REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	CTA EB No. 1182 (CTA CASE No. 8354)
-versus-	*Present*: DEL ROSARIO, P.J, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, and RINGPIS-LIBAN, *JJ.*
SUTHERLAND GLOBAL SERVICES PHILIPPINES, INC., *Respondent.*	Promulgated: APR 07 2016 3:45 p.m.

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RESOLUTION

MINDARO-GRULLA, J.:

Submitted for resolution is a Motion for Reconsideration filed by petitioner CIR, seeking the reversal of the Decision[1] dated October 28, 2015, the dispositive portion of which, reads as follows:

> "**WHEREFORE**, premises considered, the petition is **DENIED**. The Decision of the Second Division of this Court in CTA Case No. 8354 dated February 27, 2014 and its Resolution dated May 20, 2014 are hereby **AFFIRMED**. No pronouncement as to costs.
>
> **SO ORDERED**."

[1] En Banc docket, pp. 81-95.

Petitioner asserts that respondent's failure to present and offer as evidence proof of payment of other taxes such as Value-Added Tax (VAT)/Percentage Tax Returns is fatal to its claim for refund.

The Court En Banc finds no merit in this assertion.

At the outset, it must be already emphasized that the amount being claimed as a refund in the case at bar represents erroneously paid 5% gross income taxes for the fiscal year ending in June 30, 2009, where respondent was supposed to be benefitting from an Income Tax Holiday (ITH) incentive granted by PEZA pursuant to the Supplemental Agreement dated February 2, 2007.

Under the premises, what should ***only*** be considered by the Court En Banc in this case is whether or not respondent was able to substantiate its entitlement to the claim for refund.

As a rule, enterprises registered with the Philippine Economic Zone Authority and established in these ecozones are granted incentives. Section 23 of the Republic Act 7916 provides as follows:

> SEC. 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 under Book VI of Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987.

In sum, these incentives include an option between payment of a 5% preferential tax on gross income earned in lieu of all national and local taxes[2] or availing of an Income

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[2] Sec. 24, R.A 7916, The "Special Economic Zone Act of 1995", as amended, by R.A No. 8748. June 1, 1999.

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CHAPTER III
OPERATIONS WITHIN THE ECOZONE

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Tax Holiday of 4 to 6 years depending on whether an entity is registered as a pioneer or non-pioneer enterprise[3].

In the case at bar, respondent is a non-pioneer Information Technology locator enterprise registered as an Ecozone IT Enterprise by virtue of its Philippine Economic Zone Authority (PEZA) Amended Certificate of Registration. Thus, as a PEZA-registered enterprise, it generally has an option to either pay the preferential tax rate of 5% on gross income or avail of the 4-year income tax holiday from its commercial operations on August 9, 2006.

A perusal of the records would show that respondent's entitlement to the tax incentives is by virtue of the Registration Agreement and the Supplemental Agreement executed between respondent and PEZA. However, important consideration must be given to the pertinent provision of the Supplemental Agreement which provides as follows:

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1. (Sutherland) shall be **entitled to a 4-year Income Tax Holiday (ITH) under a non-pioneer status and upon the expiration of the ITH incentive, (Sutherland) shall be entitled**

SEC. 24. *Exemption from National and Local Taxes.*- Except for real property taxes on land owned by developers, **no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE**. In lieu thereof, **five percent (5%) of the gross income earned by all business enterprises within the ECOZONE** shall be paid and remitted as follows:

a. Three percent (3%) to the National Government;

b. Two percent (2%) which shall be directly remitted by the business establishments to the treasurer's office of the municipality or city where the enterprise is located.

[3] Article 39 (a)(1), Title III, E.O No. 226, The "Omnibus Investments Code", July 17, 1997.

TITLE III
INCENTIVES TO REGISTERED ENTERPRISES

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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.

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> **to 5% gross income tax (GIT)** incentive and to other incentives under the PEZA law"
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> 4. This Agreement shall form an integral part of the Original Contract.
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Contrary to petitioner CIR's averment, respondent did not simultaneously avail of the fiscal incentives, thus, there is no double incentive to speak of. It clearly states in the Supplemental Agreement that respondent is entitled to four years income tax holiday (ITH) incentive, and upon the expiration of the ITH incentive, only then shall it be entitled to the 5% gross income tax incentive.

Unfortunately however, respondent inadvertently paid the 5% gross income tax for the first four years from its commercial operations on August 09, 2006. When respondent realized that it erroneously paid the 5% gross income tax when it should have been exempt by virtue of its ITH incentive, it filed a claim for refund.

Meanwhile, petitioner CIR contends that the filing of the Income Tax Return is contrary to its entitlement to the Income Tax Holiday (ITH) and refund of erroneously paid income taxes, and therefore, respondent must submit proof of VAT or Percentage Tax returns in order to confirm availment of the ITH incentive and that there was indeed an erroneous payment. This contention is misplaced.

To reiterate, Section 24 of Republic Act 7916 provides as follows:

> SEC. 24. **Exemption from National and Local Taxes.**- Except for real property taxes on land owned by developers, **no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE. In lieu thereof, five percent (5%) of the gross income earned by all business enterprises within the ECOZONE** (emphasis supplied) shall be paid and remitted as follows:

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Corollary thereto, Revenue Regulation 12-97, which implements Section 24 of R.A 7916 defines "local taxes", to wit;

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i. "*Local Taxes*-shall refer to all **local taxes, business taxes, real estate taxes, and other taxes**, fees and charges imposed by the local government units pursuant to the Local Government Code of 1991, as amended"

Based on the afore-cited provisions, the five percent (5%) preferential tax rate imposed on the gross income of a PEZA-registered enterprise shall be in lieu of all national taxes and local taxes, including VAT. Clearly, a presumption arises that when respondent mistakenly paid the 5% gross income taxes during fiscal year ending in June 30, 2009, such payment was made in lieu of all national and local taxes, including VAT. Consequently, the necessity of presenting proof of payment of VAT/Percentage Tax Returns are moot and irrelevant in this case.

On another note, the Court in Division correctly held that in order to justify the claim for refund, Republic Act 7916 mandates that relevant income must be effectively related to the conduct of the registered trade or business. 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 registered business activity. The taxpayer must establish, among others, that its income relating to the subject tax refund was actually gained or received in relation to its registered operations.

Based on records, respondent submitted the following documents in order to substantiate its claim for refund and prove as well that its total revenue was indeed derived from its PEZA registered activities:

1. Various computer-generated billing invoices;
2. Debit memo;
3. Breakdown of Time and Cost Charges;

4. Schedule of Revenue for respondent company's Clark Special Economic Zone (CSEZ).

With the exception of the breakdown of time and cost charges, the Court Commissioned Independent Certified Public Accountant (ICPA) was able to attribute and verify from the afore-mentioned documents that income earned was derived from respondent's PEZA-registered activities within the CSEZ facility. But since the period when income was earned from such activities within the CSEZ exempts respondent from payment of said gross income taxes, the amount being claimed became a proper subject of refund. The Court Commissioned ICPA was also able to establish from these documents the correct amount that should be refunded to the respondent.

Respondent paid and remitted to the BIR the 5% percent preferential tax rate on its gross income as indicated in its Annual Income Tax Return and Amended Income Tax Return for the fiscal year ending in June 30, 2009. This payment was erroneous since under the Supplemental Agreement, petitioner is covered by the 4-year ITH incentive and its liability for the 5% gross income tax would only be effective upon the expiration of the 4-year ITH incentive.

Therefore, the 5% gross income taxes remitted to the BIR clearly constitutes as "illegally or erroneously paid taxes" which is a proper subject of refund under Section 204(C) [4] in relation to Section 229[5] of the NIRC of 1997, as amended. C

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[4] Section 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may

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(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.

[5] Section 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.

Notably, the afore-mentioned provisions provide no other requirements in connection with refund of taxes other than the **existence of internal revenue taxes alleged to have been erroneously or illegally assessed or collected** *(emphasis supplied).* An erroneous or illegal tax is defined as one levied without statutory authority or upon property not subject to taxation[6]. Undoubtedly, the reason why respondent filed a claim for refund precisely is because it erroneously paid taxes which it should not have.

Likewise, there is also no specific revenue regulation which categorically enumerates the documents necessary to be presented when filing a claim for refund for erroneous payment of the 5% preferential income tax for PEZA-registered entities, such as respondent, unlike that for VAT refunds. As long as the taxpayer is able to fully substantiate the amount to be refunded, as well as show prima facie its entitlement to the refund, then this Court has no reason for denying the request.

Thus, the Court En Banc is convinced that with the circumstances in the present case, the Court in Division has correctly granted respondent's claim for refund in the reduced amount of P18,199,066.08, representing erroneously paid 5% gross income tax for the fiscal year ending in June 30, 2009.

Incidentally, the Court does not agree with petitioner's position that she is not duty-bound to refute the evidence presented by respondent because the burden of proof rests only with the respondent. This mindset ignores the rule that the petitioner CIR has an equally important responsibility of contradicting petitioner's claim by presenting proof readily on hand once the burden of evidence shifts to its side.

Let petitioner CIR be reminded of the Supreme Court's explanation in *Jison vs. Court of Appeals*[7]:

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[6] Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation, G.R. No. 188497, April 25, 2012

[7] Francisco Jison v. Court of Appeals, G.R. No. 124853. February 24, 1998.

> Simply put, he who alleges the affirmative of the issue has the burden of proof, and upon the plaintiff in a civil case, the burden of proof never parts. However, in the course of trial in a civil case, **once plaintiff makes out a prima facie case in his favor, the duty or the burden of evidence shifts to defendant to controvert plaintiffs prima facie case, otherwise, a verdict must be returned in favor of plaintiff.** (emphasis supplied)

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In view of the foregoing, it is of this Court's opinion that the documents already submitted are sufficient enough to determine whether respondent's claim is valid or not. Respondent was able to present documentary evidence necessary to establish prima facie its right to the refund. Regrettably, petitioner CIR waived her right to present rebuttal evidence.

Emphasis must be given to the fact that tax refunds are based on the principle of contract or *solutio indebiti*[8] and the pertinent laws governing this principle are found in Articles 2142[9] and 2154[10] of the New Civil Code of the Philippines.

It is a basic postulate that no one should unjustly enrich himself at the expense of another. Moreover, when money is paid to another based on misapprehension of the existing facts, the right to recover arises. The caveat against unjust enrichment covers the government[11].

There being no doubt that petitioner paid 5% gross income taxes for the fiscal year ending in June 30, 2009 while being under the ITH incentive, there arises an obligation on the part of petitioner to return what was

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[8] The Commissioner of Internal Revenue vs. Acesite (Philippines) Hotel Corporation, G.R. No. 147295, February 16, 2007.

[9] Art. 2142. Certain lawful, voluntary and unilateral acts give rise to the juridical relation of quasi-contract to the end that **no one shall be unjustly enriched or benefited at the expense of another**.

[10] Art. 2154. If **something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises**.

[11] Commissioner of Internal Revenue v. Fortune Tobacco Corporation, G.R. Nos. 167274-75, July 21, 2008, citing Commissioner of Internal Revenue v. Firemans Fund Insurance Co., No. L-30644, March 9, 1987.

mistakenly paid by respondent pursuant to the principle of *solutio indebiti*. Thus, Government has to restore to respondent the sums representing the erroneously paid gross income taxes.

WHEREFORE, finding no cogent reason to reverse the Decision dated October 28, 2015, the Motion for Reconsideration is hereby **DENIED.**

SO ORDERED.

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

ESPERANZA R. FABON-VICTORINO
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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