REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

AEGIS PEOPLESUPPORT, INC. [FORMERLY PEOPLESUPPORT (PHILIPPINES), INC.], Petitioner,	CTA EB NO. 1231 (CTA Case No.8267)
	Present:
- versus -	DEL ROSARIO, *PJ* CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, *and* RINGPIS-LIBAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAY 17 2016

x- -x

DECISION

Fabon-Victorino, J.:

In this *Petition for Review*[1] filed on October 24, 2014, petitioner Aegis PeopleSupport, Inc. [formerly PeopleSupport (Philippines), Inc.] seeks to reverse and set aside the (1) Decision[2] dated May 28, 2014 promulgated by the Court in Division in CTA Case No. 8267, which denied for lack of merit its claim for refund of alleged erroneously paid income tax for calendar year (CY) 2008 amounting to ₱38,087,854.48; and (2) Resolution[3] dated September 17, 2014, which denied its *Motion for Reconsideration* of the assailed Decision.

---

[1] *En Banc* docket, pp. 7-29.
[2] *En Banc* docket, pp. 41-69.
[3] *En Banc* docket, pp. 73-74.

<u>**The Facts**</u>

The pertinent facts, as culled from the record, are as follows:

Petitioner is a domestic corporation, with principal office at PeopleSupport Center, Ayala corner Senator Gil Puyat Avenues, Makati City. It is registered with the Board of Investments (BOI) under its former name PeopleSupport (Philippines), Inc., with Certificate of Registration No. 2003-059 dated April 22, 2003 as a new and pioneer IT Export Service firm in the field of Customer Contact Center. As such, it was issued a Certificate of Income Tax Holiday (ITH) Entitlement with CE No. 2008-000145 on March 24, 2008.[4]

Petitioner is also registered with the Philippine Economic Zone Authority (PEZA), under its former name PeopleSupport (Philippines), Inc., as a new Ecozone IT (Export) Enterprise to engage in the establishment of a contact center which will provide outsourced customer care services and business process outsourcing (BPO) under Amended Registration Certificate No. 03-17-IT dated June 19, 2007.[5] Petitioner is likewise registered with the BIR as an income taxpayer, with OCN No. 8RC0000021286 on March 9, 2000.[6]

Respondent, on the other hand, is the Commissioner of the Bureau of Internal Revenue (BIR) with the authority to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes, as provided by law. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner derives its service fees from services rendered to United States (US) – based clients of its mother company PeopleSupport, Inc. (PSI-US), whose functional currency is denominated in US Dollar (USD). Since the USD is the currency that mainly influences its source of revenues, it changed its functional currency from Philippine Peso to USD in CY 2007.

---

[4] Exhibit "C"
[5] Exhibit "E"
[6] Exhibit "B"

On July 20, 2007, the Securities and Exchange Commission (SEC) noted petitioner's Filing of Functional Currency Financial Statements.[7]

On December 3, 2008, petitioner amended its Articles of Incorporation changing its name from PeopleSupport (Philippines), Inc. to Aegis PeopleSupport, Inc.[8]

On April 13, 2009, petitioner filed through the BIR's electronic filing and payment system (eFPS) its Annual Income Tax Return (ITR) for taxable year 2008, under Reference No. 120900002892804.[9] The said Annual ITR for 2008 was first amended on April 30, 2009[10] and again, on May 29, 2009[11]. In both amendments, petitioner reported Non-Operating and Other Income amounting to ₱120,286,161.00, broken down as follows:

Commission Income	₱ 1,392.00
Interest Income from Loan	9,769,484.00
Other Income	1,662,844.00
Realized Forex Gains	108,822,441.00
Total	**₱120,286,161.00**

The said Non-Operating and Other Income of ₱120,286,161.00 was subjected to the thirty-five percent (35%) regular corporate income tax for which petitioner paid the amount of ₱40,060,076.70. Petitioner avers that of the ₱40,060,076.70, the amount of ₱38,087,854.48 (₱108,822,441.00 x 35%) pertained to the income tax erroneously and/or excessively paid on the realized forex gains.

On April 11, 2011, petitioner filed an administrative claim[12] for the refund of the alleged erroneous or illegally paid income tax of ₱38,087,854.48 for calendar year 2008.

---

[7] Exhibit "F"
[8] Exhibit "A"
[9] Exhibit "J"
[10] Exhibit "K"
[11] Exhibit "L"
[12] Exhibit "GG"

On April 13, 2011, petitioner filed a *Petition for Review*[13] with the CTA alleging inaction on the part of respondent on its administrative claim for refund.

In her *Answer*[14] filed on June 7, 2011, respondent mainly argues that petitioner miserably failed to show that the amount of ₱38,087,854.48 sought to be refunded pertains to income tax erroneously and/or excessively collected. For respondent, taxes paid and collected are presumed to have been paid in accordance with law; hence, not refundable.

During the trial, only petitioner presented evidence in support of its case. Despite the opportunity granted, respondent did not present any.

On May 28, 2014 the Court in Division denied the Petition, for lack of merit ruling that for petitioner to enjoy the ITH incentive under the PEZA law and EO No. 226, its income must be effectively related to the conduct of its registered trade or business. While the ICPA matched the revenues with inward remittances and showed the movement of petitioner's Citibank N.A. dollar account for the revenues as well as provided schedules of some of the significant expenses, petitioner still failed to establish that the forex gains of ₱108,822,441.00 is attributable to its registered activity since the "*movement of petitioner's Citibank N.A. dollar account shows other credits which can be part of the source of the realized foreign exchange gains on hedging that is not directly attributable to petitioner's registered activity with the BOI and the PEZA*". Thus, the Court in Division concluded that "*a determination of the amount of foreign exchange gain, which is actually related to petitioner's PEZA/BOI-registered activity, would be difficult, if not impossible*". The Court in Division further emphasized that entering into a hedging contract is not within the ambit of petitioner's registered activities with the BOI and PEZA, thus, the forex gains arising from such hedging contract cannot be exempted from payment of income tax.

---

[13] Division docket, pp. 4-18.
[14] Division docket, pp. 117-122.

Not convinced, petitioner filed a Motion for Reconsideration which was denied in the equally assailed Resolution of September 17, 2014.

Hence, this *Petition for Review* raising the following issues for the resolution of the Court *En Banc*, to wit:

I. Whether Petitioner's foreign (forex) exchange gain is related to Petitioner's establishment of a contact center;

II. Whether the source of Petitioner's US Dollar is relevant in determining Petitioner's entitlement to ITH; and

III. Assuming arguendo that it is necessary to prove the source of Petitioner's USD, whether the USD converted into Pesos arose from Petitioner's customer support activities registered with the PEZA.

Petitioner insists that its forex gains are related to its PEZA-registered activity, hence, covered by its ITH privilege laying the following points in support thereof, to wit: (a) it earns USD for services rendered to its customers; (b) a significant portion of its expenses, which are necessary for it to carry on its PEZA-registered activity of providing customer care services, must be paid in Peso; (c) in view thereof, it had to convert some of its USD revenues into Peso; and (d) in process, it realized forex gain for having sold its USD at a rate higher than the prevailing market rate. Petitioner claims that the USD to Peso conversion resulting in forex gains amounting to ₱108,822,441.00 was necessary for day-to-day operation of its PEZA-registered activities.

Further, BIR Ruling Nos. DA-195-08, DA-375-08, and DA-(IL-011) 107-08 issued by respondent consistently hold that although the forex gains were not derived from its business activities registered with PEZA or the BOI, they are nonetheless covered by the same preferential tax regime as they arose from activities reasonably necessary and integral to the continued business of the enterprise, thus, should be considered as related or attributable to its business.

Contrary to the holding of the Court in Division, its entitlement to refund should not depend on the source of its USD, but on the use of its forex gains, e.g., to finance its call center operations, says petitioner. Assuming that the source of the forex gains is a significant factor in this case, petitioner posits that it was able to show that the USD used for conversion into Pesos came from service fees paid by its clients or customers.

Finally, it argues that its right to equal protection of the law will be violated if its forex gains will be treated differently from other taxpayers whose forex gains were exempted from income tax, as shown in BIR Ruling No. DA-195-08 (*e-Telecare Global Solutions, Inc. Ruling*).

By way of *Comment*[15], respondent submits that the arguments raised by petitioner had already been meticulously discussed, passed upon and considered by the Court in Division in the assailed Decision of May 28, 2014 and Resolution of September 17, 2014. Be that as it may, she strongly agrees with the Court in Division that *"petitioner's conduct of entering into a hedging contract is not within the ambit of its registered activities with the BOI and PEZA, the forex gains arising from such hedging contract cannot be exempted from income tax"*.

On May 19, 2015, the instant petition was deemed submitted for decision after the parties filing of their respective *Memoranda*.[16]

RULING OF THE COURT *EN BANC*

The instant Petition for Review lacks merit.

The core issue emerging distinctly from those submitted by the parties is whether the forex gain derived by petitioner, through its hedging contract with Citibank, is attributable to its registered activity with the BOI and/or PEZA as a contact center.

---

[15] *En Banc* docket, pp. 94-98.
[16] Resolution dated May 19, 2015, En Banc docket, pp. 159-160.

While it be maybe true that the USD earned by petitioner as a contact center was used to purchase Pesos, through its hedging contract with Citibank, in order to pay for its ordinary and necessary expenses of its customer-support business, the fact remains that the subject forex gains were derived from the foreign exchange contract it entered into with Citibank and not from its registered activity as a contact center or any activity necessarily related or attributable to it.

It is worth to note that petitioner's primary purpose as a contact center as expressly stated in its *Amended Articles of Incorporation*[17] is "*to engage in the business of customer support services by providing information and database service on the Internet including web-based applications in the Philippines and providing or furnishing any and all forms or types of services, data and facilities relating to providing information on consumer products and services through the internet; and, otherwise, to carry on and conduct a general business relating to internet services*".

Its PEZA Certification[18] itself shows that petitioner is a registered Ecozone IT (Export) Enterprise engaged in the establishment of a contact center which will provide outsourced customer care services and business process outsourcing (BPO) services. Article II of the Registration Agreement[19] entered into by petitioner with PEZA on August 12, 2003, delimited the **scope of petitioner's registered activity,** in the following fashion:

> ARTICLE II
> SCOPE OF REGISTRANT'S REGISTERED ACTIVITY
>
> 2. The scope of the REGISTRANT'S registered activity shall be **limited to the establishment of a contact center which will provide outsourced customer care services** and the importation of machinery, equipment, tools, goods, wares, articles, or merchandise directly used in its registered operations at Asiatown IT Park. In the event the

[17] Exhibit "A"
[18] Exhibit "E"
[19] Exhibit "N"

> REGISTRANT decides to engage in a new or additional product line, directly or indirectly related to its registered activity, it shall apply anew with PEZA for the latter's approval. (*Emphasis supplied*)

Clearly, petitioner's hedging contract, which involve the sale of specified amounts of dollar to CITIbank on pre-determined dates and at pre-determined exchange rates, is certainly not within the ambit of petitioner's registered activity with PEZA and/or BOI.

And since petitioner's hedging activity is outside of its registered trade or business, i.e. as a contact center, the income tax holiday on its registered activity cannot be possibly stretched to cover its forex gains.

We therefore agree with the Court in Division that tax incentives to which an ECOZONE Enterprise is entitled do not necessarily include all kinds of income received during the period of entitlement pursuant to the Rules and Regulations Implementing RA No. 7916, the relevant portion of which reads:

> "PART VII
> Incentives to ECOZONE Enterprises
>
> RULE XIII
> Application and Entitlement
>
> xxx xxx xxx
>
> SECTION 2. *Scope of Entitlement.* — New or expanding ECOZONE Developers/Operators, Export, Free Trade, Domestic Market, Utilities, Facilities and Tourism Enterprises, except ECOZONE Service Enterprises as defined under Section 2 (p), Rule I of these Rules, registered on or after the effectivity of these Rules, shall be entitled to the fiscal incentives provided in Sections 24 and 42 of the Act.
>
> xxx xxx xxx

> SECTION 5. *Limitation of Entitlement to Incentives.* — **Incentives granted by the PEZA shall apply only to registered operations of the ECOZONE Enterprises and only during the period of its registration with PEZA.**"

Corollary to the foregoing, Revenue Regulations No. 20-02, specifically Section 1 thereof, clarified the tax treatment of income earned from unregistered activities, thus:

> "SECTION 1. *Tax Treatment.* — **Income derived by an enterprise registered with** the Subic Bay Metropolitan Authority (SBMA), the Clark Development Authority (CDA), or the **Philippine Economic Zone Authority (PEZA) from its registered activity/ies shall be subject to such tax treatment as may be specified in its terms of registration** (i.e., the 5% preferential tax rate, the income tax holiday, or the regular income tax rate, as the case may be). Nonetheless, whatever the tax treatment of said enterprise with respect to its registered activity/ies, income realized by such registered enterprise that is not related to its registered activity/ies shall be subject to the regular internal revenue taxes, such as the 20% final income tax on interest from Philippine Currency bank deposits and yield or any other monetary benefit from deposit substitutes, and from trust funds and similar arrangements, the 7.5% tax on foreign currency deposits and the 5%/10% capital gains tax or 1/2% stock transaction tax, as the case may be, on the sale of shares of stock."

Hence, for petitioner to avail of the ITH incentive to cover its foreign exchange gains, it must show to the satisfaction of the Court that its income in the amount of ₱108,822,410.00 is effectively related to the conduct of its registered trade or business or is attributable to its registered activity with the BOI and PEZA, a burden which petitioner utterly failed to discharge. As clarified by the Court in Division, citing Executive Order No. 226, this incentive shall only be "to the extent engaged in a preferred area of investment". In elaboration it ruled, thus:

> An effectively related income may be interpreted to mean as those income derived from the business activity in which the corporation is engaged in, considering that a taxpayer may also receive income not directly connected or related to its business activity. Consequently, petitioner must also establish that its income relating to the subject tax refund is actually gained or received by it in relation to the conduct of its registered business activity.

Evidently, petitioner's forex gains of ₱108,822,441.00 realized through the conversion of its dollar earnings to peso under the hedging contract with CITIbank N.A. cannot be deemed effectively related or even anywhere near its registered trade or business. In fact, petitioner as a contact center could still operate and continue its registered activity without the hedging contract, an income generating endeavor very much remote from petitioner's registered business activity.

Moreover, a review of the movement of petitioner's dollar account with CITIbank indicates other credits making it very difficult to determine the amount of foreign exchange directly related or attributable to petitioner's PEZA/BOI registered activity.

To be sure, the present case is not the first of its kind or nature. The Court in Division in a case obviously involving the same parties entitled *Aegis PeopleSupport, Inc. [Formerly PeopleSupport (Philippines), Inc.] vs. Commissioner of Internal Revenue*, docketed as CTA Case No. 8085, promulgated on March 4, 2013, the Court in Division made the following pronouncement pertaining to the same issue, in this wise:

> Thus, it becomes apparent that the activity of petitioner of entering into an agreement with a bank wherein petitioner agreed to sell specified amounts of dollars to the bank on pre-determined dates and at

pre-determined exchange rates is not within the afore-quoted scope of petitioner's registered activity with the BOI and PEZA. Such being the case, the foreign exchange gain resulting from the said activity of the petitioner would not be exempt from income tax, or is not covered by income tax holiday granted to it by the BOI and PEZA, pursuant to the aforequoted first paragraph of Section 1 of Revenue Regulations No. 20-2002; Section 5, Part VII (Incentives to Ecozone Enterprises), Rule XIII (Application and Entitlement) of the Rules and Regulations to Implement Republic Act No. 7916; and Article II of the Registration Agreement executed on August 12, 2003 by and between the PEZA and petitioner.

Since the said activity is not within the scope of petitioner's registered activity with the BOI and PEZA, it is of no moment that the corresponding foreign exchange gain was used for petitioner's operation.

xxx xxx xxx

It is clear from the foregoing that if the foreign exchange gain of the concerned Ecozone Enterprise is attributed to an activity without income tax incentive, such foreign exchange gain shall likewise be without tax incentive or subject to the "Normal Corporate Income Tax." In this case, the foreign exchange gain of petitioner is attributed to its hedging activity — an activity without income tax incentive or an unregistered activity. Such being the case, the income tax holiday on its registered activity may not be extended to said foreign exchange gain.

To stress, there is a whale of a difference between: (i) the activity of entering into an agreement with a bank wherein petitioner agreed to sell specified amounts of dollars to the bank on pre-determined dates and at pre-determined exchange rates, and (ii) the activity of establishing a contact center which will provide outsourced customer care services and the importation of machinery, equipment, tools, goods, wares, articles, or merchandise directly used in its registered operations. Thus, even by virtue of the above-quoted PEZA memorandum circular, petitioner cannot apply its income tax incentive to the said unregistered activity.

> Moreover, the Court cannot use as bases the BIR Rulings being invoked by petitioner, since the respective transactions contemplated therein are not the same as that of petitioner. In other words, said BIR Rulings did not specifically address the supposed tax treatment on petitioner's unregistered activity of entering into the said agreement with the pertinent bank.
>
> But even granting that certain indications in the said BIR Rulings would seem applicable to petitioner for being a PEZA-registered enterprise, such as the requirement of a "nexus between the transaction giving rise to the foreign exchange gain or loss and the PEZA entity's registered activity" to avail of the applicable income tax incentive, the same can be ignored for being erroneous and improper, as they go against the said provisions of Revenue Regulations No. 20-2002, Rules and Regulations to Implement Republic Act No. 7916, and Registration Agreement executed on August 12, 2003 by and between the PEZA and petitioner.

Anent petitioner's protestation on alleged violation of its right to equal protection of the law if its forex gains will not be covered by ITH incentive, suffice it to say that it was not classified or treated differently from other PEZA and BOI registered entities. Without any doubt, petitioner is entitled to the same incentives or benefits enjoyed by other PEZA and BOI registered entities, provided all the conditions set forth under the Rules and Regulations to Implement Republic Act (RA) No. 7916, otherwise known as the Special Economic Zone Act of 1995 (PEZA Law) and EO No. 226[20] are complied with, and its income subject of a claim for refund is established to be effectively related with the conduct of its registered trade or business, pursuant to Revenue Regulations No. 20-02[21].

Finally, petitioner cannot also rely on the *eTelecare Global Solutions, Inc. Ruling* since it failed to show that the transaction contemplated therein is similar to hedging transaction in the present case. Besides, BIR Rulings are

---

[20] The Omnibus Investment Code of 1987.

[21] *Clarifying the Tax Treatment of Income Earned from Unregistered Activities by Enterprises Registered under the Bases Conversion and Development Act of 1992 and the Philippine Economic Zone Act of 1995.*

not conclusive insofar as the interpretation of tax laws is concerned. BIR Rulings should not be taken as the gospel truth of the interpretation of tax laws which will deprive the courts of its statutory mandate to interpret said laws. They are merely persuasive in nature.[22] In fact, BIR Rulings are aptly described as "*the best guess of the moment . . . sort of an information service to the taxpayer*" and are "*not binding on the courts*".[23]

WHEREFORE, the *Petition for Review* filed by petitioner Aegis PeopleSupport, Inc. [formerly PeopleSupport (Philippines), Inc.] on October 24, 2014 is hereby **DENIED**, for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
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

[22] *Atlas Consolidated Mining and Development Corporation vs. Atty. Kim S. Jacinto-Henares, in her capacity as the Commissioner of Internal Revenue, et al.*, CTA Case No. 8150, October 1, 2013.
[23] *Commissioner vs. Ledesma*, L-17509, January 30, 1970; *Commissioner of Internal Revenue vs. Placer Dome Technical Services (Phils.), Inc.*, CA-G.R. SP 71458, June 30, 2004.

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice