REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

C.T.A. EB NO. 876
(C.T.A. Case No. 7962)

Present:

DEL ROSARIO, *PJ*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, and
RINGPIS-LIBAN, *JJ.*

- versus -

JP MORGAN CHASE BANK, N.A. – PHILIPPINE CUSTOMER CARE CENTER,
Respondent.

Promulgated:

JUL 15 2013 ccApolinario 9:10 a.m.

x- -x

DECISION

Fabon-Victorino, J.:

This is an appeal[1] filed by petitioner Commissioner of Internal Revenue (CIR) on March 9, 2012, seeking to reverse the (1) Resolution[2] dated December 21, 2011, which granted respondent JP Morgan chase Bank, N.A. – Philippine Customer Care Center's claim for refund in the amount of Php2,845,654.02; as well as the (2) Resolution[3] dated February 17, 2012, which denied her *Motion for Reconsideration*, both rendered by the Court in Division in CTA Case No. 7962.

[1] *En Banc* docket, pp. 1-10.
[2] *Id.*, pp. 12-18.
[3] *Id.*, pp. 20-23.

The pertinent facts, as culled from the record, are as follows:

Petitioner is the head of the Bureau of Internal Revenue (BIR) with office address at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent JP Morgan Chase Bank, N.A. - Philippine Customer Care Center, on the other hand, is the Philippine Branch of JP Morgan Chase Bank, N.A., an American corporation with offices at the 12th, 14th, 27th, and 31th Floors, Philamlife Tower, 8767 Paseo de Roxas St., Makati City. It is registered with the Securities and Exchange Commission (SEC) to engage in call center and business process services, information technology, information technology enabled services, call-center services, customer care and other customer care services. It is likewise registered with the BIR with Certificate of Registration No. 9RC0000158857, dated August 10, 2005 and Taxpayer Identification No. 239-952-660-000.

In the pursuit of its business, respondent entered into a Master Service Provider Agreement, Task Order #2 with PeopleSupport (Philippines), Inc. (PPI) with head office at Asiatown I.T. Park, PeopleSupport Center, 6780 Ayala, Makati City. PPI is a Philippine Economic Zone Authority (PEZA) registered Ecozone IT (Export) Enterprise enjoying Income Tax Holiday (ITH) during the period May to July 2007.

Under the Agreement, PPI would provide and lease transmission facilities to respondent for a fee.

For the period May to July 2007, respondent paid PPI Php56,913,080.40 or US$1,255,251.00 detailed as follows: US$1,192,488..45 on July 26, 2007 and US$62,762.55 on August 16, 2007, and withheld tax therefrom in the amount of Php2,845,654.02.

On August 10, 2007, respondent filed its Monthly Remittance Return of Creditable Income Taxes Withheld for the month of July and paid the amount of Php3,705,125.61, inclusive of the amount of Php2,845,654.02 withheld from PPI.

Subsequently however, respondent realized that it erroneously withheld taxes on its payments to PPI given that the latter was a PEZA Registered Ecozone IT (Export) Enterprise enjoying ITH, it reimbursed PPI the amount of Php2,845,654.02 or $62,762.55 in US dollar on August 16, 2007. PPI issued Official Receipt No. 1660 dated August 16, 2007 and acknowledged such reimbursement in its letter dated July 23, 2008.

On August 7, 2008, respondent filed with the BIR's Revenue District Office No. 50 (South Makati) an application for refund of the amount of Php2,845,654.02, it allegedly erroneously withheld and remitted to the BIR on August 10, 2007.

On August 10, 2009, respondent filed a *Petition for Review* with the Court in Division hinged on petitioner's inability to act on the claim for refund.

In her *Answer*, petitioner argued that the Petition for Review must be dismissed on the ground that respondent, being a mere withholding agent, is not the proper party to ask for refund. Even assuming that respondent is allowed to file a claim for refund, it should be in the name of PPI and with its express authority.

During the trial, only respondent presented evidence. Petitioner, on the other hand, was deemed to have waived her right to present any due to her several failure to appear and present evidence, despite due notice.

On September 23, 2011, the Court in Division denied respondent's Petition for Review, for lack of merit. While it ruled that respondent is the proper party to file the instant claim for refund, it found the lease of transmission facilities subject of the Agreement outside the registered activities of PPI, hence, the income arising from such lease is subject to the regular corporate income tax and Creditable Withholding Tax.

On motion for reconsideration filed by respondent on October 14, 2011, the Court in Division reversed itself in the assailed Resolution of December 21, 2011, in this wise:

> **WHEREFORE**, the instant **Motion for Reconsideration** is hereby **GRANTED**. Our Decision dated September 23, 2011 denying the present Petition for Review for lack of merit is **REVERSED** and **SET ASIDE**. Accordingly, respondent is hereby ordered to refund to petitioner the amount of P2,845,654.02 representing the creditable withholding income tax which petitioner erroneously withheld in relation to the lease of transmission facilities of PPI for the period of May to July 2007.
>
> **SO ORDERED.**

In ruling in favor of respondent, the Court in Division considered respondent's contention that the lease of transmission facilities is included in the PEZA-registered activities of PPI, thus enjoying the exemption from withholding taxes in accord with the ITH granted to it. In view of the recent administrative rulings issued interpreting the provisions of the Implementing Rules and Regulations of Republic Act (RA) No. 7916 and Revenue Regulations (RR) No. 20-02, as well as RR No. 2-98, as amended by RR No. 14-02, the Court in Division declared that the lease of the transmission facilities is an activity necessarily related to the registered activities of PPI. Hence, the rental income from lease of transmission facilities is exempt from withholding tax.

Unconvinced, petitioner sought a *reconsideration*[4] of the foregoing Resolution, but the same was denied for lack of merit in the assailed Resolution of February 17, 2012.

---

[4] *Rollo*, pp. 336-341.

Hence, the instant Petition for Review raising the following issues, to wit:

> I. Whether the Honorable 2nd Division of the CTA erred in granting Respondent's Petition for Review and ordering the refund of the amount of Php2,845,654.02 representing the creditable withholding income tax which herein respondent withheld in relation to the lease of transmission facilities of PPI for the period of May to July 2007.
>
> II. Whether the Honorable 2nd Division of the CTA erred in denying herein petitioner's Motion for Reconsideration.

In her *Petition for Review*, petitioner merely reiterates all her arguments in her Motion for Reconsideration filed with the Court in Division on January 11, 2012. She posits that the lease of transmission facilities is essentially a contract of lease of facility and not one of those listed in Article II[5] of PPI's Registration Agreement with PEZA. That being the case, the rental income derived from such lease should be subject to regular income tax. And since such lease is not among the listed activities in PPI's Registration Agreement with PEZA, it should be considered as a "new or additional product line" requiring separate approval from PEZA. In the absence of PEZA approval, the rental income therefrom is not exempt from withholding tax.

In its *Comment,*[6] respondent counters that all the issues raised by petitioner are a mere rehash of her arguments that were thoroughly considered, and found wanting, by the Court in Division. Respondent agrees with the Court in Division in ordering the refund of Php2,845,654.02 on the following reasons:

---

[5] Article II
Scope of Registrant's Registered Activity
2. The scope of the REGISTRANT'S registered activity shall be limited to the establishment of a contact center which will provide outsourced customer care services and the importation of machinery, equipment, tools, goods, wares, articles, or merchandise directly used in its registered operations at Asiatown IT Park. In the event the REGISTRANT decides to engage in a new or additional product line, directly or indirectly related to its registered activity, it shall apply anew with PEZA for the latter's approval.

[6] *En Banc* docket, pp. 95-101.

I. The services rendered by PPI to respondent under the Agreement involve the establishment of a contact center and the provision of outsourced customer care services, and not merely a lease of transmission facilities as petitioner posits.

II. Income realized by PPI under the Agreement is derived from activities that are related to the PEZA-registered activities of PPI. Thus, such income is entitled to the income tax holiday incentive and withholding tax exemption granted under the PEZA law.

III. The services do not constitute a 'new or additional product line' requiring a separate PEZA registration.

Despite directive, only respondent filed its Memorandum on June 13, 2012, thus the case was deemed submitted for decision without petitioner's memorandum.

RULING OF THE COURT EN BANC

The instant petition should be denied.

At the core of the controversy is the question of whether the "lease of transmission facilities" is included in the PEZA-registered activities of PPI, for it is upon which PPI's exemption from withholding taxes pursuant to the income tax holiday granted to it relative to its PEZA-registered activities is moored.

Section 23 of RA 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 (EO) No. 226, otherwise known as Omnibus Investments Code of 1987.

Under the PPI's Registration Agreement with the PEZA dated August 12, 2003 and Supplemental Agreements dated February 20, 2004, July 14, 2005, May 15, 2007 and June 6, 2007, the following fiscal incentives were granted in favor of PPI:[7]

1. Incentives under Book VI of EO 226 which includes the following:

    a. Corporate income tax holiday (ITH) for six (6) years for pioneer project and four (4) years for non-pioneer project effective on the committed date of start of commercial operations or the actual date of start of commercial operations, whichever is earlier; ITH entitlement can also be extended but in no case to exceed a total period of eight (8) years for pioneer project and seven (7) years for non-pioneer project provided specific criteria are met for each additional year and prior PEZA approval is obtained. Duly approved and registered 'Expansion' and 'New' projects are entitled to a three-year, and four-year ITH, respectively;

    b. Tax and duty free importation of merchandise which include raw materials, capital equipment, machineries and spare parts;

    c. Exemption from wharfage dues and export tax, impost or fees;

    d. VAT zero-rating of local purchases subject to compliance with BIR and PEZA requirements; and

    e. Exemption from payment of any and all local government imposts, fees, licenses or taxes

---

[7] Exhibit "I".

> except real estate tax; however, machineries installed and operated in the ecozone for manufacturing, processing or for industrial purposes shall not be subject to payment of real estate taxes for the first three (3) years of operation of such machineries; production equipment not attached to real estate shall be exempt from real property taxes.
>
> xxx xxx xxx

The Implementing Rules and Regulations of RA No. 7916 however provide that the incentives granted by the PEZA shall apply only to registered activities of the PEZA registered enterprise, *viz*:

> 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 Enterprise** and only during the period of its registration with PEZA.." (*Emphases supplied*)

In relation to the foregoing provision, BIR Revenue Regulations No. 20-02 dated October 14, 2002 clarify the limitation on the entitlement to the tax incentives granted to PEZA registered entities, as follows:

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

> Authority (PEZA) from its registered activity/ies shall be subject to such tax treatment as may be specified in its terms of registration (i.e., the 5% preferential tax rate, the income tax holiday, or the regular income tax rate, as the case may be). **Nonetheless, whatever the tax treatment of said enterprise with respect to its registered activity/ies, income realized by such registered enterprise that is not related to its registered activity/ies shall be subject to the regular internal revenue taxes**, such as the 20% final income tax on interest from Philippine Currency bank deposits and yield or any other monetary benefit from deposit substitutes, and from trust funds and similar arrangements, the 7.5% tax on foreign currency deposits and the 5%/10% capital gains tax or 1/2% stock transaction tax, as the case may be, on the sale of shares of stock.
>
> Income payments made by a registered enterprise to an entity in the Customs Territory shall not be subject to the preferential tax rates or tax exemption enjoyed by the registered enterprise. Thus, dividends paid to the shareholders of a registered enterprise, interest payments to creditors of such registered enterprise (regardless of any tax provision for grossing up of taxes), and other such payments shall be subject to the appropriate rate of tax imposable on the recipient of such income. (*Boldfacing supplied*)

In several rulings[8] the BIR held that the grant of incentives to PEZA registered entities covers not only the activities explicitly listed under the entity's certificate of registration, but extends to activities necessarily related to said registered activities.

---

[8] BIR Ruling No. DA-062-08, February 1, 2008; BIR Ruling No. DA-593-07, November 14, 2007; BIR Ruling No. DA-255-07, April 25, 2007.

Thus, based on RA No. 7916 and its implementing rules and regulations, the benchmark as to whether the activity qualifies for the tax incentives (*e.g.* ITH) depends on whether the activity is related to the registered activity.

In the instant case, petitioner insists that the lease of transmission facilities was an activity not necessarily related to the registered activities of PPI. She claims that the lease of transmission facilities was essentially a contract of lease of facility and not one of the registered activities of PPI – the establishment of a contact center or outsourced customer care services and business outsourcing services - considering that the leased facility was not manned by PPI personnel but by those of respondent who performed the inbound telemarketing activities themselves.

The arguments are bereft of merit.

Pursuant to the Agreement[9] entered into by and between PPI and respondent, PPI shall provide respondent with the following services:

> III. DESCRIPTION AND SCOPE OF SERVICES.
>
> Supplier shall provide the following services to JPMC:
>
> A. Scope of Services.
>
> Supplier will provide physical plant space in its facility located at 6780 Ayala Avenue, Makati City 1227 Philippines (the "Facility") that will allow JPMC personnel to perform certain services for the benefit of JPMC. Supplier will provide all voice and data infrastructure needed for JPMC personnel to perform their intended function(s). Supplier will further provide all workstation infrastructure (as further detailed below) that is compatible with JPMC specifications to support JPMC work types to be performed at Supplier's location. Supplier will provide workstation voice

[9] Exhibit "C".

and data bandwidth as set forth below. Supplier will also provide all infrastructure necessary to conduct telephone call recording, workstation screen data capture, and data storage per the requirements of JPMC. Additionally, Supplier will provide the platform and support for inbound telemarketing activities that will be performed by JPMC employees located in the Facility. This platform and support will be consistent with all service requirements as set forth in Task Order #1 currently executed between PeopleSupport, Inc. and JPMorgan Chase Bank, National Association.

xxx xx xxx

V SUPPLIER/JPMC INTERACTION

Supplier and JPMC agree to the following:

- Supplier will assign an account manager mutually agreeable to JPMC and Supplier.
- The account manager must be proactive, responsive and solution oriented.
- The account manager should have expertise in, or direct linkage to, Supplier's facilities, security and information technology.
- The account manager must have the ability to effectively manage or address the Services to ensure optimum results for JPMC.
- The account manager will be responsible for facilitating communication between JPMC and Supplier.
- Supplier will notify JPMC of any staff reassignments involving the account manager or other designated Key personnel.
- JPMC will provide a point of contact(s) ("POC") that will serve as a liaison between the Supplier and JPMC.
- JPMC will provide POC(s) during Supplier's hours of operations.
- JPMC POC(s) will provide feedback or updates regarding escalations or concerns made by the Supplier."

It is evident that the Agreement was not limited to the leasing of transmission facilities for it included the obligation to provide support services and key personnel to respondent.

As found by the Court in Division, PPI was registered with PEZA as an Ecozone IT (Export) Enterprise to engage in the establishment of a contact center which will provide outsourced customer care services and business process outsourcing services.

The scope of services above-mentioned were within PPI's registered activities, as they involved the establishment of a contact center (*i.e.* there will be telemarketing activities to target customers), and the provision of outsourced customer care services and business process outsourcing services (*i.e.* business process outsourcing services is provided in terms of the provision by PPI to respondent of voice and data infrastructure, workstation infrastructure to conduct telephone call recording, work screen data capture, and data storage).

Also, as an integral part of its supply of infrastructure, PPI obliged itself to render support services to respondent necessary for the maintenance and repair of the subject facility.

Under the Agreement, PPI plainly obliged itself to supply the whole package of infrastructure and information technology support services to respondent, which necessarily includes the lease of its transmission facilities for purposes of establishing a contact center and related services. The Court *En Banc* agrees with the Court in Division when it ruled, thus:

> The lease of transmission facilities is included in Task Order #2 to the Master Service Provider Agreement ("Agreement") between petitioner (respondent herein) and PPI. In the said contract, PPI shall provide the physical plant space in its facility, as well as voice and data infrastructure and

> workstation infrastructure necessary to conduct telephone call recording, workstation screen data capture, data storage, and platform and support for inbound telemarketing activities. Furthermore, PPI shall also provide support services necessary for the maintenance and repair of the Facility. **Petitioner is correct in interpreting that under the Agreement, PPI undertook to supply the whole package of infrastructure and information technology support services to petitioner, which necessarily includes the lease of transmission facilities**.
>
> Applying the provisions of the rules cited above and considering the interpretation issued in the recent administrative rulings, **We find that the lease of the transmission facilities is an activity necessarily related to the registered activities of PPI. The establishment of a contact center necessarily entails the lease of a physical facility which shall be used in rendering outsourced customer care services and BPO services**. Hence, the rental income from the lease of transmission facilities is exempt from withholding tax. Xxx (*Boldfacing supplied*)

In fine, petitioner's contention that the lease of transmission facilities (being not among the registered activities of PPI), requires a separate PEZA approval to avail of the tax incentives (i.e. ITH), is not tenable. Considering that the lease of the transmission facilities is necessarily related to the registered activities of PPI, the same is already covered by PPI's registered activities thus a separate PEZA approval was not necessary.

WHEREFORE, the Petition for Review filed on March 9, 2012, by petitioner Commissioner of Internal Revenue is hereby **DENIED** for lack of merit. Accordingly, the assailed

Resolutions dated December 21, 2011 and February 17, 2012, are **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

(with Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

(I inhibit)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, **Petitioner,**	**CTA EB NO. 876** **(CTA CASE NO. 7962)**
	Members:
- versus -	**DEL ROSARIO, *PJ*,** **CASTAÑEDA, JR.,** **BAUTISTA,** **UY,** **CASANOVA,** **FABON-VICTORINO,** **MINDARO-GRULLA,** **COTANGCO-MANALASTAS, *and*** **RINGPIS-LIBAN, *JJ.***
JP MORGAN CHASE BANK, N.A. – PHILIPPINE CUSTOMER CARE CENTER, **Respondent.**	**Promulgated:** JUL 15 2013 9:10 a.m.

x- -x

DISSENTING OPINION

DEL ROSARIO, PJ.:

With utmost respect, I dissent from the opinion of the majority.

The majority opinion adopts the findings of the Court in Division in its Resolution dated December 21, 2011 that the lease of transmission facilities is an activity necessarily related to the Philippine Economic Zone Authority (PEZA) - registered activities of PeopleSupport (Philippines), Inc. (PPI) and that the establishment of a contact center necessarily entails the lease of a physical facility which shall be used in rendering outsourced customer care services and Business Process Outsourcing (BPO) services. The majority concurs with the ruling of the Court in Division that PPI's income from the lease of its transmission facilities to respondent is covered by PPI's Income Tax Holiday (ITH) incentive, and thus exempt from regular corporate income tax and consequently, from creditable withholding tax.

Section 23 of Republic Act (RA) No. 7916, otherwise known as the "Special Economic Zone Act of 1995", [1] provides that "[B]usiness 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 Investment Code of 1987."

Furthermore, Section 5 of Rule XIII of the Implementing Rules and Regulations of RA No. 7916 explicitly states that "[I]ncentives granted by the PEZA shall **apply only to registered operations** of the Ecozone Enterprises and only during the period of their registration with PEZA."

On October 14, 2002, the Bureau of Internal Revenue (BIR) issued Revenue Regulations (RR) No. 20-02 primarily to clarify 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. Section 1, paragraph 1 of RR No. 20-02 provides:

> "SECTION 1. Tax Treatment. — Income derived by an enterprise registered with the Subic Bay Metropolitan Authority (SBMA), the Clark Development Authority (CDA), or the Philippine Economic Zone Authority (PEZA) from its registered activity/ies shall be subject to such tax treatment as may be specified in its terms of registration (i.e., the 5% preferential tax rate, the income tax holiday, or the regular income tax rate, as the case may be). **Nonetheless, whatever the tax treatment of said enterprise with respect to its registered activity/ies, income realized by such registered enterprise that is not related to its registered activity/ies shall be subject to the regular internal revenue taxes**, such as the 20%, final income tax on interest from Philippine Currency bank deposits and yield or any other monetary benefit from deposit substitutes, and from trust funds and similar arrangements, the 7.5% tax on foreign currency deposits and the 5%/10% capital gains tax or ½% stock transaction tax, as the case may be, on the sale of shares of stock." (Emphasis supplied)

Clearly, only income derived from the **registered activity or from an activity related thereto** by an Ecozone Enterprise shall be entitled to incentives. Conversely, income derived by an Ecozone Enterprise from its **unregistered activity or from an activity that is not related thereto** shall not be entitled to any incentives.

[1] Philippine Economic Zone Act of 1995.

Records show that in Certification No. 2007-067[2] dated June 27, 2013, PEZA certified that PPI with sites at the Asiatown I.T. Park, PeopleSupport Center, 6780 Ayala and SM Baguio Cyberzone Building is a PEZA-registered Ecozone IT (Export) Enterprise with Registration Certificate No. 03-17-IT dated August 12, 2003 as further amended on June 19, 2007.

The Certification further confirms that PPI is registered with the PEZA to **"engage in the establishment of a contact center which will provide outsourced customer care services and BPO services.**" The Certification also states that **"the available incentives granted to PPI as provided in its Registration Agreement with PEZA dated August 12, 2003 and Supplemental Agreements dated February 20, 2004, July 14, 2005, May 15, 2007 and June 6, 2007"**, are as follows:

> 1. Incentives under Book VI of EO 226 which include the following:
>
> > a. Corporate income tax holiday (ITH) for six (6) years for pioneer project and four (4) years for non-pioneer project effective on the committed date of start of commercial operations or the actual date of start of commercial operations, whichever is earlier; ITH entitlement can also be extended but in no case to exceed a total period of eight (8) years for pioneer project and seven (7) years for non-pioneer project provided specific criteria are met for each additional year and prior PEZA approval is obtained. Duly approved and registered 'Expansion' and 'New' projects are entitled to a three-year, and four-year ITH, respectively;
> >
> > b. Tax and duty free importation of merchandise which include raw materials, capital equipment, machineries and spare parts;
> >
> > c. Exemption from wharfage dues and export tax, impost or fees;
> >
> > d. VAT zero-rating of local purchases subject to compliance with BIR and PEZA requirements; and
> >
> > e. Exemption from payment of any and all local government imposts, fees, licenses or taxes except real estate tax; however, machineries installed and operated in the ecozone for manufacturing, processing or for industrial purposes shall not be subject to payment of real estate taxes for the first three (3) years of operation of such machineries; production equipment not attached to real estate shall be exempt from real property taxes.

[2] Exhibit "I".

As stated in Certification No. 2007-067, PPI is registered with PEZA as an Ecozone IT (Export) Enterprise to engage in the establishment of a contact center which will provide outsourced customer care services and BPO services. Hence, all income earned by PPI in rendering outsourced customer care services and BPO services during the period of its registration with PEZA are entitled to ITH and, therefore, exempt from the payment of regular corporate income tax imposed under Section 27(A) of the National Internal Code of 1997 (1997 NIRC), as amended and consequently, to the creditable withholding tax imposed under Section 57(B) of the 1997 NIRC, as amended and Section 2.57.2 of Revenue Regulations No. 2-98, as amended.

The crux of the controversy is whether the lease of PPI's physical plant space, infrastructure and other transmission facilities located at 6780 Ayala Avenue, Makati City to respondent for the period May to June 2007 is an activity of PPI which is registered with PEZA or necessarily related to its existing PEZA-registered activity which is the establishment of a contact center that will provide outsourced customer care services and BPO services.

A close perusal of the terms of Task Order #2 to the Master Service Provider Agreement dated May 19, 2006 between respondent and PPI reveals that the main object of the contract is the lease of physical plant space, infrastructure and other transmission facilities of PPI. Part III (A), Scope of Services of Task Order #2 is specifically quoted hereunder:

> **"III. DESCRIPTION AND SCOPE OF SERVICES.**
>
> Supplier shall provide the following Services to JPMC:
>
> A. <u>Scope of Services.</u>
>
> Supplier will provide physical plant space in its facility located at 6780 Ayala Avenue, Makati City 1227 Philippines (the "Facility") that will allow JPMC personnel to perform certain services for the benefit of JPMC. Supplier will provide all voice and data infrastructure needed for JPMC personnel to perform their intended function(s). Supplier will further provide all workstation infrastructure (as further detailed below) that is compatible with JPMC specifications to support JPMC work types to be performed at Supplier's location. Supplier will provide workstation voice and data bandwidth as set forth below. Supplier will also provide all infrastructure necessary to conduct telephone call recording, workstation screen data capture, and data storage per the requirements of JPMC. Additionally, Supplier will provide the platform and support for inbound telemarketing activities that will be performed by JPMC employees located in the Facility. This platform and support will be consistent with all service requirements as set forth in Task

Order #1 currently executed between PeopleSupport, Inc. and JPMorgan Chase Bank, National Association."

Task Order # 2 is very clear that the physical plant space, infrastructure and other transmission facilities shall be provided to respondent for the use of the latter's own personnel.

In my opinion, respondent is not actually outsourcing its customer care functions or business processes to PPI. **Respondent's own personnel shall actually perform the services using PPI's physical plant space, infrastructure and other transmission facilities.** Undeniably, the contract between respondent and PPI is actually one that is confined to a contract of lease of properties and not a contract for the provision of services, specifically, customer care services or BPO services.

In view of the foregoing, I find that the lease of physical plant space, infrastructure and other transmission facilities is not necessarily related to the PEZA-registered activities of PPI which are outsourced customer care services and BPO services. It is an entirely different economic activity, and to be entitled to ITH incentives, the leasing activity should be separately registered by PPI with PEZA and covered by a Supplemental Registration. To be sure, PPI may register with PEZA as a facility-provider with respect to the lease of its physical plant space, infrastructure and other transmission facilities to respondent.

Notably, under PEZA Board Resolution No. 00-411 (Guidelines on the Registration of Information Technology (IT) Enterprises and the Establishment and Operation of IT Parks / Buildings) which was approved by the PEZA Board on December 29, 2000, *"facilities-providers"* may register with PEZA and may thus be entitled to incentives. *"Facilities-providers"* refer to owners / operators of buildings and other facilities inside economic zones / IT Parks which are leased to PEZA-registered locator enterprises.[3]

Part V(A)(3) of PEZA Board Resolution No. 00-411 provides that "[O]wners and / or developers of PEZA-registered IT Parks and Buildings in Metro Manila shall not be entitled to enjoy PEZA incentives; **provided, that owners and / or developers of IT Parks in Metro Manila already covered by Presidential Proclamations and / or approved by the PEZA Board prior to the PEZA Board approval of this Guidelines, including facilities-providers in such IT Parks, shall be entitled to PEZA incentives.**"

[3] Part I, Definition of Terms, PEZA Board Resolution No. 00-411.

While Certification No. 2007-067[4] dated June 27, 2013 states that PPI has a site in 6780 Ayala, there is nothing therein that shows that the leasing activity conducted by PPI in the 6780 Ayala site is registered with PEZA and entitled to incentives. In my mind, respondent has the burden of proving by preponderant evidence that PPI is registered with PEZA as a facility-provider and that PPI's income from the lease of its physical plant space, infrastructure and other transmission facilities to respondent is entitled to the ITH incentive.

Considering that respondent failed to establish that PPI is registered with PEZA as a facility-provider and that PPI's income from the lease of physical plant space, infrastructure and other transmission facilities to respondent is entitled to ITH incentive, it is my humble view that the income received by PPI from respondent is subject to regular corporate income tax imposed under Section 27(A) of the 1997 NIRC, as amended. Accordingly, respondent properly withheld and remitted to the Bureau of Internal Revenue the creditable income tax on said income payments pursuant to Section 57(B) of the 1997 NIRC, as amended and Section 2.57.2 of Revenue Regulations No. 2-98, as amended.

In light of the foregoing, I vote to grant the instant Petition for Review. Accordingly, the Resolution dated December 21, 2011 of the Court in Division should be reversed and set aside. Respondent's claim for refund in the amount of Php2,845,654.02 representing the creditable income tax withheld and remitted on payments to PPI in relation to the lease of the latter's physical plant space, infrastructure and other transmission facilities for the period May to July 2007 should be denied.

ROMAN G. DEL ROSARIO
Presiding Justice

---

[4] Exhibit "I".