CTA Form No. 8

21-000207-0056

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CTA CASE NO. 10537

SAS INSTITUTE (PHILIPPINES.), INC.,
Petitioner,

- versus -

NOTICE OF DECISION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. YVETTE C. TENEFRANCIA
Bureau of Internal Revenue
Revenue Region No. 8B, BIR Legal Division
2nd Floor, BIR Revenue Regional Office Building
No. 313 Gil Puyat Avenue, Makati City

QUISUMBING TORRES
16th Floor, One/Neo Center
26th Street corner 3rd Avenue, Crescent Park West
Bonifacio Global City, Taguig City

GREETINGS:

You are hereby notified by these presents that on **March 22, 2024,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **March 25, 2024.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

SAS INSTITUTE (PHILIPPINES.), INC., *Petitioner,*	**CTA Case No. 10537**
	Members: **DEL ROSARIO,** *P.J., Chairperson,* **MANAHAN,** and **REYES-FAJARDO** *JJ.*
- versus -	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAR 2 2 2024 1:50PM

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DECISION

REYES-FAJARDO, *J.*:

This *Petition for Review* filed on April 24, 2021 by SAS Institute (Philippines.), Inc. against the Commissioner of Internal Revenue seeking the refund or issuance of a tax credit certificate (TCC), the amount of ₱29,312,399.36, representing its alleged erroneously paid income tax for calendar year (CY) 2018.[1]

PARTIES

Petitioner SAS Institute (Philippines.), Inc. is a domestic corporation with principal place of business at 9th Floor Asian Century Center, 27th Street corner 3rd Avenue, Bonifacio Global City, Taguig. It is registered with the Bureau of Internal Revenue (BIR) Revenue District Office No. 44, with Taxpayer Identification No. 000-815-872-000.[2]

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1 See *Petition for Review*, Docket - Vol. I, at p. 13.
2 Par. 4, Stipulated Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket - Vol. I, p. 260.

Respondent is the duly appointed Commissioner of Internal Revenue vested with authority, among others, to act upon and approve claims for refund or tax credit of overpaid or erroneously paid internal revenue taxes. He holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City, where he may be served summons and other legal processes of the Court.[3]

FACTS

On April 6, 2018, petitioner filed its Annual Income Tax Return (AITR) for calendar year (CY) 2017.[4] On April 11, 2019, petitioner filed its AITR for CY 2018 and paid the income taxes due thereon on April 12, 2019.[5]

On April 8, 2021, petitioner filed with the BIR Revenue District Office (RDO) No. 44, an *Application for Tax Credits / Refunds* (BIR Form No. 1914), and a letter dated April 7, 2021, requesting for a refund or issuance of TCC of erroneously paid income tax for TY 2018, in the amount of ₱29,312,339.36.[6] Petitioner states that it erroneously included the deferred subscription revenue in the amount of ₱269,085,320.31, which was reported in its AITR for CY 2017, as part of the its total revenue for CY 2018.

On May 24, 2021, petitioner filed a *Petition for Review*,[7] to which respondent posted an *Answer* on January 26, 2022.[8]

On May 26, 2022, the Pre-Trial Conference was held.[9]

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3 Par. 6, Stipulated Facts, JSFI, Docket - Vol. I, p. 261.

4 Exhibit "P-4," Docket - Vol. II, p. 723.

5 Exhibit "P-5," Docket - Vol. II, p. 747.

6 Par. 10, *Petition for Review*, vis-à-vis par.1, *Answer*, Docket - Vol. I, pp. 11 and 183, respectively. Refer also to Exhibits "P-6" and "P-7," Docket - Vol. II, pp. 772 to 776 and 777, respectively.)

7 Docket - Vol. I, pp. 9 to 14; 85 to 87; Resolution dated June 11, 2021, pp. 141 to 142; Petitioner's *Manifestation and Compliance* dated July 9, 2021 with attached *Verification and Certification* dated May 24, 2021, Docket - Vol. I, pp. 143 to 146; Resolution dated July 16, 2021, Docket - Vol. I, pp. 148 to 150; Petitioner's *Manifestation and Compliance* dated October 25, 2021 with attached *Verification and Certification* dated August 2, 2021, etc., Docket - Vol. I, pp. 165 to 170.

8 Docket - Vol. I, pp. 183 to 185.

9 Notice of Pre-Trial Conference dated March 30, 2022, Docket - Vol. I, pp. 194 to 196; Minutes of the hearing held on, and Order dated, May 26, 2022, Docket - Vol. I, pp. 222 to 222-B and 223 to 223-B, respectively.

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On June 16, 2022, respondent posted a *Manifestation*,[10] wherein he stated that he will not be presenting any evidence in this case, which was noted, through Resolution dated July 15, 2022.[11]

On even date, the parties filed their *Joint Stipulation of Facts and Issues*,[12] which was approved, via Resolution dated July 21, 2022.[13] On the basis thereof, the Court issued a Pre-Trial Order dated August 11, 2022.[14]

During the trial, petitioner presented: (1) Ms. Elsie E. Dela Rosa,[15] petitioner's Finance Director; and (2) Ms. Maricris U. See,[16] the Court-commissioned independent certified public accountant (ICPA See), as its witnesses.[17]

On November 2, 2022, petitioner filed its *Formal Offer of Evidence*,[18] to which respondent posted his *Comment (To Petitioner's Formal Offer of Evidence)* on November 9, 2022.[19]

By Resolution dated January 18, 2023,[20] the Court admitted petitioner's offered exhibits.

In the Resolution dated April 3, 2023, this case was submitted for decision,[21] considering respondent's *Memorandum* posted on March 14, 2023;[22] and petitioner's *Memorandum* filed on March 16, 2023.[23]

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[10] Docket - Vol. I, pp. 229 to 230.
[11] Docket - Vol. I, pp. 258 to 259.
[12] Docket - Vol. I, pp. 260 to 265.
[13] Docket - Vol. I, p. 275.
[14] Docket - Vol. I, pp. 285 to 291.
[15] Exhibit "P-3," Docket - Vol. I, pp. 88 to 94; Order dated August 11, 2022, Docket - Vol. I, pp. 281 to 283.
[16] Exhibit "P-18," Docket - Vol. II, pp. 654 to 664; Minutes of the hearing held on, and Order dated, October 12, 2022, Docket - Vol. II, pp. 684 to 688.
[17] Order dated August 11, 2022, Docket - Vol. I, pp. 281 to 283; Respondent's *Manifestation* dated August 16, 2022, Docket - Vol. I, pp. 292 to 293; Resolution dated September 16, 2022.
[18] Docket - Vol. II, pp. 693 to 699.
[19] Docket - Vol. II, pp. 778 to 779.
[20] Docket - Vol. II, pp. 787 to 788.
[21] Minute Resolution dated April 3, 2023, Docket - Vol. II, p.813.
[22] Docket - Vol. II, pp. 806 to 810.
[23] Docket - Vol. II, pp. 794 to 803.

ISSUE

Is petitioner entitled to the refund or issuance of TCC in the amount of ₱29,312,399.36, representing its alleged erroneously paid income tax for TY 2018?[24]

ARGUMENTS

Petitioner argues that its claim for refund or issuance of TCC of erroneously paid income tax for CY 2018 should be granted because: (a) its administrative and judicial claims were filed within the two (2)-year prescriptive period under Sections 204 (C) and 229, of the National Internal Revenue Code of 1997 (NIRC), as amended; and (b) the inclusion of its deferred subscription revenue in the amount of ₱269,085,320.31 which was already reported in its AITR for CY 2017 was erroneously included again as part of its revenue for CY 2018, resulted in overpayment of taxes in the amount of ₱29,312,339.36.

Respondent counters that petitioner is not entitled to the claim for refund or issuance of TCC for erroneously paid income tax for TY 2018 because: (a) the *Petition for Review* was filed out of time; (b) it failed to substantiate its claim for refund; and, (c) claims for refund are strictly construed against petitioner for the same partake the nature of tax exemption.

RULING

The Petition is partially granted.

Section 7(a)(2) of Republic Act (RA) No. 1125,[25] as amended by RA No. 9282, in relation to Section 3(a)(2), Rule 4 of the Revised Rules

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[24] Par. 7, Stipulated Issues, JSFI, Docket – Vol. I, p. 261.

[25] Sec. 7. Jurisdiction. - The CTA shall exercise:

a. **Exclusive appellate jurisdiction to review by appeal**, as herein provided:

...

2. **Inaction by the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial; (Boldfacing supplied)

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of the Court of Tax Appeals (RRCTA)[26] clothes the Court with jurisdiction over the inaction of respondent involving refund of internal revenue taxes, among others. Among the kinds of refund of internal revenue taxes is one that is erroneously paid, as recognized in Sections 204[27] and 229[28] of the NIRC, as amended.

Relevantly, *Commissioner of Internal Revenue v. Carrier Air Conditioning Philippines, Inc. (Carrier)*[29] laid down the conditions for the Court to acquire jurisdiction over a claim for refund or tax credit premised on Section 204(C), in relation to Section 229 of the NIRC, as amended, thus:

> Section 204 [of the NIRC, as amended] refers to the Commissioner of Internal Revenue's administrative authority to credit or refund erroneously paid or illegally collected taxes. Under this provision, an administrative claim for refund or credit must be filed within two years from payment of the tax.

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26 **SEC. 3.** *Cases within the jurisdiction of the Court in Division.* - The Court in Division shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal the following:
...
(2) **Inaction by the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes, fees or other charges,** penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws, administered by the Bureau of Internal Revenue ... (Boldfacing supplied)

27 **SEC. 204.** *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* - The Commissioner may -
...
(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. (Boldfacing supplied)

28 **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.

29 G.R. No. 226592, July 27, 2021.

97

> Section 229 [of the NIRC, as amended], on the other hand, requires two conditions for the filing of judicial claims: (1) an administrative claim must be filed first; and (2) the judicial claim must be filed within two years after payment of the tax sought to be refunded.
>
> Reading the two provisions together, both administrative and judicial claims must be filed within the two-year period. Furthermore, the administrative claim must be filed before the judicial claim. This Court has previously declared that "[t]imeliness of the filing of the claim is mandatory and jurisdictional. The [Court of Tax Appeals] cannot take cognizance of a judicial claim for refund filed either prematurely or out of time."

For income tax, *Commissioner of Internal Revenue v. TMX Sales, Inc., et al.*[30] clarified that the two-year prescriptive period under Section 229 of the NIRC, as amended shall be reckoned from the time of filing the Final Adjustment Return or the Annual Income Tax Return. This is because the taxpayer would know whether a tax is still due or a refund can be claimed based on adjusted and audited figures upon the filing of said Final Adjustment Return or AITR.

On April 11, 2019, petitioner filed its original AITR for CY 2018 and paid the income tax due on April 12, 2019.[31] The alleged erroneous payment of income tax occurred from the date of filing of petitioner's Annual ITR for CY 2018. Following *Carrier* and *TMX*, it had two (2) years from April 12, 2019, or until April 12, 2021, to file both its administrative and judicial claims for refund or tax credit in said order.

Record shows that petitioner timely filed its administrative claim for refund or tax credit on April 8, 2021.[32]

As for the judicial claim, petitioner also had until April 12, 2021 to file a Petition for Review before the Court. Said date is covered by several administrative circulars issued by the Supreme Court,[33] ordering the physical closure of courts and the suspension of the filing and service of motions, pleadings and other court submissions beginning March 29, 2021. The filing of pleadings and other court

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30 G.R. No. 83736, January 15, 1992.

31 Exhibit "P-14," Docket - Vol. II, pp. 747 to 771.

32 Exhibits "P-6" and "P-7," Docket - Vol. II, pp. 772 to 776 and 777, respectively.

33 Refer to AC No. 15-2021 dated April 3, 2021; AC No. 21-2021 dated April 10, 2021; AC No. 22-2021 dated April 14, 2021; AC No. 29-2021 dated April 30, 2021; AC No. 33-2021 dated May 14, 2021.

submissions shall resume seven (7) calendar days counted from the first day of physical reopening of the relevant court. The Court of Tax Appeals (CTA) physically reopened on May 17, 2021, pursuant to Supreme Court AC No. 33-2021 dated May 14, 2021.

Considering these issuances, petitioner had until May 24, 2021 to file a Petition for Review. On May 24, 2021, petitioner timely filed its judicial claim for refund or tax credit of erroneous payment of tax for CY 2018.[34]

The Court will now proceed to answer whether petitioner judicially established by sufficient and competent evidence its entitlement to a claim for refund or issuance of TCC.

Petitioner maintains that the amount of ₱29,312,399.36 is an erroneously paid tax. According to petitioner, its total revenue in its AITR for CY 2017 included deferred subscription revenue[35] in the amount of ₱269,085,320.31 which was included in its AITR for CY 2018.

The Court partly agrees with petitioner.

To recall, the alleged erroneous income tax payments stemmed from petitioner's inclusion of the deferred subscription revenue in the amount of ₱269,085,320.31 as part of its revenue in its AITR for CY 2018 despite having been declared and the IT for which had been paid in CY 2017. Consider the following presentation:

	CY 2017[36]	CY 2018[37]
Net Sales/Revenues/Receipts/Fees	₱753,758,919.00	₱1,300,387,263.00
Less: Cost of Sales/Services	362,425,123.00	961,859,009.00
Gross Income from Operation	₱391,333,796.00	₱ 338,528,254.00
Add: Other Taxable Income Not Subjected to Final Tax	1,198,006.00	1,420,183.00
Total Gross Income	₱392,531,802.00	₱ 339,948,437.00
Less: Ordinary Allowable Itemized Deductions	321,853,104.00	219,577,210.00

34 Docket - Vol. I, p. 10.

35 Exhibit "P-16," p. 7, Docket - Vol. I, p. 306.
Deferred Subscription Revenue - This refers to the payments that the Company receives from its customers but not yet recognized as revenue.

36 Part IV - Computation of Tax, Exhibit "P-4," Docket - Vol. II, p. 725.

37 Part IV - Computation of Tax, Exhibit "P-5," Docket - Vol. II, p. 750.

Net Taxable Income	₱ 70,678,698.00	₱ 120,371,227.00
Income Tax Rate	30%	30%
Income Tax Due other than MCIT	₱ 21,203,609.40	₱ 36,111,368.00
Minimum Corporate Income Tax (2% of Gross Income)	₱ 7,850,636.00	₱ 6,798,969.00
Total Income Tax Due	₱ 21,203,609.00	₱ 36,111,368.00
Less: Total Tax Credits		
Creditable Taxes Withheld from Previous Quarters	₱ 9,931,553.00	₱ 11,028,005.00
Creditable Taxes Withheld for the 4th Quarter	10,298,217.00	8,110,694.00
Total Tax Credits	₱ 20,229,770.00	₱ 19,138,699.00
Net Tax Payable (Overpayment)	**₱ 973,839.00**	**₱ 16,972,669.00**

Petitioner maintains that its reported revenue and taxable income for CY 2018 should have been:

Amounts in Philip/pine Peso	**2018 Actual ITR**	**2018 ITR (should be)**
Net sale of services	1,300,387,263.00	1,300,387,263.00
Less: Cost of Services	(961,859,009.00)	(961,859,009.00)
Gross Income from operation	338,528,254.00	338,528,254.00
Add: Other taxable income not subject to final tax	1,420,183.00	1,420,183.00
Total Gross Income	**339,948,437.00**	**339,948,437.00**
Less: Ordinary allowable itemized deduction	(219,577,210.00)	(219,577,210.00)
Net Taxable Income	120,371,227.00	120,371,227.00
Adjustments: Deferred Income already taxed in 2017		(269,085,320.31)
Adjusted Taxable Income	120,371,227.00	(148,714,093.31)
Income Tax Rate	30%	30%
Income Tax Due other than MCIT	36,111,368.10	-
MCIT	6,798,968.74	6,798,968.74
Aggregate Income Tax Due (Higher of RCIT or MCIT)	36,111,368.10	6,798,968.74
Less: Tax Credit from Prior Period	(19,138,698.58)	(19,138,698.58)
Less: Tax erroneously paid in 2018		(16,972,669.52)
Total Payable (Overpayment)	16,972,669.52	(29,312,399.36)

ICPA See explains that the taxable revenue reported during CY 2017 included the amount of ₱269,311,020.31. Said figure pertained to subscription payments collected in full/in advance in 2017. However, such advance collections will only be recognized as revenue for accounting purposes when earned in 2018. As such, to avoid double taxation on the same amount, a corresponding reversal during CY 2018 for tax purposes should be made. However, petitioner only considered ₱225,700.00 as reversal for deferred revenue during CY 2018:[38]

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38 Exhibit "P-16," p. 6, Docket - Vol. I, p. 306.

CY 2018 *(In Philippine Peso)*		SGV's Tax Re-computation	Company's Tax Computation*	Financial Statement** [Exhibit P-8A]
Licenses	₱	472,351,723.00	472,351,723.00	472,351,723.00
Post-Contract Support		173,973,798.00	173,973,798.00	173,973,798.00
Consultancy		164,910,245.00	164,910,245.00	164,910,245.00
Training		12,765,810.00	12,765,810.00	12,765,810.00
IFRS 15 Adoption Adjustment (a)		465,135,818.00	465,135,818.00	-
Deferred Revenue, PY (b)		(269,311,020,31)	(225,700.00)	-
Deferred Revenue, CY (c)		11,475,568.24	11,475,568.24	-
Revenue	₱	1,031,301,943.69	1,300,387,263.00	824,001,576

The difference amounting to P269,085,320.31 between the company's computation and SGV's re-computation pertains to the erroneous non-reversal of deferred subscription revenue realized in CY 2018 but already taxed in CY 2017.

According to ICPA See, petitioner used the subscription method of accounting for revenue derived from licensing computer software in 2017. This method requires the recognition of revenue from license agreements over the license period. Thus, petitioner used the subscription template to compute for the subscription revenue[39] and deferred subscription revenue on a monthly basis, which is initially based on invoice amount or contract price.[40] For income tax purposes, a re-computation is made at year-end to compute the deferred subscription revenue based on actual collection.

Petitioner's subscription method of reporting income proceeds from the concept of accrual basis of accounting, a generally accepted accounting principle that prescribes revenue recognition when it is earned regardless of whether it has been received or not.[41] Section 43 of the NIRC, as amended, permits the taxpayer to employ any accounting method, as long as it clearly reflects the latter's income:

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39 Exhibit "P-16," p. 7, Docket - Vol. I, p. 306.
Subscription Revenue - This refers to the earned revenue of the Company from licensing computer software based on the subscription method of accounting during taxable year 2017.

Provided below are the types of contract which subscription revenue is derived:

1) Standard Contract

2) Multi-Year Deal Contract

40 Exhibit "P-16," p. 7, Docket - Vol. I, p. 306.

41 Revenue Audit Memorandum Order No. 1-00, March 7, 2001.
Subject: Updated Handbook on Audit Procedures and Techniques Volume I (Revision — Year 2000)

> SEC. 43. *General Rule.* — The taxable income shall be computed upon the basis of the taxpayer's annual accounting period (fiscal year or calendar year, as the case may be) in accordance with the method of accounting regularly employed in keeping the books of such taxpayer, but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made in accordance with such method as in the opinion of the Commissioner clearly reflects the income. If the taxpayer's annual accounting period is other than a fiscal year, as defined in Section 22(Q), or if the taxpayer has no annual accounting period, or does not keep books, or if the taxpayer is an individual, the taxable income shall be computed on the basis of the calendar year.

In the case of *Department of Finance, et al. v. Asia United Bank et. al*,[42] the Supreme Court, citing *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*,[43] explained that an accounting method is a set of rules for determining when and how to report income and deductions. Any of the recognized methods in Chapter VIII, Title II of the NIRC[44] may be employed by any taxpayer so long as it reflects its income and expenses properly. The peculiarities of the business or occupation engaged in by a taxpayer would largely determine how it would report income and expenses in its accounting books or records. The NIRC does not prescribe a uniform, or even a specific method of accounting.

In this regard, to determine whether the alleged deferred subscription revenue of ₱269,085,320.31 was included in the AITRs for both CYs 2017 and 2018, petitioner's supporting documents must be examined.

Petitioner submitted the following documentary evidence, among others, to support its claim:[45]

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42 G.R. Nos. 240163 & 240168-69. December 1, 2021.

43 G.R. No. 183408, July 12, 2017, Citations omitted.

44 Chapter VIII, Title II of the NIRC enumerates the following recognized methods of accounting:
(1) Cash basis method;
(2) Accrual method;
(3) Installment method;
(4) Percentage of completion method; and
(5) Other accounting methods.

45 Formal Offer of Evidence, Docket – Vol. II, pp. 693 to 699.

Exhibit	Document
"P-3"	Sworn Statement dated 21 May 2021 of Ms. Elsie E. Dela Rosa [Petitioner's Finance Director]
"P-4"	Annual Income Tax Return (BIR Form No. 1702-RT) for CY 2017
"P-5"	Annual Income Tax Return (BIR Form No. 1702-RT) for CY 2018
"P-6"	Letter dated 7 April 2021 (Re: Administrative claim for refund of erroneously paid tax for taxable year 2018)
"P-7"	Application for Tax Credits/Refund (BIR Form No. 1914)
"P-8"	Audited Financial Statements for the CY 2018
"P-9"	Schedule/Subscription Template of Deferred Revenue for CY 2017
"P-10"	Supporting documents for Market Converge, Inc. (Standard Contract Sample)
"P-11"	Supporting documents for Land Bank of the Philippines (MYD Contract Sample)
"P-12"	Journal Entries of the Samples Selected for Standard and MYD Contract
"P-13"	Trial Balance for calendar year 2018 and CY 2017
"P-14"	BIR Form No. 2307 and 2306 of the Samples Selected
"P-15"	Supporting Documents of Schedule/ Subscription Template of Deferred Revenue for CY 2017
"P-16"	ICPA Report
"P-18"	Sworn Statement dated 7 October 2022 of Ms. Maricris U. See [Court-commissioned ICPA]

For purposes of computing the earned subscription revenue and deferred subscription revenue, petitioner used the actual number of days earned during the license term, computed as follows: [46]

Total Collections	P xxx
Revenue Earned as at year-end	(xxx)
Deferred Subscription Revenue	**Pxxx**

Revenue earned as at year-end date = Invoice Amount x (Days earned / License Term)

As reported by ICPA See, the amount of ₱269,085,320.31 may be broken down as follows:[47]

(In Philippine Peso) *Account Code and Account Name*		**Trial Balance**
269430-PHI-00000-XXX-430 DEFERRED TSR SUBSCRIPTION REVE	₱	424,324,796.52
269430-VTN-00000-XXX-430 DEFERRED TSR SUBSCRIPTION REVE		1,427,494.93
269430-ZZZ-00000-XXX-430 DEFERRED TSR SUBSCRIPTION REVE		(156,666,971.14)
	₱	**269,085,320.31**

46 Exhibit "P-16," p. 8, Docket – Vol. I, p. 306.
47 Exhibits "P-9D," Docket – Vol. I, p.442 and "P-13A," Docket – Vol. I, p.473.

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Amount per Trial Balance [**Exhibit P-13A**]	₱	**269,085,320.31**
Amount per Subscription Template [**Exhibit P-9D**]		**269,085,318.95**
Deferred Subscription Revenue	₱	**1.36**(*immaterial)*

To verify if the revenues reported for income tax purposes for CY 2017 includes the deferred subscription revenue which should no longer be subject to income tax for the CY 2018, ICPA See performed recalculation by selecting one sample of petitioner's standard license contract,[48] and one sample of its multi-year deal license contract.[49] She accounted for petitioner's deferred subscription revenue, as follows:[50]

. . .

Standard Contract

Standard contracts are license contract with a term of 1 year converted to 365 days.

. . .

We have obtained the supporting documents of the sample that we have selected [**Exhibit P-10**]. Below are the details of the transaction:

Customer Name: [Exhibit P-9B]	**Marketing Convergence Inc.**
Term of License Contract: [Exhibit P-9D]	July 13, 2017 - July 12, 2018 or 1 year
Converted Number of Days: [Exhibit P-9D]	365 Days
Invoice Amount: [Exhibit P-9D]	₱ 6,149,576.00
Amount Collected for the Year (net of VAT):	₱ 6,149,576.00
Amount collected per official receipt (gross of VAT and net of 2% withholding):[Exhibit P-10A]	₱ 6,764,533.60
Date and Year of Collection: [Exhibit P-10A]	December 18, 2017
Subscription Revenue: [Exhibit P-9B]	₱ 2,897,882.39
Deferred Subscription Revenue: [Exhibit P-9B]	₱ 3,251,693.61

The following are the recalculation made based on the sample selected:

Recalculation of Subscription Revenue:

Amount Collected for the Year:	₱ 6,149,576.00
Days earned:	172 Days (July 13, 2017 - Dec 31, 2017)
Computation:	₱ 6,149,576.00 X 172 Days/365 Days
Subscription Revenue:	₱ 2,897,882.39

48 Exhibit "10," Docket - Vol. I, pp.443-445.
49 Exhibit "11," Docket - Vol. I, pp. 446-456.
50 Exhibit "P-16," pp. 9-15, Docket - Vol. I, pp. 308-314.

The subscription revenue that was recognized for the year is based on days earned for the year 2017 - from the beginning of the contract which is July 13, 2017 up to the calendar year ended December 31, 2017.

Deferred Subscription Revenue:

Amount Collected for the Year:	₱ 6,149,576.00
Days Left:	193 Days (Jan 1, 2018 - July 12, 2018)
Computation:	₱ 6,149,576.00 X 193 Days/365 Days
Deferred Subscription Revenue:	₱ 3,251,693.61

The deferred subscription revenue that was recognized for the year is based on the number of remaining days on the terms of the contract - from January 1, 2018 up to the end of the contract which is on July 12, 2018.

It can be noted that the amount collected per official receipt does not tie up with the amount per invoice since the amount collected is inclusive of VAT and net of withholding tax. However, please note that in computing the deferred revenue, the total collection which is exclusive of VAT and withholding tax will be used. It is illustrated as follows:

Invoiced amount for the year 2017	P6,149,576.00
Value Added Tax	737,949.12
Withholding Tax (Invoiced amount x 2%)*	(122,991.52)
Amount Collected per Official Receipt	**₱6,764,533.60**

**2% EWT for services*

We also obtained the related BIR form 2307 of the selected transaction. [**Exhibit P-14G**]. **No exceptions noted.**

The above recalculation of the deferred subscription revenue on the sample selected ties-up with the amount presented in the [**Exhibit P-9B**] column "Deferred revenue based per PH GAAP".

...

Multi-Year Deal Contract

Multi-Year Deal Contracts are license contract with a term of 3 to 5 years.

...

We have obtained the supporting documents of the sample that we have selected [Exhibit P-11]. Below are the details of the transaction

Customer Name: [Exhibit P-9C]	**Land Bank of the Philippines**
Term of License Contract: [Exhibit P-9C]	July 27, 2015 - July 26, 2018 or 3 years
Converted Number of Days [Exhibit P-9C]	1,096 Days
Total Invoice Amount for the whole contract period: [Exhibit P-9C]	₱ 10,344,095.00
Invoice Amount - 1st Yr. (2015-2016)	3,336,805.00

Invoice Amount - 2nd Yr. (2016-2017)	3,503,645.00
Invoice Amount - 3rd Yr. (2017-2018)	3,503,645.00
Amount Collected for the Year 2017:	3,678,827.25
Date and Year of Collection - 1st Invoice[P-11A]	June 18, 2015
Date and Year of Collection - 2nd Invoice[P-11B]	June 29, 2016
Date and Year of Collection - 3rd Invoice[P-11C]	July 19, 2017
Subscription Revenue:	₱ 8,390,420.12
Deferred Subscription Revenue:	₱ 1,953,674.88

The following are the recalculation made based on the sample selected:

Recalculation of Subscription Revenue:

Amount of Revenue Collected during 2015*:	3,336,805.00
Amount of Revenue Collected during 2016*:	3,503,645.00
Amount of Revenue Collected during 2017*:	3,503,645.00
Subscription Revenue during 2015:**	2,706,587.27
Subscription Revenue during 2016:**	2,841,916.43
Subscription Revenue during 2017:**	2,841,916.43
Days earned:	889 Days (July 27, 2015 - Dec 31, 2017)
Computation:	₱ 10,344,095.00 X 889 Days/1,096 Days
Subscription Revenue:	**₱ 8,390,420.12**
Total Revenue Collected for 3 years, net of VAT	₱ 10,344,095.00
Total amount collected per official receipt, gross of VAT, net of 5% withholding VAT (on GOCC) and 2% withholding tax	₱ 10,861,299.50

**Net of VAT and excluding withholding tax:* [Exhibit P-11A to P-11B]
***Invoice amount x (Days earned/License term)*

The subscription revenue that was recognized for the year is based on days earned for the year 2017 - from the beginning of the contract dated July 27, 2015 up to the calendar year ended December 31, 2017.

Deferred Subscription Revenue:

Total Revenue Collected for 3 Years:	₱ 10,344,095.00
Days Left:	207 Days (Jan 1, 2018 - July 26, 2018)
Computation:	₱ 10,344,095.00 X 207 Days/1,096 Days
Deferred Subscription Revenue:	**₱ 1,953,674.88**

It can be noted that the amount collected per official receipt is not tie up with the amount per invoice since the amount collected is inclusive of VAT and net of withholding tax. However, please note that in computing the deferred revenue, the total collection which is exclusive of vat and withholding tax will be used. It is illustrated as follows (assuming 2015 amounts):

Invoiced amount for the year 2015	₱3,336,805.00
Value Added Tax	400,416.60
Withholding VAT (Invoiced amount x 5%)*	(166,840.25)
Withholding Tax (Invoiced amount x 2%)**	(66,736.10)
Amount Collected per Official Receipt	**₱3,503,645.25**

**5% withholding VAT on payments from Government-owned or control corp.*
***2% EWT for services*

We also obtained the related BIR form 2306 and BIR form 2307 of the selected transaction. [Exhibit P-14A to P-14B]. **No exceptions noted.**

Moreover, we have checked the supporting documents i.e., official receipts, billing statements, and/or invoices and contracts and ascertain that the details i.e., terms, customer name, invoice amount, were correct. We have also noted that the amount of ₱6,149,576.00 and ₱3,678,827.25 for Standard and Multi-Year Deal Contract, respectively, was properly collected during the year 2017 and the issuance of the related official receipt was made during 2017 as well.

Moreover, we would like to note that the total in [Exhibit P-9D] column "Deferred revenue based per PH GAAP" amounting to P269,085,320 represents the collections from customers and is similarly included per income tax revenues in year 2017 although not yet earned for accounting income purposes. Therefore, the revenues reported for income tax purposes for the year 2017 includes the said advance collections which shall no longer be subject to income tax for the year 2018.

...

ICPA See found the breakdown of the total deferred subscription revenue as follows as opposed the income from which the erroneous income tax payment was made:[51]

Total deferred subscription revenue based on standard contract	₱197,695,055.54
Total deferred subscription revenue based on multi-year deal contract	₱71,390,263.41
Total deferred subscription revenue	₱269,085,318.95

Legend:

License Term (e): The duration of the license as specified in the contract.
Invoice amount (b): This refers to the total amount of revenue invoiced during the license term.
Days earned (d): This refers to the total days from the start day of the license term up to the reporting period.

51 Exhibit "P-9D," Docket - Vol. I, p.442.

> Collections (c): This refers to the amount of revenue collected during the license term.
> Earned as at year-end date (f):- (b) x (d)/(e), Revenue per Accounting purposes
> Deferred Revenue (g): Collections (c) less Earned as at year-end (f)

In turn, ICPA See acknowledged in her report that the figure was arrived at by scrutinizing petitioner's supporting documents of deferred subscription revenue to ascertain [52] : (1) that the computations of the amounts included in the Schedule/Subscription Template of Deferred revenue are correct;[53] and (2) that the amount indicated per supporting documents[54] matches with the pertinent amount reflected in the schedule of deferred revenue/Subscription Template.[55]

Additionally, ICPA See confirmed that:[56]

> ...
>
> **We obtained the supporting documents of the Deferred Subscription Revenue for CY 2017 (i.e., official receipts, billings, invoices, contracts) to ascertain that the computations of the amounts included in the Schedule/Subscription Template of Deferred revenue are correct**
>
> ....[57]

Yet, while ICPA See verified said supporting documents to substantiate the deferred subscription revenue of ₱269,085,318.95 for CY 2017, most of the documents from which the latter's findings were based, were **not made available to the Court**.

Specifically, petitioner submitted the Schedule/Subscription Template of Deferred Revenue for CY 2017,[58] the related official receipts issued to various clients,[59] as well as the contract, invoices, and official receipts[60] of Marketing Convergence Inc. and Land Bank

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52 Exhibit "P-16," p.15, Docket – Vol. I, p.314.
53 Exhibit "P-9A to P9-D," Docket – Vol. I, pp. 439-442.
54 Exhibit "P-15A to P15-B," Docket – Vol. I, p.501-641.
55 Exhibit "P-9A to P9-D," Docket – Vol. I, pp. 439-442.
56 Exhibit "P-16," p.15, Docket – Vol. I, p.314.
57 Boldfacing supplied.
58 Exhibit "P-9A to P9-D," Docket – Vol. I, pp. 439-442.
59 Exhibit "P-15A to P-15B," Docket – Vol. I, p.501-641.
60 Exhibits "P-10A to P-10C,"and "P-11A to P-11K," Docket – Vol. I, pp.443-456.

of the Philippines. Based on these supporting documents, ICPA See was able to come up with the two sample computations for these two clients in the following manner:

> As reported by the ICPA, petitioner's deferred subscription revenue is computed as follows:
>
> <u>For sample standard contract:</u>
> Amount collected for the year: ₱6,149,576.00
> Days Left: 193 Days (Jan. 1, 2018 – July 12, 2018)
> Computation: ₱6,149,576.00 x 193 days / 365 days
> Deferred Subscription Revenue: **₱3,251,693.61**
>
> <u>For sample Multi-Year Deal Contract (MYD):</u>
> Total Revenue Collected for 3 Years: ₱10,344,095.00
> Days Left: 207 Days (Jan.1, 2018 – July 26, 2018)
> Computation: ₱10,344,095.00 x 207 days / 365 days
> Deferred Subscription Revenue: **₱1,953,674.88**

However, the supporting documents *other* than for these two clients were **not submitted** by petitioner. In the Schedule/Subscription Template of Deferred Revenue for CY 2017, the amount of deferred subscription revenue is ₱269,085,318.95 and is comprised of various amounts earned from 160 clients. However, an examination of the documents submitted to the Court shows that petitioner only submitted the contract, invoices, and official receipt of two out of 160 clients. In effect, the Court is unable to verify whether the amounts stated in the Schedule/Subscription Template of Deferred Revenue for CY 2017 are correct, particularly on the terms/period covered of license contract and the invoice amount.

Simply put, save for the two clients referred to in the immediately preceding presentation, petitioner did not adduce in evidence the contracts and sales invoices of its other clients showing the respective terms/period covered of license contract and the invoice amount which are necessary for the Court to verify the correct deferred subscription revenue amount for CY 2017 which it paid. This is fatal to petitioner's cause.

In *Commissioner of Internal Revenue v. Manila Mining Corporation (Manila Mining)*[61] therein claimant failed to present the documents in support of its refund claim at judicial level, and simply relied on the ICPA Certification, attesting that said documents were scrutinized by

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[61] G.R. No. 153204 August 31, 2005.

the latter. In holding that the ICPA Certification is deficient to reinforce said refund claim, *Manila Mining* decreed:

> Mere listing of VAT invoices and receipts, even if certified to have been previously examined by an independent certified public accountant, would not suffice to establish the truthfulness and accuracy of the contents thereof unless offered and actually verified by this Court. CTA Circular No. 1-95, as amended by CTA Circular No. 10-97, requires that the photocopies of invoices, receipts and other documents covering said accounts or payments must be pre-marked by the party and submitted to this Court.[62]

Manila Mining added that "[u]nder Section 8 of RA 1125, the CTA is described as a court of record. As cases filed before it are litigated *de novo*, party litigants should prove every minute aspect of their cases. No evidentiary value can be given the purchase invoices or receipts submitted to the BIR as the rules on documentary evidence require that these documents must be formally offered before the CTA."

By these observations, and pursuant to *Manila Mining*, only the following clients of petitioner shall be considered in the determination of its refund claim: (1) Marketing Convergence Inc.; and (2) Land Bank of the Philippines. The reason—only these two (2) clients have their corresponding invoices, official receipts, billing statements, and contracts, which would tend to show the terms/periods covered of the license contract, along with the amounts, necessary for the Court to verify the accurate deferred subscription amount for CY 2017, which it paid.[63]

Now, as to petitioner's two clients, namely Marketing Convergence Inc. and Land Bank of the Philippines, petitioner was able to establish that it had erroneously included the deferred subscription revenue in the amount of ₱5,205,368.49 in its AITR for CY 2017 as part of its revenue in its AITR for CY 2018.[64]

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62 Underscoring omitted.

63 Exhibits "P-9A to P9-D," Docket - Vol. I, pp. 439-442; Exhibits "P-10,"and "P-11, Docket - Vol. I, pp.443-456; and, Exhibits "P-15A to P15-B," Docket - Vol. I, p.501-641.

64 Exhibit "P-16," Docket - Vol. II, pp. 674 to 675 and 676 to 677.
As reported by the ICPA, petitioner's deferred subscription revenue is computed as follows:
<u>For sample standard contract:</u>

Amount collected for the year:	₱6,149,576.00
Days Left:	193 Days (Jan. 1, 2018 - July 12, 2018)

For purposes of determining petitioner's refund claim, its income tax for CY 2018 shall be computed as follows:

Net Sales/Revenues/Receipts/Fees	₱ 1,300,387,263.00
Less: Cost of Sales/Services	961,859,009.00
Gross Income from Operation	₱ 338,528,254.00
Add: Other Taxable Income Not Subjected to Final Tax	1,420,183.00
Total Gross Income	₱ 339,948,437.00
Less: Ordinary Allowable Itemized Deductions	219,577,210.00
Net Taxable Income	₱ 120,371,227.00
Adjustment: Deferred income already taxed in 2017	**5,205,368.49**
Adjusted Taxable Income	₱ 115,165,858.51
Income Tax Rate	30%
Income Tax Due other than MCIT	₱34,549,757.49
Minimum Corporate Income Tax (2% of Gross Income)	₱ 6,798,968.74
Total Income Tax Due	₱ 34,549,757.49
Less: Total Tax Credits/Payments	19,138,699.00
Tax erroneously paid	16,972,669.10
Net Tax Due (overpayment)	**(₱1,561,610.61)**

In fine, out of the income taxes paid in the amount of ₱29,312,399.36 petitioner sufficiently proved erroneously paid income taxes for CY 2018 only to the extent of ₱1,561,610.61.

In conclusion, actions for tax refund or credit, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven. The burden is on the taxpayer to show that he (or she) has strictly complied with the conditions for the grant of the tax refund or credit. Since taxes are the lifeblood of the government, tax laws must be faithfully and strictly implemented as they are not intended to be liberally construed.[65]

Computation: ₱6,149,576.00 x 193 days / 365 days
Deferred Subscription Revenue: **₱3,251,693.61**

<u>For sample Multi-Year Deal Contract (MYD):</u>
Total Revenue Collected for 3 Years: ₱10,344,095.00
Days Left: 207 Days (Jan.1, 2018 – July 26, 2018)
Computation: ₱10,344,095.00 x 207 days / 365 days
Deferred Subscription Revenue: **₱1,953,674.88**
Total: 5,205,368.49

65 *Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222428, February 19, 2018. Citations omitted.

WHEREFORE, the *Petition for Review* filed by SAS Institute (Philippines.), Inc is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the amount of **₱1,561,610.61**, representing its erroneously paid income tax for CY 2018.

SO ORDERED.

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

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice