REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

SUTHERLAND GLOBAL SERVICES PHILIPPINES, INC., *Petitioner,*	**CTA CASE NO. 8354**
	Members: **CASTAÑEDA, JR.,** *Chairperson* **CASANOVA,** and **COTANGCO-MANALASTAS,** *JJ.*
-versus-	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** FEB 27 2014 4:10 p.m.

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DECISION

COTANGCO-MANALASTAS, *J.*:

STATEMENT OF THE CASE

The instant Petition for Review is a claim for refund in the amount of Eighteen Million Three Hundred Eleven Thousand Five Hundred Sixty-Five Pesos (₱18,311,565.00), allegedly representing erroneously paid income tax for the fiscal year ending June 30, 2009.

STATEMENT OF FACTS

Petitioner Sutherland Global Services Philippines, Inc. is an existing, non-pioneer Information Technology (IT) locator enterprise registered as an ECOZONE IT Enterprise by virtue of the Philippine Economic Zone Authority (PEZA) Certificate of

Registration No. 05-10-IT.[1] It is also registered with the Clark Special Economic Zone (CSEZ) as an ECOZONE IT Enterprise on December 6, 2006.[2]

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), vested with authority to carry out all the functions, duties and responsibilities of said office, including, *inter alia*, the power to decide, approve, and grant refunds or tax credits of overpaid or erroneously paid or collected internal revenue taxes. She holds office at the BIR National Office Building, Diliman, Quezon City.

On December 20, 2006, petitioner and PEZA executed a Registration Agreement[3] dated November 22, 2006, authorizing petitioner to conduct and operate its business inside the Clark Special Economic Zone. The agreement granted tax incentives to petitioner under Republic Act (RA) No. 7916[4], as amended, and the PEZA IT Guidelines, more particularly, to "pay 5% tax on gross income, in lieu of all national and local taxes, subject to PEZA and BIR rules and regulations" and "Tax and duty exemption on importation of capital equipment, raw materials and supplies".[5]

The PEZA Board passed Resolution No. 07-037 on January 18, 2007, approving the grant of full PEZA Incentives to CSEZ export-oriented and IT locator enterprises.

As a result, petitioner and PEZA executed a Supplemental Agreement[6] on February 2, 2007, stating, among others, that petitioner shall be entitled to a four (4)-year Income Tax Holiday (ITH) under non-pioneer status and upon the expiration of the ITH incentive, petitioner shall be entitled to 5% gross income tax (GIT) incentive and to other incentives under the PEZA Law. Further, it was agreed that said Agreement shall form an integral part of the original contract.

Petitioner alleged that from the time it started its commercial operation on August 9, 2006, it had erroneously

[1] Exhibit "A"; Par. 3, Stipulated Facts, Pre-Trial Order, docket, p. 118.
[2] Exhibit "B"; Par. 4, Stipulated Facts, Pre-Trial Order, docket, p. 118.
[3] Exhibit "D".
[4] The Special Economic Zone Act of 1995.
[5] Par. 5, Stipulated Facts, Pre-Trial Order, docket, p. 119.
[6] Exhibit "E"; Par. 6, Stipulated Facts, Pre-Trial Order, docket, p. 119.

paid the 5% preferential tax granted to it under the Registration Agreement on its gross income instead of the ITH given under the Supplemental Agreement. Petitioner pointed out that during fiscal year July 1, 2008 to June 30, 2009, it paid the total amount of ₱18,311,565.00.[7]

On October 13, 2011, petitioner filed an administrative claim for refund with the BIR Revenue Region No. 44.[8] Receiving no affirmative relief from respondent, petitioner filed a Petition for Review with this Court on October 14, 2011[9] or one (1) day after filing the administrative claim with the BIR.

Respondent filed her Answer[10] on December 16, 2011, stating the following Special and Affirmative Defenses:

> "3) Respondent reiterates and repleads the preceding paragraphs of the answer as part of her Special and Affirmative Defenses;
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> 4) Petitioner's claim for refund is still subject to investigation by the Bureau of Internal Revenue;
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> 5) Petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected;
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> 6) Taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not refundable;
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> 7) It is incumbent upon the Petitioner to show that it has complied with the provision of Section 204(C) in relation to Section 229 of the 1997 Tax Code, as amended;
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> 8) Assuming, without admitting that Petitioner filed a claim for refund with the Respondent, it is merely a scrap of paper to make it

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[7] Exhibit "G".
[8] Exhibits "H".
[9] Docket, pp. 6-16.
[10] Docket, pp. 88-90.

appear that it has complied with Section 229 of the 1997 Tax Code considering that, based on the allegation in the Petition, the claim for refund was filed on October 13, 2011 (par. 13 of the Petition) but only after the lapse of one (1) day or on October 14, 2011, Petitioner immediately filed its judicial claim on the ground of inaction even without giving Respondent ample time to resolve its claim, thereby denying the latter of due process and depriving this court of jurisdiction over this case.

9) 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 vs. Commissioner, CA-GR No. Sp. 16432, March 30, 1990 cited in Aban, Law of Basic Taxation in the Philippines, 1st Edition, p. 206)*;

10) 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).*"

This Court issued a Notice of Pre-Trial Conference[11] on December 22, 2011, informing the parties that the pre-trial conference is set on February 9, 2012. Respondent filed her Pre-Trial Brief[12] on February 6, 2012; while petitioner filed its Pre-Trial Brief[13] on February 7, 2012. The parties submitted their Joint Stipulation of Facts and Issues[14] on February 21, 2012. Thereafter, the Court issued a Pre-Trial Order on February 28, 2012, adopting the parties' stipulations and terminating the pre-trial.[15]

Petitioner filed its Petitioner's Formal Offer of Documentary Exhibits[16] on March 7, 2013, offering Exhibits

[11] Docket, p. 92.
[12] Docket, pp. 93-95.
[13] Docket, pp. 96-102.
[14] Docket, pp. 113-116.
[15] Docket, pp. 118-121.
[16] Docket, pp. 339-359.

"A" to "GG-1", inclusive of sub-markings. Respondent filed her Comment (To Petitioner's Formal Offer of Evidence)[17] on March 14, 2013, stating that she has no objection to the admission of said exhibits. This Court admitted the foregoing exhibits via Resolutions dated May 10, 2013[18] and August 14, 2013[19].

During the June 17, 2013 hearing, counsel for respondent manifested that she will no longer be presenting any evidence. Accordingly, this Court ordered both parties to submit within thirty (30) days their respective Memorandum.[20]

Petitioner submitted its Memorandum for Petitioner[21] on September 27, 2013 while respondent filed her Memorandum[22] on October 9, 2013. With the filing of the parties' respective Memorandum, this Court declared the case submitted for decision on October 22, 2013.[23]

STATEMENT OF ISSUES

The issues[24] stipulated by the parties for this Court's resolution are as follows:

> "I. Whether or not Petitioner is entitled to the refund of the amount of EIGHTEEN MILLION THREE HUNDRED ELEVEN THOUSAND FIVE HUNDRED SIXTY FIVE PESOS (18,311,565.00) representing alleged erroneously paid income tax for the period of 1 July 2008-30 June 2009.
>
> II. Whether or not the Petition should be dismissed for lack of merit on the failure of the petitioner to exhaust administrative remedies." /

[17] Docket, pp. 360-361.
[18] Docket, pp. 365-366.
[19] Docket, pp. 426-427.
[20] Docket, p. 399.
[21] Docket, pp. 435-456.
[22] Docket, pp. 457-461.
[23] Docket, p. 463.
[24] Docket, p. 115.

RULING OF THE COURT

The Court will address first the question of non-exhaustion of administrative remedies.

Sections 204(C) and 229 of the National Internal Revenue Code (NIRC) of 1997, as amended, provide the taxpayer a period of two (2) years from the date of payment of the tax or penalty within which to file a suit or proceeding to recover any erroneously paid or illegally collected tax, regardless of any supervening cause that may exist after payment, to wit:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* - The Commissioner may -
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **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." *(Emphasis supplied)*
>
> "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." *(Emphasis supplied)*

It is settled in this jurisdiction that Sections 204(C) and 229 govern all kinds of refund of internal revenue taxes - those taxes imposed and collected pursuant to the NIRC.[25] Section 204(C) applies to administrative claims filed with the BIR, while Section 229 refers to judicial actions for the recovery of the tax. However, both the claim for refund with the BIR and the subsequent appeal to the Court of Tax Appeals must be filed within the two-year period from the *date of payment of the tax.*

For actions for refund of erroneously or excessively paid corporate income tax, the Supreme Court ruled that the two-year prescriptive period should be counted from the filing of the final adjustment return or annual income tax return, because it is only during that date that the exact tax liability or refundability of the tax can be determined.[26]

Moreover, jurisprudence has it that when the two-year period is about to prescribe and the claim for refund with the BIR Commissioner has not been acted upon, for the protection of the interest of the taxpayer, he should file a Petition for Review with this Court within the said two-year period; otherwise, if the decision of the Commissioner is adverse to the

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[25] *Commissioner of Internal Revenue vs. Central Azucarera Don Pedro,* G.R. No. L-28467, February 28, 1973, citing *Commissioner of Internal Revenue vs. Insular Lumber Co.,* 21 SCRA 1237.

[26] *Commissioner of Internal Revenue vs. TMX Sales, Inc. and the Court of Tax Appeals,* G.R. No. 83736, dated January 15, 1992; *ACCRA Investments Corporation vs. The Honorable Court of Appeals, et al.,* G.R. No. 96322, December 20, 1991.

taxpayer and it was made after the two-year period he can no longer appeal the same to this Court.[27] Thus, it is not necessary for the BIR Commissioner to act unfavorably on the claim for refund before this Court may acquire jurisdiction because of the positive requirement of Section 229 and the doctrine that delay of the BIR Commissioner in rendering decision does not extend the peremptory period fixed by the statute. Neither is it required under the law that the claim for refund be filed at the earliest instance in order to give the BIR Commissioner an opportunity to rule on it and the Court to review the ruling of the Commissioner on appeal. The law fixed the same period of two years for filing a claim for refund with the BIR Commissioner, and for filing suit in Court[28] and as long as these two acts fall within this period then, there is no legal impediment to the judicial claim for refund.[29]

The instant claim pertains to income tax for the fiscal year ending June 30, 2009 for which petitioner filed its original[30] and amended[31] Annual Income Tax Returns on October 14, 2009 and November 11, 2009, respectively, and paid the corresponding income taxes totaling ₱18,311,565.00, broken down as follows:

Tax Payments for the First Three Quarters		
1st Quarter (Exhibit "Z-1"/"J-3")	₱3,007,881.00	
2nd Quarter (Exhibit "Z 2"/"J 2")	4,306,509.00	
3rd Quarter (Exhibit "Z 3"/"J 1")	4,491,094.00	₱ 11,805,484.00
Tax Paid Per Original Annual Income Tax Return (Exhibit "Z-4"/"J")		6,506,081.00
Tax Paid Per Amended Annual Income Tax Return (Exhibit "Q")		
Total Income Tax Paid for FY ending June 30, 2009		**₱18,311,565.00**

Counting from October 14, 2009, the date when petitioner filed its original Annual Income Tax Return for fiscal year ending June 30, 2009, petitioner had until October 14, 2011 within which to file its claim both in the administrative

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[27] *Commissioner of Internal Revenue vs. Hitachi Computer Products (Asia) Corporation*, CA-G.R. SP No. 63340, February 7, 2002, citing *Gibbs vs. Collector of Internal Revenue and Court of Tax Appeals*, 107 Phil. 232, *Johnson Lumber Co. vs. Court of Tax Appeals*, 101 Phil. 151.

[28] *Commissioner of Internal Revenue vs. Bank of the Philippine Islands, as Liquidator of Paramount Acceptance Corporation and the Court of Tax Appeals*, CA-G.R. SP No. 34102, September 19, 1994.

[29] *Manila Electric Company vs. The Commissioner of Internal Revenue*, CTA Case No. 5091, October 2, 1997.

[30] Exhibit "Z-4".

[31] Exhibit "Q".

and judicial levels. Therefore, the letter claim filed with the BIR on October 13, 2011[32] and the subsequent appeal before this Court via a Petition for Review filed on October 14, 2011 fell within the two-year prescriptive period.

The Court will now proceed to determine whether or not the income tax of ₱18,311,565.00 was erroneously paid.

Petitioner asserts that it is entitled to tax incentives by virtue of the Registration Agreement and the Supplemental Agreement it executed with PEZA which expressly provide, among others, a grant of a four (4)-year ITH and a rate of 5% gross income tax. Petitioner contends that since the two tax regimes are incompatible and cannot be availed of simultaneously, the ITH should be given preference since it came from the Supplemental Agreement which is a more recent contract executed between the parties. Petitioner opines that it is absurd to think that PEZA intended petitioner to enjoy a 5% preferential tax treatment, and then a four-year ITH after a year of operation, and then again a 5% preferential tax treatment.

Respondent counters that petitioner's claim must be denied since it failed to establish through competent evidence that its income subject of the instant claim for refund is effectively connected with the conduct of its registered trade or business. She likewise claims that the February 2, 2007 Supplemental Agreement is too vague and general to be valid and binding. Even granting that petitioner is subject to the four (4)-year Income Tax Holiday, it should only be exempted from paying income tax to the exclusion of other taxes.

Records show that on December 6, 2006[33], petitioner was registered with the Philippine Economic Zone Authority as an ECOZONE IT Enterprise at the Clark Special Economic Zone. Petitioner and PEZA executed a Registration Agreement entitling petitioner to conduct and operate its business inside the CSEZ. Among the provisions of the Registration Agreement is the grant to petitioner of tax incentives under Republic Act No. 7916, as amended, and the PEZA IT Guidelines, more particularly, that petitioner "shall pay 5% tax on gross income, in lieu of all national and local taxes, subject

[32] Exhibit "H".
[33] Exhibit "B".

to PEZA and BIR rules and regulations", and "Tax and duty exemption on importation of capital equipment, raw materials and supplies".[34]

However, on February 2, 2007, petitioner and PEZA executed a Supplemental Agreement[35] which stated that:

> "1. The REGISTRANT shall be entitled to four (4) years Income Tax Holiday (ITH) under non-pioneer status and upon the expiration of the ITH incentive, the REGISTRANT shall be entitled to 5% gross income tax (GIT) incentive and to other incentives under the PEZA law.
>
> 2. The REGISTRANT shall automatically revert to the enjoyment of incentives for CSEZ once the pertinent law is enacted by Congress.
>
> 3. Nothing herein contained shall be construed as amending or modifying any of the terms and conditions of the Original Contract except as herein expressly provided.
>
> 4. This Agreement shall form an integral part of the Original Contract."

Based on the foregoing, petitioner is entitled to the ITH incentive for four years under non-pioneer status and it is only upon the expiration of the ITH incentive will it be subject to the 5% gross income tax incentive.

As correctly pointed out by petitioner, although Republic Act No. 9400[36], which took effect on April 19, 2007, did not adopt the incentive of an ITH in favor of enterprises operating within the CSEZ, Section 7 of said Act nonetheless provides:

> "SECTION 7. Business enterprises presently registered and granted with tax and duty incentives

[34] Exhibit "D"; Par. 5, Stipulated Facts, Pre-Trial Order, docket, p. 119.
[35] Exhibit "E".
[36] An Act Amending Republic Act No. 7227, as amended, otherwise known as the Bases Conversion and Development Act of 1992, and for Other Purposes.

> by the Clark Development Corporation (CDC), Poro Point Management Corporation (PPMC), JHMC, and Bataan Technological Park Incorporated (BTPI), including such governing bodies, **shall be entitled to the same incentives until the expiration of their contracts entered into prior to the effectivity of this Act**." *(Emphasis supplied)*

Considering that RA No. 9400 retained the force and effectivity of contracts entered into by PEZA-registered enterprises such as the Supplemental Agreement between PEZA and petitioner, the latter continued to enjoy the grant of the 4-year Income Tax Holiday.

Petitioner's entitlement to the aforesaid incentives finds legal basis on Section 23 of RA No. 7916 (PEZA Law), as amended, which states:

> "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." *(Emphasis supplied)*

The fiscal incentives referred to under Presidential Decree (PD) No. 66, the law creating the Export Processing Zone Authority or EPZA (now PEZA) include the 5% preferential tax rate on gross income earned in lieu of national and local taxes as provided for under Section 24 of RA No. 7916, as amended by RA No. 8748, to wit:

> "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." *(Emphasis supplied)*

On the other hand, the fiscal incentives granted under Book VI of Executive Order (E.O.) No. 226, otherwise known as the Omnibus Investments Code of 1987, include income tax holiday for four (4) to six (6) years, depending on whether the enterprise is registered as pioneer or non-pioneer as stated in Title III, Article 39(a)(1) thereof, to wit:

> "TITLE III
> *Incentives to Registered Enterprises*
>
> 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. xxx"

It bears stressing that these two sets of fiscal incentives are in the alternative and cannot be availed of at the same time by a PEZA- registered enterprise.[37]

As earlier stated, petitioner was granted an ITH incentive for a period of four (4) years starting from its commercial operations on August 9, 2006[38]. Thus, petitioner had until

[37] *Hitachi Computer Products (Asia) Corporation vs. Commissioner of Internal Revenue*, CTA Case No. 5943, August 6, 2001.
[38] Exhibit "F".

August 9, 2010 within which to enjoy such incentive and thereafter petitioner shall be entitled to the 5% gross income tax incentive provided that it complies with the conditions as set forth by the PEZA Law.

However, even though said ITH incentive grants petitioner exemption from payment of income taxes, such exemption is not absolute. It applies only to the income derived from petitioner's registered activity as provided under Part VII of Rule XIII of the Rules and Regulations to Implement Republic Act No. 7916 (PEZA Rules), thus:

> "Part VII
> *Incentives to ECOZONE Enterprises*
>
> RULE XIII
> *Application and Entitlement*
>
> xxx xxx xxx
>
> 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)*

Petitioner was registered with the PEZA as an ECOZONE IT Enterprise at the CSEZ to engage in process consulting, technology support services, account management services, technical support/help desk services, customer care services and back office processing for operating call center and the importation of raw materials, machinery, equipment, tools, goods, wares, articles, or merchandise directly used in its registered operations at CSEZ.[39] Therefore, petitioner must establish that its income relating to the subject tax refund was actually earned or received by it in relation to the conduct of said registered business activities within the CSEZ.

Petitioner's amended Annual Income Tax Return[40] for the fiscal year ending June 30, 2009 has the following entries: /

[39] Exhibit "D", Article II, Scope of Registrant's Registered Activity.
[40] Exhibit "Q".

	EXEMPT	TAXABLE	
		Special Rate	Regular Rate
Sales/Revenues/Receipts/Fees	₱2,807,099,692	₱1,370,361,308	-
Less: Cost of Sales/Services	1,618,775,799	759,975,795	-
Gross Income from Operation	1,188,323,893	610,385,513	-
Add: Non-Operating and Taxable Other Income	-	-	₱ 18
Total Gross Income	1,188,323,893	610,385,513	18
Less: Deductions	722,376,515	-	2,159,436
Taxable Income	-	**610,385,513**	**(2,159,418)**
Tax Rate		5%	32.5%
Income Tax		**30,519,276**	**(701,811)**
Less: Share of Other Agencies		12,207,710	
Aggregate Income Tax Due		**18,311,565**	
Less: Tax Credits/Payments			
Tax Payments for the First Three Quarters		11,805,484	
Tax Paid in Return Previously Filed		6,506,081	
Total Tax Credits/Payments		18,311,565	
Tax Payable/(Overpayment)		-	

Based on the Report[41] of the Court-commissioned Independent Certified Public Accountant (CPA), the total amount of ₱4,177,461,000.00[42] declared as revenues by petitioner in its amended Annual Income Tax Return for fiscal year 2009 were generated by its various facilities in different locations with the following assigned business unit codes:

Business Unit Code per Site	Location
PHL01	ExportBank Plaza Building, Makati City
PHL02	Clark Special Economic Zone
PHL03	Burgundy Corporate Tower, Makati City
PHL04	Camarines Sur Information Technology Park
PHL05	Davao City – TESDA
PHL06	Luisa Avenue Square IT Park, Davao City
PHL07	Tarlac Provincial Information Technology Park II, Tibag, Tarlac City
PHL08	Total Corporate Center 1, Taguig City

Notice that the assigned business unit code for petitioner's facility located at the CSEZ is PHL02.

[41] Exhibit "O", pp. 4 and 5.
[42] The sum of ₱2,807,099,692.00 and ₱1,370,361,308.00.

The Independent CPA accounted and compared petitioner's total revenues for fiscal year 2009, as reflected in its Breakdown of Total Revenues per Site[43] and as declared in its amended Annual Income Tax Return, as follows:

	EXEMPT *(Site: PHL01, PHL03, PHL04, PHL05, PHL06, PHL07, PHL08)*	**SPECIAL RATE** *(Site: PHL02)*
Revenue per Breakdown of Revenues per Site	₱ 2,807,099,691.00	P 1,370,361,308.00
Revenue per Amended 2009 Annual Income Tax Return	2,807,099,692.00	1,370,361,308.00
Difference	**(₱ 1.00)**	**₱ 0.00**

Based on the table above, petitioner's reported "EXEMPT" revenues in the amount of ₱2,807,099,692.00 was earned by its business facilities located in: (a) Exportbank Plaza Building, Makati City; (b) Burgundy Corporate Tower, Makati City; (c) Camarines Sur Information Technology Park; (d) Davao City-TESDA; (e) Luisa Avenue Square IT Park, Davao City; (f) Tarlac Provincial Information Technology Park II, Tibag, Tarlac City; and (g) Total Corporate Center 1, Taguig City, with the corresponding business unit codes of PHL01, PHL03, PHL04, PHL05, PHL06, PHL07, and PHL08, respectively. Petitioner then submitted the related Registration Agreement[44] and Supplemental Agreements[45] it executed with PEZA, as well as the Certificate of Incentives issued by PEZA[46] to prove that these business facilities were likewise granted ITH incentives for four years including the subject fiscal year 2009 except for its business facility located in Davao City-TESDA (PHL05) with revenues amounting to ₱238,419.00.

As regards petitioner's reported revenues in the amount of ₱1,370,361,308.00 which was generated by its CSEZ facility (PHL02) and on which a 5% gross income tax was paid, petitioner submitted before this Court various computer-generated billing invoices[47], Breakdown of Time and Cost

[43] Exhibit "V".
[44] Exhibit "AA-1".
[45] Exhibits "AA-2", "AA-3", "AA-4", "AA-5", and "AA-6".
[46] Exhibit "BB".
[47] Exhibits "X" and "DD", inclusive of sub-markings.

Charges[48], and Schedule of Revenue for the Company's facility in the CSEZ[49] to prove that said revenues were actually derived from its PEZA-registered business activities within the CSEZ. Upon examination of these documents, the Independent CPA noted the following exceptions[50]:

Nature	Reference (Exhibit "O")	Amount
Adjustment to revenues generated from the Company's registered activities within the CSEZ reported in the 2009 Audited Financial Statements *(Exhibit U)* and reported under the 5% Special Rate per Amended 2009 Annual Income Tax Return *(Exhibit Q)* which is supported with computer-generated billing invoice not dated within the period July 1, 2008 to June 30, 2009, issued by the Company to non-resident customer *(Exhibit DD)*	*Annex C Page 19*	(₱ 7,453.82)
Accrued revenue adjustments to the Company's revenue from registered activities within the CSEZ reported in the 2009 Audited Financial Statements *(Exhibit U)* and reported under the 5% Special Rate per Amended 2009 Annual Income Tax Return *(Exhibit Q)* where supporting documents are not available during the time of review.		382,242.43
Total		**₱374,788.61**

Out of the ₱1,370,361,308.00 revenues subjected to the special rate of 5%, only the amount of ₱1,369,986,519.39 was verified by the Independent CPA to have been earned by petitioner from its PEZA-registered activities within the CSEZ for the period July 1, 2008 to June 30, 2009. Below is the breakdown of the amount of ₱1,369,986,519.39, to wit:

Nature	Reference (Exhibit "O")	Amount
Revenues generated from the Company's registered activities within the CSEZ reported in the 2009 Audited Financial Statements *(Exhibit U)* and reported under the 5% Special Rate per Amended 2009 Annual Income Tax Return *(Exhibit Q)* which are supported with computer-generated billing invoices dated within the period July 1, 2008 to June 30, 2009, issued by the Company to non-resident customer *(Exhibit X)*	*Annex A Page 17*	₱ 1,361,942,357.33

[48] Exhibit "CC", inclusive of sub-markings.
[49] Exhibit "W".
[50] Exhibit "O", p. 8.

Revenues generated from the Company's registered activities within the CSEZ reported in the 2009 Audited Financial Statements *(Exhibit U)* and reported under the 5% Special Rate per Amended 2009 Annual Income Tax Return *(Exhibit Q)* which are supported with Breakdown of Time and Cost Charges *(Exhibit CC)* for non-resident customers covering the period July 1, 2008 to June 30, 2009.	*Annex B Page 18*	8,044,162.06
Total		**₱1,369,986,519.39**

However, this Court finds that out of the ₱1,369,986,519.39 revenues verified by the Independent CPA as pertaining to petitioner's PEZA-registered activities within the CSEZ, the amount of ₱8,044,162.06 that was supported with Breakdown of Time and Cost Charges should be disallowed. The Court cannot give credence to the Breakdown of Time and Cost Charges as this merely showed computation and did not establish that a particular amount was actually billed to a certain customer for services rendered by petitioner within the CSEZ.

In sum, out of the ₱1,370,361,308.00 total revenues subjected to the 5% gross income tax, only the amount of ₱1,361,942,357.33 which was supported with computer-generated billing invoices was proved to have been earned by petitioner from its PEZA-registered activities within the CSEZ for the fiscal year ending June 30, 2009. Since petitioner is exempt from income tax for the fiscal year ending June 30, 2009 on income earned from its PEZA-registered activities within the CSEZ, only the amount of ₱18,199,066.08, representing the 5% income tax on its fiscal year 2009 CSEZ revenues of ₱1,361,942,357.33, shall constitute as erroneously paid tax which is refundable pursuant to Sections 204(C) and 229 of the NIRC of 1997, as amended. Below is the computation of the erroneous income tax payment of ₱18,199,066.08:

Income Tax Claimed For Refund Multiplied by: Allocation Factor	₱ 18,311,565.00
Validly Substantiated CSEZ Revenues	₱1,361,942,357.33
Total Revenues Subjected to 5% Special Rate	1,370,361,308.00
Allocation Factor	0.993856401
Refundable Erroneously Paid Income Tax	**₱ 18,199,066.08**

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WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** in favor of petitioner the amount of **₱18,199,066.08**, representing petitioner's erroneously paid 5% gross income tax for the fiscal year ending June 30, 2009.

SO ORDERED.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice