Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

AEGIS PEOPLESUPPORT, INC. [FORMERLY, PEOPLESUPPORT (PHILIPPINES), INC.],		**CTA EB Case No. 996** (CTA Case No. 8085)
Petitioner,		
- versus -		Members:
COMMISSIONER OF INTERNAL REVENUE, Respondent.		DEL ROSARIO, *P.J.*, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, and RINGPIS-LIBAN, *JJ.*
		Promulgated: AUG 04 2014 Apolinario 8:45 a.m.

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DECISION

CASANOVA, J.:

This is an appeal, by way of Petition for Review,[1] filed on April 12, 2013, by petitioner-Aegis PeopleSupport, Inc. [Formerly, PeopleSupport (Philippines),Inc.] ("Aegis"), praying that the Decision[2] dated July 9, 2012 (Assailed Decision) and the Resolution[3] (Assailed Resolution) dated March 4, 2013 of Court of Tax Appeals First Division be reversed and set aside and for this Court to grant petitioner's claim for refund or issuance of tax credit in the amount of P66,177,830.95 representing petitioner's erroneous payment of income tax for calendar year 2007.

[1] CTA En Banc Rollo, pp. 7-40.
[2] Annex "A" to the Petition for Review, Ibid, pp. 42-67.
[3] Annex "B" to the Petition for Review, Id, pp. 69-77.

The facts of the case, as found by the CTA First Division, are as follow:

> "Petitioner, Aegis PeopleSupport, Inc., is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at PeopleSupport Center, Ayala corner Senator Gil Puyat Avenues, Makati City. It is registered with the Board of Investments (BOI) under its former name PeopleSupport (Philippines), Inc., with Certificate of Registration No. 2003-059 dated April 22, 2003 as a new and pioneer IT Export Service firm in the field of Customer Contact Center. As such, it was issued a Certificate of ITH Entitlement CE No. 2008-000145 issued on March 24, 2008.
>
> Also, petitioner is registered with the Philippine Economic Zone Authority (PEZA), under its former name PeopleSupport (Philippines), Inc., as a new Ecozone IT (Export) Enterprise to engage in the establishment of a contact center which will provide outsourced customer care services and business process outsourcing (BPO) under Amended Registration Certificate No. 03-17-IT dated June 19, 2007. Petitioner is likewise registered with the BIR as an income taxpayer, with OCN No. 9RC0000247326 on March 9, 2000.
>
> On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) empowered to perform the duties of said office including, among others, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes, as provided by law.
>
> On April 15, 2008, petitioner filed with the BIR, through the electronic filing and payment system (eFPS), its Annual Income Tax Return (ITR) for taxable year 2007, under Reference No. 120800002188132. Thereafter, petitioner filed its amended Annual ITR for taxable year 2007 via the BIR's eFPS, under Reference No. 120800002209352 on April 29, 2008. On the same date, petitioner filed its Audited Financial Statements with the Revenue District Office (RDO) No. 47 of the BIR.
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> Meanwhile, on December 3, 2008, petitioner amended its Articles of Incorporation changing its name

from PeopleSupport (Philippines), Inc. to Aegis PeopleSupport, Inc.

Subsequently, on April 8, 2010, petitioner filed with the BIR Revenue District Office (RDO) No. 47, an administrative claim for refund or issuance of tax credit certificate (TCC) and an Application for Tax Credits/Refunds (BIR Form No. 1914) for its excess payment of income tax for taxable year 2007 in the amount of P66,177,830.95.

Respondent's inaction on petitioner's administrative claim for refund prompted the filing of the instant Petition for Review on April 15, 2010.

Respondent posted an Answer to this petition, through registered mail, on June 7, 2010 interposing the following special and affirmative defenses:

> '6) Assuming but without admitting that Petitioner filed a claim for refund, the same is still subject to investigation by the Bureau of Internal Revenue;
>
> 7) Petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected;
>
> 8) Taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not creditable or refundable;
>
> 9) It is incumbent upon the Petitioner to show that it has complied with the provision of Section 204(C) in relation to Section 299 of the 1997 Tax Code, as amended;
>
> 10) In an action for tax credit or refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge the said burden is fatal to the claim (Emmanuel & Zenaida Aguilar v. Commissioner, CA-

G.R. No. Sp. 16432, March 30, 1990 cited Aban, Law of Basic Taxation in the Philippines, 1st Edition, p. 206);

11) Claims for refund are construed strictly against the claimant, the same partake the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95) and as such, they are looked upon with disfavor. (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121).'

The issues having been joined, this case was set for pre-trial on July 9, 2010. As directed by the Court, the parties filed their Consolidated Joint Stipulation of Facts and Issues on July 26, 2010 which was approved in the Resolution dated July 28, 2010.

During trial, petitioner presented two (2) witnesses, Liana Lorenzo and ICPA Katherine Constantino, in support of its claim. On the other hand, respondent's counsel manifested during the hearing held on November 17, 2011 that he would not present evidence, as the issues involved in the instant case are purely legal.

On January 31, 2012, petitioner submitted its Memorandum; while respondent failed to file her Memorandum as per records verification dated February 1, 2012. Accordingly, the case was submitted for decision on February 3, 2012."[4]

After trial on the merits, the CTA First Division promulgated a Decision on July 9, 2012, the dispositive portion of which reads as follows:

"**WHEREFORE,** the instant Petition for Review is hereby **DENIED** for insufficiency of evidence.

SO ORDERED."

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[4] Decision dated July 9, 2012,, Annex "A" to the Petition for Review, Id., pp. 42-46.

Not satisfied with the above decision, petitioner filed its Motion for Reconsideration[5] filed on August 1, 2012 and Supplemental Motion for Reconsideration (*With Motion for Leave to Admit)*[6] filed on October 10, 2012, which were both denied in a Resolution[7] promulgated on March 4, 2013.

Hence, petitioner filed the instant Petition for Review, on April 12, 2013.

In a Resolution[8] dated July 29, 2013, the Court gave due course to the Petition after considering the arguments raised by petitioner and in view of the fact that respondent's period to file her comment had already expired. Both parties were given a period of fifteen (15) days from receipt thereof to file their respective memorandum.

On August 28, 2013, petitioner filed its Motion for Extension of Time to File Memorandum[9] which was granted by the Court in a Minute Resolution[10] dated August 30, 2013.

Petitioner subsequently filed a Manifestation (With Motion for Leave to File Reply) on September 16, 2013, manifesting that it will be adopting the arguments in its Petition for Review as its Memorandum and praying that, in the event the respondent opts to file a Memorandum in this case, petitioner be allowed to file Reply thereto, if necessary.

In a Resolution dated November 6, 2013, the Court *En Banc* noted petitioner's Manifestation and granted its Motion for Leave to File Reply.

On February 26, 2014, the Court submitted the case for decision taking into consideration petitioner's Manifestation and respondent's failure to file her Memorandum as per Records Verification of the Judicial Records Division dated February 4, 2014.

The issues for the resolution of this Court *En Banc* are the following:

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[5] Division Docket (Vol. II), pp. 727-755.
[6] Ibid, pp. 758-769.
[7] Id., pp. 777-785.
[8] En Banc Rollo, pp. 83-84.
[9] Ibid, pp. 85-88.
[10] Id., p. 89.

a. Whether petitioner's forex gain is related to petitioner's establishment of a contact center;

b. Whether the source of petitioner's USD is relevant in determining petitioner's entitlement to ITH; and,

c. Assuming that it is necessary to prove the source of petitioner's USD, whether the USD converted into Pesos arose from petitioner's registered activities.

In the subject Petition, petitioner is of the considered view that since its registered activity is the establishment of a contact center, then, all activities related to the contact center must be covered by tax incentives. It insists that the activity that led to the forex gain intrinsically involves: (1) the sale of USD that petitioner earned through the performance of its registered activity of establishing and operating a contact center; and (2) the purchase of Pesos needed to pay operational expenses can easily be considered as related to petitioner's business.

Petitioner further claims that the ruling of this Court in *JP Morgan Chase vs. Commissioner of Internal Revenue*[11] is applicable to its case.

Furthermore, it argues that the source of petitioner's USD is irrelevant in determining petitioner's entitlement to ITH on the ground that a forex gain or loss is taxable or deductible from the income, as the case maybe, only when the foreign currency is sold. Accordingly, the fact that the earned USD of petitioner does not result in realized gain or loss, it was erroneous for the Court in Division to base its Decision wholly on the source of petitioner's USD.

After a careful and thorough evaluation and consideration of the records and arguments as well as the laws and jurisprudence on the matter, the CTA *En* Banc finds no merit in the instant Petition.

The controversy in this case hinges on whether or not the foreign exchange gain derived by petitioner, through its hedging contract with Citibank, is attributable to petitioner's registered activity with the Board of Investment and PEZA as contact center.

We affirm the CTA First Division's ruling in the assailed Resolution and Decision denying petitioner's Petition for Review for insufficiency of evidence. Records show that while petitioner may have

[11] CTA Case No. 7692, December 21, 2011.

shown that its earned USD as a contact center is being used to purchase Pesos, through its hedging contracts with Citibank, in order to pay for the ordinary and necessary expenses of petitioner's customer-support business, the fact still remains that the subject foreign exchange gains were derived from the foreign exchange contracts entered into by petitioner with Citibank and not from its registered activity as a contact center nor necessarily related to it.

It should be recalled that petitioner's primary purpose as a contact center as stated in its Amended Articles of Incorporation is "to engage in the business of customer support services by providing information and database service on the Internet including web-based applications in the Philippines and providing or furnishing any and all forms or types of services, data and facilities relating to providing information on consumer products and services through the internet; and, otherwise, to carry on and conduct a general business relating to internet services."[12]

Likewise, its PEZA Certification shows that it is a registered Ecozone IT (Export) Enterprise engaged in the establishment of a contact center which will provide outsourced customer care services and business process outsourcing (BPO) services.[13]

On the other hand, petitioner's hedging activity involves the sale of specified amounts of dollar to the bank on pre-determined dates and at pre-determined exchange rates.

Considering petitioner's hedging activity is outside of the registered activity as a contact center, then, the income tax holiday on its registered activity may not be extended to the said foreign exchange gains.

At the risk of being repetitive, *We* reiterate the pertinent portions of the Assailed Decision, to wit:

> "In this regard, it must be emphasized that the income tax holiday incentive does not necessarily include all kinds of income which petitioner may receive during the period of entitlement. The Rules and Regulations Implementing Republic Act No. 7916, read in part:

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[12] Annex "A" to the Petition for Review, Division Docket (Vol. I), p. 27.
[13] Annex "F" to the Petition for Review, Ibid, p. 46.

"PART VII
Incentives to ECOZONE
Enterprises

Rule XIII
Application and Entitlement

SECTION 1. *Application for Availment of Incentives.* — All applications for availment of incentives shall be filed with PEZA.

SECTION 2. *Scope of Entitlement.* — New or expanding ECOZONE Developers/Operators, Export, Free Trade, Domestic Market, Utilities, Facilities and Tourism Enterprises, except ECOZONE Service Enterprises as defined under Section 2(p), Rule I of these Rules, registered on or after the effectivity of these Rules, shall be entitled to the fiscal incentives provided in Sections 24 and 42 of the Act.

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SECTION 5. *Limitation of Entitlement to Incentives.* — **Incentives granted by the PEZA shall apply only to registered operations of the ECOZONE Enterprises and only during the period of its registration with PEZA.'** (Emphasis supplied)

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

'REVENUE REGULATIONS NO. 20-02

SUBJECT: *Clarifying the Tax Treatment of Income Earned from Unregistered Activities by Enterprises Registered under the Bases Conversion and Development Act of 1992 and the Philippine Economic Zone Act of 1995*

TO: *All Internal Revenue Officers and Others Concerned*

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

SECTION 1. *Tax Treatment.* — **Income derived by an enterprise registered with** the Subic Bay Metropolitan Authority (SBMA), the Clark Development Authority (CDA), or **the Philippine Economic Zone Authority (PEZA) from its**

> **registered activity/ies shall be subject to such tax treatment as may be specified in its terms of registration (i.e., the 5% preferential tax rate, the income tax holiday, or the regular income tax rate, as the case may be). Nonetheless, whatever the tax treatment of said enterprise with respect to its registered activity/ies, income realized by such registered enterprise that is not related to its registered activity/ies shall be subject to the regular internal revenue taxes**, such as the 20% final income tax on interest from Philippine Currency bank deposits and yield or any other monetary benefit from deposit substitutes, and from trust funds and similar arrangements, the 7.5% tax on foreign currency deposits and the 5%/10% capital gains tax or 1/2% stock transaction tax, as the case may be, on the sale of shares of stock.'(Emphasis supplied)

Clearly, to enjoy the incentives granted under the PEZA law, the taxpayer's income must be effectively related with the conduct of its registered trade or business. Likewise, Executive Order No. 226 provides that the incentives granted under the said law shall only be 'to the extent engaged in a preferred area of investment.' Thus, for petitioner to enjoy the income tax holiday incentive provided under the PEZA law and EO No. 226, petitioner's income must be effectively related with the conduct of its registered trade or business.

An effectively related income may be interpreted to mean as those income derived from the business activity in which the corporation is engaged in, considering that a taxpayer may also receive income not directly connected or related to its business activity. Consequently, petitioner must also establish that its income relating to the subject tax refund is actually gained or received by it in relation to the conduct of its registered business activity.

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x x x Petitioner therefore, has the burden of proving that the foreign exchange gain of P189,079,517.00 is attributable to its registered activity with the BOI and the PEZA, specifically, the establishment of a contact center which will provide outsourced customer care services and business process outsourcing.

According to petitioner, it significantly derived its service fees by servicing its US-based clients who pay in dollars. On the other hand, the bulk of its expenses consist of the payroll of its employees, the rent on the lease of office space, and utilities such as water, electricity, and communication service providers, which it necessarily had to incur in order to conduct its business and had to be paid in pesos. As a consequence, it was necessary to convert the dollars it received from its customers to pesos, which would be used for its expenses.

To convert its dollars to pesos, petitioner allegedly entered into an agreement with a bank wherein it agreed to sell specified amounts of dollars to the bank on pre-determined dates and at pre-determined exchange rates. There were occasions when its pre-determined exchange rate would be higher than the prevailing market rate. Whenever petitioner would sell its dollars at a rate higher than the prevailing market rate, it would recognize a gain on its forex transactions. As a result thereof, petitioner realized a forex gain equivalent to P189,079,517.00.

In its original and amended Annual Income Tax Returns for taxable year 2007, petitioner reflected taxable income of P196,129,583.00 and a corresponding income tax due of P68,645,354.05 using the regular corporate income tax rate of 35% as follows:

Sales/Revenues/Receipts/Fees	P -
Less: Cost of Sales/Service	4,411,542.00
Gross Income from Operation	(4,411,542.00)
Add: Non-Operating and Other Income	**201,246,931.00**
Total Gross Income	196,835,389.00
Less: Deductions	705,806.00
Taxable Income	196,129,583.00
Tax Rate (except MCIT rate)	35%
Income Tax Due (35%)	**P68,645,354.05**

The Non-Operating and Other Income in the total amount of P201,246,931.00, which was reported under the regular rate column shown above, included realized foreign exchange gains on hedging in the amount of P189,079,517.00. Breakdown of the Schedule of Non-Operating and Taxable Other Income from Schedule 4 of its Annual Income Tax Return is as follows:

Commission Income	P 113,848.00
Interest Income from Loan	11,956,746.00
Other Income	96,820.00
Realized Forex Gains	**189,079,517.00**
Total Other Income	P201,246,931.00

Out of the P68,645,354.05 total income tax due, P66,177,830.95 pertains to the income tax on the realized foreign exchange gains on hedging, which is the subject of the present claim. The alleged realized foreign exchange gains on hedging in the amount of P189,079,517.00, being part of 'non-operating and other income', was thus subjected to 35% regular corporate income tax.

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Petitioner submitted its Certificate of Foreign Exchange Contracts from Citibank, Schedules of Service Revenue, Certificate of Inward Remittances and customer advices, System Generated General Ledger, Citibank N.A.'s credit advices, Schedule of Gain/Loss on Foreign Exchange Contracts, Bank Statements — peso and dollar, Service Agreements, Sales Invoices, General Ledger of Revenues, Reconciliation of Detailed Schedule of Revenue to General Ledger and Credit Memos to support its service revenues. It also submitted Summary of Payments and supporting documents covering disbursements to support its expenses. Even though the ICPA matched the revenues with inward remittances, showed the movement of petitioner's Citibank dollar account for the revenues, and provided schedules of some of the significant expenses, petitioner still failed to establish that the foreign exchange gain of P189,079,517.00 derived by petitioner is attributable to its registered activity.

Simply put, petitioner's evidence failed to support its allegation that the activities from which the amount of foreign exchange gain arose are attributable to activities with income tax incentive, as it failed to establish the nature of the foreign exchange contracts entered by it with Citibank from which the subject foreign exchange gains were derived.

Further, a perusal of the movement of petitioner's Citibank dollar account shows other credits which can be part of the source of the realized foreign exchange gain on hedging that is not directly attributable to petitioner's registered activity with the BOI and the PEZA. Thus, a determination of the amount of foreign exchange gain, which is actually related to petitioner's PEZA/BOI-registered activity, would be difficult, if not impossible."[14] (Emphases supplied)

We, likewise quote with approval the relevant portions of the Assailed Resolution:

"It is clear from the foregoing that if the foreign exchange gain of the concerned Ecozone Enterprise is attributed to an activity without income tax incentive, such foreign exchange gain shall likewise be without tax incentive or subject to the *'Normal Corporate Income Tax.'* In this case, the foreign exchange gain of petitioner is attributed to its hedging activity—an activity **without** income tax incentive or an **unregistered activity**. Such being the case, the income tax holiday on

[14] Assailed Decision, Annex "A" to the Petition for Review, En Banc Rollo, pp. 58-65.

its registered activity may not be extended to said foreign exchange gain.

To stress, there is a whale of a difference between: (i) the activity of entering into an agreement with a bank wherein petitioner agreed to sell specified amounts of dollars to the bank on pre-determined dates and at pre-determined exchange rates, and (ii) the activity of establishing a contact center which will provide outsourced customer care services and the importation of the machinery, equipment, tolls, goods, wares, articles, or merchandise directly used in its registered operations. Thus, even by virtue of the above-quoted PEZA memorandum circular, petitioner cannot apply its income tax incentive to the said unregistered activity.

Moreover, the Court cannot use as bases the BIR Rulings being invoked by petitioner, since the respective transactions contemplated therein are not the same as that of petitioner. In other words, said BIR Rulings did not specifically address the supposed tax treatment on petitioner's unregistered activity of entering into the said agreement with the pertinent bank.

But even granting that certain indications in the said BIR Rulings would seem applicable to petitioner for being a PEZA-registered enterprise, such as the requirement of a *'nexus between the transaction giving rise to the foreign exchange gain or loss and the PEZA entity's registered activity'* to avail of the applicable income tax incentive, the same can be ignored for being erroneous and improper, as they go against the said provisions of Revenue Regulations No. 20-2002, Rules and Regulations to Implement Republic Act No. 7916, and Registration Agreement executed on August 12, 2003 by and between the PEZA and petitioner.

In *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch),* the Supreme Court said:

> 'Although '[i]t is widely accepted that the interpretation placed upon a statute by the executive officers, whose duty is to enforce it, is entitled to great respect by the courts,' this interpretation is not conclusive and will have to be 'ignored if judicially found to be erroneous and 'clearly absurd x x x or improper'. An administrative issuance that overrides the law it merely seeks to interpret, instead of remaining consistent and in harmony with it, will not be countenanced by this Court.'

In addition, contrary to the assertion of petitioner, it is axiomatic that the State can never be in estoppel, and **this is particularly true in matters involving taxation.** The errors of certain administrative officers should never be allowed to jeopardize the government's financial position.

Settled is the rule in this jurisdiction that taxation is the rule and exemption is the exception. The burden of proof rests upon the party claiming exemption to prove that it is, in fact, covered by the exemption so claimed. Tax exemptions should be granted only by clear and unequivocal provision of law on the basis of language too plain to be mistaken. They cannot be extended by mere implication or inference.

Thus, considering that petitioner failed to establish entitlement to the tax exemption under Section 23 of RA 7916, in relation to Article 39(a)(1) of Executive Order No. 226 (series of 1987), as amended by RA 7918, there is a basis for this Court to deny petitioner's claim for refund.

In view of the above discussions, the presentation of additional evidence to establish that the 'Other Credits' were composed of: (a) placement in short term investments to increase funds for operational expenditure, (b) payment of USD-denominated liabilities, and (c) payment of cash advances to employees, already becomes moot since the same would not result in a reversal of the Court's ruling in the instant case."[15]

Lastly, petitioner's reliance on *JP Morgan Chase vs. Commissioner of Internal Revenue*[16] (JP Morgan Case) is misplaced because the facts obtaining therein are not on all fours with the case at bench. In the JP Morgan Case, there was a finding that the establishment of a contact center necessarily entails the lease of a physical facility which shall be used in rendering outsourced customer care services, thus, the rental income from the lease of the transmission facilities is exempt from withholding tax. The present case, on the other hand, involves the hedging contract entered into by petitioner with Citibank which falls outside of the scope of the registered activity of petitioner, hence, not covered by the income tax holiday.

Finding no reversible error, *We* affirm the assailed Decision, promulgated on July 9, 2012, and the Assailed Resolution, promulgated on March 4, 2013, both rendered by the CTA First Division.

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

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

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[15] Assailed Resolution, , Annex "B" to the Petition for Review, Ibid, pp. 75-77.
[16] CTA Case No. 7692, December 21, 2011.

WE CONCUR:

(With Separate Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *en banc* before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

AEGIS PEOPLESUPPORT, INC. [FORMERLY PEOPLESUPPORT (PHILIPPINES), INC.], Petitioner,	**CTA EB NO. 996** **(CTA CASE NO. 8085)**
	***Members*:**
- versus -	**DEL ROSARIO, *P.J.,* CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, RINGPIS-LIBAN, *JJ.***
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** AUG 04 2014 8:45 a.m.

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CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur in the denial of the Petition for Review on the ***sole*** ground that petitioner failed to prove during trial that the foreign exchange gain of ₱189,079,517.00 derived by petitioner on hedging is entirely attributable to its registered activity with the Board of Investments (BOI) and the Philippine Economic Zone Authority (PEZA) which is the establishment of a contact center.

As pointed out by the Court in Division in the assailed Decision, notwithstanding the submission by the Independent Certified Public Accountant (ICPA) of an independent computation of realized foreign exchange gain on hedging;[1] petitioner's submission of documents to support its service revenues, such as, Certificate of Foreign Exchange Contracts from Citibank, Schedules of Service Revenue, Certificate of Inward Remittances and customer advices, System Generated General Ledger, Citibank N.A.'s credit advices, Schedule of Gain/loss on Foreign Exchange Contracts, Bank Statements – peso and dollar, Service Agreements, Sales Invoices, General Ledger of Revenues, Reconciliation of Detailed Schedule of Revenue to General Ledger and Credit Memos;[2] petitioner's submission of Summary of Payments and supporting documents covering disbursements to support its expenses;[3] and, although the ICPA matched the revenues with inward remittances, showed the movement of petitioner's Citibank dollar account for the revenues, and provided schedules of some of the significant expenses,[4] the same are not sufficient to prove that the foreign exchange gain of ₱189,079,517.00 derived by petitioner is attributable to its registered activity. Indeed, the presence of other credits in petitioner's Citibank N.A. dollar account[5] casts doubt on petitioner's claim that the foreign exchange gains that resulted from its hedging activity are totally attributable to its registered activity.

It bears stressing that tax refunds partake of the nature of tax exemptions, which are construed *strictissimi juris* against the taxpayer, thus, **evidence in support of a claim must likewise be *strictissimi* scrutinized and duly proven.**[6] The taxpayer has the burden to present convincing evidence to substantiate a claim for refund,[7] and a taxpayer's "**[e]ntitlement to a tax refund is for the taxpayer to prove** and not for the government to disprove."[8]

All told, I concur in the result and VOTE to DENY the Petition for Review filed by AEGIS PEOPLESUPPORT, INC.

ROMAN G. DEL ROSARIO
Presiding Justice

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[1] *Rollo*, p. 718.
[2] *Rollo*, pp. 718 to 719.
[3] *Rollo*, p. 719.
[4] *Id.*
[5] *Id.*
[6] Commissioner of Internal Revenue vs. Far East Bank & Trust Company (Now Bank of the Philippines Islands), G.R. No. 173854, March 15, 2010, *citing* Philippine Long Distance Telephone Company v. Commissioner of Internal Revenue, G.R. No. 157264, January 31, 2008, 543 SCRA 329, 33.
[7] Philam Asset Management, Inc. vs. Commissioner of Internal Revenue, G.R. Nos. 156637/162004, December 14, 2005.
[8] *Supra*, note 6.