REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	CTA EB No. 1936 (CTA Case Nos. 8580 & 8660)
-versus-	*Present*: DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN,
MACQUARIE OFFSHORE SERVICES PTY. LTD. – PHILIPPINE BRANCH, *Respondents.*	BACORRO-VILLENA, and MODESTO-SAN PEDRO, *JJ* Promulgated: AUG 2 2 2019 4:11 p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision on January 11, 2019 is the Petition for Review for the Court *En Banc* under *Section 4(b), Rule 8*[1] *of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA), as amended,* of the Decision, in the case

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[1] SEC. 4. *Where to appeal; mode of appeal.* –

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> (b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court *en banc* shall act on the appeal.

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entitled *Macquarie Offshore Services Pty. Ltd – Philippine Branch vs. Commissioner of Internal Revenue,* docketed as CTA Case Nos. 8580 & 8660, dated May 18, 2018,[2] and the Resolution dated September 10, 2018,[3] both rendered by the Former Third Division of this Court, the dispositive portions of which read as follows:

> CTA Case Nos. 8580 & 8660:
> Decision dated May 18, 2018:
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> "**WHEREFORE,** the Petition for Review in CTA Case No. 8660 is **DENIED** for lack of jurisdiction, while the Petition for Review in CTA Case No. 8580 is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED** to refund or issue a TCC in favor of petitioner in the amount of **₱2,361,101.61,** representing its unutilized input VAT for the first quarter of FY 2011 attributable to its zero-rated sales of the second, third and fourth quarters of FY 2011.
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> **SO ORDERED.**"
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> CTA Case Nos. 8580 & 8660:
> Resolution dated September 10, 2018:
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> "**WHEREFORE**, petitioner's and respondent's *Motion for Partial Reconsideration*, both dated June 7, 2018, are **DENIED**. The Decision dated May 18, 2018 is **AFFIRMED**.
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> **SO ORDERED.**"

The facts of the case, as recited by the former Third Division in its Decision, read as follows:

> "Petitioner Macquarie Offshore Services Pty. Ltd. is a foreign corporation registered with the Securities and Exchange Commission (SEC) on April 10, 2008 to

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[2] Penned by Associate Justice Esperanza R. Fabon-Victorino, concurred in by Former Associate Justice Lovell R. Bautista and Associate Justice Ma. Belen M. Ringpis-Liban, *En Banc* Docket, pp. 21-53.
[3] *Ibid.,* pp. 55-63.

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operate as a Regional Operating Headquarters (ROHQ), pursuant to the Omnibus Investments Code of 1987, as amended by Republic Act No. 8756, and its implementing rules and regulations.

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Respondent, on the other hand, is the Commissioner of Internal Revenue (CIR), with authority to act on claims for refund or tax credit. He holds office at the 5th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City. He is represented by the Legal Division of Revenue Region No. 8 (South Makati), with office address at the 2nd Floor, BIR Regional Office Building, 313 Sen. Gil Puyat Avenue, Makati City, where he may be served with court processes.

As an ROHQ, petitioner provides qualifying services to its affiliates and related parties in the Asia-Pacific Region and other foreign markets. These qualifying services include application testing and monitoring, technology infrastructure, application development and support, and financial administration. As an ROHQ with a limited business purpose, petitioner generally does not generate VAT taxable and VAT-exempt sales.

Petitioner states that for FY 2011, it only had one non-resident foreign client, namely, Macquarie Financial Holdings Limited (MFHL), to whom it rendered VAT zero-rated sales of service.

MFHL is an entity incorporated, registered, and operating under the laws of Australia. It is not registered with the Securities and Exchange Commission (SEC) to do business in the Philippines either as a corporation or partnership. The services rendered by petitioner to MFHL were pursuant to a Services Agreement dated April 1, 2009, duly signed by the representatives of the parties. The services were rendered by petitioner in the Philippines, paid for in Australian Dollars (AUD), inwardly remitted to the Philippines and duly accounted for in accordance with

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the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).

For the 1st Quarter of FY 2011, petitioner rendered services and issued corresponding invoices to MFHL. However, they were allegedly not paid during the said quarter. Thus, petitioner's quarterly VAT return for the 1st quarter of FY 2011 shows zero-entry for its VATable sales/receipts, sales to government, zero-rated sales and exempt sales/receipts.

In the course of its operations during the same period, petitioner incurred and paid input VAT arising from its domestic purchases of goods and services. The amounts of its domestic purchases and the corresponding amounts of input VAT were recorded in the quarterly and monthly summaries.

Since petitioner did not generate any VATable sales in the 1st quarter, there was no output VAT with which to offset the input VAT it incurred in the same period. Hence, this amount of input VAT was carried over to the succeeding periods and remained unutilized. Petitioner further claims that this same amount of input VAT is wholly attributable to its VAT zero-rated sales in the same period.

For the 2nd to 4th quarters of FY 2011, petitioner's quarterly VAT returns show the following VAT zero-rated sales:

Quarter	VAT Zero-Rated Sales in Pesos
2nd	110,837,771.93
3rd	298,552,653.50
4th	231,931,332.30

During these quarters, petitioner also incurred and paid input VAT arising from its domestic purchases of goods and services. The amounts of its domestic purchases and the corresponding amounts of input VAT were recorded in its quarterly and monthly summaries.

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No VATable sales/were generated during the said 2nd to 4th quarters and there was no output VAT with which to offset the input VAT it incurred in the same period. This amount of input VAT was carried over to the succeeding periods and remained unutilized. This same amount of input VAT is also directly attributable to its zero-rated sales for the same period.

Petitioner filed its original quarterly VAT returns for the four quarters of FY 2011 on the following dates:

Exhibit	Quarter	Period	Date Filed
"P-3"	1st	April to June 2010	July 26, 2010
"P-4"	2nd	July to September 2010	October 26, 2010
"P-5"	3rd	October to December 2010	January 25, 2010
"P-6"	4th	January to March 2011	April 25, 2011

Petitioner filed its administrative claim for refund with the BIR Revenue District Office (RDO) No. 47 on the following dates:

Exhibit	Quarter	Period	Date Filed
"P-13"	1st	April to June 2010	June 29, 2012
"P-30"	2nd to 4th	July 2010 to March 2011	September 28, 2012

For the 1st quarter, petitioner filed an administrative claim for refund/TCC in the amount of ₱3,406,989.90, while for the 2nd to 4th quarters, in the amount of ₱17,188,149.08, or a total of ₱20,595,138.98.

On November 27, 2012, petitioner received from RDO No. 47 a Letter of Authority (LOA) dated October 29, 2012 for the period of July 1, 2010 to March 31, 2011, with attached formal request for the submission and presentation of additional documents. Petitioner complied and transmitted the requested additional document on January 16, 2013.

On February 27, 2013, petitioner wrote a letter to the BIR indicating that the documents submitted on

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September 28, 2012 and January 16, 2013 constitute complete documents for purposes of its claim for refund/TCC.

However, insofar as petitioner's claim for refund for the 1st quarter of FY 2011, no additional documents were required by the BIR.

On November 26, 2012 and June 14, 2013, petitioner filed the instant Petitions for Review, docketed as CTA Case Nos. 8580 and 8660, respectively.

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At the instance of petitioner, the two Petitions for Review were consolidated. xxx" (Citations omitted.)

The former Third Division dismissed the Petition for Review in CTA Case No. 8660 due to lack of jurisdiction while the Petition for Review in CTA Case No. 8580, which covers the claim for the 1st quarter of FY 2011 was ruled to be timely filed both in the administrative and judicial levels. The former Third Division ruled that Macquarie Offshore Services Pty. Ltd. – Philippine Branch (MOSPLPB) was able to prove, through summaries of zero-rated sales, service invoices, official receipts (ORs), schedule of remittances and certifications of inward remittances issued by the Hongkong Shanghai Banking Corporation (HSBC); and that it had zero-rated sales for the 2nd to 4th quarter of FY 2011 since it had sales of services and billed MFHL for the 1st quarter but declared the same only in the subsequent quarters because of MFHL's late payment. Thus, MOSPLPB was entitled to such refund. Further, the former Third Division ruled that MOSPLPB complied with all the requisites to be entitled to the refund in the reduced amount of ₱2,361,101.61.

Both parties filed their Motions for Partial Reconsideration on June 7, 2018, which were both denied in the assailed Resolution, hence, this Petition for Review[4] filed

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[4] *En Banc Docket,* pp. 5-19.

by the Commissioner of Internal Revenue on October 12, 2018.

In the assailed Resolution, the CIR raised the admissibility of MOSPLPB's pieces of evidence since the witnesses therein allegedly have no personal knowledge of the facts and contents of the documentary exhibits. However, the former Third Division ruled that the objection of the CIR as to the admissibility of MOSPLPB's pieces of evidence to prove zero-rated sales in the 1st quarter of FY 2011 was made beyond the period to object, thus, considered waived.

In his Petition for Review, the CIR reiterates his argument in his Motion for Partial Reconsideration that MOSPLPB failed to present ORs for the 1st quarter of FY 2011 as to its zero-rated sales to MFHL, and that MOSPLPB's presented pieces of evidence are considered as hearsay, inadmissible and have no probative value. The CIR also repeats its argument that hearsay evidence, such as those presented by MOSPLPB in this case, cannot be admitted as evidence even if he failed to object thereto. Lastly, the CIR reiterates that the refund must be construed strictly against MOSPLPB.

This Court denies the petition.

At the outset, it must be realized that the CIR does not raise any argument not ruled upon thoroughly by the former Third Division.

At any rate, based on the records of the case, the service invoices,[5] as well as the summaries,[6] ORs,[7] schedules,[8] Certificates of Inward Remittance[9] and the Independent Certified Public Accountant (ICPA) Report[10] that

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[5] Exhibits "P-22a" to "P-22d", "P-41e" to "P-41hh", "P-55", "P-56", "P-58", and "P-59", *Dockets*, Vol. III, pp. 1622-1625, 1806-1835.
[6] Exhibits "P-15", "P-38" to "P-40", *Dockets*, Vol. III, pp. 1551, 1799-1801.
[7] Exhibits "P-22e" to "P-22g", "P-41-a" to "P-41d" and "P-41ii", *Dockets,* Vol. III, pp. 1626-1628, 1802-1805 and 1836.
[8] Exhibit "P-26", *supra*.
[9] Exhibits "P-25a" to "P-25e", *supra*.
[10] Exhibit "P-54", *supra*.

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were all admitted by the Court clearly show the generation of zero-rated sales for the 1st quarter of FY 2011. In the assailed Decision, these documents *per se* were scrutinized, and proved zero-rated sales for the 1st quarter of FY 2011.

As to the issue on hearsay evidence, on the first note, the general rule is that hearsay evidence is not admissible. However, the lack of objection to hearsay testimony may result in its being admitted as evidence.[11] The lack of objection may make any incompetent evidence admissible.

Be that as it may, MOSPLPB denies such allegation and in its Comment,[12] it alleges that its witnesses have sufficient knowledge of the facts and contents of the documentary exhibits being the custodians of such.

A review of the Sworn Statements of the witnesses of MOSPLPB, specifically of Mr. Garry Taylor[13] and Ms. Ailyn Perocho[14] would show that they have personal knowledge of the facts and contents of the documentary exhibits, being the Division Director and the Certified Public Accountant respectively, of MOSPLPB who both safekeep MOSPLPB's various financial and accounting documents, and regularly meet with its personnel in charge of finance and tax matters.[15] As stated in the Sworn Statements, the documentary exhibits were prepared by the financial team of Ms. Ailyn Perocho under the instructions and supervision of Mr. Garry Taylor, and that the documents were signed by Ms. Ailyn Perocho as the Finance Head of the Company. Each service invoice and OR, as well as the returns presented were also signed by Mr. Garry Taylor. Clearly, the actual execution of these documents was made by and under the supervision of MOSPLPB's witnesses.

WHEREFORE, premises considered, the Petition for Review filed by the Commissioner of Internal Revenue is hereby **DENIED.** The assailed Decision and Resolution dated

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[11] *People vs. Parungao*, G.R. No. 125812 November 28, 1996.
[12] *En Banc Docket*, pp. 68-74.
[13] Exhibit "P-28", *Dockets*, Vol. III, pp. 1666-1690.
[14] Exhibit "P-53", *Dockets*, Vol. III, pp. 1845-1876, "P-1864", Vol. IV, pp. 1996-2000.
[15] Notes 11 and 12.

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May 18, 2018 and September 10, 2018, respectively, in CTA Case Nos. 8580 & 8660 are hereby **AFFIRMED.**

SO ORDERED.

CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice