REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

EHS LENS PHILIPPINES, INC. (formerly HOYA LENS MANUFACTURING PHILIPPINES, INC.), *Petitioner,*	**CTA CASE NO. 9014**
	Members: **Bautista,** *Chairperson* **Fabon-Victorino,** *and* **Ringpis-Liban,** *JJ.*
- versus -	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: APR 19 2017 3:45 p.m.

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DECISION

BAUTISTA, J:

The Case

Before the Court is a Petition for Review[1], as amended through the filing of an Amended and Supplemental Petition for Review[2] on August 28, 2015, filed by petitioner EHS Lens Philippines, Inc. ("EHS Lens") on March 20, 2015, pursuant to *Section 7(a)(2)*[3] *of Republic Act*

[1] *Records, CTA Case No. 9014, Vol. 1, Petition for Review ("PFR"),* pp. 6-130, with annexes.
[2] *Id., Vol. 1, Amended and Supplemental PFR,* pp. 177-314, with annexes.
[3] Sec. 7. *Jurisdiction.* - The Court of Tax Appeals shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

xxx xxx xxx

(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations 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 of action, in which case the inaction shall be deemed a denial;

("RA") No. 1125[4], as amended by *RA No. 9282*[5] and *RA No. 9503*[6], in relation to *Section 3(a)(1)*[7], *Rule 4 of the Revised Rules of the Court of Tax Appeals ("RRCTA")*[8], praying that petitioner be refunded or be issued applicable tax credit certificates ("TCC") for the total amount of Value-added Tax ("VAT") paid by petitioner and remitted/paid by Epson Precision (Philippines), Inc. ("EPPI") and Philippines Epson Optical, Inc., renamed to PEO Company, Inc. ("PEOI-PEOCI"), to the Bureau of Internal Revenue ("BIR") in the aggregate amount of Sixty-Eight Million, Nine Hundred Three Thousand, Four Hundred Thirty-Five and 74/100 Pesos (Php68,903,435.74) for taxable year ("TY") 2013.[9]

The Parties

Petitioner EHS Lens, formerly Hoya Lens Manufacturing Philippines Inc.,[10] is a domestic corporation[11] duly organized in accordance with Philippine laws, with the primary purpose "to make, manufacture, assemble, import, export, buy, trade and/or otherwise deal at wholesale inoptical lenses and other optical related goods of whatever nature, and any and all equipment, material supplies used or employed in or related to the manufacture of such finished

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[4] An Act Creating the Court of Tax Appeals, as amended.

[5] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes.

[6] An Act Enlarging the Organizational Structure of the Court of Tax Appeals, Amending for the Purpose Certain Sections of the Law Creating the Court of Tax Appeals, and for Other Purposes.

[7] Sec. 3. *Cases within the jurisdiction of the Court in Division.* - The Court in Division shall exercise:

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

[8] *A.M. No. 05-11-07-CTA*, November 22, 2005.

[9] *Records, Vol. 1, Amended and Supplemental PFR, Prayer*, p. 195.

[10] *Petitioner's Evidence Folder, Exhibit "P-2," Amended Articles of Incorporation*, p. 1; *Petitioner's Evidence Folder, Exhibit "P-1," Cover Sheet for Application at Company Registration and Monitoring Department*; *BIR Records, Certificate of Filing of Amended Articles of Incorporation*, p. 73.

[11] *Petitioner's Evidence Folder, Exhibit "P-2," Amended Articles of Incorporation*, p. 1; *BIR Records, Certificate of Incorporation*, p. 74.

product."[12] It is registered with the Philippine Economic Zone Authority ("PEZA") as an Ecozone Export Enterprise ("EEE") and an Ecozone IT Enterprise ("EITE") as of January 17, 2013, with Certificate of Registration No. 13-06.[13]

Petitioner had three (3) plants located in Cavite (VAT-registered), Laguna and Batangas, for which it secured Certificates of Registration from the BIR, detailed as follows:

REGISTRATION DATE	ADDRESS	INDUSTRY	OCN	TIN	RDO
October 24, 2012[14]	Gateway Business Park, General Trias, Cavite 4107	3999 - Manufacture of Other Articles, N.E.C	1RC0000622176	008-380-068-000	54-B
January 24, 2013[15]	SEP2 Lot 1, Blk. 3, Phase 5 Ampere St. LISP, Bo. Diezmo, Cabuyao, Laguna 4025	3999 - Manufacture of Other Articles, N.E.C	1RC0000601396	008-380-068-001	057
August 26, 2014[16]	Lot 1-A Phase 1-B First Philippine Industrial Pk, Tanauan City, Batangas 4232	3999 - Manufacture of Other Articles, N.E.C	1RC0000740404	008-380-068-002	059

Respondent Commissioner of Internal Revenue ("CIR") is the head of the BIR, with office address at the BIR National Office Building, Agham Road, Diliman, Quezon City.[17]

The Facts

PEOI-PEOCI is a domestic corporation.[18] Its primary purpose is "to purchase, acquire, sell, lease, exchange, mortgage, or otherwise dispose of, within the limits allowed by law, any and all real estate and properties of every kind and description except land whatsoever as may be necessary or requisite for its purposes, and to enter into, make, perform and carry out contracts of every kind and for any lawful purpose pertaining to the business of the Corporation, or in any manner incident thereto, as principal, agent, or otherwise, with any person, firm, association or corporation[;]" with principal office

[12] *Petitioner's Evidence Folder, Exhibit "P-2," Amended Articles of Incorporation,* p. 1.
[13] *Petitioner's Evidence Folder, Exhibit "P-12," PEZA Amended Certificate of Registration,* p. 1; *BIR Records, PEZA Certificate of Registration, PEZA Amended Certificate of Registration,* pp. 68-69.
[14] *Petitioner's Evidence Folder, Exhibit "P-9," BIR Certificate of Registration, Cavite,* p. 1.
[15] *Petitioner's Evidence Binder, Vol. 1, Exhibit "P-46," BIR Certificate of Registration, Laguna,* p. 1.
[16] *Id., Exhibit "P-47," BIR Certificate of Registration, Batangas,* p. 1.
[17] *Records, Vol. 1, Joint Stipulation of Facts and Issues ("JSFI"),* p. 624.
[18] *Petitioner's Evidence Folder, Exhibit "P-8," PEOI-PEOCI Amended Articles of Incorporation,* p. 1; *BIR Records, PEOI-PEOCI SEC Certificate of Incorporation,* p. 53.

located in SEPZ, Lima Technology Center, Lipa City, Batangas.[19] PEOI-PEOCI is a VAT-registered[20] and a PEZA-registered[21] entity.

EPPI is a domestic corporation.[22] Its primary purpose is "to make, manufacture, assemble, import, export, buy, trade and/or otherwise deal at wholesale in electrical, plastic and metal products, as well as quarts-based products, and goods of whatever nature, and any and all equipment, material supplies, used or employed in or related to the manufacture of such finished products and the development of software that may be used in the production of said finished products[;]" with principal office located in SEPZ, Lima Technology Center, Lipa City, Batangas.[23] EPPI was issued a BIR Certificate of Registration as a VAT-registered Large Taxpayer,[24] and a PEZA Amended Certificate of Registration No. 95-18[25] as an EEE at the Lima Technology Center - Special Economic Zone.

PEZA and PEOI-PEOCI entered into a Registration Agreement[26] on March 14, 2005, followed by several Supplemental Agreements dated July 15, 2009[27], January 26, 2010[28], March 18, 2011[29], and December 9, 2011[30].

On November 29, 2012, PEZA Certificate of Board Resolution No. 12-649 was issued stating that PEOI-PEOCI's PEZA Registration as an EEE will be cancelled effective thirty (30) days from the signing of the Registration Agreement of petitioner for the projects to be taken-over by petitioner from PEOI-PEOCI and the transfer to petitioner of

[19] *Petitioner's Evidence Folder, Exhibit "P-4," PEOI-PEOCI Director's Certificate to the Amendment of Articles of Incorporation,* p. 1; *Petitioner's Evidence Folder, Exhibit "P-8," PEOI-PEOCI Amendment of Articles of Incorporation,* p. 1.

[20] *Petitioner's Evidence Folder, Exhibit "P-11," PEOI-PEOCI BIR Certificate of Registration,* p. 1; *BIR Records, PEOI-PEOCI BIR Certificate of Registration,* p. 51.

[21] *BIR Records, PEOI-PEOCI PEZA Amended Certificate of Registration,* p. 41.

[22] *Id., EPPI SEC Certificate of Registration,* p. 23.

[23] *Petitioner's Evidence Folder, Exhibits "P-6" and "P-6-a," EPPI Amended Articles of Incorporation,* pp. 1-2.

[24] *Petitioner's Evidence Folder, Exhibit "P-10," EPPI BIR Certificate of Registration,* p. 1; *BIR Records, EPPI BIR Certificate of Registration,* p. 22.

[25] *Petitioner's Evidence Folder, Exhibit "P-13," PEOI-PEOCI PEZA Certificate of Registration,* p. 1; *BIR Records, PEOI-PEOCI PEZA Certificate of Registration,* p. 21.

[26] *Petitioner's Evidence Folder, Exhibit "P-15," PEOI-PEOCI Registration Agreement,* pp. 1-9; *BIR Records, PEOI-PEOCI Registration Agreement,* pp. 43-50.

[27] *Petitioner's Evidence Folder, Exhibit "P-16," PEOI-PEOCI First Supplemental Agreement,* pp. 1-3; *BIR Records, PEOI-PEOCI First Supplemental Agreement,* pp. 38-40.

[28] *Petitioner's Evidence Folder, Exhibit "P-17," PEOI-PEOCI Second Supplemental Agreement,* pp. 1-3; *BIR Records, PEOI-PEOCI Second Supplemental Agreement,* pp. 35-37.

[29] *Petitioner's Evidence Folder, Exhibit "P-18," PEOI-PEOCI Third Supplemental Agreement,* pp. 1-4; *BIR Records, PEOI-PEOCI Third Supplemental Agreement,* pp. 32-34.

[30] *Petitioner's Evidence Folder, Exhibit "P-19," PEOI-PEOCI Fourth Supplemental Agreement,* pp. 1-3; *BIR Records, PEOI-PEOCI Fourth Supplemental Agreement,* pp. 28-30.

all rights and obligations of PEOI-PEOCI under its Registration Agreement with PEZA dated March 14, 2005 and its Supplemental Agreements dated July 15, 2009, January 26, 2010, March 18, 2011 and December 9, 2011, which were approved, subject to petitioner's signing of a Registration Agreement with PEZA and to certain terms and conditions.[31]

On January 17, 2013, PEZA and petitioner entered into a Registration Agreement[32]. Hence, PEOI-PEOCI's PEZA registration was only cancelled thirty (30) days therefrom or on February 16, 2013.[33]

On February 1, 2013, petitioner entered into an Asset Purchase Agreement[34] with PEOI-PEOCI. Petitioner undertook to pay the amount of USD20,559,732.18, exclusive of VAT, which shall be borne by petitioner and paid to PEOI-PEOCI[35] in exchange for all of PEOI-PEOCI's rights, title and interest in and to the following:[36]

PROPERTY DESCRIPTION	NET BOOK VALUE	
Inventory (Finished Goods, Work in Process, Raw Materials)	USD	5,916,039.31
Other Inventory		1,765,128.08
Prepaid Expenses		45,122.00
Other Current Assets		146,315.78
Tangible Fixed Assets		12,052,017.05
Intangible Fixed Assets		338,450.83
Other Investment		296,659.13
PURCHASE PRICE (GRAND TOTAL)	**USD**	**20,559,732.18**

On even date, petitioner likewise entered into a Deed of Sale and Assignment[37] with EPPI. Petitioner agreed to pay the purchase price of USD4,123,216.07, exclusive of VAT to be borne by petitioner and

[31] *Petitioner's Evidence Folder, Exhibit "P-14," PEOI-PEOCI PEZA Certificate of Board Resolution No. 12-649,* p. 1; *BIR Records, PEOI-PEOCI PEZA Certificate of Board Resolution No. 12-649,* pp. 55-57.
[32] *Petitioner's Evidence Folder, Exhibit "P-20," Registration Agreement,* pp. 1-10; *BIR Records, Registration Agreement,* pp. 58-67.
[33] *Records, Vol. 2, Exhibits "P-31" and "P-31-a," Amended Judicial Affidavit ("JA") of Ms. Chona C. Menta, Q&A No. 23,* pp. 658-659.
[34] *Petitioner's Evidence Folder, Exhibit "P-3," PEOI-PEOCI Asset Purchase Agreement,* pp. 1-6; *BIR Records, PEOI-PEOCI Asset Purchase Agreement,* pp. 15-20.
[35] *Petitioner's Evidence Folder, Exhibit "P-3," PEOI Asset Purchase Agreement,* pp. 1-2; *BIR Records, PEOI-PEOCI Asset Purchase Agreement,* pp. 19-20.
[36] *Petitioner's Evidence Folder, Exhibit "P-3," PEOI Asset Purchase Agreement, Grand Summary for Annex,* p. 1; *BIR Records, PEOI Asset Purchase Agreement, Grand Summary for Annex,* p. 14.
[37] *Petitioner's Evidence Folder, Exhibit "P-4," EPPI Deed of Sale and Assignment,* pp. 1-9; *BIR Records, EPPI Deed of Sale and Assignment,* pp. 8-13.

paid to EPPI, for EPPI real properties and leasehold rights,[38] as follows:[39]

PROPERTY DESCRIPTION	NET BOOK VALUE	
Fixed Assets (Building & Structure)	USD	1,880,439.59
Prepaid Expenses (Land Rights)		2,242,776.48
PURCHASE PRICE (GRAND TOTAL)	**USD**	**4,123,216.07**

On March 21, 2013, EPPI and PEOI-PEOCI remitted[40] to the BIR the amounts of Php8,287,503.18 and Php60,492,742.46, respectively, representing VAT for February 2013. Based on their Monthly VAT Declarations[41], their VATable Sales amounted to Php70,089,110.70 and Php504,106,187.19.

By virtue of the Asset Purchase Agreement with PEOI-PEOCI and the Deed of Sale and Assignment with EPPI, PEOI-PEOCI and EPPI respectively issued Billing Invoice[42] and Sales Invoice[43], both dated January 14, 2015, as follows:

DETAILS	AMOUNT	
Tangible and Intangible Fixed Assets from PEOI-PEOCI		
Total VATable Sale	USD	12,390,467.88
Add: VAT		1,486,856.15
TOTAL SELLING PRICE	**USD**	**13,877,324.03**
Building & Structure from EPPI		
Total VATable Sale	USD	1,722,726.08
Add: VAT		206,727.13
TOTAL SELLING PRICE	**USD**	**1,929,453.21**

On June 30, 2015, PEZA issued a Certification[44] valid for the year 2013 stating that petitioner is a PEZA-registered EEE, with Registration Certificate No. 13-06 dated January 17, 2013, taking over the entire existing PEZA-registered operations of PEOI-PEOCI and as EITE; and that the available incentives to petitioner, as provided in its Registration Agreement and Supplemental Agreement both dated

[38] *Petitioner's Evidence Folder, Exhibit "P-4-a," EPPI Deed of Sale and Assignment,* pp. 1-2.

[39] *Petitioner's Evidence Folder, Exhibit "P-4-f," EPPI Deed of Sale and Assignment, Grand Summary for Annex,* p. 1; *BIR Records, EPPI Deed of Sale and Assignment, Grand Summary for Annex,* p. 7.

[40] *Petitioner's Evidence Folder, Exhibits "P-23" and "P-24," EPPI and PEOI-PEOCI BIR eFPS Payment Details,* p. 1 and p. 1; *BIR Records, EPPI and PEOI-PEOCI BIR eFPS Payment Details,* pp. 1, 4.

[41] *Petitioner's Evidence Folder, Exhibits "P-25" and "P-26," EPPI and PEOI-PEOCI BIR Form No. 2550-M,* p. 1 and p. 1; *BIR Records, EPPI and PEOI-PEOCI BIR Form No. 2550-M,* pp. 3, 6.

[42] *Petitioner's Evidence Folder, Exhibit "P-22," PEOI-PEOCI Billing Invoice,* p. 1; *BIR Records, PEOI-PEOCI Billing Invoice,* p. 93, with annex.

[43] *Petitioner's Evidence Folder, Exhibit "P-21," EPPI Sales Invoice,* p. 1; *BIR Records, EPPI Sales Invoice, p. 91,* with annexes.

[44] *Petitioner's Evidence Folder, Exhibit "P-27," PEZA Certification,* pp. 1-2.

January 17, 2013, includes "VAT zero-rating of local purchases subject to compliance with BIR and PEZA requirements[.]"

On March 18, 2015, petitioner filed an Application for Tax Credits/Refunds[45] for VAT for the period covering March 21, 2013 to March 21, 2013, specifically asking for refund in the total amount of Php68,780,245.64 due to erroneous payment, with attached Request for Tax Refund/Tax Credit for Erroneous Payment of VAT Under *Section 229 [of the 1997 National Internal Revenue Code, as amended ("1997 NIRC")]*[46] dated March 18, 2015 and supporting documents.

On March 19, 2015, petitioner filed a Supplemental to Letter-Request for Tax Refund/Tax Credit for Erroneous Payment of VAT Under *Section 229 [of the 1997] NIRC* Dated 18 March 2015[47], with supporting documents.

Due to respondent's inaction, petitioner filed its Petition for Review with the Court on March 20, 2015.[48]

On April 7, 2015, the Court issued Summons[49] to respondent, with an order to file an Answer to the Petition for Review within fifteen (15) days from service thereof. The BIR Litigation Division received the same on April 8, 2015.[50]

On April 22, 2015, respondent filed a Motion for Extension of Time to File Answer[51] praying for an extension of thirty (30) days from April 23, 2015 or until May 23, 2015, within which to file an Answer. This was granted by the Court in its Resolution[52] dated April 30, 2015.

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[45] *Petitioner's Evidence Folder, Exhibit "P-28," BIR Form No. 1914,* p. 1; *BIR Records, BIR Form No. 1914,* p. 88.
[46] *Petitioner's Evidence Folder, Exhibit "P-28-a," Request for Tax Refund/Tax Credit for Erroneous Payment of VAT Under Section 229 [of the 1997] NIRC,* pp. 1-13, exclusive of annexes; *BIR Records, Request for Tax Refund/Tax Credit for Erroneous Payment of VAT Under Section 229 [of the 1997] NIRC,* pp. 75-87, with annexes pp. 1-13.
[47] *Petitioner's Evidence Folder, Exhibit "P-29," Supplemental to Letter-Request for Tax Refund/Tax Credit for Erroneous Payment of VAT Under Section 229 [of the 1997] NIRC Dated 18 March 2015,* pp. 1-4, exclusive of annexes; *BIR Records, Supplemental to Letter-Request for Tax Refund/Tax Credit for Erroneous Payment of VAT Under Section 229 [of the 1997] NIRC Dated 18 March 2015, 95-98,* with annexes pp. 89-94.
[48] *Records, Vol. 1, PFR,* pp. 6-130, with annexes.
[49] *Id., Summons,* p. 131.
[50] *Id.*
[51] *Id., Vol. 1,* pp. 133-137.
[52] *Id.* at 139.

On May 25, 2015, respondent filed an Answer (To the Petition for Review dated 2[0] March 2015[53].

On August 26, 2015, respondent filed his Pre-Trial Brief.[54]

However, on August 28, 2015, petitioner filed its Motion to Admit Amended and Supplemental Petition for Review[55], with attached Amended and Supplemental Petition for Review.[56]

During the hearing held last September 1, 2015 and as confirmed in a Resolution[57] dated September 10, 2015, the Court treated the Amended and Supplemental Petition for Review as petitioner's Amended Petition for Review upon manifestation and motion of petitioner's counsel that it is withdrawing the original Petition for Review.[58] Consequently, respondent was ordered to file his comment thereto within a period of ten (10) days or until September 11, 2015.[59]

On September 3, 2015, respondent filed his Manifestation with Motion for Leave to File Amended Answer[60], followed by an Urgent Motion for Extension of Time to File Amended Answer[61] on September 16, 2017. In its Resolution[62] dated September 21, 2015, the Court granted both Motions.

On September 28, 2015, respondent filed an Amended Answer (To the Amended Petition for Review dated 24 August 2015)[63], raising Special and Affirmative Defenses[64], in sum: *(1)* the Court has no jurisdiction over the case as petitioner failed to exhaust administrative remedies prior to the filing of the Petition for Review, *(2)* the transactions entered into by petitioner were proper subjects of VAT since pursuant to *BIR Ruling No. 291-12 dated April 25, 2012* (as reiterated in *BIR Ruling No. 115-13*), the sale of a PEZA-registered enterprise of its fixed assets to another PEZA-registered entity is not

[53] *Records, Vol. 1, Answer,* pp. 140-146.
[54] *Id., Respondent's Pre Trial Brief,* pp. 170-174.
[55] *Id., Motion to Admit Amended and Supplemental Petition for Review,* pp. 175-176.
[56] *Id., Amended and Supplemental PFR,* pp. 177-314, with annexes.
[57] *Id., Vol. 1,* pp. 334-335.
[58] *Id., September 1, 2015 Minutes of Hearing,* p. 315.
[59] *Records, Vol. 1, September 1, 2015 Minutes of Hearing,* p. 315.
[60] *Id., Vol. 1,* pp. 316-321.
[61] *Id.,* pp. 341-345.
[62] *Id., Vol. 1,* pp. 347-348.
[63] *Id., Amended Answer (To the Amended Petition for Review dated 24 August 2015),* pp. 350-359.
[64] *Id.* at 351-356.

part of its registered activity, hence, not entitled to incentives, and *(3)* taxation is the rule and exemption is the exception.

On October 6, 2015, petitioner filed its Reply (To the Amended Answer dated 23 September 2015)[65].

On October 14, 2015, Respondent's Amended Pre-Trial Brief[66] was filed, while petitioner filed its Pre-Trial Brief[67] on October 16, 2015.

On November 4, 2015, the parties filed their Joint Stipulation of Facts and Issues[68] ("JSFI").

On January 6, 2016, a Pre-trial Order[69] was issued by the Court terminating the Pre-Trial Conference.

In the course of the proceedings, petitioner presented the following witnesses: *(1)* Ms. Chona C. Menta,[70] current Procurement Department Manager of petitioner and Department Manager-Accounting Section of petitioner from October 1, 2013 to May 21, 2015; and *(2)* Mr. Edwin F. Ramos[71], the Court-appointed[72] Independent Certified Public Accountant ("ICPA").

On April 20, 2016, petitioner filed its Formal Offer of Exhibits[73] ("FOE"), offering *Exhibits* "P-1," "P-2," "P-2a" to "P-2f," "P-3," "P-3a" to "P-3tt," "P-4," "P-4a" to "P-4n," "P-5," "P-6," "P-6a" to "P-6d," "P-7," "P-8," "P-8a" to "P-8c," "P-9" to "P-14," "P-14a" to "P-14c," "P-15," "P-15a" to "P-15h," "P-16," "P-16a" to "P-16b," "P-17," "P-17a" to "P-17b," "P-18," "P-18a" to "P-18c," "P-19," "P-19a" to "P-19b," "P-20," "P-20a" to "P-20i," "P-21" to "P-25," "P-25a," "P-26," "P-26a," "P-27," "P-27a," "P-28," "P-28a" to "P-28m," "P-29," "P-29a" to "P-29c," "P-30," "P-30a" to "P-30m," "P-31," "P-31a," "P-32," "P-32a," "P-33," "P-

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[65] *Records, Vol. 1, Reply (To the Amended Answer dated 23 September 2015),* pp. 362-364.
[66] *Id., Respondent's Amended Pre-Trial Brief,* pp. 367-373.
[67] *Id., Pre-Trial Brief,* pp. 374-382.
[68] *Id., Vol. 2, JSFI,* pp. 624-630.
[69] *Id., Pre-Trial Order ("PTO"),* pp. 643-649.
[70] *Records, Vol. 2, Exhibits "P-31" and "P-31-a," Amended JA of Ms. Chona C. Menta,* pp. 652-664, with annexes; *Records, Vol. 2, February 9, 2016 Minutes of Hearing,* p. 669; *Transcript of Stenographic Notes ("TSN"), February 9, 2016 Hearing,* pp. 3-12.
[71] *Records, Vol. 2, Exhibits "P-40" and "P-40-a," JA of Mr. Edwin F. Ramos,* pp. 787-793; *Records, Vol. 2, Independent Certified Public Accountant ("ICPA") Report,* pp. 696-784; *Records, Vol. 2, April 5, 2016 Minutes of Hearing,* p. 794; *TSN, April 5, 2016 Hearing,* pp. 3-9.
[72] *Records, Vol. 2, Oath of Commission (For a CPA Firm),* p. 692.
[73] *Id., Petitioner's Formal Offer of Exhibits ("FOE"),* pp. 798-810.

34," "P-35," "P-35a," "P-36" to "P-51," "P-52.1" to "P-52.2," "P-53.1" to "P-53.5," "P-54" to "P-54.6," "P-55" to "P-55.7," "P-56," "P-57," "P-58.1" to "P-58.9," "P-59.1" to "P-59.3," "P-60," "P-61," "P-62.1" to "P-62.3," "P-63.1" to "P-63.484," "P-64.1" to "P-64.2," "P-65," and "P-66.1" to "P-66.6."

On June 3, 2016, the Court resolved[74] to admit all of petitioner's exhibits except for *Exhibits* "P-43" to "P-50," "P-64.1" to "P-64.2," and "P-66.1" to "P-66.6," for failure to submit the originals for comparison and for failure of the ICPA to certify that the said exhibits were compared with the originals. The Court likewise noted that the submarkings of *Exhibits* "P-3," "P-3a" to "P-3tt," "P-14," "P-14a" to "P-14c," "P-15," "P-15a" to "P-15h," "P-16," "P-16a" to "P-16b," "P-17," "P-17a" to "P-17b," "P-18," "P-18a" to "P-18c," "P-19," "P-19a" to "P-19b," "P-20," "P-20a" to "P-20i," "P-25," "P-25a," "P-26," "P-26a," "P-27," "P-27a," "P-28," "P-28a" to "P-28m," "P-29," "P-29a" to "P-29c," "P-30," and "P-30a" to "P-30m," do not appear in the corresponding marked documents.

During the hearing held on June 7, 2016 and as confirmed in a Resolution[75] dated June 7, 2016, respondent manifested that he has no evidence to present.[76] As prayed for, the parties were granted thirty (30) days or until June 17, 2016 to submit their respective memoranda.[77]

After petitioner filed a Manifestation and Motion for Reconsideration (of the Honorable Court's Resolution[] dated 03 June 2016[78], the Court admitted *Exhibits* "P-43" to "P-48," "P-50," "P-64.1" to "P-64.2," and "P-66.1" to "P-66.6" leaving only *Exhibit* "P-49" denied for failure to comply with the Rules on Secondary Evidence.[79]

Petitioner filed its Memorandum[80] on September 5, 2016. After being granted an extension,[81] respondent filed its Memorandum[82] on September 6, 2016.

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[74] *Records, Vol. 2,* pp. 826-828.
[75] *Id.* at 839.
[76] *Id., June 7, 2016 Minutes of Hearing,* p. 829.
[77] *Id.*
[78] *Id., Vol. 2,* pp. 831-838, with annex.
[79] *Id.* at 850-852.
[80] *Records, Vol. 2, Petitioner's Memorandum,* pp. 863-883.
[81] *Id., Vol. 2,* pp. 853-857, 859.
[82] *Id., Respondent's Memorandum,* pp. 884-892.

Thereafter, the Court resolved to submit the case for decision through its Resolution[83] dated September 16, 2016; hence, this Decision.

The Issues[84]

WHETHER THE COURT HAS JURISDICTION OVER THE INSTANT PETITION FOR REVIEW; AND

WHETHER PETITIONER IS ENTITED TO A REFUND OR THE ISSUANCE OF TCCS IN THE TOTAL AMOUNT OF PHP68,780,245.64 ALLEGEDLY REPRESENTING VAT ON PETITIONER'S PURCHASE OF PROPERTIES ON FEBRUARY 1, 2013.

Petitioner's Arguments[85]

Petitioner claims that the Court has jurisdiction over the case since petitioner availed the proper remedy under the circumstances and is the proper party-in-interest; and that it is entitled to a refund or issuance of TCCs with respect to VAT paid for the sales transactions on February 1, 2013 with EPPI and PEOI-PEOCI.

Respondent's Counter-Arguments[86]

Respondent claims that the Court has no jurisdiction over the case as petitioner failed to exhaust administrative remedies prior to the filing of the Petition for Review; that the transactions entered into by petitioner were proper subjects of VAT; and that taxation is the rule and exemption is the exception.

The Ruling of the Court

The Court has jurisdiction over the instant case.

[83] *Records, Vol. 2,* p. 894.
[84] *Id., PTO,* p. 644.
[85] *Id., Petitioner's Memorandum,* pp. 871-882.
[86] *Id., Respondent's Memorandum,* pp. 885-890.

The Court must first determine whether it has jurisdiction over the case at bar.

The pertinent provisions of the *1997 NIRC* are *Sections 204 and 229, viz.*:

> SECTION 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. <u>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</u>: Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund.
>
> xxx xxx xxx
>
> SECTION 229. *Recovery of Tax Erroneously or Illegally Collected.* — <u>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</u> or illegally assessed or <u>collected</u>, 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, <u>until a claim for refund or credit has been duly filed with the Commissioner</u>; 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, <u>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</u>: 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.[87]

Based on the foregoing, petitioner had two (2) years from the date of payment of the tax to file both its administrative and judicial claims for refund or issuance of a TCC. This was affirmed in the Supreme Court case of *Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership*[88].

Records reveal that on March 21, 2013, EPPI and PEOI-PEOCI both remitted to the BIR the corresponding VAT arising from its sales transactions with petitioner on February 1, 2013. Therefore, any refund must be filed on or before March 21, 2015, making the administrative claim filed on March 18, 2015, as supplemented on March 19, 2015, and the Petition for Review filed on March 20, 2015, timely and within the prescriptive period.

Petitioner has no personality to file the claims for refund.

While the administrative and judicial claims for refund were timely filed, the Court finds that petitioner is not the proper party to file the same.

This case is similar to the one decided by the Supreme Court, specifically, *Contex Corporation v. Commissioner of Internal Revenue*[89] *("Contex case")*. Contex is also a domestic corporation, registered with the Subic Bay Metropolitan Authority as a Subic Bay Freeport Enterprise, pursuant to the provisions of *RA No. 7227*. As an SBMA-registered firm, it is exempt from all local and national internal revenue taxes except for preferential tax. From January 1, 1997 to December 31, 1998, it purchased various supplies and materials necessary in the conduct of its manufacturing business, and Contex was required to pay input VAT thereon. However, acting on the belief that it is exempt from VAT, it filed administrative and judicial claims for refund.

[87] Underscoring ours.
[88] G.R. No. 191498, January 15, 2014, 713 SCRA 645.
[89] G.R. No. 151135, July 2, 2004, 433 SCRA 376.

The Supreme Court found that Contex's VAT exemption under *RA No. 7227* is limited to the VAT on which it is directly liable as a seller and hence, it cannot claim any refund or exemption for any input VAT it paid, if any, on its purchases of raw materials and supplies. The Highest Tribunal explained that while Contex should not have been liable for the VAT inadvertently passed on to it, Contex is not the proper party to claim such VAT refund. Citing *Section 4.100-2 of Revenue Regulations ("RR") No. 7-95, as amended,* the Supreme Court explained that since the transaction is deemed a zero-rated sale, petitioner's supplier may claim an Input VAT credit with no corresponding Output VAT liability. Congruently, no Output VAT may be passed on to the petitioner. Rather, it is Contex's suppliers who are the proper parties to claim the tax credit and accordingly refund Contex for the VAT erroneously passed on to the latter.

In the case at bar, on February 1, 2013, petitioner entered into an Asset Purchase Agreement[90] with PEOI-PEOCI for which the former was charged USD1,486,856.15 or Php60,492,742.46 for VAT. Petitioner likewise, entered into a Deed of Sale and Assignment[91] for which EPPI passed on to it VAT in the amount of USD206,727.13 or Php8,410,693.28.

On March 21, 2013, PEOI-PEOCI and EPPI remitted[92] to the BIR the amounts of Php60,492,742.46 and Php8,287,503.18 representing VAT for the sales transactions on February 1, 2013; and on January 14, 2015, petitioner was issued a Billing Invoice[93] by PEOI-PEOCI and Sales Invoice[94] by EPPI, showing the amounts of VAT shouldered by petitioner.

Without going into a detailed discussion as to whether petitioner is VAT exempt, the Court finds that the doctrine in the *Contex case* can be applied to the case at bar. In both cases, *(1)* the taxpayer was charged by its suppliers for input VAT in its purchases, *(2)* the taxpayer's suppliers remitted the VAT to the BIR, *(3)* the taxpayer is claiming

[90] *Petitioner's Evidence Folder, Exhibit "P-3," PEOI-PEOCI Asset Purchase Agreement,* pp. 1-6; *BIR Records, PEOI-PEOCI Asset Purchase Agreement,* pp. 15-20.
[91] *Petitioner's Evidence Folder, Exhibit "P-4," EPPI Deed of Sale and Assignment,* pp. 1-9; *BIR Records, EPPI Deed of Sale and Assignment,* pp. 8-13.
[92] *Petitioner's Evidence Folder, Exhibits "P-23" and "P-24," EPPI and PEOI-PEOCI BIR eFPS Payment Details,* p. 1 and p. 1; *BIR Records, EPPI and PEOI-PEOCI BIR eFPS Payment Details,* pp. 1, 4.
[93] *Petitioner's Evidence Folder, Exhibit "P-22," PEOI-PEOCI Billing Invoice,* p. 1; *BIR Records, PEOI-PEOCI Billing Invoice,* p. 93, with annex.
[94] *Petitioner's Evidence Folder, Exhibit "P-21," EPPI Sales Invoice,* p. 1; *BIR Records, EPPI Sales Invoice, p. 91,* with annexes.

exemption from VAT, and *(4)* consequently, the taxpayer sought the refund of the VAT paid under *Section 229 of the 1997 NIRC.*

Therefore, petitioner is not the proper entity to file the refund. Instead, it should be PEOI-PEOCI and EPPI who should have filed the same and from whom petitioner should have claimed reimbursement for the VAT erroneously paid.

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

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

I attest 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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to *Article VIII, Section 13 of the Constitution,* and the Division Chairperson's Attestation, 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.

ROMAN G. DEL ROSARIO
Presiding Justice