

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

SPECIAL FIRST DIVISION

**INSTITUTIONAL SHAREHOLDER
SERVICES INC., - PHILIPPINE
ROHQ,**

Petitioners,

- versus -

C.T.A. CASE NO. 7662

Members:

**ACOSTA, Chairperson
BAUTISTA, and
CASANOVA, JJ.**

**COMMISSIONER OF INTERNAL
REVENUE,**

Respondents.

Promulgated:

JUN 03 2010 ; 3:30 pm

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DECISION

BAUTISTA, J.:

This case arose from a Petition for Review filed by petitioner on July 24, 2007, seeking refund or issuance of tax credit certificate in the total amount of P6,364,720.39, representing its alleged unutilized input value-added tax (VAT) for the second, third, and fourth quarters of 2005, the four quarters of 2006, and the first quarter of 2007.

Petitioner Institutional Shareholder Services, Inc. – Philippine ROHQ is the regional operating headquarter (ROHQ) of Institutional Shareholder Services, Inc., a foreign multinational company organized under the laws of New York, United States of America. It was duly granted a license (amended on April 10,

2002) by the Philippine Securities and Exchange Commission on December 5, 2001.¹ Its office is located at 28th Floor Philamlife Tower, 8767 Paseo de Roxas, Makati City.

Petitioner is a VAT-registered taxpayer with a Certificate of Registration bearing OCN No. 9RC0000062059 issued on December 14, 2001.² It is currently engaged in the business of (1) logistics services, (2) research and development services, (3) product development, (4) data processing and communication, and (5) business development.³

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), vested under appropriate laws with the authority to carry out all functions, duties, and responsibilities of said office including, *inter alia*, the power to decide, approve, and grant refunds or tax credit of erroneously paid or illegally collected internal revenue taxes. For this particular case, respondent is represented by the legal officer of the BIR Revenue Region No. 8, with office address at the 5/F Legal Division, Atrium Bldg., Makati Ave., Makati City.⁴

For the second quarter of 2005 to the first quarter of 2007, petitioner filed with respondent its Quarterly VAT Returns and Amended Quarterly VAT Returns on the following dates:

Quarters	Exhibit	Date the Original Quarterly VAT Returns were filed	Exhibit	Date the Amended Quarterly VAT Returns were filed
2005				
2 nd Qtr	"N"	July 25, 2005	"O"	November 18, 2005
3 rd Qtr	"P"	October 25, 2005	"Q"	November 18, 2005
4th Qtr	"R"	January 25, 2006	-	-
2006				
1 st Qtr	"S"	April 26, 2006	"T"	April 27, 2006

¹ Exhibits "B" and "C"

² Exhibit "A"

³ Par. 4, Facts Admitted, Joint Stipulation of Facts and Issues (JSFI), docket, p. 198

⁴ Par. 2, Facts Admitted, JSFI, docket, p. 198

2 nd Qtr	"U"	July 25, 2006	-	-
3 rd Qtr	"V"	June 26, 2007	-	-
4 th Qtr	"W"	January 25, 2007	-	-
2007				
1 st Qtr	"X"	April 25, 2007	"Y"	April 30, 2007

On June 26, 2007, petitioner filed with respondent, through Revenue District Office No. 50, the appropriate claim for refund or issuance of tax credit certificate for the input VAT allegedly incurred during the second quarter of 2005 until the first quarter of 2007, in the total amount of P6,364,720.39.⁵

Respondent failed however to act on the said refund claim. Hence, in order to stop the running of the two-year prescriptive period granted by law for the filing of refund claims, petitioner filed before this Court the instant Petition for Review on July 24, 2007.

In his Answer⁶, respondent interposed the following Special and Affirmative Defenses:

- "5. Assuming but without admitting that Petitioner filed a claim for refund, the same is still subject to investigation by the Bureau of Internal Revenue;
6. Petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected;
7. Taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not creditable or refundable;
8. It is incumbent upon the Petitioner to show that it has complied with the provision of Sections 112(A) and 204(C) in relation to Sections 229 of the 1997 Tax Code, as amended;
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 &*

⁵ Exhibit "K"

⁶ Docket, pp. 173-175

Zenaida Aguilar v. 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*)."

On September 24, 2007, a Notice of Pre-Trial Conference was issued by this Court, setting the case for Pre-Trial Conference on October 19, 2007 and requiring both parties to file with this Court and to serve on the adverse party their respective Pre-trial Briefs.⁷

Petitioner and respondent filed their respective Pre-trial Briefs on October 16, 2007⁸ and October 18, 2007⁹.

On October 26, 2007, the parties submitted their Joint Stipulation of Facts and Issues¹⁰, which was later approved in a Resolution¹¹ dated November 13, 2007.

During trial, petitioner was able to present and to formally offer its documentary and testimonial evidence; while respondent manifested that he is submitting the case for decision based on the records.¹²

On June 16, 2009, the case was submitted for decision, taking into consideration petitioner's Memorandum filed on June 8, 2009, without respondent's Memorandum¹³.

⁷ Docket, p. 177

⁸ Docket, pp. 178-187

⁹ Docket, pp. 188-190

¹⁰ Docket, pp. 197-202

¹¹ Docket, p. 204

¹² Docket, p. 481

¹³ Resolution dated June 16, 2009, docket, p. 637



The parties submitted the following issues¹⁴ for this Court's disposition:

- "1. Whether or not Petitioner's claim for refund was filed within the prescriptive period;
2. Whether petitioner incurred input VAT in the total amount of Php6,364,720.39 on its expenses consisting of importations and domestics purchases and services representing costs of providing services to Institutional Shareholder Services Inc. U.S. (ISS Inc.-U.S.) from 1 April 2005 to 31 March 2007;
3. Whether Petitioner rendered services solely and exclusively to ISS Inc.-U.S.;
4. Whether Petitioner's services to ISS Inc.-U.S. are subject to VAT at zero percent;
5. Whether Petitioner's claim for refund or tax certificate of the alleged input VAT in the amount of Php6,364,720.39 is duly substantiated by documentary evidence;
6. Whether Petitioner is entitled to a refund or issuance of tax credit certificate in the aggregate amount of Php6,364,720.39 representing alleged unutilized input VAT from 01 April 2005 until 31 March 2007."

The above-stated issues can be summarized as follows:

"Whether petitioner is entitled to a refund or issuance of tax credit certificate in the aggregate amount of P6,364,720.39, representing petitioner's alleged unutilized input VAT from April 1, 2005 until March 31, 2007."

Pertinent to the resolution of the present case is Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, which provides as follows:

"SEC. 112. *Refunds or Tax Credits of Input Tax.* –

(A) *Zero-rated or Effectively Zero-rated Sales.* – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable

¹⁴ Issues, JSFI, docket, pp. 200-201



quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales."

Based on the foregoing, petitioner may be entitled to a refund or tax credit of unutilized input VAT attributable to zero-rated or effectively zero-rated sales only upon compliance with the following requisites:

1. that there must be zero-rated or effectively zero-rated sales;
2. that input taxes were incurred or paid;
3. that such input VAT are attributable to zero-rated or effectively zero-rated sales;
4. that the input VAT were not applied against any output VAT liability during and in the succeeding quarters; and
5. that the claim for the refund was filed within the two-year prescriptive period.

Petitioner is a regional operating headquarter of Institutional Shareholder Services, Inc. (hereinafter referred to as "ISSI-USA"), which is a multinational company organized and existing under the laws of New York, United States of America. Petitioner, as an ROHQ, is currently engaged in the business of (1) logistics services, (2) research and development services, (3) product development, (4) data processing and communication, and (5) business development.¹⁵

¹⁵ Par. 4, Facts Admitted, JSFI, docket, p. 198; Exhibit "C"



For the period starting from the second quarter of 2005 to the first quarter of 2007, petitioner rendered services solely and exclusively to its head office, ISSI-USA. Petitioner claims that such services qualify for VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended, because the same were paid for in US dollars duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP) and the recipient (ISSI-USA) of such services is engaged in business conducted entirely outside the Philippines.

Section 108(B)(2) of the NIRC of 1997, as amended, is hereunder quoted for easy reference, to wit:

"SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties. –

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(B) Transactions Subject to Zero Percent (0%) Rate. -
The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:

(1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP);

(2) Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP);" (Emphasis supplied)



Significantly, in the case of **Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.**¹⁶, the Supreme Court held that in order for the supply of services to be VAT zero-rated under Section 108(B)(2) of the NIRC of 1997, the following requisites must be satisfied: (1) the services must be other than processing, manufacturing or repacking of goods; (2) payment for such services must be in acceptable foreign currency accounted for in accordance with BSP rules and regulations; and (3) the recipient of such services must be other persons doing business outside the Philippines. The pertinent portions of the said Decision read:

"The Tax Code not only requires that the services be other than 'processing, manufacturing or repacking of goods' and that payment for such services be in acceptable foreign currency accounted for in accordance with BSP rules. Another essential condition for qualification to zero-rating under Section 102 (b) (2) [now Section 108(b)(2)] is that the **recipient of such services is doing business outside the Philippines**. While this requirement is not expressly stated in the second paragraph of Section 102 (b), this is clearly provided in the first paragraph of Section 102 (b) where the listed services must be **'for other persons doing business outside the Philippines.'** The phrase 'for other persons doing business outside the Philippines' not only refers to the services enumerated in the first paragraph of Section 102 (b), but also pertains to the general term 'services' appearing in the second paragraph of Section 102 (b). In short, services other than processing, manufacturing, or repacking of goods must likewise be performed for persons doing business outside the Philippines." (*Emphasis supplied*)

Perusal of the records of this case shows that petitioner complied with the first requisite as the services¹⁷ it rendered to its head office, ISSI-USA, such as logistics services, research and development, product development, data

¹⁶ G.R. No. 153205, January 22, 2007

¹⁷ Exhibit "I", Notes to Financial Statements (2005), item no. 2 "Summary of Significant Accounting Policies", under "Revenue Recognition"; Exhibit "J", Notes to Financial Statements (2006), item no. 3 "Significant Accounting Policies" under "Revenue Recognition"; Exhibit "UUUU-12", Notes to Financial Statements (2007), item no. 4 "Significant Accounting Policies" under Revenue Recognition

processing and communication, and business development services for the subject period of claim are not in the same category as "processing, manufacturing or repacking of goods". Also, as jointly stipulated by the parties and as evidenced by petitioner's Certificate of Registration, petitioner is a VAT-registered entity. Petitioner likewise submitted various Statements of Account and official receipts it issued to ISSI-USA¹⁸ and Citibank Certificates of Inward Remittances¹⁹, proving petitioner's receipt of service fee payments in US dollars. Per verification of the Court-commissioned Independent Certified Public Accountant (CPA), the peso equivalent of the US dollar denominated service fees received by petitioner for the periods April 1, 2005 to December 31, 2005, January 1, 2006 to December 31, 2006, and January 1, 2007 to March 31, 2007, amounted to P53,728,552.36, P105,687,499.19, and P34,413,152.65, respectively.²⁰

Now, as to whether the services rendered by petitioner was for other person doing business outside the Philippines, it is imperative for this Court to take into consideration the provisions of Republic Act (R.A.) No. 8756²¹.

The necessity of making reference to this piece of legislation is apparent, considering that the said statute was enacted primarily to give foreign entities the opportunity to do business in a limited capacity and derive income in the Philippines, through the establishment of Regional Operating Headquarters, like

¹⁸ Exhibits "UU" to "TTT"

¹⁹ Exhibits "UUU" to "TTTT"

²⁰ Exhibit "VVVV", pages 3 and 4

²¹ An Act Providing for the Terms, Conditions and Licensing Requirements of Regional or Area Headquarters, Regional Operating Headquarters and Regional Warehouses of Multinational Companies, Amending for the Purpose Certain Provisions of Executive Order No. 226, Otherwise Known as the Omnibus Investments Code of 1987



herein petitioner. Section 2(3) of R.A. No. 8756 defines a Regional Operating Headquarter in this wise:

"SECTION 2. *Definition of Terms.* For purposes of this Act, the term:

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(3) *Regional Operating Headquarters (ROHQ)* shall mean a foreign business entity which is allowed to derive income in the Philippines by performing qualifying services to its affiliates, subsidiaries or branches in the Philippines, in the Asia-Pacific Region and in other foreign markets."

It may be gleaned from the above definition that the recipients of the qualifying services to be rendered by Regional Operating Headquarters are limited only to its affiliates, subsidiaries or branches.

Now, in harmonizing the provisions of R.A. No. 8756 and the provisions of the NIRC of 1997, as amended by R.A. No. 9337, the phrase "other persons doing business outside the Philippines" contemplated in Section 108(b)(1) and (2) is deemed to pertain only to "affiliates, subsidiaries or branches" of the Regional Operating Headquarters as enumerated under R.A. 8756.

This interpretation is in line with the principle in statutory construction that a statute should be construed not only to be consistent with itself but also to harmonize with other laws on the same subject matter, as to form a complete, coherent and intelligible system. This principle is consistent with the maxim, *interpretare et concordare leges legibus est optimus interpretandi modus* or every statute must be so construed and harmonized with other statutes as to form a uniform system of jurisprudence.²²

²² Dreamwork Construction Inc. vs. Cleope S. Janiola and Hon. Arthur A. Famine, G.R. No. 184861, June 30, 2009



Accordingly, this Court shall determine whether ISSI-USA can be categorized as "other person doing business outside the Philippines" mentioned in Section 108(1) and (2) of the NIRC of 1997, as amended by R.A. No. 9337, on the basis of the definition of an "ROHQ" provided for under R.A. No. 8756 as well as the other significant provisions of R.A. No. 8756.

It is noteworthy that R.A. No. 8756 did not provide for the statutory definition of an affiliate, a subsidiary, and a branch. Thus, this Court will presume that the words in the statute are to be used to express their meaning in common usage or treat the same in their plain and ordinary meaning.²³

An "affiliate company" is defined as a company effectively controlled by another or associated with others under common ownership or control. On the other hand, a "subsidiary" is a company wholly controlled by another that owns more than half of its voting stocks.²⁴ While a "branch office" of a foreign company carries out the business activities of the head office and derives income from the host country.²⁵

In this case, ISSI-USA, the mother company of the ROHQ (herein petitioner), may not be considered as an affiliate, subsidiary or branch on the basis of the above-mentioned definitions for the simple reason that petitioner ROHQ and ISSI-USA must be considered as one and the same entity for purposes of taxation.

²³ Commissioner of Internal Revenue vs. Bank of the Philippine Islands, G.R. No. 147375, June 26, 2006

²⁴ Webster's Third New International Dictionary, 1976 Edition

²⁵ Section 1, Rule I, Implementing Rules and Regulations of R.A. No. 7042, otherwise known as the Foreign Investments Act of 1991, as amended by R.A. No. 8179

Section 4 of R.A. No. 8756 provides:

"SECTION 4. Book III of the same Code is hereby further amended by adding a new chapter designated as Chapter II to read as follows:

CHAPTER II

LICENSING OF REGIONAL OPERATING HEADQUARTERS

Art. 59. *Qualification of Regional Operating Headquarters (ROHQs).* - **Any foreign business entity formed, organized and existing under any laws other than those of the Philippines may establish a regional operating headquarters in the Philippines to service its own affiliates, subsidiaries or branches in the Philippines, in the Asia-Pacific Region and other foreign markets. ROHQs will be allowed to derive income by performing the qualifying services enumerated under paragraph (b)1 hereunder.** ROHQs of non-banking and non-financial institutions are required to secure a license from the Securities and Exchange Commission, upon the favorable recommendation of the Board of Investments. ROHQs of banking and financial institutions, on the other hand, are required to secure licenses from the Securities and Exchange Commission and the Bangko Sentral ng Pilipinas, upon the favorable recommendation of the Board of Investments.

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(1) The regional operating headquarters may engage in any of the following qualifying services:

- General administration and planning;
- Business planning and coordination;
- Sourcing/procurement of raw materials and components;
- Corporate finance advisory services;
- Marketing control and sales promotion;
- Training and personnel management;
- **Logistics services**
- **Research and development services, and product development**
- Technical support and maintenance;
- **Data processing and communication; and**
- **Business development."** (*Emphasis supplied*)



From the foregoing enumeration, it may be observed that the qualifying services mentioned above are administrative in nature. Like the Regional or Area Headquarters, the ROHQ is a mere administrative arm of the mother company, only that by virtue of the enactment of R.A. No. 8756 and through the establishment of an ROHQ, the mother company may now do business and derive income in the Philippines from the qualifying services rendered by the ROHQ to its affiliates, subsidiaries or branches. Therefore, the ROHQ and its mother company may not be treated as a separate entity.

This may further be explained by the Sponsorship Speech of then Rep. Manuel Roxas during the period of sponsorship and deliberation of House Bill No. 7550 on May 27, 1999, the pertinent parts of which state:²⁶

"REP. ROXAS: Mr. Speaker, Your Honor, House Bill No. 7550 seeks to amend certain portions of Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987. The said Omnibus Investments Code, Mr. Speaker, Your Honor, already provides for the creation and existence and operation of what is called regional headquarters.

This regional headquarters, Mr. Speaker, Your Honor, are the administrative arms of multinational companies who may have operations all over Asia, including the Philippines, and who decide to locate the situs of their administrative functions in our nation. The EO 226 provides them certain rights and likewise extracts certain obligations for them to perform these functions in our country.

The proposed bill, Mr. Speaker, Your Honor, amends EO 226 in two very important respects. The first amendment, Mr. Speaker, Your Honor, has to do with the creation of a new

²⁶ Congressional Deliberations on House Bill No. 7550, Transcript of Session Proceedings held on May 27, 1999

classification called regional operating headquarters. The distinction is necessary, Mr. Speaker, Your Honor, as between regional headquarters and regional operating headquarters because regional headquarters are not allowed to derive income in our country, they perform merely administrative functions and do not derive any income accordingly from the Philippines.

The creation of the regional operating headquarters is necessary to plug some loopholes in the incentives that they have been accorded. **It is common practice in multinational corporations to charge their subsidiaries for certain functions that are performed by the administration personnel. Accordingly, this would now be booked as income by the regional operating headquarters.**

After so amending the Executive Order to create the regional operating headquarters, we have now levied upon them a tax of 10% on their taxable income. **These operations, Mr. Speaker, Your Honor, are very very limited and in fact are only operations or activities that are within the adjunct or within the purview of their performing their administrative functions. xxx"**

On the basis of the foregoing discussions, it may be deduced that ISSI-USA may not be considered as "other person doing business outside the Philippines" not only because ISSI-USA fails to qualify as "other person" since ISSI-USA and petitioner are considered as one and the same entity, but more importantly, because ISSI-USA is considered as doing business in the Philippines through its Regional Operating Headquarters.

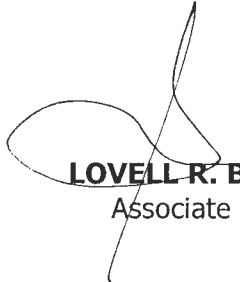


It is undisputed that petitioner is a ROHQ of ISSI-USA. As can be gleaned from the Certificate of Registration and License²⁷ issued by the Securities and Exchange Commission on December 5, 2001 in favor of ISSI-USA, the purpose of ISSI-USA in establishing a ROHQ in the Philippines is to engage in logistics services, research and development services, product development, data processing and communication, and business development. Clearly, petitioner is actually an instrumentality by which ISSI-USA engages in business in the Philippines. Since the requirement for VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended, is that the payer/recipient of the services must be other persons doing business outside the Philippines, services rendered by petitioner to ISSI-USA for the second quarter of 2005 to the first quarter of 2007 cannot qualify for VAT zero-rating. Accordingly, the claimed input VAT attributable thereto in the amount of P6,364,720.39 cannot be granted.

Inasmuch as petitioner failed to prove that its sale of services to its mother company is zero-rated, this Court finds it unnecessary to discuss petitioner's compliance with the other requisites for refund/tax credit of input VAT.

WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.



LOVELL R. BAUTISTA
Associate Justice

²⁷ Exhibit "C"

WE CONCUR:

(On Leave)
ERNESTO D. ACOSTA
Presiding 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.


LOVELL R. BAUTISTA
Associate Justice
Acting Chairperson

CERTIFICATION

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


JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice