REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

SUTHERLAND GLOBAL PHILIPPINES, INC.,
Petitioner,

- *versus* -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB CASE NO. 916
(CTA Case No. 7985)

Present:
Del Rosario, P.J.
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, and
Ringpis-Liban, JJ.

Promulgated:

DEC 02 2013 ArApolinario 9:08 a.m.

x---x

DECISION

BAUTISTA, J.:

The Case

Before the Court *En Banc* is a Petition for Review,[1] filed on July 27, 2012, assailing the Decision dated March 28, 2012,[2] rendered by the Second Division of the Court ("Court in Division"), which denied the claim for refund of erroneously paid income tax for the period covering July 1, 2006 to June 30, 2007, in the total amount of ₱2,118,052.88; and the Resolution dated June 25, 2012,[3] which denied the Motion for Reconsideration for lack of merit.

---

[1] *Rollo*, CTA EB Case No. 916 (CTA Case No. 7985), pp. 12-67, with Annexes.
[2] Penned by Associate Justice Cielito N. Mindaro-Grulla, with Associate Justice Juanito C. Castañeda, Jr., concurring and Associate Justice Caesar A. Casanova, on wellness leave; *Rollo*, pp. 33-61, *Annex "A."*
[3] Penned by Associate Justice Cielito N. Mindaro-Grulla, with Associate Justices Juanito C. Castañeda, Jr., and Caesar A. Casanova, concurring; *Rollo*, pp. 64-67, *Annex "B."*

The Antecedent Facts

The relevant antecedents are succinctly recited by the Court in Division in its Decision dated March 28, 2012, as follows:

> "Petitioner Sutherland Global Services Philippines, Inc. is a foreign corporation organized and existing under the laws of Cayman Islands and duly licensed by the Securities and Exchange Commission in accordance with the Corporation Code of the Philippines and the Foreign Investments Act of 1991 to establish its branch office in the Philippines to process consulting services, account management services, technical support/help desk services, customer care services and back office processing for operating call center.
>
> Respondent Commissioner of the Bureau of Internal Revenue (BIR) is the public official tasked with the enforcement of internal revenue laws. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.
>
> Petitioner is a non-pioneer Information Technology (IT) locator enterprise registered as an Ecozone IT Enterprise by virtue of a Philippine Economic Zone Authority (PEZA) Amended Certificate of Registration No. 05-10-IT dated October 16, 2008 and PEZA Certificate of Registration No. 06-90-IT dated December 6, 2006.
>
> Pursuant to PEZA Resolution No. 06-543 dated November 14, 2006, the PEZA Board approved the application of petitioner to conduct and operate its business within the Clark Special Economic Zone (CSEZ). Consequently, a Registration Agreement between PEZA and petitioner was executed. The scope of its registered activity included process consulting, technology support services, customer care services, and back office processing for operating call center, as well as the importation of raw materials, machinery, equipment, tools, goods, wares, articles, or merchandise directly used in its registered operations at the CSEZ.
>
> Petitioner was also granted tax incentives under Republic Act (R.A.) No. 7916, as amended, and PEZA Resolution No. 00-411 (PEZA IT Guidelines). Under the Registration Agreement, petitioner 'shall pay 5% tax on gross income, in lieu of all national and local taxes, subject to PEZA and BIR Rules and Regulations,' and '(t)ax and duty

exemption on importation of capital equipment, raw materials and supplies.'

On January 18, 2007, through PEZA Resolution No. 07-37, petitioner, along with other CSEZ export-oriented and IT locator enterprises that registered with the Clark Development Corporation (CDC) after the proclamation of CSEZ as a PEZA Special Economic Zone, was allegedly granted full PEZA incentives.

Accordingly, petitioner and PEZA executed a Supplemental Agreement on February 2, 2007, wherein it was stated that '(t)he REGISTRANT shall be entitled to four (4) years Income Tax Holiday (ITH) under non-pioneer status and upon the expiration of the ITH incentive, the REGISTRANT shall be entitled to 5% gross income tax (GIT) incentive and to other incentives under the PEZA law.'

However, according to petitioner, from the time petitioner started its commercial operations, the four-year ITH was not applied to it, and it mistakenly paid the five percent (5%) preferential tax on its gross income in the total amount of ₱3,530,088.13. Two million one hundred eighteen thousand fifty two pesos and 88/100 (₱2,1[1]8,052.88) of this amount was allegedly remitted to the BIR, and the balance, in the amount of ₱1,412,036.00 was remitted to the local government of Mabalacat, Pampanga.

Realizing that it paid the 5% preferential tax when it should have been exempt for the first four years on the basis of the PEZA IT Guidelines, petitioner purportedly filed an administrative claim for refund with the BIR.

Petitioner then filed the instant Petition for Review and Supplemental Petition for Review, both through registered mail, on October 15, 2009 and November 27, 2009, respectively.

In Answer to the Petition for Review filed on November 25, 2009, respondent interposed the following defenses:

> '3. Petitioner did not file any administrative claim for refund; hence, this Petition for Review should be dismissed for lack of jurisdiction. Petitioner stated in its Petition for Review that it has mailed the administrative claim for refund in October 15, 2009. Petitioner then filed its Petition for Review on October 20, 2009.

4. Respondent observing due diligence requested the records of the instant administrative claim, which prompted a Memorandum dated November 11, 2009 (Attached as Annex 'A') from the Revenue District Office which supposedly received its claim. The Memorandum states that petitioner never filed any application for tax refund.

5. Section[s] 204(c) and 229 of the Tax Code required the taxpayer to file a written claim for refund before he could file a judicial claim for refund:

> 'Section 204(c) xxx 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 years after the payment of the tax or penalty. xxx'
>
> 'Section 229. 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 or penalty it claimed to have been collected without authority, 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 xxx.'

Clearly, no administrative claim was filed. There was no exhaustion of administrative remedies. No documents were ever received by respondent to study the said claim.

6. It is a well-settled rule in tax laws, that the taxpayer who feels aggrieved by the actions taken by tax authorities may not seek redress in the courts of justice without first exhausting available administrative remedies, except for certain well-recognized exceptions. It is the policy of the law and good practice to discourage court litigations and encourage resort to administrative action whenever the latter is feasible, adequate and speedy. For another thing, the respect

and consideration due to each branch of the government demand that the judicial department abstain; whenever possible from interfering in the acts of the other departments, except when the latter transcend their respective shares of action and suitable remedies cannot be obtained by them. (*Bagatsing vs. Ramirez, 74 SCRA 306*)

7. Equally noteworthy is the fact that the Highest Tribunal in the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, G.R. No. 145526* promulgated on *March 26, 2007* held:

> 'Petitioner's contention that non-compliance with Revenue Regulations 3-88 could not have adversely affected its case in the CTA indicates a failure on its part to appreciate the nature of the proceeding in that court. First a judicial claim for refund or tax credit in the CTA is by no means an original action but rather an appeal by way of petition for review of a previous, unsuccessful administrative claim. Therefore, as in every appeal or petition for review, a petitioner has to convince the appellate court that quasi-judicial agency a quo did not have reason to deny its claim. In this case, it was necessary for petitioner to show the CTA not only that it was entitled under substantive law to grant its claim but also that it satisfied all the documentary evidence and evidentiary requirements for administrative claim for refund or tax credit. xxx"

Thus, as clearly stated by the above jurisprudence, the necessity for petitioner to submit all relevant documents to substantiate its administrative claim is imperative. The filing of the petition for review to this Honorable Court must be due to the denial of its claim or inaction which is tantamount to a denial of the said claim. Absent these circumstances, the judicial claims merely become an attempt by the taxpayer to circumvent the role and duties of the Commissioner in evaluating the taxpayer's claim for refund.'

The case was set for pre-trial on January 15, 2010. Thereafter, respondent filed her Pre-trial Brief on January 5, 2010; while petitioner filed its Pre-trial Brief on January 12, 2010.

Respondent also filed a Motion to Dismiss on March 3, 2010, reiterating her allegation that petitioner failed to file any administrative claim for refund. Petitioner filed its Opposition (Respondent's Motion to Dismiss dated 4 March 2010) on March 22, 2010, contradicting respondent's averment. The said Motion was denied by this Court in a Resolution dated April 30, 2010.

On March 16, 2010, the parties submitted their Joint Stipulation of Facts and Issues, which was approved in a Resolution dated March 26, 2010. In the same Resolution, the pre-trial conference was terminated.

During trial, petitioner presented four (4) witnesses, namely: Alteza Alindogan Dy, Reggie Leo L. Sabayo, Ida M. Cortez, and Amabel P. Oliquino.

On September 9, 2010, petitioner filed its Formal Offer of Evidence with respondent's comment. This Court in its Resolutions dated November 25, 2010 and January 18, 2011 admitted *Exhibits 'A'* to *'Q,'* inclusive of sub-markings.

The documentary evidence formally offered by petitioner are the following:

xxx xxx xxx

Respondent presented the only witness, Josalyn E. Tan.

Thereafter, respondent formally offered *Exhibits '1'* to *'8-a,'* which were subsequently admitted in the Resolutions dated June 16, 2011 and August 25, 2011.

The documentary evidence for the respondent are as follows:

xxx xxx xxx

On August 31, 2011, the case was considered submitted for decision, after petitioner filed its Memorandum on July 21, 2011 and respondent filed her Memorandum on August 22, 2011."[4]

The Ruling of the Court in Division

The Court in Division issued a Decision dated March 28, 2012, ruling as follows:

> "**WHEREFORE,** premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"[5]

Aggrieved, petitioner filed a Motion for Reconsideration on April 18, 2012, which was denied as well in a Resolution dated June 25, 2012.

The Issue

Hence, the present Petition for Review, where petitioner assigns the lone issue of:

> "WHETHER OR NOT THE COURT'S SECOND DIVISION ERRED IN FINDING THAT SUTHERLAND IS NOT ENTITLED TO THE REFUND OF THE AMOUNT OF TWO MILLION ONE HUNDRED EIGHTEEN THOUSAND FIFTY TWO PESOS AND 88/100 (₱2,118,052.88) REPRESENTING ERRONEOUSLY PAID INCOME TAX FOR THE PERIOD 1 JULY 2006 TO 30 JUNE 2007."[6]

Petitioner's Arguments

Petitioner maintains that the entries in its Annual Income Tax Return for the fiscal year ending June 30, 2007 are clear and conclusive evidence that the amount of ₱2,118,052.88 was sourced from PEZA-registered

[4] *Rollo*, pp. 35-44. Citations omitted.
[5] *Ibid.*, p. 61.
[6] *Ibid.*, p. 19.

activities, to wit: (a) that it did not state any income on the column subject to the regular rate; (b) that pursuant to Section 52 of the 1997 National Internal Revenue Code, as amended, its Income Tax Return is the true and accurate report of its business operations; (c) that pursuant to Section 44 of the Rules of Evidence, entries in its Annual Income Tax Return partake the nature of an official record; (d) that respondent never posted any objection nor questioned the entries made in its Annual Income Tax Return; and (e) that it had attached its Financial Statement for Fiscal Year ending June 30, 2007 in the Motion for Reconsideration filed on April 18, 2012, to substantiate its claim.

Respondent's Counter-Arguments

Respondent counters that the principle of *solutio indebiti* cannot salvage petitioner's failure to substantiate and prove the veracity of its claim; bare allegations, unsubstantiated by evidence, are not equivalent to proof. Considering that petitioner has been given the opportunity to present all its evidence before the proceedings in the Court in Division, and still failed to substantiate its claim, respondent prays that the present case should also be denied.

The Ruling of the Court En Banc

The Petition for Review is bereft of merit.

In the assailed Decision, the denial of the claim for refund has been stated as follows:

> "Aside from its Annual Income Tax for the taxable period ending June 30, 2007, **petitioner failed to present supporting documents to prove that its declared income is effectively connected with the conduct of its registered activity**. Therefore, without such supporting documents, the determination of whether the amount declared in petitioner's Annual Income Tax Return for the taxable year ending June 30, 2007 is income connected with the conduct of petitioner's registered business would be impossible."[7] (*Boldfacing supplied.*)

---

[7] *Ibid.*, p. 60.

Upon filing of its Motion for Reconsideration and in order to further prove its claim, petitioner attached a copy of its Financial Statement for the fiscal year ending June 30, 2007. Nevertheless, the Court in Division ruled as follows:

> "Likewise, an examination of petitioner's Financial Statement, attached to its Motion, shows that there is nothing therein indicating that the income declared in petitioner's Annual Income Tax Return was effectively connected with the conduct of its registered activity."[8]

With the foregoing, the Court now sitting *En Banc* cannot simply reverse a finding made by the Court in Division when petitioner clearly ignored the ruling that in order to enjoy the incentives granted under the PEZA Law, a taxpayer must prove that its declared income was related to the conduct of its registered trade or business. The Court *En Banc*, thus, affirms the findings of the Court in Division, to quote:

> "Petitioner presented its Certificate of Registration with [R]egistration [N]o. 06-90-IT, which shows that petitioner is registered as an Ecozone IT Enterprise at the Clark Special Economic Zone on December 6, 2006. It likewise submitted the Registration Agreement and Supplemental Agreement entered into between petitioner and PEZA.
>
> The Registration Agreement executed on December 20, 2006 indicates that petitioner's project shall be entitled to the incentives under R.A. No. 7916, as amended and under the PEZA IT Guidelines, subject to the following terms and conditions:
>
> 'xxx xxx xxx
>
> ARTICLE XIV
> SPECIAL CONDITIONS
>
> 14. The incentives herein granted are subject to the following terms and conditions:
>
> 14.1 The **incentives herein granted shall apply only to the registered activity**. Xxx'

---

[8] *Ibid.*, p. 67.

A Supplemental Agreement was also executed between petitioner and PEZA on February 2, 2007 which, among others, provides:

xxx xxx xxx

Thus, it is clear that petitioner is a PEZA-registered enterprise, which was granted incentives under the PEZA Law. Now, in order to determine whether the said incentives pertain to the amount claimed for refund, this Court shall be guided by the above-cited provisions of the agreements entered between petitioner and PEZA in relation to the provisions of R.A. No. 7916 and the pertinent BIR Rules and Regulations.

Section 23 of Republic Act No. 7916, otherwise known as the Special Economic Zone Act of 1995 ('PEZA Law') provides that business establishments operating within the Ecozones shall be entitled to the fiscal incentives as provided under Presidential Decree No. 66, the law creating the Export Processing Zone Authority, or those provided under Book VI of Executive Order No. 226, otherwise known as the Omnibus Investments Code.

A perusal of petitioner's registration as a PEZA establishment, its non-pioneer status, its Registration Agreement, and its Supplemental Agreement would show that petitioner was entitled to a four-year Income Tax Holiday incentive commencing from the date it started business operations on August 9, 2006.

The Income Tax Holiday incentive allows petitioner an exemption from the payment of all taxes which may be levied by the National Government for a period of four (4) years from the start of its business operations. Thus, counting the period of four (4) years from the commencement of its operation on August 9, 2006, petitioner had until August 9, 2010 within which to enjoy such incentive, provided that it complies with the conditions as set forth by the PEZA Law.

Nonetheless, this incentive does not necessarily include all kinds of income which petitioner may receive during the period of availment.

In this regard, the Rules and Regulations Implementing Republic Act No. 7916, read in part:

'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.'

Revenue Regulations No. 20-02 clarified the tax treatment of income earned from unregistered activities, to wit:

> 'xxx xxx xxx
>
> 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.
>
> xxx xxx xxx'

Clearly, in order to enjoy the incentives granted under the PEZA law, the taxpayer's income must be effectively related with the conduct of its registered trade or business. An effectively related income may be interpreted to mean as that 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."[9] (*Boldfacing supplied.*)

A reading of the foregoing shows that the Court in Division has thoroughly pointed out that in order to enjoy the incentives granted under the PEZA law, the relevant income must be effectively related to the conduct of the registered trade or business; and an effectively related income is that income derived from the business activity in which the corporation is engaged in; for an income may also be received that may not be directly connected or related to the business activity, thus, the need for this Court to examine the records and for petitioner to prove every minute aspect of its claim.

Further, the Court *En Banc* notes that the Court in Division has sufficiently addressed the issues raised by petitioner in the case at bench, to quote:

> "xxx, in order to enjoy the incentives granted under the PEZA law, the taxpayer's income must effectively be related with the conduct of its registered trade, business, activity or operation. And, petitioner must establish, among others, that its income relating to the subject tax refund was actually gained or received in relation to its registered operations. Petitioner failed to do so.
>
> Petitioner presented only its Annual Income Tax Return. While it may be true that the entries in petitioner's Annual Income Tax Return constitutes *prima facie* evidence of the facts stated therein, it does not, however, distinguish whether the income declared was derived from petitioner's registered activity or not. The entries only show the amount and payment of income tax.
>
> As correctly argued by respondent, the burden is on the taxpayer to prove its entitlement to the refund. In the case of *Commissioner of Internal Revenue vs. Far East Bank & Trust Company (Now Bank of the Philippine Islands)*, the High Court further discussed as follows:
>
>> 'Moreover, the fact that the petitioner failed to present any evidence or to refute the evidence presented by respondent does not *ipso facto* entitle the respondent to a tax

---

[9] *Ibid.*, pp. 55-60. Citations omitted.

> refund. It is not the duty of the government to disprove a taxpayer's claim for refund. Rather, the burden of establishing the factual basis of a claim for a refund rests on the taxpayer.
>
> And while the petitioner has the power to make an examination of the returns and to assess the correct amount of tax, his failure to exercise such powers does not create a presumption in favor of the correctness of the returns. The taxpayer must still present substantial evidence to prove his claim for refund. As we have said, there is no automatic grant of a tax refund.
>
> Hence, for failing to prove its entitlement to a tax refund, respondent's claim must be denied. Since tax refunds partake of the nature of tax exemptions, which are construed *strictissimi juris* against the taxpayer, evidence in support of a claim must likewise be *strictissimi* scrutinized and duly proven. xxx.'

Clearly, there is a need for petitioner to substantiate its claim for refund despite respondent's failure to object when petitioner submitted its Annual Income Tax Return in 2008, and respondent's failure to examine petitioner's return and to assess the purported correct amount of tax."

All told, the Court *En Banc* finds no compelling reason to warrant a reversal of the assailed Decision and Resolution.

WHEREFORE, the Petition for Review is hereby **DENIED** for lack of merit. The Decision dated March 28, 2012, and Resolution dated June 25, 2012 issued by the Second Division of the Court are hereby **AFFIRMED** *in toto*.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

(On Leave)
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 this Court.

ROMAN G. DEL ROSARIO
Presiding Justice