Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

AEGIS PEOPLESUPPORT, INC. [FORMERLY, PEOPLESUPPORT (PHILIPPINES), INC.],	**CTA EB Case No. 996** (CTA Case No. 8085)
Petitioner,	
- versus –	Members:
COMMISSIONER OF INTERNAL REVENUE, Respondent.	DEL ROSARIO, *P.J.*, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, and RINGPIS-LIBAN, *JJ.*
	Promulgated: JAN 07 2015 11:55 a.m.

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RESOLUTION

CASANOVA, J.:

This resolves petitioner's Motion for Reconsideration[1] filed on September 2, 2014, sans respondent's Comment per Records Verification dated November 4, 2014, praying for the Court *En Banc* to reconsider its Decision[2] (Assailed Decision) dated August 4, 2014 and render judgment ordering respondent to refund or issue a tax credit certificate in the amount of P66,177,830.95, representing petitioner's erroneous payment of income tax for calendar year (CY) 2007.

The dispositive portion of the Assailed Decision reads:

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[1] *En Banc* Rollo, pp. 122-138.
[2] Ibid, pp. 106-119.

"**WHEREFORE,** premises considered, the present Petition for Review is hereby **DENIED,** and accordingly, **DISMISSED** for lack of merit.

SO ORDERED."

In its Motion, petitioner asserts the following arguments for the consideration of this Court:

a. The incentives granted to Philippine Economic Zone Authority (PEZA)-registered entities extends to activities that are necessarily related to the registered activities of these entities;

b. Petitioner established that its foreign exchange (forex) gains were derived from the conversion of US dollars to Philippine pesos in order to defray expenses incurred in connection with its PEZA-registered activity; hence, these foreign gains should be covered by petitioner's income tax holiday (ITH) privilege; and

c. Petitioner's right to due process will be violated if its forex gains will not be covered by ITH incentive.

A perusal of the grounds raised by petitioner in its Motion for Reconsideration reveals that the same are practically mere reiterations of the arguments contained in its Motion for Reconsideration[3] dated August 1, 2012 and Petition for Review[4] dated April 12, 2013, which have been extensively discussed, resolved and settled in the Assailed Decision and Resolution[5] of the CTA Special First Division dated March 4, 2013. To discuss them anew is superfluity.

We shall now proceed to the last issue in which petitioner advances the argument that its right to due process will be violated if its foreign gains will be treated differently from the taxpayers whose foreign gains were exempted from income tax, as shown in the following Bureau of Internal Revenue (BIR) Rulings: DA-195-08 (e-Telecare Global Solutions, Inc. Ruling); DA-375-08 (Samsung Electronics Philippine Manufacturing Corp. Ruling); DA-(IL-011)107-08 (Manila North Tollways Corporation Ruling; DA-(C-295)723-09 (Manila Wtaer Services, Inc. Ruling); and, DA-(IL 009) 089-10 (Amkor Technology Philippines, Inc. Ruling). Thus, citing the equal protection clause,

[3] Division Docket (Vol. II), pp. 727-755.
[4] *En Banc* Rollo, pp. 7-40.
[5] Division Docket (Vol. II), pp. 777-785.

petitioner insists that it should be accorded the same extent of fiscal incentives granted to the foregoing corporations.

We are not convinced.

The equal protection clause under the Constitution means that "no person or class of persons shall be deprived of the same protection of laws which is enjoyed by other persons or other classes in the same place and in like circumstances." Stated differently, all persons belonging to the same class shall be taxed alike.[6]

In the case at bench, petitioner cannot find support in the equal protection clause since it was not classified nor treated differently from other Philippine Economic Zone Authority (PEZA) and Board of Investment (BOI) enterprises. In fact, it is entitled to the same incentives being enjoyed by the said enterprises, provided that it complies with the conditions set forth by the Rules and Regulations to Implement Republic Act (RA) No. 7916[7], or otherwise known as the Special Economic Zone Act of 1995 (PEZA Law) and EO No. 226[8] and, for as long as its income is effectively related with the conduct of its

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[6] Chamber of Real Estate and Builders' Association, Inc. vs. Alberto Romulo, et al., G.R. No. 160756, March 9, 2010.

[7] "PART VII
Incentives to ECOZONE
Enterprises

Rule XIII
Application and Entitlement
SECTION 1. Application for Availment of Incentives. — All applications for availment of incentives shall be filed with PEZA.

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.

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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."

[8]" INCENTIVES TO REGISTERED ENTERPRISES

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:"

registered trade or business, pursuant to Revenue Regulations No. 20-02[9].

Further, petitioner cannot rely on the afore-mentioned rulings since it failed to sufficiently establish, to the satisfaction of this Court, that the respective transactions contemplated in the same are similar to that of petitioner's. In fact, none of them, as correctly pointed out by the Court in Division, specifically addressed the supposed tax treatment on petitioner's unregistered activity of entering into a hedging contract with Citibank.[10]

Furthermore, the foregoing rulings were found by the Special First Division to be in conflict with the provisions of Revenue Regulations No. 20-2002, Rules and Regulations to Implement RA No. 7916, and Registration Agreement Executed on August 12, 2003 by and between the PEZA and petitioner.[11]

Lastly, BIR Rulings are not conclusive in the interpretation of tax laws. Said 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.[12] In fact, BIR Rulings are aptly described as "the best guess of the moment

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[9] "REVENUE REGULATIONS NO. 20-02

SUBJECT: 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

TO: All Internal Revenue Officers and Others Concerned

These Regulations are issued to clarify the internal revenue tax treatment of income earned from unregistered activities by enterprises that are registered with the Subic Bay Metropolitan Authority, the Clark Development Authority, or the Philippine Economic Zone Authority, as the case may be.

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."

[10] Page 7 of the Resolution dated March 4, 2013, Annex "B" to the Petition for Review, *En Banc* Rollo, p. 75.

[11] Page 7 and 8 of the Resolution dated March 4, 2013, Annex "B" to the Petition for Review, *En Banc* Rollo, pp. 75 -76.

[12] Atlas Consolidated Mining and development Corporation vs. Atty. Kim S. Jacinto- Henares, in her capacity sa the Commissioner of Internal Revenue, et al., CTA Case No. 8150, October 1, 2013.

. . . sort of an information service to the taxpayer" and are "not binding on the courts".[13]

In view of the foregoing, the CTA *En Banc* finds no cogent justification to disturb the findings and conclusions spelled out in the August 4, 2014 CTA *En Banc* Decision. What the instant Motion for Reconsideration seeks is for the Court to view and appreciate the evidence in their own perspective of things, which unfortunately had already been considered and passed upon.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

(I maintain my Concurring Opinion)
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

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[13] Commissioner vs. Ledesma, L-17509, January 30, 1970; Commissioner of Internal Revenue vs. Placer Dome Technical Services (Phils), Inc., CA-GR SP 71458, June 30, 2004.

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice