REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

AEGIS PEOPLESUPPORT INC. [FORMERLY PEOPLESUPPORT (PHILIPPINES), INC.],
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 8085

Members:

ACOSTA, *P.J.*
UY, *and*
FABON-VICTORINO, *JJ.*

Promulgated:
JUL 09 2012 ; 9:30 a.m.

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DECISION

UY, *J.*:

Before the Court is a Petition for Review filed on April 15, 2010, seeking the tax refund or the issuance of tax credit certificate in the amount of P66,177,830.87, representing petitioner's alleged excess payment of its income tax for taxable year 2007.

THE FACTS

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

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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.[1] As such, it was issued a Certificate of ITH[2] Entitlement CE No. 2008-000145 issued on March 24, 2008.[3]

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.[4] Petitioner is likewise registered with the BIR as an income taxpayer, with OCN No. 9RC0000247326 on March 9, 2000.[5]

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

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[1] Par. 1.8, Admitted Facts, CJSFI, Docket, pp. 200-201
[2] Income Tax Holiday
[3] Exhibit "F"
[4] Exhibits "G" and "I"
[5] Exhibit "E"

taxable year 2007, under Reference No. 120800002188132.[6] Thereafter, petitioner filed its amended Annual ITR for taxable year 2007 via the BIR's eFPS, under Reference No. 120800002209352 on April 29, 2008.[7] On the same date, petitioner filed its Audited Financial Statements with the Revenue District Office (RDO) No. 47 of the BIR.[8]

Meanwhile, on December 3, 2008, petitioner amended its Articles of Incorporation changing its name from PeopleSupport (Philippines), Inc. to Aegis PeopleSupport, Inc.[9]

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.[10]

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[11] to this petition, through registered mail, on June 7, 2010 interposing the following special and affirmative defenses:

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[6] Par. 1.13, Admitted Facts, CJSFI, Docket, at p. 201, Exhibit "S"
[7] Par. 1.15, Admitted Facts, CJSFI, Docket, at p 201, Exhibit "U"
[8] Pars. 1.16 and 1.18, Admitted Facts, CJSFI, Docket, at pp. 201-202
[9] Par. 1.3, Admitted Facts, CJSFI, Docket, at p. 200; Exhibit "C"
[10] Par. 1.19, Admitted Facts, CJSFI, Docket, at p. 202; Exhibit "DD"
[11] Docket, Vol. I, p. 174-176

"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-GR 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[12]. As directed by the Court, the parties filed their Consolidated Joint Stipulation of Facts and Issues[13] on July 26, 2010 which was approved in the Resolution[14] dated July 28, 2010.

During trial, petitioner presented two (2) witnesses, Liana Lorenzo and

[12] Minutes of Pre-Trial Conference on July 9, 2010, Docket, Vol. I, p. 197
[13] Docket, Vol. I, pp. 199-205
[14] Docket, Vol. I, p. 207

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.[15]

On January 31, 2012, petitioner submitted its Memorandum[16]; while respondent failed to file her Memorandum as per records verification dated February 1, 2012.[17] Accordingly, the case was submitted for decision on February 3, 2012.[18]

Hence, this Decision.

THE ISSUES

The main issue and sub-issues submitted by the parties for this Court's resolution are as follows:

Main Issue:

> "Whether or not petitioner is entitled to the refund or issuance of a TCC in the amount of Php66,177,830.95, representing the excess regular corporate income tax erroneously paid by the petitioner during CY 2007. [19]"

Sub-issues:

"3.1. Whether or not petitioner derived income in the gross amount of One Hundred Eighty-Nine Million Seventy-Nine Thousand Five Hundred Seventeen Pesos (Php189,079,517.00) as foreign exchange gain for CY 2007;

3.2 Whether or not the foreign exchange gain of

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[15] Minutes of the Hearing held on November 17, 2011, Docket, Vol. II, p. 651; Resolution dated November 29, 2011, Docket, Vol. II, p. 653
[16] Docket, Vol. II, pp. 664-696
[17] Docket, Vol. II, pp. 697
[18] Docket, Vol. II, p. 699
[19] Par. 2, Stipulated Issues for Trial, CJSFI, Docket, Vol. I, p. 203

Php189,079,517.00 derived by petitioner was made subject to RCIT at the rate of thirty-five percent (35%);

3.3 Whether or not the RCIT on petitioner's foreign exchange gain for CY 2007, amounting to Php66,177,830.95, was remitted and paid to the BIR;

3.4 Whether or not the foreign exchange gain of Php189,079,517.00 derived by petitioner is attributable to petitioner's registered activity with the BOI and the PEZA;

3.5 Whether or not petitioner is entitled to an income tax holiday (ITH) for its registered activities for taxable year 2007 under the Omnibus Investments Code of 1987 pursuant to its Board of Investments and Philippine Economic Zone Authority (PEZA) registrations.

3.6 Whether or not the foreign exchange income derived by petitioner is exempt from the RCIT under Section 27(A), Tax Code;

3.7 Whether or not petitioner's right to claim a refund of its alleged erroneously/excessively paid income tax was duly substantiated. [20]"

Petitioner's arguments

Petitioner avers that it is entitled to an income tax holiday on its PEZA-registered customer support services for taxable year 2007, pursuant to Executive Order (EO) No. 226, as amended by Republic Act (RA) No. 7916. According to petitioner, it derived foreign exchange gains from its hedging activities in taxable year 2007 amounting to P189,079,517.00. Petitioner's realized foreign exchange gains on hedging for taxable year 2007 was allegedly subjected to the thirty-five percent (35%) regular corporate income

[20] Par. 3, Stipulated Issues for Trial, CJSFI, Docket, Vol. I, pp. 203-204

tax under Section 27(A) of the National Internal Revenue Code (NIRC) of 1997, as amended and the tax due thereon amounting to P66,177,830.95 was paid and duly remitted by petitioner to the BIR. Considering that the said realized foreign exchange gain on hedging for taxable year 2007 was allegedly attributable directly to petitioner's PEZA-registered activities, petitioner claims that it is exempt from the 35% regular corporate income tax under Section 27(A) of the NIRC of 1997, as amended.

Respondent's arguments

On the other hand, respondent argues that petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected. Furthermore, respondent alleges that the taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not creditable or refundable. According to respondent, it is incumbent upon petitioner to show that it has complied with Section 204(C) in relation to Section 229 of the NIRC of 1997, as amended, to be entitled to a refund.

THE COURT'S RULING

In general, the applicable provisions of the NIRC of 1997, as amended, in filing a claim a refund or tax credit are Sections 204(C) and 229 thereof, which read:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate, and Refund or Credit Taxes.* – The Commissioner may -

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(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund."

"SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

Based on the foregoing, in filing a claim for a tax refund or issuance of a tax credit certificate for erroneously collected or illegally assessed taxes, the administrative and judicial claims for refund must be filed within two (2) years from payment thereof.

In the instant case, petitioner's refund claim pertains to taxes allegedly paid excessively or erroneously for the taxable year 2007. Records show that petitioner filed its 2007 Annual Income Tax Return on April 15, 2008[21]. Counting from this date, petitioner had until April 15, 2010 within which to file its claim for refund or issuance of tax credit certificate both in the administrative and judicial levels. Evidently, petitioner's administrative claim for refund filed on April 8, 2010[22] and the Petition for Review filed on April 15, 2010[23], were both filed within the two-year prescriptive period.

We now look at the specific incidents which allegedly gave rise to petitioner's instant refund claim. Petitioner contends that as a BOI and PEZA registered enterprise, it is entitled to the income tax holiday incentive provided under Book VI of EO No. 226, otherwise known as the Omnibus Investments Code, as amended, in relation to Article 39 thereof; Section 23 of RA No. 7916, as amended, otherwise known as the Special Economic Zone Act of 1995 ("PEZA Law"); and PEZA Memorandum Circular No. 32-2005 dated September 15, 2005.

Article 39 of Executive Order No. 226, as amended, the Omnibus Code, provides:

> "**INCENTIVES TO REGISTERED ENTERPRISES**
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> ARTICLE 39. *Incentives to Registered Enterprises.* - **All registered enterprises shall be granted the following incentives to the extent engaged in a preferred area of investment**;

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[21] Exhibit "PPPP", Docket, Vol. II, pp. 611-617
[22] Exhibit "DD", Docket, Vol. II, pp. 553-561
[23] Petition for Review, Docket, Vol. I, pp. 5-24

(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:" *(Emphasis supplied)*

Additionally, Section 23 of Republic Act No. 7916, otherwise known as the Special Economic Zone Act of 1995 ("PEZA Law"), provides that business establishments operating within the Ecozones shall be entitled to the fiscal incentives as provided under Presidential Decree No. 66, the Law creating the Export Processing Zone Authority, or those provided under Book VI of Executive Order No. 226. Section 23 of RA No. 7916, in relation to Presidential Decree (PD) No. 66 and EO No. 226, states:

> "**SECTION 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."

Petitioner was incorporated with this primary purpose : "(t)o 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."[24]

In the Consolidated Joint Stipulation of Facts and Issues, the following matters were admitted by the parties: (a) that petitioner is registered with the Board of Investments, under its former name PeopleSupport (Philippines), Inc., under 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 pursuant to BOI Certificate of ITH Entitlement CE No. 2008-000145; and, (b) that petitioner is registered with the Philippine Economic Zone Authority, under its former name PeopleSupport (Philippines), Inc., as a new Ecozone IT (Export) Enterprise to engage in the establishment of a contact center that will provide outsourced customer care services and business process outsourcing under Amended Registration Certificate No. 03-17-IT dated June 19, 2007.

In support of its claim, petitioner presented its BOI[25] and PEZA[26] Certificate of Registrations, Registration/Supplemental Agreements executed between PEZA and petitioner,[27] letter from PEZA,[28] Notice of ITH Extension Approval[29] and Notice of Approval of Start of Commercial Operations (SCO)[30] for its various operating locations, the details of which are summarized as follows:

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[24] Par. 1.2, Admitted Facts, CJSFI, docket, p. 200; Exhibit "C", Docket, Vol. II, p. 395
[25] Exhibit "F", Docket, Vol. II, p. 411
[26] Exhibits "G" and "I", Docket, Vol. II, pp. 412- 414
[27] Exhibits "K", "M", "N", "O", "P", and "NN", Docket, Vol. II, pp. 415-441 and 586-589
[28] Exhibit "JJ", Docket, Vol. II, p. 582
[29] Exhibits "HH", Docket, Vol. II, pp. 579-580
[30] Exhibit "II", "KK", "LL", and "MM", docket, pp. 581, 583, 584, and 585

PROJECT AS PER REGISTRATION AGREEMENT/CERTIFICATE OF REGISTRATION	CERTIFICATE OF REGISTRATION	NUMBER OF YEARS WITH INCOME TAX HOLIDAY INCENTIVE	INCOME TAX HOLIDAY (ITH) PERIOD/STARTING DATE FOR THE AVAILMENT OF THE ITH	EXHIBIT
PeopleSupport (petitioner's former name)	2003-059 under BOI dated April 22, 2003	6 years	April 22, 2003 to April 21, 2009	Exhibit F
Cebu Contact Center, Asia Town I.T. Park, Cebu	03-17 IT under PEZA dated August 12, 2003	4 years plus 1 bonus year	October 1, 2003 to September 30, 2008	Exhibits K and HH
New Project with Base Figure at the PeopleSupport Center		4 years	June 2005 to May 2009	Exhibit M and JJ
2nd, 3rd, 4th and 5th Floors of Skyrise Building, Asiatown IT Park		6 years	March 2006 (start of commercial operation)	Exhibit N and II
SM Baguio Cyberzone Bldg.		6 years	May 2007 (start of commercial operation)	Exhibit P and MM
6780 Ayala Avenue, Makati City (6th and 8th Floors)		6 years	December 2006 (start of commercial operation)	Exhibit O and KK
6780 Ayala Avenue, Makati City (11th and 12th Floors)		4 years	August 1, 2007 to July 31, 2011	Exhibit NN and LL

Based on the foregoing, petitioner is entitled to an income tax holiday for taxable year 2007 for its registered activities, provided it complies with the conditions set forth by the PEZA Law and EO No. 226.

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:

"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,**

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> **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."[31] 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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[31] Article 39 of Executive Order No. 226

Pursuant to BOI Certificate of ITH Entitlement CE No. 2008-000145, petitioner is registered as a new and pioneer IT Export Service Firm in the field of Customer Contact Center.[32] Petitioner is likewise registered with the 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 under Amended Registration Certificate No. 03-17-IT dated June 19, 2007.[33]

Petitioner also cited PEZA Memorandum Circular No. 32-2005, which purportedly clarified the tax treatment of gains derived by PEZA-registered entities from their foreign exchange transactions. The pertinent portion of the said PEZA Memorandum Circular is hereunder reproduced:

> "The tax treatment of foreign exchange (forex) gains shall depend on the activities from which these arise. Thus, if the forex gain is attributed to an activity with income tax incentive (Income Tax Holiday or 5% Gross Income Tax), said forex gain shall be covered by the same income tax incentive. On the other hand, if the forex gain is attributed to an activity without income tax incentive, said forex gain shall likewise be without income tax incentive, *i.e.*, therefore, subject to normal corporate income tax."

Following the issuance of the above-mentioned PEZA Memorandum Circular are BIR Rulings interpreting the tax treatment of forex gains of PEZA/BOI-registered entities, where the BIR consistently held that the realized forex gains are exempt from income tax provided that they are attributable, connected or intimately related to the registered activities which

[32] Exhibit "F", docket, p. 411
[33] Par. 1.11, Admitted Facts, CJSFI, docket, p. 201; Exhibits "G" and "I", docket, pp. 412-414

enjoy similar fiscal incentive.[34] 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.[35] As a result thereof, petitioner realized a forex gain equivalent to P189,079,517.00.

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[34] BIR Ruling No. DA-195-08, BIR Ruling No. DA-375-08, BIR Ruling No. DA-(IL-011) 107-08, BIR Ruling No. DA-(C-295) 723-09, BIR Ruling No. DA-(IL-009) 089-10

[35] Exhibit "FFFF"

In its original and amended Annual Income Tax Returns[36] 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/Services	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	P 201,246,931.00

Out of the P68,645,354.05 total income tax due, P66,177,830.95[37] 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

[36] Exhibits "PPPP", "S" or "RR", "SS", "W", "UU", "VV", and "WW"
[37] P189,079,517.00 x 35% regular corporate income tax rate

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"non-operating and other income", was thus subjected to 35% regular corporate income tax.

The Court-commissioned Independent Certified Public Accountant (ICPA) Katherine O. Constantino, provided an independent computation of realized foreign exchange gain on hedging as follows:[38]

A		B	c	d	e
				(b-c)	(d*a)
DOLLAR AMOUNT SOLD	**MATURITY DATE**	**FORWARD RATE AT MATURITY**	**SPOT RATE PER BOOKS**	**DIFFERENCE IN RATES**	**FOREIGN EXCHANGE GAIN ON HEDGING PER COMPUTATION**
$ 3,000,000.00	02/28/07	49.0500	48.59306	0.45694	P 1,370,807.52
2,000,000.00	02/28/07	49.0800	48.59371	0.48629	972,578.48
3,000,000.00	03/30/07	49.0580	48.22888	0.82912	2,487,365.88
2,000,000.00	03/30/07	49.0750	48.22912	0.84588	1,691,763.93
3,000,000.00	04/30/07	49.0480	47.53600	1.51200	4,536,000.00
2,000,000.00	04/30/07	49.0700	47.53600	1.53400	3,068,000.00
3,000,000.00	05/31/07	49.0460	46.17800	2.86800	8,604,000.00
2,000,000.00	05/31/07	49.0650	46.17800	2.88700	5,774,000.00
3,000,000.00	06/29/07	49.0400	46.24600	2.79400	8,382,000.00
2,000,000.00	06/29/07	49.0600	46.24600	2.81400	5,628,000.00
3,000,000.00	07/31/07	49.0350	45.34400	3.69100	11,073,000.00
2,000,000.00	07/31/07	49.0550	45.34400	3.71100	7,422,000.00
3,000,000.00	08/31/07	49.0300	46.66400	2.36600	7,098,000.00
2,000,000.00	08/31/07	49.0500	46.66400	2.38600	4,772,000.00
3,000,000.00	09/28/07	49.0300	44.97400	4.05600	12,168,000.00
2,000,000.00	09/28/07	49.0450	44.97400	4.07100	8,142,000.00
3,000,000.00	10/31/07	49.0250	43.73000	5.29500	15,885,000.00
2,000,000.00	10/31/07	49.0400	43.73000	5.31000	10,620,000.00
3,000,000.00	11/29/07	49.0200	42.75900	6.26100	18,783,000.00
2,000,000.00	11/29/07	49.0350	42.75900	6.27600	12,552,000.00
3,000,000.00	12/28/07	49.0150	41.41100	7.60400	22,812,000.00
2,000,000.00	12/28/07	49.0300	41.41100	7.61900	15,238,000.00
$55,000,000.00					**P 189,079,515.81**

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

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[38] Annex 7, Exhibit "HHHH" (ICPA Report)

Statements – peso and dollar, Service Agreements, Sales Invoices, General Ledger of Revenues, Reconciliation of Detailed Schedule of Revenue to General Ledger and Credit Memos[39] to support its service revenues. It also submitted Summary of Payments and supporting documents covering disbursements[40] to support its expenses. Even though the ICPA matched the revenues with inward remittances[41], showed the movement of petitioner's Citibank dollar account for the revenues[42], and provided schedules of some of the significant expenses[43], 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

[39] Exhibits "AAA", "BBB", "CCC", "DDD", "EEE", "FFF-1" to "FFF-48", "GGG", "LLL-1" to "LLL-24", "MMM", "NNN", "OOO", "PPP" to "PPP-3", "QQQ-1" to "QQQ-233", "XXX", "YYY" "ZZZ", "AAAA", "BBBB" and "EEEE-1" to "EEEE-29"
[40] Exhibits "HHH", "III", "JJJ", "KKK", and "WWW-1" to "WWW-299"
[41] Annexes 8, 9, 10, and 11, Exhibit "HHHH" (ICPA Report)
[42] Annex 12, Exhibit "HHHH" (ICPA Report)
[43] Annexes 13, 14, 15, and 16, Exhibit "HHHH" (ICPA Report)

related to petitioner's PEZA/BOI-registered activity, would be difficult, if not impossible.

At this juncture, it is well-settled that a tax refund is in the nature of a tax exemption which must be construed *strictissimi juris* against the taxpayer. The taxpayer must present convincing evidence to substantiate a claim for refund.[44] Considering that petitioner failed to submit substantial evidence to support its claim for refund, the instant Petition for Review must necessarily fail.

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

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

ESPERANZA FABON-VICTORINO
Associate Justice

[44] *Philam Asset Management Inc. vs. Commissioner of Internal Revenue*, G.R. Nos. 156637/162004, December 14, 2005; *Far East Bank and Trust Company vs. Commissioner of Internal Revenue*, G.R. No. 149589, Resolution promulgated on September 15, 2006

C E R T I F I C A T I O N

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.

ERNESTO D. ACOSTA
Presiding Justice