REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

MAERSK GLOBAL SERVICE CENTRES (PHILIPPINES) LTD., *Petitioner,*	**CTA CASE NO. 8934**
- versus -	Members: **BAUTISTA**, *Chairperson,* **FABON-VICTORINO**, *and* **RINGPIS-LIBAN**, *JJ.*
THE COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: OCT 11 2017 4:00 p.m.

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DECISION

BAUTISTA, J.:

The Case

This case involves a Petition for Review[1] filed on November 24, 2014, which seeks to annul and cancel the deficiency income tax and final withholding tax ("FWT") assessments issued by respondent against petitioner for calendar year ("CY") 2010 in the aggregate amount of Php49,469,186.64, inclusive of interest and compromise penalty.[2]

The Parties

Petitioner Maersk Global Service Centres (Philippines) Ltd. is a foreign corporation duly organized and existing under the laws of Hong Kong, and licensed to do business in the Philippines as a regional operating headquarters ("ROHQ") with principal office

[1] *Records, CTA Case No. 8934, Vol. 1, Petition for Review ("PFR")*, pp. 6-38, with annexes.
[2] *Id.* at 14.

address at the 16th and 17th Floor, Wynsum Corporate Plaza, Emerald Avenue, Ortigas Center, Pasig City.[3]

Respondent Commissioner of Internal Revenue ("CIR") is the duly appointed Commissioner of the Bureau of Internal Revenue ("BIR") who holds office at the BIR National Office, Diliman, Quezon City.[4]

The Facts

On October 15, 2007, petitioner executed a Service Agreement[5] with A.P. Moller - Maersk A/S ("APMM"), a foreign corporation duly organized and existing under the laws of Denmark. APMM owns container vessels and containers, and operates worldwide through its subsidiaries; and is required to handle various back office tasks on behalf of its clients.[6] Under the Service Agreement, petitioner would render back office tasks, documentation, and other processes (*e.g.*, export documentation, import documentation, agency operations, logistics export handling, finance and accounting, systems processes, value added services)[7] to APMM and its clients.[8]

In CY 2006, petitioner had unutilized and excess input value-added tax ("VAT") attributable to its zero-rated sale of services in the total amount of Php11,133,280.05.[9] In this regard, petitioner filed a claim for issuance of a tax credit certificate ("TCC") of the said amount with the Department of Finance ("DOF"). However, the claim was denied in a letter[10] issued by the DOF on October 10, 2009 on the sole ground that petitioner did not strictly comply with the invoicing requirements for zero-rated sales.[11]

For CY 2010, respondent issued Letter of Authority No. LOA-43A-2011-00000642[12] on October 11, 2010 authorizing Revenue Officer ("RO") Carmencita Villanueva and Group Supervisor Antonino

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[3] *Records, Vol. 1, Exhibit "P-1," Securities and Exchange Commission Certification*, pp. 343-349.
[4] *Id., Joint Stipulation of Facts and Issues ("JSFI")*, p. 303.
[5] *Id., Exhibit "P-11," Service Agreement*, pp. 474-486.
[6] *Id.* at 478.
[7] *Id.* at 483-484.
[8] *Id.* at 478.
[9] *Records, Vol. 1, JSFI*, p. 305.
[10] *Id., Exhibit "P-9," Department of Finance Letter dated October 10, 2009*, pp. 469-471.
[11] *Id., JSFI*, p. 305.
[12] *Bureau of Internal Revenue ("BIR") Records, Vol. 1, Exhibit "R-1," Letter of Authority*, p. 1.

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Ilagan to conduct the investigation of the 2010 books of accounts and accounting records of petitioner.[13]

Thereafter, respondent issued a Notice of Informal Conference[14] and a Preliminary Assessment Notice ("PAN") with attached Details of Discrepancies[15].

On April 3, 2014, respondent issued two (2) Formal Letters of Demand[16] with attached Details of Discrepancies and three (3) Assessment Notices[17] (the "FANs"), which were received by petitioner on even date.[18] Under the FAN, petitioner was assessed deficiency income tax and FWT on branch profits and compromise penalty,[19] as follows:[20]

I. DEFICIENCY INCOME TAX

Taxable income per Income Tax Return (ITR)				P[hp]	27,059,636.00
Add: Adjustment per Investigation					
Non-deductible Bad Debts					11,133,280.00
Taxable income per investigation				**P[hp]**	**38,192,916.00**
Income tax due thereon				P[hp]	3,819,291.60
Less: Allowable tax credits/payments					
Payments		P[hp]	2,759,776.00		
Less: Excess credits to be carried over to succeeding period			53,819.00		2,705,957.00
Deficiency income tax				P[hp]	1,113,334.60
Add: 20% Interest p.a. (04.16.11 to 5.12.14)					684,472.01
TOTAL AMOUNT DUE				**P[hp]**	**1,797,806.61**

II. DEFICIENCY FINAL WITHHOLDING TAX

Profits applied/earmarked for remittance	P[hp]	166,043,000.00
Multiply by Branch Profit Remittance Tax		15%

[13] *Records, Vol. 1, JSFI*, p. 305.
[14] *BIR Records, Vol. 1, Exhibit "R-2," Notice of Informal Conference*, pp. 596-598.
[15] *Records, Vol. 1, JSFI*, p. 305; *Records, Vol. 1, PTO*, p. 316; *BIR Records, Vol. 1, Exhibit "R-5," Preliminary Assessment Notice*, pp. 632-633.
[16] *Records, Vol. 1, Exhibit "P-2," Formal Letter of Demand ("FLD") (Income Tax and FWT)*, pp. 337-338; *Records, Vol. 1, Exhibit "P-5," FLD, Compromise Penalty*, p. 341; *BIR Records, Vol. 1, Exhibit "R-6," FLDs*, pp. 634-636.
[17] *Records, Vol. 1, Exhibit "P-3," Assessment Notice (Income Tax)*, p. 339; *Records, Vol. 1, Exhibit "P-4," Assessment Notice (Final Withholding Tax)*, p. 340; *Records, Vol. 1, Exhibit "P-6," Assessment Notice (Compromise Penalty)*, p. 342; *BIR Records, Vol. 1, Exhibit "R-6," Assessment Notices*, pp. 637-639.
[18] *Records, Vol. 1, JSFI*, p. 303.
[19] *Id.*
[20] *Records, Vol. 1, Exhibit "P-2," FLD (Income Tax and FWT)*, pp. 337-338; *Records, Vol. 1, Exhibit "P-5," FLD, Compromise Penalty*, p. 341; *BIR Records, Vol. 1, Exhibit "R-6," FLDs*, pp. 634-636.

Deficiency final withholding tax				P[hp]	24,906,450.00
Add:	25% Surcharge	P[hp]	6,226,612.50		
	20% Interest p.a. (01.18.11 to 5.12.14)		16,513,317.53		22,739,930.03
TOTAL AMOUNT DUE				**P[hp]**	**47,646,380.03**

Compromise penalty for:		
Non/late-filing/payment of final withholding tax	[Php]	25,000.00

On April 27, 2014, petitioner filed a letter[21] with respondent wherein it requested for a reinvestigation of the FAN.

In a letter[22] dated June 10, 2014, which was received by petitioner on June 19, 2014, respondent granted petitioner's request for reinvestigation. RO Rosalina Reyes was authorized by respondent to handle the re-investigation.[23]

In a letter dated July 21, 2014, petitioner submitted additional documents to respondent.[24]

In a letter dated January 14, 2015, which was received by petitioner on January 29, 2015, respondent reiterated its assessment and recommended the issuance of a Final Decision on Disputed Assessment ("FDDA").[25]

Meanwhile, alleging the one hundred and eighty (180)-day period under *Section 228 of the 1997 National Internal Revenue Code, as amended ("1997 NIRC")*[26] had lapsed without respondent's action on petitioner's protest to the FAN, petitioner filed the present Petition for Review[27] on November 24, 2014.

Respondent filed his Answer[28] on January 23, 2015.

Petitioner filed its Pre-Trial Brief[29] by registered mail on

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[21] *Records, Vol. 1, Exhibit "P-7," Petitioner's Letter dated April 24, 2014*, pp. 350-359.
[22] *BIR Records, Vol. 1, Exhibit "R-8," Respondent's Letter dated June 10, 2014*, p. 735.
[23] *Records, Vol. 1, JSFI*, p. 305; *BIR Records, Vol. 1, Exhibit "R-7," Memorandum of Assignment*, p. 734-A.
[24] *BIR Records, Vol. 2, Exhibit "R-13," Petitioner's Letter dated July 18, 2014*, pp. 569-570.
[25] *Id., Vol. 1, Exhibit "R-14," Respondent's Letter dated January 14, 2015*, pp. 737-738.
[26] Republic Act No. 8424, as amended (1997).
[27] *Records, Vol. 1, PFR*, pp. 6-38, with annexes.
[28] *Id., Answer*, pp. 46-50.
[29] *Id., Petitioner's Pre-Trial Brief*, pp. 236-244.

February 27, 2015, while Respondent's Pre-Trial Brief[30] was filed on April 8, 2015. Thereafter, a pre-trial conference was held on April 14, 2015.[31] Together, the parties filed their Joint Stipulation of Facts and Issues[32] on April 24, 2015, which was adopted by the Court in the Pre-Trial Order[33] issued on May 20, 2015.

Petitioner proceeded with the presentation of its evidence. To this end, petitioner presented Ms. Nicole Elene S. Butalid, its Site Finance and Office Management Lead.[34] Thereafter, petitioner filed its Formal Offer of Evidence[35] on July 28, 2015 wherein it offered *Exhibits* "P-1," "P-2," "P-3," "P-4," "P-5," "P-6," "P-7," "P-8," "P-9," "P-10," "P-11," "P-12," and "P-12-A." Petitioner's Formal Offer of Evidence was resolved by the Court in a Resolution[36] dated August 3, 2015, which admitted all of petitioner's evidence.

Respondent then proceeded with the presentation of his evidence. In this regard, respondent presented the following witnesses: *(1)* Atty. Carmencita G. Villanueva, the RO who conducted the audit or investigation of petitioner's books of accounts and other accounting records for CY 2010;[37] and *(2)* Ms. Rosalina T. Reyes, the RO who conducted the reinvestigation in relation to petitioner's protest to the FAN.[38] Respondent's Formal Offer of Evidence[39] was filed on October 20, 2015 wherein he offered *Exhibits* "R-1," "R-2," "R-3," "R-4," "R-5," "R-6," "R-7," "R-8," "R-9," "R-10," "R-10-a," "R-12," "R-12-a," "R-13," and "R-13-a." Petitioner filed its Comment (To Respondent's Formal Offer of Evidence)[40] on November 5, 2015. Respondent's Formal Offer of Evidence was resolved by the Court in a Resolution[41] dated November 24, 2015, which admitted all of respondent's evidence.

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[30] *Records, Vol. 1, Respondent's Pre-Trial Brief*, pp. 260-265.
[31] *Id., Minutes of Hearing dated April 14, 2015*, p. 287.
[32] *Id., JSFI*, pp. 303-312.
[33] *Id., PTO*, pp. 314-321.
[34] *Records, Vol. 1, Minutes of Hearing dated June 15, 2015*, p. 323; *Records, Vol. 1, Exhibit "P-12," Judicial Affidavit of Ms. Nicole Elene S. Butalid*, pp. 58-222, with annexes.
[35] *Records, Vol. 1, Petitioner's Formal Offer of Evidence*, pp. 331-336.
[36] *Id., Resolution*, p. 488.
[37] *Records, Vol. 1, Minutes of Hearing dated August 17, 2015*, p. 493; *Records, Vol. 1, Exhibit "R-10," Judicial Affidavit*, pp. 268-276.
[38] *Records, Vol. 1, Minutes of Hearing dated September 7, 2015*, p. 499; *Records, Vol. 1, Exhibit "R-12," Judicial Affidavit*, pp. 279-284.
[39] *Records, Vol. 2, Respondent's Formal Offer of Evidence*, pp. 584-592.
[40] *Id., Comment (To Respondent's Formal Offer of Evidence)*, pp. 596-597.
[41] *Id., Resolution*, pp. 599-600.

Petitioner presented rebuttal evidence through its witness, Ms. Analou Y. Meneses, petitioner's Finance Manager.[42] Consequently, Petitioner's Formal Offer of Rebuttal Evidence[43] was filed on February 16, 2016 wherein it offered *Exhibits* "P-13-A," "P-13-B," "P-13-C," "P-14," "P-15," "P-17," "P-18," "P-19," "P-20," and "P-20-A." Respondent failed to file his comment thereon despite notice.[44] Petitioner's Formal Offer of Rebuttal Evidence was resolved by the Court in Resolutions[45] dated March 8, 2016 and July 20, 2016, which admitted all of petitioner's rebuttal evidence except *Exhibits* "P-13-A," "P-13-B," and "P-13-C." Petitioner then filed a Proffer of Evidence[46] on August 8, 2016, which was duly noted by the Court in a Resolution[47] dated August 31, 2016.

Thereafter, petitioner filed its Memorandum[48] on September 8, 2016; however, respondent failed to file his memorandum despite notice[49]. On October 14, 2016, the Court issued a Resolution[50] submitting the case for decision; hence, this Decision.

The Issues[51]

The issues for consideration of this Court are, as follows:

> WHETHER THE VAT REFUND CLAIM OF PETITIONER FOR EXCESS AND UNUTILIZED INPUT VAT ON ITS PURCHASES OF GOODS AND SERVICES ATTRIBUTABLE TO ITS ZERO-RATED SALE OF SERVICES FOR CY 2006, WHICH WAS DENIED BY THE DOF ONE-STOP-SHOP INTER-AGENCY TAX CREDIT AND DUTY DRAWBACK CENTER ON MARCH 11, 2010 ON THE SOLE GROUND THAT PETITIONER DID NOT STRICTLY COMPLY WITH THE INVOICING REQUIREMENTS FOR ZERO-RATED SALES, IS DEDUCTIBLE FROM GROSS INCOME FOR CY 2010;

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[42] *Records, Vol. 2, Minutes of Hearing dated January 25, 2016,* p. 606; *Records, Vol. 2, Exhibit "P-20," Judicial Affidavit of Ms. Analou Y. Meneses,* pp. 509-519.
[43] *Records, Vol. 2, Petitioner's Formal Offer of Rebuttal Evidence,* pp. 613-617.
[44] *Id., Records Verification Report,* p. 655.
[45] *Records, Vol. 2, Resolution,* pp. 658-659; *Records, Vol. 2, Resolution,* pp. 683-687.
[46] *Records, Vol. 2, Proffer of Evidence,* pp. 688-694.
[47] *Id., Resolution,* pp. 701-702.
[48] *Id., Petitioner's Memorandum,* pp. 703-731.
[49] *Id., Records Verification Report,* p. 734.
[50] *Id., Resolution,* p. 736.
[51] *Id., Vol. 1, PTO, Issues,* p. 317.

AND

WHETHER PETITIONER IS LIABLE FOR DEFICIENCY BRANCH PROFIT TAX.

Petitioner's Arguments[52]

Petitioner argues that the assessments are devoid of any legal and/or factual basis. As regards the deficiency income tax assessment based on petitioner's VAT refund claim which was denied by the DOF, petitioner avers that said denied refund claim can be deducted from gross income either as a business expense or as a business loss. Considering the loss arising from the denial of the VAT refund claim was sustained when the claim was denied by the DOF and the related receivable was written-off by petitioner during CY 2010, and the loss was sustained in connection with petitioner's trade or business conducted in the Philippines, the rejected VAT claim is a deductible business loss for CY 2010. On the other hand, as regards the deficiency FWT on branch profits, petitioner claims that respondent erred in assuming that petitioner applied for and earmarked for remittance its accumulated earnings to the head office when in fact petitioner did not. Considering petitioner has neither applied nor earmarked its accumulated profits for remittance, there is no basis for imposing the branch profits remittance tax ("BPRT"). In any case, petitioner did not remit profits to its head office in order to have sufficient funds to finance its day-to-day operations.

Respondent's Counter-Arguments[53]

Respondent claims that he immediately acted on petitioner's protest upon the filing thereof with the Office of the Regional Director; that petitioner failed to prove that the expense being claimed as a deduction from gross income was paid or incurred during CY 2010; that petitioner failed to prove that the expense being claimed as a deduction from gross income was duly supported by adequate receipts or invoices; that there is no factual and legal basis for petitioner to declare a loss and claim the same as an item of deduction; and that there was a constructive remittance of profit in view of the recognition of the accounts receivable and the increase in

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[52] *Records, Vol. 2, Petitioner's Memorandum, Arguments and Discussion,* pp. 711-728.
[53] *Id., Vol. 1, Answer,* pp. 46-50.

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petitioner's retained earnings.

The Ruling of the Court

The main issue to be resolved by this Court is whether the deficiency income tax and FWT assessments made by respondent against petitioner for CY 2010 are valid. The Court answers in the negative - the assessments are without legal or factual basis.

Insofar as the assessment for deficiency income tax is concerned, petitioner properly claimed the denied VAT refund claim as a deductible loss. Meanwhile, insofar as the assessment for deficiency BPRT is concerned, petitioner should not be liable for the same absent actual application or earmarking for remittance of profits.

At the outset, however, the Court will first discuss whether the Court has jurisdiction over the present case.

The Court has jurisdiction over the present case.

Jurisdiction is conferred by law and is the capacity of a court to "entertain, hear, and determine certain controversies."[54] The Court, as a court of special jurisdiction, can only take cognizance of matters clearly within its jurisdiction.[55]

Section 7(a)(2) of Republic Act No. 1125, as amended[56], provides that this Court has exclusive appellate jurisdiction to review by appeal the inaction of the CIR in cases involving disputed assessments, as follows:

> **Sec. 7. *Jurisdiction.*** – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

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[54] *Guy v. Court of Appeals*, G.R. Nos. 165849, 170185, 170186, 171066 & 176650, December 10, 2007, 539 SCRA 584.
[55] *CIR v. Silicon Philippines, Inc.*, G.R. No. 169778, March 12, 2014, 718 SCRA 513.
[56] June 16, 1954.

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> (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;[57]

Corollary thereto, *Section 228 of the 1997 NIRC* provides that a taxpayer disputing an assessment may appeal to the Court of Tax Appeals ("CTA") within thirty (30) days from the lapse of the one hundred and eighty (180)-day period granted to the CIR, from the submission of documents in support of a protest or from receipt of the CIR's decision on the protest. The relevant provision states:

> Sec. 228. *Protesting of Assessment.* - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings; *Provided, however,* That a preassessment notice shall not be required in the following cases:
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> xxx xxx xxx
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest,

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[57] Underscoring ours.

> all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.[58]

Meanwhile, in *Rizal Commercial Banking Corporation v. CIR*[59], the Supreme Court ruled that a taxpayer's options in appealing the CIR's action or lack thereof, as regards a disputed assessment, are mutually exclusive, thus:

> From the foregoing, it is clear that the jurisdiction of the Court of Tax Appeals has been expanded to include not only decisions or rulings but inaction as well of the Commissioner of Internal Revenue. The decisions, rulings or inaction of the Commissioner are necessary in order to vest the Court of Tax Appeals with jurisdiction to entertain the appeal, provided it is filed within 30 days after the receipt of such decision or ruling, or within 30 days after the expiration of the 180-day period fixed by law for the Commissioner to act on the disputed assessments. This 30-day period within which to file an appeal is jurisdictional and failure to comply therewith would bar the appeal and deprive the Court of Tax Appeals of its jurisdiction to entertain and determine the correctness of the assessments. Such period is not merely directory but mandatory and it is beyond the power of the courts to extend the same.
>
> In case the Commissioner failed to act on the disputed assessment within the 180-day period from date of submission of documents, a taxpayer can either: 1) file a petition for review with the Court of Tax Appeals within 30 days after the expiration of the 180-day period; or 2) await the final decision of the Commissioner on the disputed assessments and appeal such final decision to the Court of Tax Appeals within 30 days after receipt of a copy of such decision. However, these options are mutually exclusive, and resort to one bars the

[58] Underscoring ours.
[59] G.R. No. 168498, April 24, 2007, 522 SCRA 144.

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application of the other.[60]

Following the aforementioned provision of the *Section 228 of the 1997 NIRC*, as well as the Supreme Court's pronouncements in the *Rizal Commercial Banking Corporation case*, petitioner had the option to wait for the decision of the CIR on its disputed assessment or the lapse of the one hundred and eighty (180)-day period before appealing the same to the CTA. Petitioner chose the latter.

It is worthy to note that the fact that respondent granted petitioner's request for reinvestigation in his letter dated June 10, 2014[61] is immaterial as it was only in January 14, 2015 that respondent issued its decision on petitioner's protest, denying the same.[62]

Following the procedural requirements for the option to file the appeal with the CTA from the lapse of the one hundred and eighty (180)-day period, the Court finds that petitioner complied with the same.

Petitioner filed its protest, in the form of a request for reinvestigation, with the CIR on April 27, 2014.[63] The one hundred eighty (180)-day period granted to the CIR to act on the protest ended on October 24, 2014. Counting thirty (30) days therefrom, petitioner properly filed the present Petition for Review on November 24, 2014.[64]

The Court will now discuss the substantial aspect of the case.

The assessment for deficiency income tax on non-deductible bad debts was improper. Petitioner's denied VAT refund claim is a deductible loss.

Petitioner, as an ROHQ, rendered services solely in favor of APMM - a foreign corporation based in Denmark. Under *Section*

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[60] Underscoring ours.
[61] *BIR Records, Vol. 1, Exhibit "R-8," Respondent's Letter dated June 10, 2014*, p. 735.
[62] *Id., Exhibit "R-14," Respondent's Letter dated January 14, 2015*, pp. 737-738.
[63] *Records, Vol. 1, Exhibit "P-7," Petitioner's Letter dated April 24, 2014*, pp. 350-359.
[64] The end of the thirty (30)-day period fell on November 23, 2014, a Sunday.

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108(B)(4) of the 1997 NIRC, services rendered to persons engaged in international shipping or international air transport operations are zero-rated.

In CY 2006, petitioner had excess input VAT from various purchases of goods and services in the amount of Php11,133,280.05. Thereafter, petitioner filed a claim for issuance of TCC with the DOF. However, the DOF denied petitioner's claim because petitioner failed to comply with the invoicing requirements. The DOF ruled as follows:

> Verification from your books of accounts and other related accounting records revealed that the computer-generated sales invoices issued were not covered with a permit to use computerized accounting system from the Bureau of Internal Revenue, as called for under Revenue Memorandum Order [No.] 22-2009. Likewise, you failed to secure Authority to Print Receipts, resulting to non-issuance of official receipts to support actual collections for the year on account of the zero-rated services rendered, as prescribed under Sections 113 and 237, both of the National Internal Revenue Code, as amended. Excerpts of the provisions are as follows:
>
> xxx xxx xxx
>
> Consequently, since the computer-generated sales invoices issued are not duly registered invoices, same cannot be considered competent evidence to prove zero-rated services and there was likewise no issuance of official receipts as required under Sections 113, 237 and 238 of the Tax Code, as amended, there was no strict compliance with the invoicing requirements. Accordingly, much to our regret, your claim for issuance of Tax Credit Certificate involving the total amount Php11,133,280.05 cannot be given due course.[65]

Petitioner received the DOF's ruling on March 11, 2010. In view of the DOF's denial of petitioner's claim, petitioner wrote off the same in its books and claimed it as a deduction from gross income for CY 2010. The CIR then assessed petitioner for deficiency income tax and disallowed the deduction, explaining in the FAN:

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[65] *Records, Vol. 1, Exhibit "P-9," Department of Finance Letter dated October 10, 2009,* pp. 469, 471.

> I. DEFICIENCY INCOME TAX
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> **Non-deductible Bad Debts (Php11,133,280.00)** – Verification disclosed that the bad debts amounting to 11,133,280.00 per financial statements was not properly supported with the necessary documents in order to be valid deduction from gross income, therefore, disallowed pursuant to Section 34.[66]

The Court finds respondent's assessment for deficiency income tax, in view of the alleged bad debt, improper.

Ms. Butalid, petitioner's Site Finance and Office Management Lead, explained petitioner's accounting practice in accordance with its Global Chart of Accounts – the basis of petitioner's accounting system – to wit:

> **Q35: Please explain the accounting entries for the following: (a) when input tax was incurred, (b) when the input tax was applied for refund with the DOF and (c) when the input tax was written off after the claim for refund was denied by the DOF.**
>
> A35: a.1. To take up the input VAT on purchases of goods;
>
> Debit: Purchases
> Input VAT
> Credit: Accounts Payable/Cash
>
> a.2. To take up purchases of services without OR
>
> Debit: Services
> Deferred Input VAT
> Credit: Accounts Payable/ Cash
>
> a.3. To take up receipt of OR/Payment
>
> Debit: Input VAT
> Credit: Deferred Input VAT
>
> a.4 Reclassification of input VAT to VAT Settlement Account

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[66] *Id., Exhibit "P-2," FLD*, p. 338.

Debit: VAT Settlement
Credit: Input VAT

a.5 Closing of VAT Settlement account at the end of the year

Debit: Other Receivables
Credit: VAT Settlement

b. when the input VAT was applied for refund with the DOF

No Entry

c. when the input VAT was written off after the claim for refund was denied by the DOF

Debit: Other Provision - Allowance
Credit: Other Receivables

Debit: Bad Debts
Credit: Other Provision - Allowance
Permanent difference[67]

The Court notes that petitioner's internal accounting procedure is beyond the purview of the Court. As applied to deductions in general, however, the proper characterization of the account as a valid deduction from gross income depends on the actual nature of the account.

Petitioner's use of the account name "bad debts" does not necessarily equate to the bad debt expense, as identified in the *1997 NIRC*. The account, in this case, refers to a deductible loss.

Black's Law Dictionary defines a loss as "an undesirable outcome of a risk; the disappearance or diminution of value, usually in an unexpected or relatively unpredictable way."[68]

In the present case, petitioner's claim for VAT refund was denied by the DOF due to non-compliance with invoicing

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[67] *Records, Vol. 1, Exhibit "P-12," Judicial Affidavit of Ms. Nicole Elene S. Butalid*, pp. 64-65.
[68] *Black's Law Dictionary* 963 (8th ed. 2004).

requirements on its zero-rated sales. There was no question whether petitioner's input VAT was substantiated. In fact, prior to such denial, petitioner had a reasonable expectation that it was entitled to a TCC for its unutilized input VAT for CY 2006; hence, it filed the claim for refund with the DOF. With the DOF's denial of the claim for refund, however, petitioner will no longer be able to receive a TCC for the unutilized input VAT from CY 2006. Accordingly, petitioner properly considered the amount pertaining to the denied VAT refund claim as a loss, which could be deducted from its gross income in CY 2010 (*i.e.*, the year when it received the DOF's letter of denial).

Section 34(D)(1)(a) of the 1997 NIRC provides that a loss actually sustained during the taxable year, which is not compensated by insurance or otherwise, shall be deductible from gross income if the same is incurred in trade or business. The relevant provision states:

> Sec. 34. *Deductions from Gross Income.* - Except for taxpayers earning compensation income arising from personal services rendered under an employer-employee relationship where no deductions shall be allowed under this Section other than under Subsection (M) hereof, in computing taxable income subject to income tax under Sections 24(A); 25(A); 26; 27(A), (B), (C); and 28(A)(1), there shall be allowed the following deductions from gross income:
>
> xxx xxx xxx
>
> (D) *Losses.* -
>
> (1) *In general.* - Losses actually sustained during the taxable year and not compensated for by insurance or other forms of indemnity shall be allowed as deductions:
>
> (a) If incurred in trade, profession or business;

Meanwhile, *Section 96*[69] *of Revenue Regulations No. 02-40*[70]

[69] *Section 96 of Revenue Regulations No. 02-40* provides:

> Section 96. *Losses Generally.* - Losses must usually be evidenced by closed and completed transactions. Proper adjustment must be made in each case for expenditures or items of loss properly chargeable to capital account, and for depreciation, obsolescence, amortization, or depletion. Moreover, the amount of the loss must be reduced by the amount of any insurance or other compensation received, and by the salvage value, if any, of the property. A loss on the sale of

provides that losses, in general, must be evidenced by closed and completed transactions.

From the foregoing, an actual loss may be claimed as a deduction from gross income if the following requisites are present:

1. The loss is actually sustained by the taxpayer;

2. The loss is sustained during the taxable year;

3. The loss is not compensated by insurance or other forms of indemnity;

4. The loss is incurred in the taxpayer's trade, profession, or business; and

5. The loss is evidenced by a closed and completed transaction.

The records show that petitioner's denied VAT refund claim was a valid loss, which was properly deducted from its gross income for CY 2010, given the following circumstances: *(1)* petitioner actually sustained a loss in the amount of Php11,133,280.05 when the DOF denied its claim for refund considering that with the denial of its claim for refund, petitioner no longer had any reasonable expectation to classify the same as a receivable; *(2)* the loss was sustained in CY 2010, when petitioner received the DOF's denial letter, and as evidenced by the date stamped on the envelope[71] of said letter (*i.e.*, March 11, 2010); *(3)* petitioner was not compensated for the loss; *(4)* petitioner incurred the loss in the conduct of its trade or business (*i.e.*, the denied input VAT arose from petitioner's zero-rated sale of services); and *(5)* the DOF categorically stated in its denial letter that petitioner's claim for issuance of TCC "cannot be given due course."[72] As a valid deduction, it was thus erroneous for respondent to assess

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residential property is not deductible unless the property was purchased or constructed by the taxpayer with a view to its subsequent sale for pecuniary profit. No loss is sustained by the transfer of property by the gift or death. Losses sustained in illegal transactions are not deductible. (Emphasis ours.)

[70] February 10, 1940.

[71] *Records, Vol. 1, Exhibit "P-10,"* p.472.

[72] *Id., Exhibit "P-9," Department of Finance Letter dated October 10, 2009*, p. 471.

petitioner for deficiency income tax arguing that the denied VAT refund claim was an unsubstantiated bad debt expense, which should be disallowed.

The assessment for deficiency FWT on BPRT was improper. Petitioner did not apply or earmark for remittance any profit.

Petitioner, as a branch, is subject to BPRT. Under *Section 28(A)(5) of the 1997 NIRC*, BPRT at the rate of fifteen percent (15%) of the total profits applied or earmarked for remittance is imposed on any profit remitted by a branch to its head office.

In the FAN, the CIR explained the deficiency FWT assessment in this wise:

> II. DEFICIENCY FINAL WITHHOLDING TAX
>
> Verification disclosed that you failed to subject the profits applied or earmarked for remittance to withholding tax as required under Revenue Regulations No. 02-98, as amended. Hence, assessed pursuant to Section 28(A)(5) of the NIRC of 1997, as amended.[73]

The Court finds respondent's assessment for deficiency FWT on BPRT improper.

Respondent's assessment for FWT against petitioner is centered on petitioner's "Accumulated Earnings" account of the Audited Statement of Financial Position for CY 2010, which shows the composition of the Head Office Account. For CYs 2009 and 2010, the Head Office Account may be broken down, as follows:

	As of December 31	
	2010	2009
Head Office Account		
Assigned Capital	Php 11,129,800.00	Php 11,129,800.00

[73] *Id., Exhibit "P-2," FLD*, p. 338.

Accumulated Earnings	166,043,000.00	126,029,120.00
Total Head Office Account	Php 177,172,800.00	Php 137,158,920.00

A review of petitioner's Head Office Account for CYs 2009 and 2010 reveals that it is comprised of two different items, *i.e.* Assigned Capital and Accumulated Earnings.

As regards the Assigned Capital account, the assigned capital of Php11,129,800.00[74] in CY 2010 remained the same in CY 2009. On the other hand, as regards the Accumulated Earnings account, all of petitioner's net income in CY 2010 (*i.e.*, Php40,013,880.00)[75] was added to its Accumulated Earnings account, which resulted in the total balance of Php166,043,000.00[76] as of December 31, 2010.

Meanwhile, in the assessment, respondent assumed that petitioner's entire earnings as of CY 2010 was remitted (*i.e.*, not just the net income for CY 2010 in the amount of Php40,013,880.00, but also those of previous years), and thus imposed BPRT on the same resulting in the deficiency FWT assessment.

The Court holds that it was erroneous for respondent to conclude that the entire earnings of petitioner as of CY 2010 (*i.e.*, Php166,043,000.00) partakes the nature of an indirect remittance to the head office which should be subjected to BPRT. Under the branch accounting principles in the Philippines, the net income is a standard component or entry in the Head Office Account, which entry is added to the Accumulated Earnings of the previous year (*i.e.*, CY 2009) in order to arrive at the Accumulated Earnings as of the end of the current year (*i.e.*, CY 2010). The mere fact that Accumulated Earnings was booked under the Head Office Account does not automatically mean that said accumulated earnings were already applied or earmarked for remittance to the head office. Respondent's allegation of a constructive remittance of profits cannot be countenanced.

In addition, *Section 28(A)(5) of the 1997 NIRC* requires that profits be applied or earmarked for remittance to the head office. In

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[74] *BIR Records, Vol. 2, Assigned Capital balance as of December 31, 2009 and 2010,* p. 494.
[75] *Id., Net Income for the Year ended December 31, 2010,* p. 493.
[76] *Id., Accumulated Earnings balance as of December 31, 2010,* p. 494. Php126,029,120.00 plus Php40,013,880.00.

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the present case, however, there is no evidence that petitioner actually did either - apply for remittance or earmark for remittance its net income as of CY 2010 to its head office.

Therefore, respondent's conclusion that the income, booked as Accumulated Earnings under the Head Office Account, should have been subject to FWT on BPRT, does not in any way justify the imposition of the BPRT absent any showing that actual remittance or earmarking for remittance was made by petitioner.

From the foregoing, it is evident that the assessments made against petitioner for CY 2010 were issued without basis in law and in fact. Necessarily, having ruled that the assessments for deficiency income tax and FWT are improper, the interest and compromise penalty imposed by respondent thereon likewise have no basis.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the assessments covering income tax and final withholding tax for calendar year 2010 in the total amount of Php49,469,186.64, inclusive of interest and compromise penalty, are hereby **CANCELLED** and **SET ASIDE**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

(With Concurring and Dissenting Opinion)
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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

MAERSK GLOBAL SERVICE CENTRES (PHILIPPINES) LTD., Petitioner,	CTA CASE NO. 8934
	Members:
- versus -	BAUTISTA, *Chairperson* FABON-VICTORINO, *and* RINGPIS-LIBAN, *JJ.*
THE COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: OCT 11 2017 4:00 p.m.

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CONCURRING AND DISSENTING OPINION

FABON-VICTORINO, *J.*:

I concur with the ruling that the instant Petition for Review was seasonably filed vesting the Court with jurisdiction to take cognizance of the case. I also agree that the assessment for deficiency Final Withholding Tax (FWT) on Branch Profit Remittance Tax (BPRT) was improper given that petitioner did not apply or earmark for remittance any profit.

My point of dissent, however, pertains to the finding that petitioner's denied VAT refund claim in the amount of P11,133,280.05, is a deductible loss for income tax purposes. I submit that respondent correctly disallowed the said amount as a deduction from petitioner's gross income.

Section 110 (B) of the National Internal Revenue Code (NIRC) of 1997, as amended, provides the remedy of refund for the taxpayer to recover the unapplied accumulated input VAT arising from zero-rated transactions, to wit:

> Sec. 110. *Tax Credits.* —
>
> xxx xxx xxx
>
> B) *Excess Output or Input Tax.* — If at the end of any taxable quarter, the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters. Provided however, that **any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112**. (*Emphases supplied*)
>
> xxx xxx xxx

In relation thereto, Section 112(A) of the same Code states:

> Sec. 112. *Refunds or Tax Credits of Input Tax.* -
>
> (A) *Zero-rated or Effectively Zero-rated Sales.* — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *xxx*

From the above-cited provisions, the unutilized creditable input taxes attributable to zero-rated sales can only be recovered through an application for refund or tax credit. There is no specific provision in the Tax Code that explicitly allows another modality to recover unapplied input taxes arising from zero-rated or effectively zero-rated sales.

With more reason insofar as petitioner's position that a denied VAT Refund claim can be treated as deductible expense for income tax purposes.

In view thereof, I vote to **PARTIALLY GRANT** the instant *Petition for Review*.

ESPERANZA R. FABON-VICTORINO
Associate Justice