Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

ADVANCED WORLD SYSTEMS, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8977
For: Assessment

Members:

DEL ROSARIO, P.J., *Chairperson*
UY, and
MINDARO-GRULLA, JJ.

Promulgated:

MAR 19 2018, 10:10 a.m.

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DECISION

MINDARO-GRULLA, J.:

This resolves the Petition for Review filed by Advanced World Systems, Inc., against the Commissioner of Internal Revenue, pursuant to Section 7(a)(1)[1] of Republic Act (RA) No. 1125[2], as amended, as well as Section 3(a)(1)[3] of Rule 4 and Section 4(a)[4] of Rule 8 of the Revised Rules of the Court of Tax Appeals, as amended.

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[1] Sec. 7. *Jurisdiction.* - The CTA shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
(1) Decisions of 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; xxx.

[2] Act Creating the Court of Tax Appeals.

[3] 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:
(1) Decisions of 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.

[4] Sec. 4. *Where to appeal; mode of appeal.* –
(a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

Petitioner seeks to cancel and set aside the issued Final Assessment Notice (FAN) and the Final Decision on Disputed Assessment (FDDA) that found petitioner liable for alleged deficiency income tax for taxable year (TY) 2006.[5]

Petitioner Advanced World Systems, Inc. is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office address at the 3rd Floor Yupangco Building, 1606 Trade Street corner Investment Drive, Madrigal Business Park, Ayala Alabang, Muntinlupa City.[6] It is registered with the Bureau of Internal Revenue (BIR), with Taxpayer Identification No. 002-601-495-000, as evidenced by its Certificate of Registration No. 9RC0000397293.[7] Petitioner is also duly registered with the Board of Investments (BOI) and the Philippine Economic Zone Authority (PEZA).[8]

Pursuant to its Articles of Incorporation, petitioner's primary purpose is:

> "To engage in, operate, conduct, and carry on the business of developing, manufacturing, buying, selling (without engaging in the retail business), distributing and marketing software, computers, peripherals and other related products and parts."[9]

On the other hand, respondent is the duly appointed Commissioner of the BIR who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner filed its Annual Income Tax Return (ITR) on April 16, 2007.[10]

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[5] Statement of the Case, Pre-Trial Order, Docket, vol. I, p. 293
[6] Par. 2, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, vol. I, p. 223
[7] Exhibit "P-3", Docket, vol. I, p. 461
[8] Exhibits "P-4" and "P-5", Docket, vol. I, pp. 462 to 467 and p. 468, respectively
[9] Exhibits "P-1" and "P-2", Docket, vol. I, pp. 414 and 446, respectively
[10] Exhibit "P-11", Docket, vol. I, pp. 478 to 483

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On May 9, 2008, Letter of Authority (LOA) No. LOA 2001 00062870 was issued by respondent for the purpose of authorizing revenue officers to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period covering January to December 2006.[11]

After conducting the tax investigation, respondent issued the Preliminary Assessment Notice (PAN) on January 8, 2010, assessing petitioner for alleged deficiency value-added tax (VAT) in the amount of ₱42,965,054.25 and deficiency income tax in the amount of ₱31,278,411.51.[12]

As a result, petitioner disputed the said PAN on January 14, 2010.[13]

Respondent subsequently issued the Final Assessment Notice (FAN) against petitioner on January 25, 2010, assessing petitioner for purported deficiency VAT and deficiency income tax in the amounts of ₱43,312,586.32 and ₱31,619,830.79, respectively.[14]

Consequently, petitioner protested the said FAN via its protest letter filed on January 29, 2010.[15]

Petitioner received a Letter from the BIR Revenue Region No. 8-Makati on March 1, 2010, advising petitioner that the FAN was returned to BIR Revenue District Office (RDO) No. 53B-Muntinlupa for further verification, evaluation and action.[16] In the Letter dated October 1, 2012, petitioner was informed that its 2006 tax case was re-assigned to Group Supervisor Ms. Rosalie M. Panuda.[17]

On December 29, 2014, petitioner received the Final Decision on Disputed Assessment dated December 23, 2014, upholding the

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[11] Par. 4, Admitted Facts, JSFI, Docket, vol. I, p. 224; Exhibit "P-13", Docket, vol. I, p. 520
[12] Par. 5, Admitted Facts, JSFI, Docket, vol. I, p. 224; Exhibit "P-14", Docket, vol. I, pp. 521 to 522
[13] Par. 6, Admitted Facts, JSFI, Docket, vol. I, p. 224; Exhibit "P-15", Docket, vol. I, p. 526
[14] Par. 7, Admitted Facts, JSFI, Docket, vol. I, p. 224; Exhibit "P-16", Docket, vol. I, pp. 540 to 541 and pp. 544 to 545
[15] Par. 8, Admitted Facts, JSFI, Docket, vol. I, p. 224; Exhibit "P-17", Docket, vol. I, p. 550
[16] Par. 9, Admitted Facts, JFSI, Docket, vol. I, p. 224
[17] Par. 10, Admitted Facts, JSFI, Docket, vol. I, p. 225; Exhibit "R-3", BIR records, p. 424

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deficiency income tax assessment in the amount of ₱51,444,176.11, but cancelling the deficiency VAT assessment.[18]

As a consequence, petitioner filed the instant Petition for Review[19] before this Court on January 28, 2015.

Respondent filed his Answer[20] through registered mail on March 26, 2015 and received by this Court on April 8, 2015, interposing the following special and affirmative defenses:

> "1. Respondent reiterates and repleads the preceding paragraphs of the answer as part of his Special and Affirmative Defenses;
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> 2. Petitioner cannot avail the Income Tax Holiday both from the PEZA under Republic Act 7616 and the Board of Investment (BOI) under Republic Act 7918 simultaneously.
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> 3. Pursuant to Section 23 of Republic Act No. 7616, two different fiscal incentives are granted to an Ecozone Enterprise to wit:
>
>> Sec. 23. Fiscal Incentives. – Business establishments operating within the Ecozones shall be entitled to the fiscal incentives as provided for under Presidential Decree No. 66, the law creating the Export Processing Zone Authority, or those provided under Book VI of Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987.
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> Furthermore, Section 24 of Republic Act No. 7916, states that:
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>> Section 24. Exemption from National and Local Taxes. – Except for real property taxes on land owned by developers, no taxes, local and

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[18] Par. 11, Admitted Facts, JSFI, Docket, vol. I, p. 225; Exhibits "P-18", Docket, vol. I, pp. 552 to 555
[19] Docket, vol. I, pp. 6 to 17
[20] Docket, vol. 1, pp. 79 to 81

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national, shall be imposed on business establishments operating within the Ecozone. In lieu thereof, five percent (5%) of the gross income earned by all business enterprises within the Ecozone shall be paid and remitted as follows:

a. Three Percent (3%) to the National Government.
b. Two Percent (2%) which shall be directly remitted by the business establishments to the treasurer's office of the municipality or city where the enterprise is located.

4. Assessments are prima facie presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. *(Aban, Law of Basic Taxation in the Philippines, 1st Edition, p. 109)*;

5. Finally, Petitioner should be reminded that taxes are important because it is the lifeblood of the government and so should be calculated without unnecessary hindrance *(Commissioner vs. Algue, Inc. L-28896, 17 February 1988)*. Taxes are enforced proportional contribution from persons and property levied by the state, thus, no one is considered entitled to recover that which he must give up to another – *Non videtur quisquam id capere quod ei necesse est alii restitutere*."

Petitioner filed its Reply[21] to the Answer on April 10, 2015.

The case was scheduled for a pre-trial conference on June 18, 2015. Thus, respondent's Pre-Trial Brief[22] and petitioner's Pre-Trial Brief[23] were both filed on June 15, 2015.

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[21] Docket, vol. I, pp. 83 to 86
[22] Docket, vol. I, pp. 183 to 186
[23] Docket, vol. I, pp. 207 to 215

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Thereafter, the parties submitted their Joint Stipulation of Facts and Issues[24] and Supplemental Joint Stipulation of Facts and Issues[25] on July 3, 2015 and August 7, 2015, respectively, which were approved by this Court via Resolution[26] dated August 18, 2015. In the same Resolution, the Court declared the termination of the pre-trial. The Court then issued a Pre-Trial Order[27] on October 5, 2015.

Upon motion of petitioner,[28] the Court appointed Ms. Myra Celeste O. Dabalos as the Independent Certified Public Accountant (CPA) for the case on August 13, 2015.[29]

To prove its claim, petitioner presented Ms. Myra Celeste O. Dabalos and Ms. Cherry R. Catarata as witnesses. Thereafter, petitioner formally offered its documentary and testimonial evidence, consisting of Exhibits "P-1" to "P-969", inclusive of sub-markings. In the Resolution[30] issued on July 1, 2016, the Court admitted all the formally offered exhibits as petitioner's evidence.

The documentary evidence formally offered by the petitioner and admitted by the Court are as follows:

Exhibit:	**Description:**
P-1	Petitioner's Securities and Exchange Commission Certificate of Registration No. AS093-03837
P-2	Petitioner's Amended Articles of Incorporation
P-3	Petitioner's BIR Certificate of Registration with TIN No. 002-601-495-000
P-4	Petitioner's Board of Investments' Certificate of Registration No. 2001-147
P-5	Petitioner's Philippine Economic Zone Authority (PEZA) Certificate of Registration No. 05-06-IT
P-6	Certificate of Board Resolution No. 03-324
P-7	PEZA Letter dated 22 February 2006 [addressed to Mr. Akira Konishi]
P-8	PEZA Letter dated 26 June 2006 [addressed to Mr. Akira Konishi]

[24] Docket, vol. I, pp. 223 to 225
[25] Docket, vol. I, pp. 257 to 260
[26] Resolution, Docket, vol. I, p. 276
[27] Docket, vol. I, pp. 293 to 301
[28] Motion for Commissioning of Independent Certified Public Accountant, Docket, vol. I, pp. 234 to 236
[29] Resolution, Docket, vol. I, pp. 270 to 271; Oath of Commission, Docket, vol. I, p. 268
[30] Resolution dated July 1, 2016, Docket, vol. II, pp. 579 to 580

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P-9	Certificate of Incorporation of Advanced World Solutions, Inc. with Certificate No. CS200611878
P-10	Statement of Income per Registration
P-11	Annual Income Tax Return for taxable year 2006 of Advanced World Systems, Inc.
P-12	Independent Auditor's Report accompanying Petitioner's Annual Income Tax Return for taxable year ending 31 December 2006
P-13	Letter of Authority with No. LOA 2001 00062870 dated 9 May 2008
P-14	Preliminary Assessment Notice
P-15	Petitioner's Protest to Preliminary Assessment Notice
P-16	Final Assessment Notice/Formal Letter of Demand
P-17	Petitioner's Protest to Formal Assessment Notice
P-18	Final Decision on Disputed Assessment
P-19	Registration Agreement between PEZA and Advanced World Solutions, Inc.
P-20	PEZA Certificate of Board Resolution No. 06-398
P-21	PEZA Certificate of Board Resolution No. 06-399
P-965	Judicial Affidavit of Cherry Catarata
P-965-A	Signature of Ms. Cherry Catarata
P-966	Judicial Affidavit of Ms. Myra Celeste Dabalos
P-966-A	Signature of Ms. Myra Celeste Dabalos
P-967	Judicial Affidavit of Ms. Myra Celeste Dabalos
P-968	Supplemental Judicial Affidavit of Cherry Catarata
P-968-A	Signature of Ms. Cherry Catarata
P-969	Supplemental Judicial Affidavit of Cherry Catarata [dated 4 May 2016]
P-969-A	Signature of Ms. Cherry Catarata
P-22	Report on the Results of the Procedures Performed on the Verification of Documents and Schedules Relative to the Deficiency Income Tax Assessmednt for Calendar Year Ended December 31, 2006
P-22-A	Name and Signature of Myra Celeste O. Dabalos
P-23	Letters from the Board of Investment dated October 25, 2007 on the approval of Petitioner's application for Income Tax Holiday for calendar year ended December 31, 2006
P-24	Letters from the Philippine Economic Zone Authority dated July 25, 2007 on the approval of Petitioner's application for Income Tax Holiday for calendar years ended December 31, 2005 and 2006
P-25	Petitioner's General Ledger for Income and Expense Accounts for January to March 2006
P-26	Petitioner's General Ledger for Income and Expense Accounts for April to June 2006
P-27	Petitioner's General Ledger for Income and Expense Accounts for July to September 2006
P-28	Petitioner's General Ledger for Income and Expense Accounts for October to December 2006
P-29	Petitioner's Profit and Loss Schedule
P-29-1	Schedule of Salaries & Wages – Basic Pay – PEZA

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P-29-2	Schedule of Salaries & Wages – Allowances – PEZA
P-29-3	Schedule of Salaries & Wages – OT Pay – PEZA
P-29-4	Schedule of Salaries & Wages – VL Convert – PEZA
P-29-5	Schedule of Salaries & Wages – Nth Month – PEZA
P-29-6	Schedule of Development Expenses – Trips – PEZA
P-29-7	Schedule of Development Expenses – Staff – PEZA
P-29-8	Schedule of Development Expenses – Supplies & Peripherals – PEZA
P-29-9	Schedule of Development Expenses – Postage and Freight – PEZA
P-29-10	Schedule of Depreciation – F&F – PEZA
P-29-11	Schedule of Depreciation – OE – PEZA
P-29-12	Schedule of Depreciation – PE – PEZA
P-29-13	Schedule of Depreciation – LI – PEZA
P-29-14	Schedule of DEVOH – Rent – PEZA
P-29-15	Schedule of DEVOH – Light & Water – PEZA
P-29-16	Schedule of DEVOH – Basic Pay – PEZA
P-29-17	Schedule of DEVOH – Nth Month – PEZA
P-29-18	Schedule of DEVOH – Allowances – PEZA
P-29-19	Schedule of DEVOH – Benefits – PEZA
P-29-20	Schedule of DEVOH – Bonus – PEZA
P-29-21	Schedule of DEVOH – Communications – PEZA
P-29-22	Schedule of DEVOH – Trips – PEZA
P-29-23	Schedule of DEVOH – Training – PEZA
P-29-24	Schedule of DEVOH – Others – PEZA
P-29-25	Schedule of DEVOH – Fringe Benefits – PEZA
P-29-26	Schedule of DEVOH – Fringe Benefits Tax – PEZA
P-29-27	Schedule of DEVOH – Staff – PEZA
P-29-28	Schedule of DEVOH – Action – PEZA
P-29-29	Schedule of DEVOH – Others – PEZA
P-29-30	Schedule of Benefits – Bonus – PEZA
P-29-31	Schedule of Benefits – Meal Allowance – PEZA
P-29-32	Schedule of Benefits – SSS & Pag-ibig – PEZA
P-29-33	Schedule of Benefits – Other Benefits – PEZA
P-29-34	Schedule of Communications – PEZA
P-29-35	Schedule of Adm – Basic Pay – PEZA
P-29-36	Schedule of Adm – Allowances – PEZA
P-29-37	Schedule of Adm – OT Pay – PEZA
P-29-38	Schedule of Adm – Nth Month – PEZA
P-29-39	Schedule of Administrative Services – PEZA
P-29-40	Schedule of Contracted Services – PEZA
P-29-41	Schedule of Adm Benefits – Outing – PEZA
P-29-42	Schedule of Adm Benefits – Christmas – PEZA
P-29-43	Schedule of Other Adm Benefits – PEZA
P-29-44	Schedule of Adm Bonus – PEZA
P-29-45	Schedule of Recruitment Expense – PEZA
P-29-46	Schedule of Professional Fee – PEZA
P-29-47	Schedule of EAR – BOD – PEZA
P-29-48	Schedule of EAR – OFFICER – PEZA
P-29-49	Schedule of Anniversary/Others – PEZA
P-29-50	Schedule of Rent – PEZA

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P-29-51	Schedule of Light & Water – PEZA
P-29-52	Schedule of Office Supplies – PEZA
P-29-53	Schedule of Adm – Communications – PEZA
P-29-54	Schedule of Insurance – PEZA
P-29-55	Schedule of Adm – Trips – PEZA
P-29-56	Schedule of Adm – Training – PEZA
P-29-57	Schedule of Taxes & Licenses – PEZA
P-29-58	Schedule of Repairs and Maintenance – PEZA
P-29-59	Schedule of Office Upkeep – PEZA
P-29-60	Schedule of Adm – Depreciation – PEZA
P-29-61	Schedule of Interest and Bank Charges – PEZA
P-29-62	Schedule of Printing and Reproduction – PEZA
P-29-63	Schedule of Association & Club Dues – PEZA
P-29-64	Schedule of Subscription and Periodicals – PEZA
P-29-65	Schedule of Gas & Oil – PEZA
P-29-66	Schedule of Fringe Benefits – PEZA
P-29-67	Schedule of Fringe Benefits Tax – PEZA
P-29-68	Schedule of Documentary Stamp Tax – PEZA
P-29-69	Schedule of Miscellaneous – PEZA
P-29-70	Schedule of Realized Forex Gain/Loss – PEZA
P-29-71	Schedule of Salaries & Wages – Basic Pay – BOI
P-29-72	Schedule of Salaries & Wages – Allowances – BOI
P-29-73	Schedule of Salaries & Wages – OT Pay – BOI
P-29-74	Schedule of Salaries & Wages – VL Convert – BOI
P-29-75	Schedule of Salaries & Wages – Nth Month – BOI
P-29-76	Schedule of Development Expenses – Trips – BOI
P-29-77	Schedule of Development Expenses – Staff – BOI
P-29-78	Schedule of Development Expenses – Supplies & Peripherals – BOI
P-29-79	Schedule of Development Expenses – Duties – BOI
P-29-80	Schedule of Development Expenses – Postage and Freight – BOI
P-29-81	Schedule of Depreciation – F&F – BOI
P-29-82	Schedule of Depreciation – OE – BOI
P-29-83	Schedule of Depreciation – PE – BOI
P-29-84	Schedule of Depreciation – LI – BOI
P-29-85	Schedule of DEVOH – Rent – BOI
P-29-86	Schedule of DEVOH – Light & Water – BOI
P-29-87	Schedule of DEVOH – Basic Pay – BOI
P-29-88	Schedule of DEVOH – Nth Month – BOI
P-29-89	Schedule of DEVOH – Allowances – BOI
P-29-90	Schedule of DEVOH – Benefits – BOI
P-29-91	Schedule of DEVOH – Bonus – BOI
P-29-92	Schedule of DEVOH – Communications – BOI
P-29-93	Schedule of DEVOH – Trips – BOI
P-29-94	Schedule of DEVOH – Training – BOI
P-29-95	Schedule of DEVOH – Others – BOI
P-29-96	Schedule of DEVOH – Depreciation – BOI
P-29-97	Schedule of DEVOH – Fringe Benefits – BOI
P-29-98	Schedule of DEVOH – Fringe Benefits Tax – BOI
P-29-99	Schedule of DEVOH – Staff – BOI

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P-29-100	Schedule of DEVOH – Action – BOI
P-29-101	Schedule of DEVOH – BU – Others – BOI
P-29-102	Schedule of Benefits – Bonus - BOI
P-29-103	Schedule of Benefits – Meal Allowance – BOI
P-29-104	Schedule of Benefits – SSS & Pag-ibig – BOI
P-29-105	Schedule of Benefits – Other Benefits – BOI
P-29-106	Schedule of Communications – BOI
P-29-107	Schedule of Adm – Basic Pay – BOI
P-29-108	Schedule of Adm – Allowances – BOI
P-29-109	Schedule of Adm – OT Pay – BOI
P-29-110	Schedule of Adm – VL Convert – BOI
P-29-111	Schedule of Adm – Nth Month – BOI
P-29-112	Schedule of Administrtive Services – BOI
P-29-113	Schedule of Contracted Services – BOI
P-29-114	Schedule of Adm Benefits – Outing – BOI
P-29-115	Schedule of Adm Benefits – Christmas – BOI
P-29-116	Schedule of Other Adm Benefits – BOI
P-29-117	Schedule of Adm Bonus – BOI
P-29-118	Schedule of Recruitment Expense – BOI
P-29-119	Schedule of Professional Fee – BOI
P-29-120	Schedule of EAR – BOD – BOID
P-29-121	Schedule of EAR – OFFICER – BOI
P-29-122	Schedule of Anniversary/Others – BOI
P-29-123	Schedule of Rent – BOI
P-29-124	Schedule of Light & Water – BOI
P-29-125	Schedule of Office Supplies – BOI
P-29-126	Schedule of Adm – Communications – BOI
P-29-127	Schedule of Insurance – BOI
P-29-128	Schedule of Adm – Trips – BOI
P-29-129	Schedule of Adm – Training - BOI
P-29-130	Schedule of Taxes & Licenses – BOI
P-29-131	Schedule of Advertising and Promotions – BOI
P-29-132	Schedule of Repairs and Maintenance – BOI
P-29-133	Schedule of Office Upkeep – BOI
P-29-134	Schedule of Adm – Depreciation – BOI
P-29-135	Schedule of Interest and Bank Charges – BOI
P-29-136	Schedule of Printing and Reproduction – BOI
P-29-137	Schedule of Association & Club Dues – BOI
P-29-138	Schedule of Subscription and Periodicals – BOI
P-29-139	Schedule of Gas & Oil – BOI
P-29-140	Schedule of Fringe Benefits – BOI
P-29-141	Schedule of Fringe Benefits Tax – BOI
P-29-142	Schedule of Documentary Stamp Tax – BOI
P-29-143	Schedule of Doubtful Accounts Expense – BOI
P-29-144	Schedule of Miscellaneous – BOI
P-29-145	Schedule of Realized Forex Gain/Loss – BOI
P-30	Petitioner's Summary of Sales for 2006
P-31	Schedule of Sales per Registered Activity Against Invoices and Contracts
P-32	Petitioner's Summary of Sales for 2005
P-33	Petitioner's Summary of Sales for 2007

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P-34	Independent Auditor's Report accompanying Petitioner's Annual Income Tax Return for Taxable Year Ending March 31, 2007
P-35 to P-744	Petitioner's Invoices for the year ended December 31, 2006
P-745 to P-963	Petitioner's Contracts with Clients for the year ended December 31, 2006
P-964	Short-Period Annual Income Tax Return for Taxable Year Ending March 31, 2007 of ADVANCED WORLD SYSTEMS, INC.

On the other hand, respondent presented his sole witness, Ms. Rosalie M. Panuda, to disprove petitioner's claim. Subsequently, respondent formally offered his documentary and testimonial evidence, consisting of Exhibits "R-1" to "R-13-a", inclusive of sub-markings; which were all admitted by the Court.[31]

Respondent's documentary evidence are as follows:

Exhibit:	**Description:**
R-1	Tax Verification Notice No. 00167658 dated April 27, 2010
R-1-a	Name and signature of Artemio d. Aquino
R-2	Memorandum of Assignment dated October 4, 2012
R-2-b	Name and signature of Rosalie M. Panuda
R-3	Letter dated October 1, 2012
R-3-a	Name and signature of Danilo G. Lino
R-3-b	Name and signature of Lizabeth Ong-Coro dated October 1, 2012
R-4	Letter dated October 3, 2012
R-4-a	Name and signature of Danilo G. Lino
R-4-b	Name and signature of Lizabeth Ong-Coro
R-5	Letter dated October 16, 2012
R-6	First page of the Memorandum Report dated October 19, 2012
R-7	Second page of the Memorandum Report dated October 19, 2012
R-7-a	Name and signature of Rosalie M. Panuda
R-7-b	Name and signature of Sulpicio M. Adapon
R-8	Letter dated September 30, 2013
R-8-a	Name and signature of Christina C. Barroga
R-9	Letter-reply dated October 10, 2013
R-10	Letter dated November 12, 2013
R-10-a	Name and signature of Christina C. Barroga
R-11	Letter dated November 20, 2013
R-12	Memorandum Report dated November 22, 2013

[31] Resolution dated January 10, 2017, Docket, vol. II, pp. 620 to 621

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R-12-a	Name and signature of Rosalie M. Panuda
R-13	Judicial Affidavit of Rosalie M. Panuda
R-13-a	Name and signature of Rosalie M. Panuda

Petitioner submitted its Memorandum[32] on February 8, 2017; while respondent filed his Memorandum[33] via registered mail on February 24, 2017 and received by the Court on March 8, 2017. Petitioner subsequently submitted a Reply-Memorandum[34] on March 8, 2017.

Considering the filing of the parties' respective memoranda, the Court declared the instant case submitted for decision on March 27, 2017.[35]

The parties submitted the following issue for this Court's resolution:

> Whether or not petitioner is liable for deficiency income tax in the aggregate amount of ₱51,444,176.11, inclusive of interest, for the taxable year 2006.[36]

Before addressing the stipulated issue, the Court shall determine first whether it has jurisdiction over the present case.

Section 228 of the National Internal Revenue Code of 1997, as amended, provides:

> "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:
>
> xxx xxx xxx

[32] Docket, vol. II, pp. 622 to 647
[33] Docket, vol. II, pp. 653 to 659
[34] Docket, vol. II, pp. 664 to 667
[35] Resolution, Docket, vol. II, p. 669
[36] Issues, JSFI, Docket, vol. I, p. 225

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> 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, 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."

It is clear from the foregoing provision that the taxpayer has thirty (30) days from receipt of respondent's decision denying the protest, in whole or in part, to appeal to the Court of Tax Appeals. Records indicate that petitioner received the FDDA dated December 23, 2014 on December 29, 2014; hence, petitioner had thirty (30) days from December 29, 2014 or until January 28, 2015 within which to appeal the said decision to this Court.

Since petitioner filed the instant Petition for Review on January 28, 2015, the same was seasonably filed.

The Court shall now proceed to determine whether petitioner is liable for deficiency income tax for TY 2006 in the amount of ₱51,444,176.11.

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On January 25, 2010, respondent issued a FAN assessing petitioner for alleged deficiency income tax amounting to ₱31,619,830.79 and value-added tax in the amount of ₱43,312,586.32, or in the aggregate amount of ₱74,932,417.11.[37] As such, petitioner filed its letter of protest on January 29, 2010.[38]

Subsequently, petitioner received the FDDA on December 29, 2014, cancelling the deficiency VAT assessment, but upholding the deficiency income tax assessment in the amount of ₱51,444,176.11.[39]

Respondent computed the assessed deficiency income tax of ₱51,444,176.11 as follows:

Taxable Income (Loss) per return		₱ 330,812.00
Add: Adjustment/Disallowance per investigation		
Undeclared Income		57,427,667.00
Taxable Income per audit		₱ 57,758,479.00
Tax Due thereon		₱ 20,215,467.65
Less: Tax Credits/Payments		
Prior Year's Excess Credits	₱ 45,379.06	
Tax Paid	29,790.05	
Creditable Tax Withheld	142,625.96	
Total	₱ 217,795.07	
Less: Excess Credit Carried Over to Succeeding Year	102,010.87	115,784.20
Basic Tax Due		₱ 20,099,683.45
Add: Interest (04.16.07 to 01.30.15)		31,344,492.66
TOTAL AMOUNT DUE		**₱ 51,444,176.11**

Income Not Subject to Income Tax Holiday – ₱57,427,667.00

Finding that petitioner's declared exempt income amounting to ₱57,427,667.00, as computed below, was not allegedly covered by Income Tax Holiday based on the certifications submitted, respondent

[37] Par. 7, Admitted Facts, JSFI, Docket, vol. I, p. 224; Exhibit "P-16", Docket, vol. I, pp. 540 to 545
[38] Par. 8, Admitted Facts, JSFI, Docket, vol. I, p. 224; Exhibit "P-17", Docket, vol. I, p. 550
[39] Par. 11, Admitted Facts, JSFI, Docket, vol. I, p. 225; Exhibit "P-18", Docket, vol. I, pp. 552 to 555

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assessed petitioner of deficiency income tax pursuant to Section 32(A) of the NIRC of 1997, as amended:[40]

Total Sales – PEZA	₱ 219,189,280.00
Less: Cost of Sales/Services	122,041,469.00
Gross Income	₱ 97,147,811.00
Add: Other Income	-
Total Gross Income	₱ 97,147,811.00
Less: Deductions	24,893,658.00
Taxable Income	₱ 72,254,153.00
Less: Taxable Income Subject to Income Tax Holiday	14,826,486.00
Income Not Subject to Income Tax Holiday	**₱ 57,427,667.00**

A reading of the Details of Discrepancies discloses that the assessment is based on the premise that petitioner, as opined by the Legal Division of Revenue Region No. 8-Makati, cannot avail simultaneously of the Income Tax Holiday both from the PEZA under Republic Act No. 7916 and from the BOI under RA No. 7918.

The Court finds the assessment unwarranted.

Pursuant to Sections 23 and 24 of RA No. 7916[41] otherwise known as "The Special Economic Zone Act of 1995", business enterprises registered with the PEZA may choose between two fiscal incentive schemes: (a) to pay a five percent (5%) preferential tax rate on its gross income under the said law; or (b) an Income Tax Holiday provided under Executive Order (EO) No. 226, or the Omnibus Investments Code of 1987, as amended, to wit:

> "SECTION 23. *Fiscal Incentives.* – Business establishments operating within the ECOZONES shall be entitled to the fiscal incentives as provided for under the Presidential Decree No. 66, the law creating the Export Processing Zone Authority, or those provided under Book VI of Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987."

[40] Exhibit "P-18", Annex A, Details of Discrepancies, Docket, vol. I, p. 554

[41] An Act Providing for the Legal Framework and Mechanisms for the Creation, Operation, Administration, and Coordination of Special Economic Zones in the Philippines, Creating for this Purpose, the Philippine Economic Zone Authority (PEZA), and for Other Purposes.

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

(a) Three percent (3%) to the National Government;
(b) Two percent (2%) which shall be directly remitted by the business establishments to the treasurer's office of the municipality or city where the enterprise is located."

Likewise, EO No. 226, as amended by RA No. 7918, grants Income Tax Holiday to BOI-registered entities, the pertinent parts of which are quoted hereunder:

"ARTICLE 39. *Incentives to Registered Enterprises.* – All registered enterprises shall be granted the following incentives to the extent engaged in a preferred area of investment:

(a) *Income Tax Holiday.* –

(1) For six (6) years from commercial operation for pioneer firms and four (4) years for non-pioneer firms, new registered firms shall be fully exempt from income taxes levied by the National Government. Subject to such guidelines as may be prescribed by the Board, the income tax exemption will be extended for another year in each of the following cases:

i. The project meets the prescribed ratio of capital equipment to number of workers set by the Board;

ii. Utilization of indigenous raw materials at rates set by the Board;

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iii. The net foreign exchange savings or earnings amount to at least US$500,000 annually during the first three (3) years of operation.

The preceding paragraph notwithstanding, no registered pioneer firm may avail of this incentive for a period exceeding eight (8) years."

Stated differently, both the PEZA and the BOI may grant Income Tax Holiday to enterprises registered with them.

On September 18, 2001, petitioner registered with the BOI its service activities in its Muntinlupa and Cebu offices as a pioneer enterprise on certain research and development and a new service firm in the field of software development. Under such registration, petitioner enjoys, among other incentives, a six (6)-year Income Tax Holiday from the start of commercial operations in September 2001 until September 2007.[42]

On March 14, 2005, petitioner registered with the PEZA its activities in its Makati office, and was granted one (1) year to enjoy the incentives thereon with a condition, which reads as follows:[43]

"Within one (1) year from the date of signing of (the Registration Agreement), the REGISTRANT shall file an application with PEZA for registration of a new/separate entity to exclusively handle its PEZA-registered project at the Multinational Bancorporation Centre (MBC) subject to PEZA-approval; unless prior to or upon the end of the one-year period, the Citibank-Frabelle Building in Alabang and the PDI Condominium at Cebu City, where its other BOI-registered operations are located are proclaimed as PEZA IT Buildings and the REGISTRANT's projects in the said buildings are likewise registered with PEZA, or if a PEZA policy is issued allowing PEZA-registered enterprises to maintain their non-PEZA registered projects under the same entity registered with PEZA."

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[42] Exhibits "P-4" and "P-12", Docket, vol. I, pp. 462-467 and 500; Docket, vol. I, p. 489.
[43] Exhibits "P-5", "P-7", and "P-12", Docket, vol. I, pp. 468, 472, and 501.

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Through the Letters dated February 22, 2006[44] and June 26, 2006[45], the PEZA granted petitioner's request for an extension in the registration of a new/separate entity until June 30, 2006 and August 1, 2006, respectively.

On July 31, 2006, the new entity as required by PEZA was registered under the name of "Advanced World Solutions, Inc.".[46] Accordingly, the registered activity undertaken by petitioner in its Makati office was taken over by the newly-registered entity.

On August 25, 2006, PEZA cancelled petitioner's registration as an Ecozone IT Enterprise at the Multinational Bancorporation Centre.[47]

Clearly, petitioner is not only BOI-registered, but was also PEZA-registered. Accordingly, petitioner can avail of the Income Tax Holiday on the activities registered with the BOI, and on those registered with the PEZA. Petitioner's entitlement to the incentive arose from projects/activities in different locations duly registered with different authorities. Also, the incentive was granted pursuant to different laws. Thus, contrary to respondent's allegation, there was no simultaneous availment of the Income Tax Holiday incentive for the same project/activity in the same site/location.

Excess Tax Credit Carried Over to Succeeding Years – ₱102,010.87

Respondent disallowed the excess tax credit because the same would be allegedly credited against the income tax due for the taxable quarters/years immediately succeeding the taxable quarters/years in which the excess credit arose, pursuant to Section 2.58.3 of Revenue Regulations No. 2-98.

Any tax benefit derived by petitioner from such carry-over redounds to the succeeding period; at most, petitioner may only be

[44] Exhibit "P-7", Docket, vol. I, p. 472
[45] Exhibit "P-8", Docket, vol. I, p. 473
[46] Exhibit "P-9", Docket, vol. I, p. 474
[47] Exhibit "P-21", Docket, vol. I, p. 565; Exhibit "P-5", Docket, vol. I, p. 468

assessed in the succeeding period. Therefore, the disallowance of the carry-over is not proper.

In fine, petitioner is not liable for any deficiency income tax.

WHEREFORE, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, the Final Decision on Disputed Assessment and the Formal Assessment Notice issued by respondent against petitioner for taxable year 2006 covering deficiency income tax are hereby **CANCELLED and SET ASIDE**.

SO ORDERED.

Cielito N. Mindaro-Grulla

CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice
Chairperson, 1st Division