Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

AEGIS PEOPLESUPPORT, INC. [FORMERLY PEOPLESUPPORT (PHILIPPINES), INC.],
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8267
For: Refund

Members:
DEL ROSARIO, PJ, *Chairperson*
UY, and
MINDARO-GRULLA, JJ.

Promulgated:
MAY 28 2014 ; 1:12 p.m.

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D E C I S I O N

MINDARO-GRULLA, J.:

This is a Petition for Review filed on April 11, 2013 by Aegis Peoplesupport, Inc. as petitioner, against Commissioner of Internal Revenue as respondent for the Court in Division, pursuant to Section 7(a)(2) of Republic Act (RA) No. 1125, An Act Creating the Court of Tax Appeals, as amended[1], as well as Rule 4, Section 3(a)(2), in relation to Rule 8, Section 4(a) of the Revised Rules of the Court of Tax Appeals (RRCTA)[2], as amended.

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[1] Sec. 7. *Jurisdiction*. – The CTA shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
x x x x x x
(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds or internal revenue taxes, fees of 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, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial;
x x x x x x

[2] Rule 4, Sec. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:

Petitioner seeks the refund or the issuance of a tax credit certificate (TCC) in the amount of Thirty-Eight Million Eighty-Seven Thousand Eight Hundred Fifty-Four and 48/100 Pesos (₱38,087,854.48), representing alleged excess payment of corporate income tax for calendar year (CY) 2008.

Petitioner Aegis PeopleSupport, Inc. is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office at PeopleSupport Center, Ayala Ave. corner Senator Gil Puyat Ave., Makati City.[3] It is registered with the Bureau of

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(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

x x x x x x

(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, where the National Internal Revenue Code or other applicable law provides a specific period for action: *Provided,* that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; *Provided, further,* that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules;

x x x x x x

Rule 8. Sec. 4. *Where to appeal; mode of appeal.-*

(a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

x x x x x x

[3] Par. 1, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 152.

Internal Revenue (BIR) as an income taxpayer under Certificate of Registration No. OCN 8RC0000021286[4] and as a bona fide Board of Investments (BOI)-registered enterprise with Certificate of ITH Entitlement CE No. 2008-000145.[5] Petitioner's primary purpose 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.[6] It is likewise a Philippine Economic Zone Authority (PEZA)-registered Ecozone IT (Export) Enterprise[7] with Registration Certificate No. 03-17-IT[8] dated August 12, 2003.

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue empowered to perform the duties of said office including, among others, the power 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 and PEZA entered into a Registration Agreement[9] for the establishment of a contact center at Asiatown IT Park on August 12, 2003 and several Supplemental Agreements[10] for the creation of new contact centers at PeopleSupport Center 6780 Ayala, at the 2nd, 3rd, 4th, and 5th Floors of Skyrise Plaza, Asiatown IT Park, and at the 11th and 12th Floors of 6780 Ayala on July 14, 2005, May 15, 2007, and June 4, 2009, respectively. As such, PEZA issued Notice of Approval of SCO No. 07-130 on September

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[4] Exhibit "B", Docket, p. 376.
[5] Exhibit "C", Docket, p. 377.
[6] Par. 4, JSFI, Docket, p. 153.
[7] Exhibit "E", Docket, pp. 379-380.
[8] Exhibit "D", Docket, p. 378
[9] Exhibit "N", Docket, pp. 408-415.
[10] Exhibits "P", "Q", "R", and "S", Docket, pp. 421-425, 426-430, 431-434, and 435-438.

7, 2007,[11] Notice of Approval of SCO No. 07-173 on December 11, 2007,[12] Notice of Approval of SCO No. 08-008 on January 21, 2008,[13] Notice of ITH Extension Approval No. 08-015 on March 7, 2008,[14] Notice of Approval of SCO NO. 10-087 on September 17, 2010,[15] and a Letter dated June 20, 2006.[16]

Petitioner derived its service fees from services rendered to United States (US)-based clients of its mother company, PeopleSupport, Inc. (PSI-US). The functional currency of these clients is denominated in US Dollar (USD). Since USD was the currency that mainly influences the source of revenues of petitioner, it changed its functional currency from Philippine Peso to USD in calendar year 2007.[17]

On July 20, 2007, the Securities and Exchange Commission (SEC) noted petitioner's Filing of Functional Currency Financial Statements.[18]

On December 3, 2008, petitioner amended its Articles of Incorporation changing its name from PeopleSupport (Philippines), Inc. to Aegis PeopleSupport, Inc.[19]

Petitioner filed its 1st, 2nd, and 3rd Quarterly Income Tax Returns for calendar year 2008 through Electronic Filing and Payment System (eFPS) on May 28, 2008, August 29, 2008, and November 27, 2008, respectively.[20] Payments were made through Authorized Agent Banks (AABs) for the 1st and 2nd quarters, while payment for the 3rd quarter was made through Tax Debit Memo (TDM).[21] Further, it submitted its

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[11] Exhibit "V", Docket, p. 442.
[12] Exhibit "U", Docket, p. 441.
[13] Exhibit "W", Docket, p. 441.
[14] Exhibit "T", Docket, p. 439.
[15] Exhibit "Y", Docket, p. 445.
[16] Exhibit "X", Docket, p. 444.
[17] A4 of Exhibit "Z", Docket, p. 446.
[18] Exhibit "F", Docket, p. 381.
[19] Exhibit "A", Docket, pp. 364-375.
[20] Exhibits "AA", "BB", and "CC", Docket, pp. 459, 463, and 466.
[21] Exhibit "CCCC", Docket, p. 505.

Annual Income Tax Return through eFPS on April 13, 2009,[22] and amended it twice on April 30, 2009 and May 29, 2009.[23]

On April 11, 2011, petitioner claimed a refund for the alleged erroneous or illegal payment of its income tax for calendar year 2008 with the BIR.[24] Due to the inaction of respondent on the administrative claim, petitioner was constrained to file this instant Petition for Review on April 13, 2011.[25]

Respondent filed her Answer[26] on June 7, 2011, interposing the following special and affirmative defenses:

> "9. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue.
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> 10. Petitioner miserably failed to show that the amount of Thirty Eight Million Eighty-Seven Thousand Eight Hundred Fifty-Four and 48/100 Pesos (Php38,087,854.48) being claimed by petitioner pertains to income tax erroneously and/or excessively paid on the realized foreign gains, which is the subject of this claim for refund.
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> 11. Taxes paid and collected are presumed to have been paid in accordance with law; hence, not refundable.
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> 12. Petitioner must prove that it has complied with the provisions of Section 229, in relation to Section 204, of the National Internal Revenue Code (NIRC) of 1997, as amended, quoted hereunder, to wit:
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> xxx xxx xxx.

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[22] Exhibit "J", Docket, p. 391.
[23] Exhibit "K" and "L", Docket, pp. 398-400 and 401-403.
[24] Exhibit "GG, Docket, pp. 473-480.
[25] Petition for Review, Docket, pp. 4-21.
[26] Docket, p. 117-122.

13. Petitioner must prove that the alleged excess income tax payments were erroneously or illegally collected.

14. Moreover, 'claims for refund or tax credit,' to say the least, 'are strictly construed against the claimant for the same partake the nature of exemption from taxation' ***(COMMISSIONER OF INTERNAL REVENUE VS. LEDESMA, 31 SCRA 95)*** and as such, they are looked upon with disfavor' ***(WESTERN MINOLCO CORP. VS. COMMISSIONER OF INTERNAL REVENUE, 124 SCRA 121)***.

15. In an action for refund/tax credit, the ***onus probandi*** is on the taxpayer to establish its right to refund/tax credit, and failure to sustain the burden is fatal to its claim for refund/tax credit ***(ASIATIC PETROLEUM CO. VS. LLANES, 49 PHIL. 466 cited in COLLECTOR OF INTERNAL REVENUE VS. MANILA JOCKEY CLUB, INC. 98 PHIL. 670)***.

xxx xxx xxx."

Petitioner filed its Pre-Trial Brief[27] on July 18, 2011; while Respondent's Pre-Trial Brief[28] was filed on July 20, 2011.

On August 15, 2011, the parties submitted their Joint Stipulation of Facts and Issues[29] and the Court approved it on August 17, 2011.[30] On the same date, the Court terminated the pre-trial and ordered the parties to proceed with the trial proper.

During trial, petitioner presented Ariel Carpio, Maria Ciara A. Locsin, Katherine O. Constantino, and Atty. Ray-An Francis V. Baybay as its witnesses.

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[27] Docket, pp. 126-141.
[28] Docket, pp. 142-144.
[29] Docket, pp. 152-157.
[30] Resolution dated August 17, 2011, Docket, p. 160.

Petitioner formally offered Exhibits "A" to "EEEE-1", which the Court admitted except Exhibits "UU-1" to "UU-4", "EEE-17", "EEE-18", and "VVV-17" to "VVV-116" as per Resolution[31] dated May 21, 2012. On June 7, 2012, petitioner filed a motion for the reconsideration of the Resolution dated May 21, 2012 and to re-open the case. Acting on the said motion and considering respondent's comment thereto, the Court resolved to grant the reopening of the case and to recall petitioner's witness; thus, the resolution of petitioner's Motion for Reconsideration was held in abeyance.[32]

On August 30, 2012, petitioner filed its Supplemental Formal Offer of Evidence. Subsequently, the Court granted petitioner's Motion for Reconsideration and admitted the aforesaid denied exhibits on September 19, 2012.[33]

Petitioner filed anew the Motion for Leave to Re-open Case[34] on October 19, 2012, which the Court granted in its Resolution[35] dated December 19, 2012.

Petitioner then presented additional witnesses, namely: Arsyl Tolentino and Genly Manrisa. Petitioner also submitted a Second Supplemental Formal Offer of Evidence on March 5, 2013. The Court, in its Resolution[36] dated March 27, 2013, admitted all the pieces of evidence submitted by way of its Supplemental Formal Offer of Evidence except Exhibits "GGGG-9", "GGGG-10", and "GGGG-39".

Petitioner's documentary exhibits are as follows:

Exhibit	Description
A	Petitioner's Amended Articles of Incorporation dated December 3, 2008 with attached Certificate of Filing of Amended Articles of

[31] Resolution dated May 21, 2012, Docket, pp. 519-520.
[32] Resolution dated July 30, 2012, Docket, pp. 572-574.
[33] Resolution dated September 19, 2012, Docket, pp. 596-598.
[34] Docket, pp. 601-607.
[35] Resolution dated December 19, 2012, Docket, pp. 619-621.
[36] Docket, pp. 934-935.

	Incorporation issued by the Securities and Exchange Commission (SEC) on December 24, 2008
B	Petitioner's Amended Certificate of Registration issued by the Bureau of Internal Revenue (BIR)
C	Certificate of Income Tax Holiday (ITH) Entitlement No. 2008-000145 dated March 24, 2008, issued by the Board of Investments (BOI)
D	Petitioner's Amended Certificate of Registration No. 03-17-IT, dated January 29, 2010, issued by the Philippine Economic Zone Authority (PEZA)
E	Certification dated January 21, 2008 signed by Ms. Mary Harriet O. Abordo, PEZA's Deputy Director General for Operations
F	Letter from the Office of the General Accountant of the Securities and Exchange Commission (SEC) dated July 20, 2007
G	Memorandum Circular No. 2005-032 dated September 15, 2005 issued by the Philippine Economic Zone Authority
H	BIR Ruling No. DA-195-08, dated March 25, 2008
I	BIR Ruling No. DA-375-08, dated June 20, 2008
J	Petitioner's Original Annual Income Tax Return (ITR) for CY 2008, filed via BIR's electronic filing and payment system (eFPS) on April 13, 2009 with Filing Reference No. 120900002892804
K	Petitioner's First Amended Annual ITR for CY 2008, filed via BIR's eFPS on April 30, 2009 with Filing Reference No. 120900002932998
L	Petitioner's Second Amended Annual ITR for CY 2008, filed via BIR's eFPS on May 29, 2009 with Filing Reference No. 120900002995372
N	Registration Agreement dated August 12, 2003 between PEZA and Petitioner
O	Supplemental Agreement between PEZA and Petitioner dated June 6, 2007
P	Supplemental Agreement between PEZA and Petitioner dated May 15, 2007
Q	Supplemental Agreement between PEZA and Petitioner dated May 15, 2007
R	Supplemental Agreement between PEZA and Petitioner notarized on July 14, 2005
S	Supplemental Agreement between PEZA and Petitioner dated June 4, 2009
T	Notice of ITH Extension Approval No. 08-015 dated March 07, 2008, issued by PEZA
U	Notice of Approval of Start of Commercial Operations (SCO) 07-173 dated December 11,

	2007, issued by PEZA
V	Notice of Approval of SCO 07-130 dated September 7, 2007, issued by PEZA
W	Notice of Approval of SCO No. 08-008, dated January 21, 2008, issued by PEZA
X	Letter from Ms. Mary Harriet O. Abordo, Deputy Director General for Operations of PEZA, dated June 20, 2006, addressed to Mr. Noel Legaspi, Finance Director of the Petitioner
Y	Notice of Approval of SCO 10-087 dated September 17, 2010, issued by PEZA
Z	Amended Sworn Statement of Mr. Ariel Carpio to questions propounded by Atty. Ray-an Francis V. Baybay dated September 22, 2011
Z-1	Signature of Mr. Ariel Carpio
AA	Petitioner's Quarterly ITR for the 1st quarter of CY 2008, filed via BIR's eFPS on May 28, 2008
BB	Petitioner's Quarterly ITR for the 2nd quarter of CY 2008, filed via BIR's eFPS on August 29, 2008
CC	Petitioner's Quarterly ITR for the 3rd quarter of CY 2008, filed via BIR's eFPS on November 27, 2008
DD	eFPS Payment Details with Filing Reference No. 130800002264768
GG	Petitioner's administrative claim for refund of erroneously or illegally paid income tax for CY 2008 filed with the BIR's Large Taxpayers Services (BIR-LTS) on April 11, 2011
GG-1	Signature of "Martin Ignacio D. Mijares"
HH	Sworn Statement of Ms. Maria Ciara A. Locsin to questions propounded by Atty. Ray-an Francis V. Baybay dated October 12, 2011
II	Report of the Independent Certified Public Accountant (ICPA) commissioned by the Honorable Court
JJ	Amended Annual ITR for CY 2008, together with Audited Financial Statements and Statement of Reconciliation of Net Income per Books against Taxable Income, manually filed on May 5, 2009
KK	Reconciliation of service fees of Expedia, Inc. reported in the general ledger and amount shown in the detailed schedule
LL	Petitioner's Permit to Adopt Computerized Books of Account
MM	Petitioner's trial balance for CY 2008 (in US Dollars with Philippine translation)
OO-1 to OO-4	Credit advices issued by Citibank N.A.
PP	Schedule of Gain/Loss on Forward Exchange Contracts settlement
QQ	General Ledger/Trial Balance on Foreign

c

	Exchange Gain realized from hedging
RR	General Ledger/Trial Balance on unrealized foreign exchange loss on hedging
SS	Petitioner's Bank Statement for CY 2008 (in US Dollar)
TT	Petitioner's Bank Statement for CY 2008 (in Philippine Peso)
UU-1 to UU-4	Documents supporting the Spot Rates used in calendar year (CY) 2008
VV	General Ledger of service revenues from PeopleSupport, Inc.
WW	General Ledger of service revenues from JP Morgan Chase Bank, N.A.
XX	General Ledger of service revenues from Expedia, Inc.
YY	General Ledger of Commission Income
ZZ	Schedule of service fees paid by PeopleSupport, Inc. to Petitioner
AAA	Schedule of service fees paid by JP Morgan Chase Bank, N.A. to Petitioner
BBB	Schedule of service fees paid by Expedia, Inc. to Petitioner
CCC-1 to CCC-3	Service agreements executed between Petitioner and its customers, namely: (a) PeopleSupport, Inc.; (b) J.P. Morgan Chase Bank, N.A.; and (c) Expedia, Inc.
DDD-1 to DDD-208	Sales invoices for CY 2008
EEE-1 to EEE-16	Credit Memos for CY 2008 issued by Petitioner
EEE-17	Credit Memo No. CRM0000120 issued on August 19, 2008
EEE-18	Credit Memo No. CRM0000121 issued on August 19, 2008
EEE-19	Credit Memo for CY 2008 issued by Petitioner
FFF-1 to FFF-30	Certificate of inward remittances and customer advices of remittance, issued by Citibank, N.A.
GGG	Petitioner's Quarterly Value-Added Tax (VAT) Return for the 1st quarter of CY 2008
HHH	Petitioner's Quarterly VAT Return for the 2nd quarter of CY 2008
III	Petitioner's Quarterly VAT Return for the 3rd quarter of CY 2008
JJJ	Petitioner's Quarterly VAT Return for the 4th quarter of CY 2008
KKK	Summary of payments made by Petitioner in the 1st quarter of CY 2008 denominated in Philippines Peso
LLL	Summary of payments made by Petitioner in the 2nd quarter of CY 2008 denominated in

	Philippine Peso
MMM	Summary of payments made by Petitioner in the 3rd quarter of CY 2008 denominated in Philippine peso
NNN	Summary of payments made by Petitioner in the 4th quarter of CY 2008 denominated in Philippine Peso
OOO-1 to OOO-295	Supporting documents of significant disbursements for CY 2008
PPP	Income statement per location denominated in US Dollar
QQQ	Income statement per location denominated in Philippine Peso
RRR	Income statement of JAKA Building 6th to 8th floors denominated in US Dollars
SSS	Income statement of JAKA Building 6th to 8th floors denominated in Philippine Peso
TTT	Annual ITR for CY 2008 manually filed with the BIR on April 15, 2009
UUU	Journal entries to support audit adjustments
VVV-1 to VVV-16	General ledger of salaries and wages of the travel agency
WWW	Reconciliation of net income per books against taxable income for CY 2008
XXX-1 to XXX-191	Supporting documents for Petitioner's travel agency activity
YYY-1 to YYY-26	Supporting documents for Petitioner's commission income
ZZZ	Supplemental report of the Independent CPA submitted on November 29, 2011
AAAA	Supplemental Sworn Statement of Ms. Maria Clara A. Locsin to questions propounded by Atty. Ray-an Francis V. Baybay dated November 16, 2011
AAAA-1	Signature of Ms. Maria Clara A. Locsin
BBBB	Sworn Statement of Ms. Katherine O. Constantino to Questions Propounded by Atty. Ray-an Francis V. Baybay dated December 2, 2011
BBBB-1	Signature of Ms. Katherine O. Constantino
CCCC	Certification from the Revenue Accounting Division of the BIR dated November 29, 2011
DDDD	Letter addressed to the Revenue Accounting Division of the BIR dated November 16, 2011
DDDD-1	Signature of "Jerome Joseph B. Arnaldo"
DDDD-2	Signature of Ray-an Francis V. Baybay"
EEEE	Sworn Statement of Atty. Ray-an Francis V. Baybay to Questions Propounded by Atty. Jerome B. Arnaldo dated January 20, 2012
EEEE-1	Signature of Atty. Ray-an Francis V. Baybay

FFFF	Supplemental Sworn Statement of Ms. Katherine O. Constantino to Questions Propounded by Atty. Ray-an Francis V. Baybay dated August 13, 2012
FFFF-1	Signature of Ms. Katherine O. Constantino
FFFF	Petitioner's Financial Statements for the calendar years (CY) ending December 31, 2007 and December 31, 2008
FFFF-1	Petitioner's Statements of Income for the CY ending December 31, 2007 and December 31, 2008
FFFF-2	Petitioner's Statements of Cash Flow for the CY ending December 31, 2007 and December 31, 2008
GGGG-1 to GGGG-8, GGGG-11-GGGG-38, GGGG-40-GGGG-43	Original print outs of Journal Vouchers for CY 2008
HHHH	Sworn Statement of Ms. Arsyl Tolentino to Questions Propounded by Atty. Ray-an Francis V. Baybay dated February 11, 2013
HHHH-1	Signature of Mr. Arsyl Tolentino
IIII	Sworn Statement of Mr. Genly Manrisa to Questions Propounded by Atty. Ray-an Francis V. Baybay dated February 18, 2013
IIII-1	Signature of Mr. Genly Manrisa

On February 18, 2013, respondent's counsel manifested that respondent would no longer present any witness and would submit the instant case for decision. Thus, the parties were given thirty (30) days from notice within which to file their respective Memoranda.

On July 2, 2013, the instant case was deemed submitted for decision considering respondent's Memorandum[37] filed on May 2, 2013 and petitioner's Memorandum[38] filed on May 31, 2013.[39]

[37] Docket, pp. 940-949.
[38] Docket, pp. 957-987.
[39] Resolution dated July 2, 2013, Docket, p. 989.

The parties presented the following issues[40] to be resolved by this Court:

> "8. Whether or not petitioner is entitled to the refund or issuance of a tax credit certificate in the amount of Php38,087,854.48, representing the alleged excessive corporate income tax erroneously paid by the petitioner for CY 2008;
>
> 9. Whether or not petitioner derived income in the gross amount of One Hundred Eight Million Eight Hundred Twenty Two Thousand Four Hundred Forty One Pesos (Php108,822,441.00) as a foreign exchange gain for CY 2008;
>
> 10. Whether or not foreign exchange gain of Php108,822,441.00 derived by petitioner was included in its taxable income subjected to RCIT at the rate of thirty-five percent (35%);
>
> 11. Whether or not the regular corporate income tax (RCIT) on petitioner's foreign exchange gain for CY 2008, amounting to Thirty Eight Million Eighty Seven Thousand Eight Hundred Fifty Four and 48/100 Pesos (Php38,087,854.48) was remitted and paid to the BIR;
>
> 12. Whether or not the foreign exchange gain of Php108,822,441.00 derived by petitioner is attributable to its activities registered with the BOI and PEZA;
>
> 13. Whether or not the foreign exchange derived by petitioner is exempt from RCIT under Section 27(A), Tax Code;
>
> 14. Whether or not petitioner exhausted all administrative remedies before filing the instant petition before this Honorable Court; and

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[40] Docket, pp. 156-157.

> 15. Whether or not petitioner complied with Section 229 in relation to Section 204, Tax Code."

Petitioner contends that it filed its Annual Income Tax Return on April 13, 2009. Thus, it had two years or until April 13, 2011 within which to file its administrative and judicial claims for refund. Further, it filed its administrative and judicial claims on April 11, 2011 and April 13, 2011, respectively. Petitioner asserts that it complied with the mandatory periods under Sections 204(C) and 229 of the NIRC of 1997.

Respondent counter-argues that petitioner failed to exhaust administrative remedies and the latter's judicial claim for refund was filed prematurely. She points out that the Petition for Review was filed two (2) days after the filing of the administrative claim. Evidently, petitioner did not give respondent the opportunity to examine and evaluate its claim for refund. In effect, petitioner failed to exhaust administrative remedies. Respondent emphasizes that it is basic to resort first to the appropriate administrative authorities in the resolution of a controversy falling under their jurisdiction before the same may be elevated to the courts of justice for review. The non-observance of the doctrine will result in lack of cause of action which is one of the grounds allowed by the Rules of Court for the dismissal of the complaint.

Section 204(C) of the National Internal Revenue Code of 1997, as amended, provides:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes*. - The Commissioner may -
>
> xxx xxx xxx
>
> (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." *(Emphasis supplied)*

In relation thereto, Section 229 of the NIRC of 1997, as amended, reads:

> "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)*

Section 204(C) applies to administrative claims filed with the BIR; while Section 229 refers to judicial actions for the recovery of the tax. The settled rule is that both the claim for refund with the BIR and the subsequent appeal to the Court of Tax Appeals must be filed within the two-year period from the date of payment of the tax.

In the instant claim, petitioner's corporate income taxes were remitted through eFPS on April 13, 2009.[41] Counting from this date, petitioner had until April 13, 2011 within which to file its administrative and judicial claims for refund. Apparently, petitioner's administrative claim for refund filed before the Commissioner of Internal Revenue on April 11, 2011 and the subsequent appeal before this Court by way of a Petition for Review filed on April 13, 2011 fell within the two-year prescriptive period.

Respondent further alleges that petitioner failed to submit complete documents pursuant to Revenue Memorandum Order (RMO) No. 53-98 dated June 1, 1998. However, records prove that petitioner forwarded its Letter dated April 11, 2011[42] to respondent requesting the refund or the issuance of a tax credit certificate with the attached supporting documents. It is a rule that a tax examiner cannot demand what type of supporting documents should be submitted; otherwise, the taxpayer will be at the mercy of the examiner, who may require the production of documents that the taxpayer cannot submit. Moreover, it is basic that respondent ought to know the tax records of all taxpayers.[43]

Finding petitioner's claim to have been timely filed, the merits of the instant Petition for Review are discussed hereunder.

Petitioner's primary purpose 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,

[41] Exhibit "J".
[42] Exhibit "GG".
[43] *Diageo Philippines, Inc. vs. Commissioner of Internal Revenue,* CTA Case Nos. 7846 and 7865, January 16, 2012.

to carry on and conduct a general business relating to internet services."[44]

Records show that petitioner is registered with the Board of Investments 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 pursuant to BOI Certificate of ITH Entitlement CE No. 2008-000145.[45] Petitioner is likewise registered with PEZA under its former name PeopleSupport (Philippines) Inc. (PSPI) as an Ecozone IT Enterprise engaged in the establishment of a contact center that will provide outsourced customer care services and business process outsourcing (BPO) services under the Amended Certificate of Registration No. 03-17-IT.[46] Petitioner's registrations with the BOI and PEZA for its various operating locations are summarized as follows:

Project as per Registration Agreement/Certificate of Registration	**Certificate of Registration**	**No. of years with Income Tax Holiday Incentive**	**Income Tax Holiday (ITH) Period/Starting Date for the Availment of the ITH**	**Reference**
PeopleSupport (Philippines) Inc. (petitioner's former name)	2003-59 under BOI dated April 22, 2003	6 years	April 22, 2003 to April 29, 2009	Exhibit "C"
Cebu Contact Center, Asia Town IT Park, Cebu	03-17 IT under PEZA dated August 12, 2003	4 years plus 1 bonus year	October 1, 2003 to September 30, 2008	Exhibits "N" and "T"
SM Baguio Cyberzone Bldg.		6 years	May 2007 (start of commercial operation)	Exhibits "O" and "U"
6780 Ayala		6 years	December 2006 (start of commercial operation)	Exhibits "P" and "V"
2nd, 3rd, 4th & 5th Flrs., Skyrise Plaza, Asiatown IT Park		6 years	March 2006 (start of commercial operation)	Exhibits "Q" and "W"
New Project with Base Figure, PeopleSupport Center		4 years	June 2005 to May 2009	Exhibits "R" and "X"
6780 Ayala Ave (11th & 12th Flrs)		4 years	August 1, 2007 to July 31, 2011	Exhibits "S" and "Y"

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[44] Par. 4, Admitted Facts, JSFI, Docket, p. 153; Exhibit "A", Docket, p. 366.
[45] Exhibit "C", Docket, p. 377.
[46] Exhibits "D" and "E", Docket, pp. 378 to 380.

Petitioner contends that as a BOI and PEZA-registered enterprise, it is entitled to the income tax holiday incentive which is based on Section 23 of Republic Act No. 7916 otherwise known as "The Special Economic Zone Act of 1995" ("PEZA Law"), which provides:

> "SECTION 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 for under Book VI of Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987."

The fiscal incentives granted to registered enterprise under Book VI of Executive Order (EO) No. 226 otherwise known as the "Omnibus Investments Code of 1987", as amended, in relation to Article 39(a)(1) thereof include income tax holiday for four (4) to six (6) years, depending on whether the enterprise is registered as pioneer or non-pioneer firm, to wit:

> "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:" *(Emphasis supplied)*

However, the tax incentives to which an ECOZONE Enterprise is entitled do not necessarily include all kinds of income that it may receive during the period of entitlement. The Rules and Regulations Implementing RA No. 7916 read in part:

"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.**" *(Emphasis supplied)*

Revenue Regulations No. 20-02 has clarified the tax treatment of income earned from unregistered activities in this wise:

"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." *(Emphasis supplied)*

Clearly, to enjoy the incentives granted under the PEZA law, the taxpayer's income must be effectively related to the conduct of its registered trade or business. Executive Order No. 226 also provides that the incentives granted under the said law shall only be "to the extent engaged in a preferred area of investment." Therefore, in order for petitioner to enjoy the income tax holiday incentive provided under the PEZA law and EO No. 226, petitioner's income must be effectively related to the conduct of its registered trade or business.

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.[47]

Petitioner cited PEZA Memorandum Circular No. 2005-032[48] dated September 15, 2005, which clarifies the tax

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[47] *Aegis PeopleSupport Inc. [Formerly PeopleSupport (Philippines), Inc. vs. Commissioner of Internal Revenue,* CTA Case No. 8085, July 9, 2012.
[48] Exhibit "G".

treatment of foreign exchange gains by ECOZONE Export Enterprises; a portion of which states:

> "The tax treatment of foreign exchange (forex) gains shall depend on the activities from which these arise. Thus, if the forex gain is attributed to an activity with income tax incentive (Income Tax Holiday or 5% Gross Income Tax), said forex gain shall be covered by the same income tax incentive. On the other hand, if the forex gain is attributed to an activity without income tax incentive, said forex gain shall likewise be without income tax incentive, *i.e.*, therefore, subject to normal corporate income tax."

Following the issuance of the above-mentioned PEZA Memorandum Circular are BIR Rulings interpreting the tax treatment of forex gains of PEZA/BOI-registered entities, where the BIR consistently held that the realized forex gains are exempt from income tax provided that they are attributable, connected or intimately related to its registered activities which enjoy similar incentive.[49] Therefore, petitioner has the burden of proving that the foreign exchange gain of ₱108,822,410.00 is attributable to its registered activity with the BOI and PEZA, specifically, the establishment of a contact center which will provide outsourced customer care services and business process outsourcing.

According to petitioner, it substantially derives its service fees by servicing US-based clients of its mother company, PeopleSupport, Inc. (PSI-US). The functional currency of these clients is denominated in US Dollar. Since the USD is the currency that mainly influences the Company's source of revenue, the Company changed its functional currency from Philippine Peso to USD in CY 2007. However, while the Company's income was principally denominated in USD, the bulk of its expenses (*i.e.*, payroll, rent, and utilities) were denominated in Philippine Pesos. As a consequence, the Company's ability to meet its primary

[49] BIR Ruling Nos. DA-195-08, DA-375-08, DA-(IL-011) 107-08, DA-(C-295) 723-09, and DA-(IL-009) 089-10.

obligations to its employees, lessors, utility providers (*e.g.*, electricity, water, and communication service providers), etc. was primarily dependent upon the conversion of some of its USD income to Philippine Peso. In 2008, the Company sold its USD at rates which were higher than the average prevailing forex rate. So for 2008, the Company recognized forex gains which were subjected to regular corporate income tax.[50]

In relation to the conversion of its dollars to pesos, petitioner allegedly entered into an Agreement[51] with Citibank N.A. to partially offset the effect of the declining value of the USD against the Philippine Peso. Due to the improvement of the Philippine Peso in CY 2008 and the transactions entered into with Citibank N.A., petitioner realized forex gain of ₱108,822,441.00.

In its amended Annual Income Tax Return[52] filed on May 29, 2009 through eFPS, petitioner reflected taxable income of ₱114,457,362.00 and a corresponding income tax due of ₱40,060,076.70 using the regular corporate income tax rate of 35%, as follows:

Sales/Revenues/Receipts/Fees	₱ -
Cost of Sales/Services	4,792,707.00
Gross Income from Operations	₱ (4,792,707.00)
Add: Non-Operating & Taxable Other Income	**120,286,161.00**
Total Gross Income	₱ 115,493,454.00
Less: Deductions	1,036,092.00
Taxable Income	₱ 114,457,362.00
Tax Rate (except MCIT rate)	35%
Income tax due	**₱ 40,060,076.70**

The realized foreign exchange gains on hedging in the amount of ₱108,822,441.00 were reported as part of the total Non-Operating and Taxable Other Income[53] of ₱120,286,161.00, broken down as follows: *c*

[50] Exhibit "Z", A4, Docket, pp. 446 to 447.
[51] Annex "G", Petition for Review, Docket, p. 44.
[52] Exhibit "L", Docket, p. 401.
[53] Exhibit "L", Schedule 4, Docket, p. 405.

Commission Income	₱ 31,392.00
Interest income from Loan	9,769,484.00
Other Income	1,662,844.00
Realized Forex Gain from Hedge	**108,822,441.00**
Total	**₱ 120,286,161.00**

Included in the total income tax due of ₱40,060,076.70 is the amount of ₱38,087,854.35 (₱108,822,441 x 35%) pertaining to the alleged income tax erroneously and/or excessively paid on the realized exchange gains on hedging.

Petitioner provided a Schedule of Computation of Gain on Forward Exchange Contracts[54] with a total amount of ₱109,654,130.56, which differs from the amount of ₱108,822,441.00 reported in the ITR; thus, a discrepancy in the amount of ₱831,558.62:

	(a)	(b)	(c)	(d)	(e) [(b-c)*a]	(f) [(b-d)*a]	(g) (e-f)
Forward Exchange Contract Reference No.	**Dollar Amount Sold**	**Forward Rate at Maturity**	**Spot Rate per Schedule**	**Spot Rate Upon Booking**	**Foreign Exchange Gain Computed Based on Schedule**	**Foreign Exchange Gain Computed Based on Spot Rate per Booking**	**Difference**
1337026022	$ 3,000,000.00	49.00000	41.32500	41.45482	₱ 23,025,000.00	₱ 22,635,538.86	₱ 389,461.14
1337029015	2,000,000.00	49.02500	41.32500	41.45524	15,400,000.00	15,139,513.72	260,486.28
1337060001	5,000,000.00	48.34680	40.64300	40.67826	38,519,000.00	38,342,720.42	176,279.58
1337093002	5,000,000.00	48.30500	41.76300	41.76407	32,710,000.00	32,704,668.38	5,331.62
	$15,000,000.00				**₱109,654,000.00**	**₱108,822,441.38**	**₱831,558.62**

The Court-commissioned Independent CPA, Katherine O. Constantino, noted that the difference in amount is due to the difference in the spot rate used by petitioner in preparing the schedule and spot rate used in recording the transaction in the books.

The foreign exchange gain on hedging was computed using the spot rate per booking as follows:[55]

[54] Exhibit "PP".
[55] Annex 7, Exhibit "II" (ICPA Report).

A		b	c	D (b-c)	e (d*a)
Dollar Amount Sold	**Maturity Date**	**Forward Rate at Maturity**	**Spot Rate per Books**	**Difference in Rates**	**Foreign Exchange Gain on Hedging per Computation**
$ 3,000,000.00	1/23/2008	49.00000	41.45482	7.54518	₱ 22,635,538.86
2,000,000.00	1/23/2008	49.02500	41.45524	7.56976	15,139,513.72
5,000,000.00	2/22/2008	48.34680	40.67826	7.66854	38,342,720.42
5,000,000.00	3/28/2008	48.30500	41.76407	6.54093	32,704,668.38
$15,000,000.00					**₱ 108,822,441.38**

Petitioner submitted documents to support Spot Rate used,[56] System Generated General Ledger,[57] Citibank N.A.'s credit advices,[58] Schedule of Gain/Loss on Foreign Exchange Contracts,[59] Service Agreements between petitioner and its customers,[60] Schedules of Service Revenues,[61] Sales Invoices,[62] Certificate of Inward Remittances and customer advices,[63] General Ledger of Service Revenues,[64] Bank Statements-peso and dollar,[65] and Credit Memos issued by petitioner[66] to support its service revenues. It also submitted Summary of Payments[67] and supporting documents covering disbursements[68] to support its expenses.

Even though the Independent CPA matched the revenues with inward remittances,[69] showed the movement of petitioner's Citibank N.A. dollar account for the revenues[70] and provided schedules of some of the significant expenses,[71] petitioner still failed to establish that the

[56] Exhibits "UU-1" to "UU-4".
[57] Exhibits "QQ" and "RR".
[58] Exhibits "OO-1" to "OO-4".
[59] Exhibit "PP".
[60] Exhibits "CCC-1" to "CCC-3".
[61] Exhibits "ZZ", "AAA", and "BBB".
[62] Exhibits "DDD-1" to "DDD-208".
[63] Exhibits "FFF-1" to "FFF-30".
[64] Exhibits "VV", "WW", and "XX".
[65] Exhibits "SS" and "TT".
[66] Exhibits "EEE-1" to "EEE-39", and "FFF-1" to "FFF-30".
[67] Exhibits "KKK", "LLL", "MMM" and "NNN".
[68] Exhibits "OOO-1" to "OOO-295".
[69] Annexes 8, 9, and 10, Exhibit "II".
[70] Annex, 11, Exhibit "II".
[71] Annexes 12, 13, 14, and 15, Exhibit "II".

foreign exchange gain of ₱108,822,441.00 is attributable to its registered activity. Further, a perusal of 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 gain on hedging that is not directly attributable to petitioner's registered activity with the BOI and the PEZA. *Ergo*, 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.

It may also be recalled that pursuant to the Certificate of ITH Entitlement,[72] petitioner "is entitled to ITH incentive provided under Article 39(a) of Executive Order No. 226 as amended by R.A. 7918" for a period of six (6) years from April 22, 2003 to April 21, 2009, and that **its registered product** is "IT Export Service Firm in the field of Customer Contact Center".

Moreover, Article II of the Registration Agreement (by and between PEZA and petitioner) executed on August 12, 2003,[73] which was referred to as the "Original Contract" in the Supplemental Agreements subsequently executed by petitioner with PEZA,[74] states the scope of petitioner's registered activity, to wit:

> "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 REGISTRANT decides to engage in a new or additional product line, directly or indirectly related to its

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[72] Exhibit "C", Docket, p. 377.
[73] Exhibit "N", docket, pp. 408 to 415.
[74] Exhibits "O" to "S", Docket, pp. 416 to 438.

registered activity, it shall apply anew with PEZA for the latter's approval." *(Emphasis supplied)*

In a Resolution rendered by the CTA First Division in an earlier case entitled *Aegis PeopleSupport, Inc. [Formerly PeopleSupport (Philippines), Inc.] vs. Commissioner of Internal Revenue, CTA Case No. 8085, March 4, 2013,* involving the parties herein, the Court made the following ruling on the issue similar to the present issue:

> "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." *(Emphasis supplied)*

Clearly from the foregoing, since 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.

Basic is the rule that tax refunds are in the nature of tax exemptions and are to be construed *strictissimi juris* against the entity claiming the same.[75] Moreover, statutes in derogation of sovereignty such as those containing exemption from taxation should be strictly construed in favor of the state.[76] In this regard, taxation is the rule and exemption is the exception. The burden of proof rests upon the party claiming exemption to prove that it is, in fact, covered by the exemption so claimed.[77] Tax exemption should be granted only by clear and unequivocal provision of law on the basis of language too plain to be mistaken. They cannot be extended by mere implication or inference.[78]

Petitioner failed to sustain the burden placed upon it by presenting proof that it is entitled to the refund or issuance of a tax credit certificate in the amount of ₱38,087,854.48 allegedly representing excess payment of regular corporate income tax for the CY 2008.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

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

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[75] *Philippine Geothermal, Inc. vs. The Commissioner of Internal Revenue,* G.R. No. 154028, July 29, 2005.
[76] *PLDT vs. City of Davao,* 399 SCRA 442.
[77] *National Power Corporation vs. Province of Isabela,* G.R. No. 165827, June 16, 2006 citing *Cyanamid Philippines, Inc. v. Court of Tax Appeals,* 379 Phil. 689, 703 (2000).
[78] *PLDT vs. City of Davao,* 447 Phil. 571, 585-586 (2003).

WE CONCUR:

(with Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

(on leave)
ERLINDA P. UY
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 before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice
Chairpersor, 1st Division

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

AEGIS PEOPLESUPPORT, INC. [FORMERLY PEOPLESUPPORT (PHILIPPINES), INC.], Petitioner,	**CTA CASE NO. 8267**
	***Members*:**
- versus -	**DEL ROSARIO,** *Chairperson,* **UY,** *and* **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** MAY 28 2014 ; 1:12 p.m.

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CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur in the denial of the Petition for Review on the ***sole*** ground that petitioner failed to prove during trial that the foreign exchange gain of ₱108,822,441.00 is entirely attributable to its registered activity with the Board of Investments (BOI) and Philippine Economic Zone Authority (PEZA) which is the establishment of a contact center.

As correctly pointed out by the *ponente*, the Honorable Associate Justice Cielito N. Mindaro-Grulla, although the Court-commissioned Independent Certified Public Accountant (ICPA) matched the revenues with inward remittances, showed the movement of petitioner's Citibank N.A. dollar account for the revenues and provided schedules of some of the significant expenses, the same are not sufficient to clearly show that the foreign exchange gain of ₱108,822,411.00 is entirely attributable to petitioner's registered activity with the BOI and PEZA. Indeed, the presence of other credits in petitioner's Citibank N.A. account casts doubt on petitioner's claim that the foreign exchange gains that resulted from its hedging activity are totally attributable to its registered activity.

There is no denying that tax refunds partake of the nature of tax exemptions, which are construed *strictissimi juris* against the taxpayer, thus, **evidence in support of a claim must likewise be *strictissimi* scrutinized and duly proven.**[1] The taxpayer has the burden to present convincing evidence to substantiate a claim for refund,[2] and a taxpayer's "**[e]ntitlement to a tax refund is for the taxpayer to prove** and not for the government to disprove."[3]

I VOTE to DENY the Petition for Review filed by AEGIS PEOPLESUPPORT, INC.

ROMAN G. DEL ROSARIO
Presiding Justice

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[1] Commissioner of Internal Revenue vs. Far East Bank & Trust Company (Now Bank of the Philippines Islands), G.R. No. 173854, March 15, 2010, citing Philippine Long Distance Telephone Company v. Commissioner of Internal Revenue, G.R. No. 157264, January 31, 2008, 543 SCRA 329, 33.
[2] Philam Asset Management, Inc. vs. Commissioner of Internal Revenue, G.R. Nos. 156637/162004, December 14, 2005.
[3] *Supra,* note 19.