent (3%) to the National Government;

(b) Two percent (2%) which shall be directly remitted by the business establishments to the treasurer's office of the municipality or city where the enterprise is located.

In contrast, Title III, Article 39(a)(1) of Book VI of Executive Order (EO) No. 226, otherwise known as "The Omnibus Code of 1987," grants a four (4) to six (6) years Income Tax Holiday (ITH) from commercial operation to a registered pioneer and non-pioneer enterprises, respectively, thus:

Article 39. Incentives to Registered Enterprises. All registered enterprises shall be granted the following incentives to the extent engaged in a preferred area of investment;

(a) Income Tax Holiday.

(1) For six (6) years from commercial operation for pioneer firms and four (4) years for non-pioneer firms, new registered firms shall be fully exempt from income taxes levied by the National Government. Subject to such guidelines as may be prescribed by the Board, the income tax exemption will be extended for another year in each of the following cases:

i. the project meets the prescribed ratio of capital equipment to number of workers set by the Board;

ii. utilization of indigenous raw materials at rates set by the Board;

iii. the net foreign exchange savings or earnings amount to at least US$500,000.00 annually during the first three (3) years of operation.

The preceding paragraph notwithstanding, no registered pioneer firm may avail of this incentive for a period exceeding eight (8) years.

In this case, respondent was entitled to 5% tax on gross income incentive, in lieu of all national and local taxes and tax and duty exemption on importation of capital equipment, raw materials and supplies, pursuant to the Registration Agreement it executed with PEZA on December 20, 2006, the pertinent portion of which reads:

> "**ARTICLE XIII**
> **INCENTIVES**
>
> 13. The REGISTRANT'S project shall be entitled to the following incentives under R.A. 7916, as amended, and the PEZA IT Guidelines, subject to the following terms and conditions:
> 13.1 The REGISTRANT shall pay 5% tax on gross income, in lieu of all national and local taxes, subject to PEZA and BIR rules and regulations.
>
> 13.2 Tax and duty exemption on importation of capital equipment, raw materials and supplies;"

Subsequently, respondent was granted a 4-year ITH under non-pioneer status by virtue of a Supplemental Agreement it executed with PEZA on February 2, 2007, the pertinent portion of which reads:

> "**1. The REGISTRANT shall be entitled to four (4) years Income Tax Holiday (ITH) under non-pioneer status and upon the expiration of the ITH incentive, the REGISTRANT shall be entitled to 5% gross income tax (GIT) incentive and to other incentives under the PEZA law.**
>
> 2. The REGISTRANT shall automatically revert to the enjoyment of incentives for CSEZ once the pertinent law is enacted by Congress.
>
> 3. Nothing herein contained shall be construed as amending or modifying any of the terms and conditions of the Original Contract except as herein expressly provided.
>
> 4. This Agreement shall form an integral part of the Original Contract."[19] [Emphasis supplied.]

[19] Exhibit "F to F-1", Supplemental Agreement dated February 2, 2007; Division Docket, Vol. 1, pp. 201-202.

A careful reading of Supplemental Agreement executed between PEZA and respondent reveals that the latter was entitled to 4 years ITH under non-pioneer status from its commercial operations on August 9, 2006[20] or until August 9, 2010. Thereafter, upon expiration of the ITH incentive, respondent shall be entitled to 5% gross income tax (GIT) incentive and to other incentives under the PEZA law.

Nevertheless, records disclosed that for fiscal year July 1, 2007 to June 30, 2008, respondent paid and remitted to the BIR the 5% preferential tax rate on its gross income in the total amount of P12,147,471.73, broken down as follows:

INCOME TAX RETURN PERIOD	REFERENCE	AMOUNT PAID
1ST QUARTER INCOME TAX RETURN	EXHIBIT "CC-1"[21]	2,589,737.00
2ND QUARTER INCOME TAX RETURN	EXHIBIT "CC-2"[22]	3,890,921.73
3RD QUARTER INCOME TAX RETURN	EXHIBIT "CC-3"[23]	1,863,524.00
ORIGINAL ANNUAL INCOME TAX RETURN	EXHIBIT "H"[24]	3,789,812.00
AMENDED ANNUAL INCOME TAX RETURN	EXHIBIT "I"[25]	13,477.00
		12,147,471.73

It bears stressing that while respondent is entitled to the 4-year ITH under the Supplemental Agreement, such incentive shall apply only to registered operations of the ECOZONE Enterprise and only during the period of its registration with PEZA.[26] Thus, it is incumbent upon the respondent to prove that the total revenue relating to the subject tax refund was actually earned from its PEZA-registered activities within the CSEZ for the fiscal year ending June 30, 2008. ✓

[20] Exhibit "L"; Division Docket, Vol. 1, p. 266.
[21] Division Docket, Vol. 2, p. 583.
[22] *Id.*
[23] *Id.*
[24] Division Docket, Vol. 1, p. 233.
[25] Division Docket, Vol. 1, p. 236.
[26] Part VII, Rule XIII, Rules and Regulations to Implement Republic Act No. 7916 which reads:
PART VII - INCENTIVES TO ECOZONE ENTERPRISES
Rule XIII - Application and Entitlement
xxx
SECTION 5. Limitation of Entitlement to Incentives - Incentives granted by the PEZA shall apply only to registered operations of the ECOZONE Enterprise and only during the period of its registration with PEZA.

The Independent CPA (ICPA) Report[27] reveals that respondent's total revenue in the amount of P2,426,402,646.00 declared in its Amended Income Tax Return was derived from its various facilities with the following assigned business unit codes:

Business Unit Code per Site	Location
PHL01	ExportBank Plaza Building, Makati City
PHL02	CSEZ
PHL03	Burgundy Corporate Tower, Makati City
PHL04	Camarines Sur Information Technology Park
PHL05	Davao City - TESDA
PHL06	Luisa Avenue Square IT Park, Davao City

The ICPA compared the amount per Breakdown of Revenues per Site as against the Revenues per Amended 2008 Annual Income Tax Return as follows:

	ITH / "Exempt" Column *(Sites: PHL01, PHL03, PHL04, PHL06)*	**GIT / "Special Rate" Column** *(Site: PHL02)*	**RCIT / "Taxable Column** *(Site: PHL05)*
Revenue per Breakdown of Revenues per Site	₱ 1,206,186,614.00	₱ 1,173,272,664.27	₱ 46,943,362.65
Revenue per Amended 2008 Annual Income Tax Return	1,206,186,619.00	1,173,272,664.00	46,943,362.00
Discrepancy	**₱ (4.92)**	**₱ 0.27**	**₱ (0.35)**

The revenues from the PEZA-registered activities within the CSEZ (PHL02) under the "Special Rate" column in its Amended 2008 Annual Income Tax Return in the total amount of ₱1,173,272,664.27 is the subject of respondent's present claim for refund.

Upon review of the supporting documents of respondent's income from PEZA-registered activities within the CSEZ (PHL02), the ICPA verified that the total revenues of ₱1,167,424,834.69 were actually earned from its PEZA-registered activities within the CSEZ for the fiscal year ending June 30, 2008. The said amount is computed as follows:[28]

Nature	Reference	Amount
Revenues generated from the Company's registered activities within the CSEZ reported in the 2008		₱ 1,150,343,972.51

[27] Exhibit "R-1", pp. 4-5; Division Docket, Vol. 2, pp. 529-530.
[28] *Id.*, at 7-8; Division Docket, Vol. 2, pp. 532-533.

Audited Financial Statements *(Exhibit X)* and reported under the 5% Special Rate per Amended 2008 Annual Income Tax Return *(Exhibit T)* which are supported with computer-generated billing invoices dated within the period July 1, 2007 to June 30, 2008, issued by the Company to non-resident customers *(Exhibit AA)*	*Annex A, Page 18*	
"Inter-unit Revenues" generated from the Company's registered activities within the CSEZ reported in the 2008 Audited Financial Statements *(Exhibit X)* and reported under the 5% Special Rate per Amended 2008 Annual Income Tax Return *(Exhibit T)* which are supported with computer-generated debit notes dated within the period July 1, 2007 to June 30, 2008, issued by the Company to its non-resident affiliates *(Exhibit EE)*	*Annex B, Page 19*	651,699.49
Revenues generated from the Company's registered activities within the CSEZ reported in the 2008 Audited Financial Statements *(Exhibit X)* and reported under the 5% Special Rate per Amended 2008 Annual Income Tax Return *(Exhibit T)* which are supported with Breakdown of Time and Cost Charges *(Exhibit FF)* for non-resident customers covering the period July 1, 2007 to June 30, 2008	*Annex C, Page 20*	16,429,162.69
Total		**₱1,167,424,834.69**

The ICPA further noted that the reported revenue in the amount of ₱5,847,829.58 are either supported with computer-generated billing invoices but not dated within the fiscal period ending June 30, 2008, or with no supporting documents available during the time of review, as shown below:[29]

Nature	**Reference**	**Amount**
Revenues generated from the Company's registered activities within the CSEZ reported in the 2008 Audited Financial Statements *(Exhibit X)* and reported under the 5% Special Rate per amended 2008 Annual Income Tax Return *(Exhibit T)* which are supported with computer-generated billing invoices not dated within the period July 1, 2007 to June 30, 2008, issued by the Company to non-resident customers *(Exhibit GG)*.	*Annex D, Page 21*	₱ 3,872,713.58
Accrued revenues generated from the Company's registered activities within the CSEZ reported in the 2008 Audited Financial Statements *(Exhibit X)* and reported under the 5% Special Rate per Amended 2008 Annual income Tax Return *(Exhibit T)* where supporting documents are not available during the time of review.		1,975,116.00
Total		**₱ 5,847,829.58**

Therefore, the ICPA concludes that out of ₱1,173,272,664.00 total revenue reported in the Amended 2008 Annual Income Tax Return under the 5% Special Rate, only the total revenue amounting to ₱1,167,424,834.69 were properly supported by documents and/or schedules.

[29] *Id.*, at 8; Division Docket, Vol. 2, p. 532.

Consequently, the corresponding income tax paid for the said revenue is ₱12,086,926.52.[30]

Nevertheless, after a careful review of records of the instant case, We affirm the findings of the Third Division of this Court in the assailed Decision that the amount of ₱16,429,162.69 included in the recommended amount of the ICPA that was supported with Breakdown of Time and Cost Charges[31] should be further disallowed as there is no evidence to prove that respondent actually billed the said amount to a certain customer for services rendered by petitioner within the CSEZ. We quote:[32]

> xxx [T]he Court finds that out of the P1,167,424,834.69 revenue recommended by the ICPA as pertaining to respondent's PEZA-registered activities within the CSEZ, the amount of P16,429,162.69 that was supported with Breakdown of Time and Cost Charges should be disallowed. The Court cannot give credence to the Breakdown of Time and Cost Charges as it merely shows computations and does not establish that a particular amount was actually billed to a certain customer for services rendered by petitioner within the CSEZ.
>
> In fine, out of the P1,173,272,664.00 total revenue subjected to 5% gross income tax, only the amount of P1,150,995,672.00 (P1,167,424,834.69 less P16,429,162.69) was actually proved to have been earned by respondent from its PEZA-registered activities within the CSEZ for the FY ending June 30, 2008. But since respondent is exempt from payment of income tax on income earned from its PEZA-registered activities within the CSEZ for the FY ending June 30, 2008, only the amount of P11,916,827.02 representing the 5% income tax for its CSEZ revenue of P1,150,995,672.00 for FY 2008 constitutes erroneously paid tax, which is the proper subject for refund pursuant to Sections 204 (C) and 229 of the NIRC of 1997, as amended. Below is the computation of the erroneous income tax payment of P11,916,827.02:

Income Tax Claimed for Refund	₱ 12,147,471.73
Multiplied by: Allocation Factor Validly Substantiated CSEZ Revenues	 ₱ 1,150,995,672.00
Total Revenues Subjected to	1,173,272,664.00

[30] *Id.*, at 10; Division Docket, Vol. 2, p. 535.
[31] Exhibit "FF", Division Docket, Vol. 2, p. 555.
[32] *En Banc* Docket, pp. 31-32.

5% Special Rate	
Allocation Factor	0.9810129455
Refundable Erroneously Paid Income Tax	**₱ 11,916,827.02**

Finally, petitioner's argument that respondent needs to prove its payment of other taxes such as Value-Added Tax (VAT)/Percentage Tax Returns in order to claim its refund for erroneous payment of tax by reason of its availment of ITH incentive is bereft of any factual or legal basis. This argument turns a blind eye to the rationale behind the enactment of RA No. 7916.

In ***Commissioner of Customs v. Philippine Phosphate Fertilizer Corporation***,[33] the Supreme Court emphasized the need to balance the interest of the government vis-à-vis the business enterprises duly registered with the PEZA in this wise:

> "The incentives offered to enterprises duly registered with the PEZA consist, among others, of tax exemptions. **These benefits may, at first blush, place the government at a disadvantage as they preclude the collection of revenue. Still, the expectation is that the tax breaks ultimately redound to the benefit of the national economy, enticing as they do more enterprises to invest and do business within the zones; thus creating more employment opportunities and infusing more dynamism to the vibrant interplay of market forces.**
>
> xxx
>
> The grant of exemption under Section 17(1) is clear and unambiguous. There is neither logic nor need to cast a speck of uncertainly on a doubt-free situation to resolve the resulting forced question in favor of the government. **The disposition arises not out of a blind solicitude towards the concerns of business, but from the duty to affirm and enforce a crystal-clear legislative policy and initiative intent. Indeed, the revenue collectors of the government should be cautious before attempting to gut away at concessions the State itself has deemed worthy of award to deserving investors.** It is unsound practice and uncouth behaviour to invite over guests to dinner at home, then

[33] G.R. No. 144440, September 1, 2004.

charge them for the use of the silverware before allowing them to dine." [Emphasis supplied.]

In fine, We see no cogent reason to deviate from the factual findings of the Court *a quo* that respondent is entitled to its claim for refund in the amount of ₱11,916,827.02, representing its erroneously paid 5% gross income tax for the fiscal year ending June 30, 2008.

WHEREFORE premises considered, the petition is **DENIED**. The Decision and Resolution of the Third Division of this Court in CTA Case No. 8180 promulgated on January 13, 2014 and March 24, 2014, respectively, are hereby **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

(On Leave)

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen SL

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

C E R T I F I C A T I O N

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

ROMAN G. DEL ROSARIO
Presiding Justice