

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PPD PHARMACEUTICAL
DEVELOPMENT
PHILIPPINES CORP.,

Petitioner,

CTA EB NO. 2839
(CTA Case No. 10249)

Present:

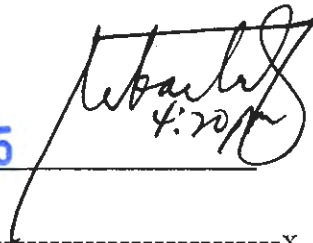
-versus-

DEL ROSARIO, P.J.,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, JJ.

Promulgated:

COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

APR 03 2025



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DECISION

RINGPIS-LIBAN, J.:

The Case

Before the Court *En Banc* is a *Petition for Review* filed by PPD Pharmaceutical Development Philippines Corp. (PPD / petitioner) pursuant to Section 3(b) of Rule 8 of the Revised Rules of the Court of Tax Appeals, as amended (RRCTA).¹

¹ SEC. 3. *Who may appeal; period to file petition.* –

The petition seeks to annul, reverse and set aside the Court of Tax Appeals (CTA) Special Second Division's *Decision* dated May 19, 2023 and its *Resolution* dated November 20, 2023, which denied PPD's claim for refund of its excess and/or unutilized creditable input VAT attributable to its zero-rated sales made in the third and fourth quarters of calendar year (CY) 2017 in the total amount of Thirteen Million Two Hundred Eighty Thousand Eighty-Nine and 79/100 Pesos (PhP13,280,089.79).

The Parties

Petitioner is a domestic corporation registered with the Securities and Exchange Commission (SEC), with principal office address at 22nd Floor Net Park Building, 5th Avenue E-Square, Crescent Park West, Bonifacio Global City, Taguig City. It is engaged in the business of conducting and managing clinical research programs, including monitoring clinical trials, providing project management services and conducting clinical feasibility assessments. It is also registered with the SEC as an export enterprise as well as with the Bureau of Internal Revenue (BIR) for VAT purposes, with Certificate of Registration (COR) No. OCN 9RC0000520175.²

Respondent is the Commissioner of Internal Revenue (respondent/CIR) with office address at the BIR National Office Building, BIR Road, Diliman, Quezon City.³

The Facts

Administrative Claim for Refund

For the 3rd and 4th quarters of CY 2017, petitioner rendered services in the Philippines to PPD Global Limited (PPD Global), a private limited company registered and located at Granta Park, Great Abington, Cambridge, CB21 6GQ, United Kingdom (UK). PPD Global is a tax resident of the UK and is not registered and allegedly *not* doing business in the Philippines, as evidenced by the SEC-issued Certificate of Non-Registration. Petitioner is a legal entity separate and distinct from PPD Global and the latter is not a director or shareholder of petitioner.⁴

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(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (*Rules of Court, Rule 42, sec. 1a*)

² May 19, 2023 Decision, *Rollo*, p. 53.

³ *Id.*

⁴ *Id.*, p. 54

Petitioner’s services to PPD Global included clinical trial coordination and support services, global clinical data management services, global biostatistics and programming services, clinical shared services, administrative shared services, and local contracting with PPD Global’s sponsors, which were among the services listed in the *Services Addendum* attached as Exhibit A to the *Affiliate Services Agreement*.⁵

During the covered periods, petitioner reported zero-rated sales, purchased goods and services, and paid input VAT, as follows:⁶

Covered Period	Zero-Rated Sales	Purchases	Input VAT
3rd Quarter	PhP 184,375,210.56	PhP 59,069,878.33	PhP 7,088,385.40
4th Quarter	289,249,339.59	46,381,926.99	5,565,831.25
Total	PhP 473,624,550.15	PhP 105,451,805.32	PhP 12,654,216.65

Petitioner alleged that its zero-rated sales pertain to the services rendered in PPD Global’s favor for which petitioner was paid in acceptable foreign currency. Petitioner neither had sales subject to 12% VAT nor exempt sales for said periods.⁷

Moreover, during the same periods, petitioner claimed that it had a total accrued input VAT on purchases of capital goods exceeding PhP1,000,000.00, amounting to PhP625,873.22. Adding the same to the input VAT from current transactions of PhP12,654,216.65 brings the total input VAT credits available for refund to PhP13,280,089.79. These input VAT credits remain unutilized and have not been applied against any output VAT liability in the 3rd and 4th quarters of CY 2017 as well as to the subsequent quarters.⁸

On September 25, 2019, or within two (2) years from the close of the 3rd and 4th quarters of CY 2017, petitioner filed its administrative claim for refund with the BIR Revenue District Office No. 44 (RDO 44), with the complete supporting documents, in compliance with Revenue Memorandum Circular (RMC) No. 54-2014.⁹

On September 30, 2019, petitioner amended its administrative claim for refund to correct the typographical error on line 8 of the BIR Form No. 1914 *from* “07/01/2017 to 09/31/2017” *to* “07/01/2017 to 12/31/2017.”¹⁰

Petitioner claims that after its external consultant, KPMG, made a follow up on the status of the application, on December 6, 2019, KPMG relayed to petitioner that RDO 44’s case officer informed them of the Revenue Region’s refusal to act

⁵ *Id.*
⁶ *Id.*
⁷ *Id.*
⁸ *Id.*, p. 55.
⁹ *Id.*
¹⁰ *Id.*; *underscoring supplied.*

on the claim and that the docket was returned to RDO 44 on the ground that the claim should have been filed with the VAT Credit and Audit Division (VCAD). Also, in the email petitioner received from KPMG, it appears that the case officer tried to personally endorse the docket to VCAD but the latter also refused to accept the endorsement.¹¹

Since respondent did *not* act or render a decision on petitioner's claim until December 24, 2019 (or within ninety [90] days from its filing of administrative claim for refund on September 25, 2025), petitioner deemed the same as *denied* due to *inaction*.

Proceedings before the Court A Quo

Within thirty (30) days from December 24, 2019, or on January 23, 2020, petitioner filed the *Petition for Review* with the court *a quo*.¹²

Petitioner further claimed that it was only on March 12, 2020 that it discovered the Letter dated February 21, 2020 (Denial Letter) signed by Regional Director Glen A. Geraldino (RD Geraldino), which was, however, issued after the 90-day period to decide (and after petitioner filed the *Petition for Review*).¹³

On March 16, 2020, respondent filed an Answer interposing the following affirmative defenses: (1) petitioner failed to show that the tax subject of the case was erroneously or illegally collected; (2) taxes paid and collected are presumed to be made in accordance with the laws and regulations hence not refundable; (3) it is incumbent upon petitioner to prove that it complied with the provisions of Section 204 (C), in relation to Section 229 of the National Internal Revenue Code of 1997, as amended (NIRC); (4) petitioner failed to fully substantiate its claim for refund with proper documents, such as sales invoices and official receipts (ORs); and, (5) claims for refund are strictly construed against the claimant as they partake the nature of exemption from taxation.¹⁴

After the filing of the separate *Pre-Trial Briefs*, the transmittal of the BIR Records, the filing of the *Joint Stipulation of Facts and Issues* (JSFI), and the issuance of the *Pre-Trial Order* on January 4, 2021, trial began.¹⁵

On January 20, 2021, Krista V. Bambao (Bambao) was commissioned as the Independent Certified Public Accountant (ICPA) while petitioner was allowed to present its first witness, Mark Irvir S. Dormile (Dormile).

¹¹ *Id.*

¹² *Id.*, pp. 55-56.

¹³ *Id.*, p. 56.

¹⁴ *Id.*

¹⁵ *Id.*, pp. 56-57.

Dormile's testimony, which was made through his *Judicial Affidavit*, was offered (A) to prove, among others, that: (1) petitioner was registered with the BIR for VAT purposes; (2) petitioner had zero-rated sales of goods and/or services to PPD Global, a limited liability corporation and a non-resident foreign corporation (NRFC) doing business outside the Philippines; (3) petitioner paid input VAT amounting to PhP13,280,089.79 for its purchases of goods and services [including the] accrued input VAT on purchase of capital goods exceeding PhP1,000,000.00; (4) petitioner used all of its purchases of goods and services for its sales of services; (5) petitioner did *not* utilize its input VAT for any output VAT liability for the subject period and for all succeeding quarters; (6) petitioner filed an administrative claim for refund together with the required supporting documents with RDO 44 on September 25, 2019; (7) petitioner filed an amended *Application for Tax Credit/Refund* (BIR Form No. 1914), together with a cover letter with RDO 44 on September 30, 2019; (8) the administrative claim for refund was filed within two (2) years from the close of the 3rd and 4th quarters of CY 2017; (9) it was only in December 2019, when petitioner's external consultant, KPMG, checked the status of the refund claim, that it was informed of the Regional Office's desire to endorse the application to the VCAD but the latter refused to accept the endorsement; (10) KPMG even went to the VCAD to try to re-file the application but the latter also verbally refused to process the application although the 90-day period to decide had yet to lapse (at the time); (11) petitioner received the *Denial Letter* from Revenue Region No. 8B-South NCR on March 12, 2020; (12) petitioner filed its judicial claim for refund with this Court within 30 days from the expiration of the 90-day period for respondent to act on the same; *and*, (B) to identify documents relevant to petitioner's claim for refund.¹⁶

On March 8, 2021, petitioner presented the testimony of its second and last witness, the Court-commissioned ICPA. Through her *Judicial Affidavit*, Bambao testified, among others, that she: (1) conducted the examination and verification of petitioner's voluminous documents and checked their compliance with substantiation requirements; *and*, (2) summarized her findings and observations in the Report submitted to this Court on February 19, 2021.¹⁷

On May 18, 2021, petitioner filed its *Formal Offer of [Documentary] Evidence* (FOE), with respondent's *Comment* filed on 05 May 2021, with a manifestation that there will no longer be presentation of any evidence considering that no final report has been prepared or submitted by the revenue examiner on petitioner's claim.¹⁸

On July 2, 2021, the Court resolved petitioner's FOE admitting all of its documentary evidence, except Exhibits "P-8", "P-9", "P-38", "P-38-1", "P-40-1", "P-56", "P-57", "P-59" to "P-61", "P-85" to "P-135", "P-137", "P-143", "P-144", "P-147", "P-157", "P-158", "P-179" to "P-188", "P-190" to "P-229", "P-230-1", "P-230-2", "P-249" and "P-249-1". Likewise, in view of respondent's manifestation that he or she will no longer be presenting evidence, the parties were given thirty (30) days within which to submit their memoranda.¹⁹

¹⁶ *Id.*, pp. 57-58.

¹⁷ *Id.*, p. 58.

¹⁸ *Id.*

¹⁹ *Id.*, pp. 58-59.

In compliance, respondent filed a *Memorandum* on August 5, 2021. Meanwhile, following the denial of some of its documentary evidence, petitioner filed a *Motion for Reconsideration* (MR) on October 27, 2021, without respondent's comment. Consequently, the Court resolved to admit petitioner's Exhibits "P-8", "P-9" and "P-40-1" and allowed the tender of excluded evidence for Exhibits "P-38" and "P-38-1".²⁰

On May 12, 2022, petitioner filed its *Memorandum*, prompting the Court to consider the case submitted for decision on May 24, 2022.²¹

On May 19, 2023, the court *a quo* issued the assailed decision which *denied* the petition for lack of merit and petitioner's *Motion for Partial Reconsideration* (Re: *Decision dated 19 May 2023*).

Proceedings before the CTA En Banc

On December 7, 2023, petitioner filed its *Petition for Review*.²²

On January 15, 2024, the Court issued a *Minute Resolution*, which directed respondent to file a comment on the petition.²³

On January 23, 2024, petitioner filed a *Supplement to the Petition for Review dated 7 December 2023*.²⁴

On February 12, 2024, the Court issued a *Minute Resolution*, which directed respondent to file a comment on the *Supplement to the Petition for Review dated 7 December 2023*.²⁵

On April 24, 2024, the Court issued a *Minute Resolution*, which (a) noted the *Records Verification* dated March 25, 2024 stating that respondent failed to file a comment on both the *Petition for Review* and the *Supplement to the Petition for Review dated 7 December 2023*; and, (b) submitted the case for decision.²⁶

Issues / Petitioner's Arguments / Assignment of Errors²⁷

Petitioner assails the decision, which denied its petition because (1) it failed to file the administrative claim with the VCAD, but instead filed it with

²⁰ *Id.*, p. 59.

²¹ *Id.*, p. 60.

²² *Rollo*, pp. 1-42.

²³ *Id.*, p. 263.

²⁴ *Id.*, pp. 264-273.

²⁵ *Id.*, p. 369.

²⁶ *Id.*, p. 371.

²⁷ *Petition for Review, Rollo*, pp. 12-13.

RDO 44;²⁸ and, (b) the court *a quo* found that PPD Global, petitioner's affiliate and sole customer and recipient of its services allegedly subject to VAT zero-rating under Section 108(B)(2) of the NIRC,²⁹ was doing business in the Philippines.³⁰

Petitioner submits that the court *a quo* gravely erred:

I. In *strictly* requiring PPD to file its administrative claim for refund with the VCAD because:

A. There is no statutory requirement to file the refund application with the VCAD. Under the Tax Code, it is the respondent Commissioner that ultimately decides a refund claim. Since the Regional Office and RDO are all part of one bureau and under

²⁸ May 19, 2023 *Decision, Rollo*, pp. 66-67.

²⁹ **SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties. –**

(A) Rate and Base of Tax. - There shall be levied, assessed and collected, a value-added tax equivalent to twelve percent (12%) of gross receipts derived from the sale or exchange of services, including the 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 non-resident 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);

(3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate;

(4) Services rendered to persons engaged in international shipping or international air transport operations, including leases of property for use thereof: Provided, That these services shall be exclusive for international shipping or air transport operations;

(5) Services performed by subcontractors and/or contractors in processing, converting, or manufacturing goods for an enterprise whose export sales exceed seventy percent (70%) of total annual production;

(6) Transport of passengers and cargo by domestic air or sea vessels from the Philippines to a foreign country; and

(7) Sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels. (*Underscoring supplied*).

³⁰ *Id.*, pp. 67-78.

the direct control and supervision of respondent Commissioner, the venue is a mere technicality that should not be used to prejudice the right of PPD to a fair determination of its application for refund; *and*,

- B. PPD should *not* be faulted for filing with RDO 44 rather than with VCAD. RDO 44 represented to PPD that it could process the administrative claim and then belatedly endorsed the same to the VCAD. Also, the VCAD itself refused to accept PPD's administrative claim.

II. In finding that PPD Global is "doing business" in the Philippines:

- A. Performing services incidental to a foreign corporation's business is not an indicium of "doing business" in the Philippines. PPD's services will necessarily be incidental and rendered in connection with PPD Global's business outside of the Philippines to qualify for zero-rating under Section 108(B)(2) of the NIRC;
- B. PPD and PPD Global are independent entities. There is no evidence that PPD acted as an agent of PPD Global in the Philippines. There is *no* evidence that PPD Global *controls* PPD;
- C. The court *a quo* gravely erred in its interpretation and application of the Foreign Investments Act. There is no evidence that PPD Global had a permanent establishment or undertook any profit-making activity within the Philippines;
- D. The court *a quo* improperly applied the alleged jurisprudential tests found in *Agilent*, *Sitel* and *Saint Wealth* cases; *and*,
- E. The court *a quo* gravely violated the due process rights of PPD as it required PPD to provide a higher degree of evidence. Respondent did *not* raise the doing business issue during the administrative stage, pre-trial or trial proper of this case. The doing business issue was only raised *after* trial and during the memorandum stage.

The Ruling of the Court *En Banc*

The Petition for Review was timely filed.

Before the Court sets out to discuss the merits of the petition, it is important to dispense with its jurisdictional aspect.



Petitioner received a copy of the assailed decision on June 1, 2023.³¹ Under Rule 15, Section 1 of the RRCTA,³² petitioner had fifteen (15) days to file a motion for reconsideration of the decision, or until June 16, 2023, which petitioner did by registered mail.³³

This petition was filed under Section 18 of RA 1125, as amended by RA 9282. Section 18 of RA 1125, as amended by RA 9282³⁴ in relation to Rule 8 Section 3(b) of the 2005 RRCTA,³⁵ provides that a party may appeal a resolution of a division of the Court on a motion for reconsideration, by filing a petition for review or a motion for extension of time to file the petition with the Court *En Banc* within fifteen (15) days from receipt of the questioned resolution.

On November 22, 2023, petitioner's counsel received the November 20, 2023 *Resolution*, which denied petitioner's *Motion for Reconsideration (Re: Decision dated 19 May 2023)*.³⁶ Petitioner had fifteen (15) days from November 22, 2023 or until December 7, 2023 to file a petition or a motion for an extension to file a petition.

Accordingly, the *Petition for Review* filed on December 7, 2023 is within the reglementary period. The Court *En Banc* can take cognizance of the present case.

³¹ *Notice of Decision*, Division Docket, Vol. III, p. 1051.

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RULE 15

MOTION FOR RECONSIDERATION OR NEW TRIAL

SECTION 1. *Who may and when to file motion.* – Any aggrieved party may seek a reconsideration or new trial of any decision, resolution or order of the Court. He shall file a motion for reconsideration or new trial within fifteen days from the date he received notice of the decision, resolution or order of the Court in question. (RCTA, Rule 13, sec. 1a)

³³ Petitioner filed its *Motion for Reconsideration (Re: Decision dated 19 May 2023)* on June 16, 2023, Division Docket, Vol. III, p. 1081.

³⁴ SECTION 18. *Appeal to the Court of Tax Appeals En Banc.* — No civil proceeding involving matter arising under the National Internal Revenue Code, the Tariff and Customs Code or the Local Government Code shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the CTA and disposed of in accordance with the provisions of this Act.

A party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration or new trial, may file a petition for review with the CTA *en banc*.

³⁵ SEC. 3. *Who may appeal; period to file petition.* —

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(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

³⁶ *Notice of Resolution*, Division Docket, Vol. III, p. 1113.

The court a quo did not gravely err in strictly requiring PPD to file its administrative claim for refund with the VCAD.

Petitioner contends that the court *a quo* gravely erred in *strictly* requiring it to file the administrative claim for refund with the VCAD. It asserts that there is *no* statutory requirement to file the refund application with the VCAD since under the Tax Code, it is respondent CIR who ultimately decides a refund claim. Since the Regional Office and RDO are all part of one bureau and under the direct control and supervision of the CIR, the venue is a mere technicality that should *not* be used to prejudice the right of PPD to a fair determination of its application for refund. Furthermore, petitioner argues that it should *not* be faulted for filing with RDO 44 rather than with VCAD. RDO 44 represented to PPD that it could process the administrative claim and then belatedly endorsed the same to the VCAD. Also, the VCAD itself refused to accept PPD's administrative claim.

Petitioner's position lacks merit.

First, petitioner's administrative claim, which was filed on September 29, 2019 falls under the coverage of Revenue Regulations No. (RR) 13-2018, Revenue Memorandum Circular No. (RMC) 17-2018 and RMC 47-2019. Contrary to petitioner's statement, these are precisely the revenue regulations in place that have the force and effect of law governing the filing of administrative claims.

Specifically, RR 13-2018³⁷ commands direct exporters to file their refund claims with the VCAD, *exclusively*. VCAD, under the functional jurisdiction of the Assessment Service, is tasked to conduct field audit / verification of VAT credit / refund claims of direct exporters:³⁸

"SEC. 4.112-1. *Claims for Refund/Credit of Input Tax.* —

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(c) Where to file the claim for refund/credit

Claims for refunds shall be filed with the appropriate Bureau of Internal Revenue (BIR) Office (Large Taxpayers Service (LTS), Revenue District Office (RDO)) having jurisdiction over the principal place of business of the taxpayer. Claims for input tax refund of direct exporters shall be

³⁷ Regulations Implementing the Value-Added Tax Provisions under the Republic Act (RA) No. 10963, or the "Tax Reform for Acceleration and Inclusion (TRAIN)," Further Amending Revenue Regulations (RR) No. 16-2005 (Consolidated Value-Added Tax Regulations of 2005), as Amended; March 15, 2018.

³⁸ Revenue Memorandum Circular No. 19-2017, *Amending Question and Answer to Number 12 of Revenue Memorandum Circular (RMC) No. 80-2010 Regarding the Issuance of Electronic Letters (eLA) for Value-Added Tax (VAT) Credit/Refund Claims Filed by Direct Exporters*; March 1, 2017.

exclusively filed with the VAT Credit Audit Division (VCAD).” (*Underscoring supplied*)

RMC 17-2018³⁹ reiterates this provision:

“For the information and guidance of all concerned, this Circular is issued to amend the provisions in RMC Nos. 89-2017 and 54-2014 on the processing of claims for issuance of tax refund/TCC, except claims processed under the jurisdiction of the Legal Service.

I. Claims for value-added tax (VAT) refund

A. General Policies

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B. Claims for VAT refund by direct exporters

1. All claims by direct exporters shall be filed with and processed by the VAT Credit Audit Division (VCAD), including direct exporters under the jurisdiction of the LTS.” (*Underscoring supplied*)

RMC 47-2019⁴⁰ provides that the administrative claim should be lodged in the same venue, VCAD:

“This Circular is issued to provide uniform guidelines and prescribe the revised mandatory documentary requirements in the processing and grant of VAT refund claims under Section 112 of the Tax Code of 1997, as amended, except claims processed under the jurisdiction of the Legal Service, thereby amending certain provisions in Revenue Memorandum Circular (RMC) Nos. 5-2011 and 17-2018.

I. GENERAL POLICIES

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2. The ‘Application for VAT Credit/Refund Claims’ (BIR Form No. 1914) shall be received by the processing offices, to wit:

a. For direct exporters, regardless of the percentage of export sales to total sales and whose claims are anchored under Section 112 (A) of the Tax Code of 1997, as amended, the claim shall be filed at the VAT Credit Audit Division (VCAD).” (*Underscoring supplied*)

³⁹ Amending Revenue Memorandum Circular (RMC) No. 89-2017 and Certain Provisions of RMC No. 54-2014 Regarding the Processing of Claims for Issuance of Tax Refund/Tax Credit Certificate (TCC) in Relation to Amendments Made in the National Internal Revenue Code of 1997, as Amended by Republic Act No. 10963, Known as the Tax Reform for Acceleration and Inclusion (TRAIN); February 27, 2018.
⁴⁰ Revised Guidelines and Mandatory Requirements for the Processing and Grant of Value-Added Tax (VAT) Refund Claims within the 90-day Period Pursuant to Section 112 of the Tax Code of 1997, as Amended; April 16, 2019.

Second, RR 13-2018, RMC 17-2018 and RMC 47-2019 are *not* mere BIR issuances, as petitioner would appear to dismiss them, but quasi-legislative issuances which were issued pursuant to Sections 4 and 244 of the NIRC:

“SEC. 4. Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases. - The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.

The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.”

“SEC. 244. Authority of Secretary of Finance to Promulgate Rules and Regulations. - The Secretary of Finance, upon recommendation of the Commissioner, shall promulgate all needful rules and regulations for the effective enforcement of the provisions of this Code.”

Tax revenue regulations are “issuances signed by the Secretary of Finance, upon recommendation of the Commissioner of Internal Revenue, that specify, prescribe or define rules and regulations for the effective enforcement of the provisions of the [NIRC] and related statutes.”⁴¹ As these issuances are mandated by the NIRC itself, they are in the nature of a *subordinate legislation* that are as compelling as the provisions of the tax law they implement.⁴² Legislative rules are a form of subordinate legislation where the agency is acting in a legislative capacity, supplementing the statute, filling in the details, pursuant to a specific delegation of legislative power. They implement a primary legislation by providing the details thereof. They impose additional obligations pursuant to authority from Congress and affect individual rights and obligations.⁴³ Thus, they can rightfully be considered to provide a binding set of rules in the filing of claims for VAT refund or TCC.

Absent any proof that these issuances are *ultra vires* acts or contravene the NIRC, petitioner’s argument must fail.

Third, petitioner contradicts itself by pleading for a liberal construction under Section 4 of the NIRC. It states that since under Section 4 respondent CIR ultimately has the quasi-judicial power to decide refund cases, it does not matter which particular BIR office under respondent the administrative claim was filed. Yet, in the same argument, petitioner calls the revenue issuances *technicalities* when they sprung from the exercise of quasi-legislative power granted under the *same* provision of law. *What’s sauce for the goose is sauce for the gander.* ✓

⁴¹ *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. No. 187485, February 12, 2013, Supreme Court *En Banc*.

⁴² *Id.*

⁴³ *Philippine Stock Exchange, Inc. v. Secretary of Finance*, G.R. No. 213860, July 5, 2022, Supreme Court *En Banc*.

Finally, because this is a *refund* case, the Court adopts a narrow interpretation of the law and its implementing rules and regulations *against the taxpayer*.

A refund undoubtedly partakes of the nature of an exemption, it cannot be allowed unless granted in the most explicit and categorical language. It has been the constant and uniform holding that exemption from taxation is *not* favored and is never presumed, so that if granted it must be strictly construed against the taxpayer. Affirmatively put, the law frowns on exemption from taxation, hence, an exempting provision should be construed *strictissimi juris*.⁴⁴

The court a quo correctly concluded that PPD Global is “doing business” in the Philippines since such finding is securely anchored on evidence and in law.

Petitioner assails the factual finding of the court *a quo* that its client affiliate, PPD Global, was doing business in the Philippines. However, it merely denies this conclusion but is *unable* to refute the facts of the case which served as the foundations for this conclusion.

Petitioner’s position must fail.

The Court directs attention to the facts discussed below that strongly indicates the PPD Global was *doing business in the Philippines* through petitioner, which was acting as its agent.

First, PPD/petitioner and PPD Global are *affiliates*, which are both under the PPD Group.⁴⁵ As affiliates, they are related to each other by shareholdings or other means of control⁴⁶ or they are persons or entities that directly or indirectly control, are controlled by, or are under common control with another person or entity.⁴⁷ This means that they ultimately share a *common parent* or are held under a *common ownership* or *beneficial interest*.

Second, petitioner contends that performing services “incidental” to PPD Global’s business is *not* an indicium of doing business in the Philippines. It adds that its services will necessarily be “incidental and rendered in connection with”



⁴⁴ *Resins Inc. v. Auditor General of the Philippines*, G.R. No. L-17888, October 29, 1968, Supreme Court *En Banc*.

⁴⁵ Exhibit P-33, *Audited Financial Statements*, Note 21 – Related Party Transactions, Division Docket, Vol. II, p. 559.

⁴⁶ Black’s Law Dictionary, 8th Edition, p. 63.

⁴⁷ Westlaw /Thompson Reuters, last accessed Febr 25, 2025:

[https://content.next.westlaw.com/practical-law/document/I03f4d935eee311e28578f7ccc38dcbee/Affiliate?viewType=FullText&transitionType=Default&contextData=\(sc.Default\)](https://content.next.westlaw.com/practical-law/document/I03f4d935eee311e28578f7ccc38dcbee/Affiliate?viewType=FullText&transitionType=Default&contextData=(sc.Default))

PPD Global's business outside of the Philippine to qualify for zero-rating under Section 108(B)(2) of the NIRC.⁴⁸

This is not accurate.

The court *a quo actually* found that petitioner was performing services “integral”⁴⁹ to PPD Global's business and performing “significant or core transactions”⁵⁰ of PPD Global and *not merely* “incidental”:

“As aforementioned, PPD Global is a clinical research organization engaged in the business of managing clinical research programs and providing clinical development and other related services for clients while petitioner's primary purpose is to conduct contract research, including clinical trials, providing management services and conducting clinical feasibility assessment and is actually tasked, through the Affiliate Services Agreement, to provide certain services (described in the Services Addendum) as may be requested by PPD Global, which are related to the Sponsor clinical trial or project identified also by PPD Global.

From the foregoing, it is evident that petitioner is performing functions that are integral to PPD Global's business purpose.

Secondly, the Contract Test examines whether a series of commercial dealings reflects an intention on the part of a foreign corporation to engage in business in the Philippines. In the instant case, the agreement between PPD Global and petitioner stipulates a five-year term with automatic renewal, during which petitioner is to perform significant or core transactions of PPD Global in the Philippines under the name of PPD Global. This is an indicium of intent on the part of PPD Global to engage in business in the Philippines by having continuing commercial dealings and arrangements, rather than an isolated transaction.”⁵¹ (*Underscoring supplied; citations and emphases omitted*)

A comparison of the nature of businesses of these two affiliates safely leads to the conclusion that petitioner conducts business in the Philippines, which is *similar if not nearly identical* to the essential business operations of PPD Global. In short, PPD locally performs activities, which are *not* only incidental or ancillary but are essential and primary to PPD Global's purpose.

Third, the court *a quo* found that PPD Global, is the only customer of petitioner, at least, for the period of the claim:

“Petitioner's total alleged zero-rated sales for the covered period, as shown in its 3rd quarter original VAT return and 4th quarter amended VAT return, amounted to P473,624,550.15, broken down as follows:



⁴⁸ *Petition for Review, Rollo*, pp. 14-16.

⁴⁹ *Assailed Decision, Rollo*, p. 75.

⁵⁰ *Assailed Decision, Rollo*, p. 75.

⁵¹ *Assailed Decision, Rollo*, p. 75.

OR No.	OR Date	Customer	Amount
0000010	11-May-17	PPD Global Limited	₱ 72,762,287.13
0000011	13-Jun-17	PPD Global Limited	111,612,923.43
Subtotal Third Quarter CY 2017			₱ 184,375,210.56
0000012	17-Jul-17	PPD Global Limited	86,834,818.32
0000013	09-Aug-17	PPD Global Limited	123,146,188.49
0000015	31-Jan-18	PPD Global Limited	79,268,332.78
Subtotal Fourth Quarter CY 2017			₱ 289,249,339.59
Total			₱ 473,624,550.15

The foregoing table shows that all of petitioner’s supposed zero-rated sales were made in favor of PPD Global, an alleged NRFC not doing business in the Philippines.”⁵²

Considering that PPD Global is petitioner’s *sole* client, it contributes to petitioner’s quarterly sales *entirely* and, thus, lends considerable weight to petitioner’s financials. To petitioner’s PhP811,001,291⁵³ total service fees for 2017, the 3rd and 4th quarters of 2017 with PhP473,624,550.15 total sales to PPD Global, contributed 58.40% --- more than half of petitioner’s sales for 2017.

Fourth, petitioner’s Accounting Manager, Dormile, testified that petitioner performed services in the Philippines in favor of PPD Global.⁵⁴ By the express provisions of the *Affiliate Services Agreement*,⁵⁵ this testimony is corroborated in detail. The objective of the agreement is to pursue the business of PPD Global [PPDG in the agreement] “as a clinical research organization engaged in the business of managing clinical research programs and providing clinical development and other related services for clients (each, a ‘Sponsor’)” and petitioner is authorized to contract *for* PPD Global:⁵⁶

AFFILIATE SERVICES AGREEMENT

THIS AFFILIATE SERVICES AGREEMENT (“**Agreement**”) is made and entered into as of 13 April 2016 (‘Effective Date’) by and between **PPD GLOBAL LIMITED** (“**PPDG**”), a private limited company, with its registered office located at Granta Park, Great Abington, Cambridge, CB21 6GQ, United Kingdom and **PPD PHARMACEUTICAL DEVELOPMENT PHILIPPINES CORP.**, with its registered office located at 22/F Net Park Bldg., 5th Avenue, E-SQ Crescent Park West, Bonifacio Global City 1634, Taguig, Metro Manila, Philippines (“**Affiliate**”) (each, a ‘**Party**’ and together, the ‘**Parties**’).

WHEREAS, PPDG is a clinical research organization engaged in the business of managing clinical research programs and providing clinical development and other related services for clients (each, a ‘Sponsor’); and

⁵² Decision, *Rollo*, pp. 68-69.
⁵³ Audited Financial Statements, Division Docket, Vol. I, p. 309.
⁵⁴ Decision, *Rollo*, p. 76.
⁵⁵ Exhibit P-11, Division Docket, Vol. I, pp. 182-200.
⁵⁶ Preamble, *Affiliate Services Agreement*, Exhibit P-11, Division Docket, Vol. I, p. 182.

WHEREAS, PPD Development (S) Pte Ltd (**PPDS**) and PPD Development, LP (**PPDD**), and together with PPDG, are the three regional hubs (each, a **Hub** and together, the **Hubs**) of the worldwide PPD Group; and

WHEREAS, PPDG wishes, from time to time, to procure certain services from Affiliate; and,

WHEREAS, Affiliate wishes to provide such services in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, for good and valuable consideration contained herein, the exchange, receipt and sufficiency of which are acknowledged, the Parties agree as follows:" (*Underscoring supplied; emphases retained*)

More specifically, PPD Global's *core* business services are carried out through petitioner in the *Services Agendum*.⁵⁷ These services include Clinical Trial Coordination and Support Services such as:

- Feasibility Study / Site / Investigator Identification and Qualification;
- Pre-Study Activities;
- Investigational Product Management and Miscellaneous Clinical Supply Management;
- Investigator's Meeting and Communications Management;
- Study Monitoring;
- Global Clinical Data Management Services;
- Global Biostatistics and Programming Services;
- Clinical Shared Services;
- Administrative Shared Services; and,
- Local Contracting with Sponsors.

From time to time and as "specifically requested by PPD Global", petitioner may enter into contracts with Sponsors located in petitioner's country, *which were considered clients of PPD Global in the agreement*.⁵⁸

"Local Contracting with Sponsors

From time to time and as specifically requested by PPDG [PPD Global], Affiliate [petitioner] may:

- Enter into contracts with Sponsors located in the same country as Affiliate (in the name of Affiliate) (the **'Local Sponsor Contracts'** and each a **'Local Sponsor Contract'**);
- The Affiliate will perform no additional tasks in respect of the Local Sponsor Contracts except billing and cash collection activities.

⁵⁷ *Affiliate Services Agreement*, Exhibit P-11, Division Docket, Vol. I, pp. 189-190.

⁵⁸ Exhibit A, *Services Agendum*, *Affiliate Services Agreement*, Exhibit P-11, Division Docket, Vol. I, p. 190; *refer also* to the preamble of the agreement.

- Affiliate shall not assume any risks associated with the Local Sponsor Contracts and PPDG shall indemnify, defend and hold harmless Affiliate from and against any and all damages, liabilities, losses, fines, penalties, settlement amounts, cost and expenses of any kind or nature whatsoever with regards to the Local Sponsor Contracts.” (*Underscoring supplied; emphases retained*)

As its VAT returns prove, petitioner habitually used this authority to generate sales exclusively and entirely from PPD Global.

Article 1868 of the Civil Code defines an agency as follows:

“Art. 1868. By the contract of agency, a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter.”

Agency is a fiduciary relationship created by express or implied contract or by law, in which one party (the agent) may act on behalf of another party (the principal) and bind that other party by words or actions.⁵⁹ The agent is one who undertakes to transact some business, or to manage some affair, for another, by the authority and on account of the latter, and to render an account of it.⁶⁰ The agent acts under the *control* of the principal.⁶¹

Except in name, the *Affiliate Services Agreement* shares the nature and features of a contract of agency.

The contract of agency requires the presence of the following essential elements: (1) there is consent, express or implied of the parties to establish the relationship; (2) the object is the execution of a juridical act in relation to a third person; (3) the agent acts as a representative and not for himself, and (4) the agent acts within the scope of his authority.⁶² All of these elements are present in the agreement:

- *First Element - Consent.* As the basis of agency is representation, there must be, on the part of the principal, an actual intention to appoint, an intention naturally inferable from the principal’s words or actions. In the same manner, there must be an intention on the part of the agent to accept the appointment and act upon it.⁶³ *Affiliate Services Agreement* embodies the intention and consent of the parties to be mutually bound by the terms therein.
- *Second Element – Execution of Juridical Act to a Third Person.* The *Affiliate Services Agreement* governs the services to be rendered by the principal PPD Global to third parties or its clients / Sponsors through

⁵⁹ Black’s Law Dictionary, 8th Edition, p. 67.

⁶⁰ Bouvier’s Law Dictionary, Vol. II, p. 2687.

⁶¹ Words and Phrases, Permanent Edition, Vol. 2, p. 719.

⁶² *Spouses Viloría v. Continental Airlines, Inc.*, G.R. No. 188288, January 16, 2012.

⁶³ *Spouses Viloría v. Continental Airlines, Inc.*, G.R. No. 188288, January 16, 2012.

petitioner, acting as its agent.⁶⁴ Petitioner emphasized that PPD Global is *not* the provider of services locally so as to constitute doing business.⁶⁵ However, the *close similarity of the core business activities* of the two, the *agency relationship* created between them and the *degree of control* exercised by PPD Global *belie* this claim.

- *Third Element – Agent Acts as a Representative and Not for Itself.* Petitioner's services and fees are governed by very specific terms of the agreement.⁶⁶ Significantly, the agreement is silent on whether petitioner can market and sell its services to other persons who are not clients of PPD Global.
- *Fourth Element - Control / Agent Acts within the Scope of Its Authority.* As will be discussed below, there are several guardrails that limit what petitioner can do and that are imposed by PPD Global through the agreement.⁶⁷

Fifth, control is a central element in agency.⁶⁸ PPD Global also wields significant *control* over how petitioner conducts its business through the *Affiliate Services Agreement*,⁶⁹ which is the law between them.⁷⁰ The control mechanisms stipulated in the contract militate against petitioner's autonomy and independence. Specifically:

- Petitioner shall provide services to a Sponsor in compliance with the terms and conditions of *Affiliate Services Agreement*,⁷¹ more particularly:

"1. SERVICES.

1.1 Scope of Services. Affiliate [petitioner] shall provide those certain services ("Services") related to a Sponsor clinical trial or project ("Project") identified by PPDG [PPD Global], described in the Services Addendum attached hereto as Exhibit A, and further described in the services agreement between any of the Hubs and Sponsor ("Sponsor Agreement"). Affiliate [petitioner] shall perform the Services in compliance with (i) the protocol for the Project ("Protocol"); (ii) the terms and conditions of this Agreement, (iii) the terms and conditions of the relevant Sponsor Agreement, the applicable terms of which shall be incorporated by reference herein; (iv) instructions provided by PPDG or Sponsor; and (v) all applicable laws, rules and regulations. To the extent any terms contained herein conflict with terms contained

⁶⁴ Sections 1.1, 2.2.2 and Services Agendum, *Affiliate Services Agreement*, Exhibit P-11, Division Docket, Vol. I, pp. 182, 183 and 188-190.

⁶⁵ Petition for Review, Rollo, p. 21.

⁶⁶ Sections 1.1, 4.1 and Services Agendum, *Affiliate Services Agreement*, Exhibit P-11, Division Docket, Vol. I, pp. 182, 184 and 188-190.

⁶⁷ Sections 1.1, 2.2.2, 4.1 and Services Agendum, *Affiliate Services Agreement*, Exhibit P-11, Division Docket, Vol. I, pp. 182, 183, 184 and 188-190.

⁶⁸ Words and Phrases, Permanent Edition, Vol. 2, p. 719.

⁶⁹ Exhibit P-11, Division Docket, Vol. I, pp. 182-200.

⁷⁰ Art. 1159, Civil Code states: "Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith."

⁷¹ Section 1.1, *Affiliate Services Agreement*, Exhibit P-11, Division Docket, Vol. I, p. 182.

in the Sponsor Agreement, the terms of the Sponsor Agreement shall govern and control.” (*Underscoring supplied; emphases retained*)

- Petitioner’s fees for its services to PPD Global are subject to limitations. For example, the direct fees chargeable to PPD Global is subject to a *price cap* or *ceiling* equivalent to the actual costs incurred plus a mark-up equal to six point six percent (6.6%) of such actual costs.⁷² The direct and indirect fees for services to local Sponsors that can be charged to PPD Global is also subject to stipulated reduction in order to comply with the cap:

“2. COMPENSATION AND PAYMENT.

2.1 Charges for Services.

2.1.1 *Direct Fees.* In consideration of the performance of Services and unless otherwise mutually agreed upon by the Parties, PPDG will compensate Affiliate such an amount equal to the actual costs incurred by Affiliate in the course of providing the Services as calculated under US GAAP (excluding any acquisition-related purchase accounting entries recorded in Affiliate’s US GAAP books, e.g. the revaluation of fixed assets and any enhanced depreciation charges thereon), plus an amount equal to six point six percent (6.6%; the ‘Mark Up’) of such actual costs (together, the ‘Direct Fees’). Such actual costs will specifically exclude any interest income or expense, and any exceptional costs that Affiliate might have incurred should the Parties so agree. The Mark Up will be subject to change upon written notice from PPDG to Affiliate. An adjustment may be made to the Direct Fees as a result of local GAAP adjustments to the US GAAP books whether identified during the preparation of the local statutory financial statements or at any other time during the year should the Parties so agree.

XXX

XXX

XXX

2.2.2 In the event that Affiliate, at the request of PPDG, enters into a services agreement with a Sponsor (a ‘**Local Sponsor Agreement**’), the Direct Fees and/or the Indirect Fees due to Affiliate from PPDG will be reduced by the amount of revenue recognised by Affiliate in respect of the Local Sponsor Agreement, such that the overall compensation for all Services performed by Affiliate is in accordance with 2.1.1 above.” (*Underscoring supplied; emphases retained*)

- Adjustment of direct fees charged by petitioner is subject to PPD Global’s “sole discretion” in the event its cost base is higher than originally projected;⁷³
- Petitioner assigned to PPD Global all the rights it may have in any invention, technology, know-how or other intellectual property relating to the *Affiliate Services Agreement*;⁷⁴ and,

⁷² Section 2.1, *Affiliate Services Agreement*, Exhibit P-11, Division Docket, Vol. I, p. 182.

⁷³ Section 2.5, *Affiliate Services Agreement*, Exhibit P-11, Division Docket, Vol. I, p. 183.

⁷⁴ Section 7.2, *Affiliate Services Agreement*, Exhibit P-11, Division Docket, Vol. I, p. 185.

- Although petitioner is authorized to enter into contracts with local Sponsors, it shall *not* assume any risk associated with the same contracts.⁷⁵

“Local Contracting with Sponsors

From time to time and as specifically requested by PPDG [PPD Global], Affiliate [petitioner] may:

- Enter into contracts with Sponsors located in the same country as Affiliate (in the name of Affiliate) (the ‘Local Sponsor Contracts’ and each a ‘Local Sponsor Contract’);
- The Affiliate will perform no additional tasks in respect of the Local Sponsor Contracts except billing and cash collection activities.
- Affiliate shall not assume any risks associated with the Local Sponsor Contracts and PPDG shall indemnify, defend and hold harmless Affiliate from and against any and all damages, liabilities, losses, fines, penalties, settlement amounts, cost and expenses of any kind or nature whatsoever with regards to the Local Sponsor Contracts.” (Underscoring supplied; emphases retained)

Although, petitioner and PPD Global were set-up as independent entities,⁷⁶ they did *not* necessarily function or operate as such in reality. The levers of control stipulated in the *Affiliate Services Agreement* undermine petitioner’s independence in carrying out its own business as a separate entity. They restrict PPD’s ability to act on its own self-interest since it is subordinate to the interests of PPD Global. Furthermore, PPD Global *owns* the technology, know-how and other intellectual properties, *assumes* the risks, and is *able to set its financial targets* by limiting the cost passed on by petitioner. Contrary to petitioner’s claim, therefore, the activities to be undertaken locally are precisely for profit-making.⁷⁷ PPD Global ensures the *profitability* of these transactions through the price caps and the other mechanisms. As a result, PPD Global effectively operates as the principal entity doing business in the Philippines through the petitioner, which merely serves as a conduit or adjunct to PPD Global’s operations—activities it cannot carry out directly without a Philippine license.

Finally, these control mechanisms impair the *arm’s length* character of the transactions between the two. The *arm’s length principle* is generally understood to cover commercial transactions conducted in a manner consistent with market conditions, regardless of the relationship between the entities involved and is defined below:

“Arm’s length” xxx is commonly used to refer to transactions in which two or more unrelated and unaffiliated parties agree to do business, acting independently and in their self-interest. In transactions “at arm’s length”, the

⁷⁵ Exhibit A, Services Agendum, *Affiliate Services Agreement*, Exhibit P-11, Division Docket, Vol. I, p. 190.

⁷⁶ *Petition for Review, Rollo*, pp. 16-18.

⁷⁷ *Petition for Review, Rollo*, pp. 20-21.

parties involved should have equal bargaining power and symmetric information, leading the parties to agree upon fair market terms. In contrast, a transaction not conducted “at arm’s length” may happen between parties that may have a personal or close relationship; for example, transactions between family members, personal friends, or the parent company and its subsidiaries. In one case, it was held that “an ‘arm’s-length’ transaction refers to dealings between two parties who are not related and not in a confidential relationship, and who are presumed to have roughly equal bargaining power. Additionally, an ‘arm’s-length’ transaction generally must be voluntary (without compulsion or duress), take place on the open market, and the parties must act in their own self-interest.”⁷⁸ (Underscoring supplied)

The concept of “arm’s length” is a hallmark of commercial transactions as it assumes that the parties are on equal economic footing and can, therefore, arrive at prices and terms that are mutually advantageous to each other. An arm’s length transaction is defined as one between two *independent* parties, where both act in their own self-interest. In such a transaction, both the buyer and the seller are independent, possess equal bargaining power, are not under any pressure or duress, and are focused on securing the most advantageous deal for themselves.⁷⁹ The *arm’s length* principle is “fundamental to ensuring fairness and transparency in various financial dealings” and “play[s] a pivotal role in maintaining integrity within markets, preventing conflicts of interest, and ensuring that all parties act independently without undue influence.”⁸⁰

In this case, petitioner’s independence appears encumbered when the *Affiliate Services Agreement* with PPD Global is examined through the lens of the arm’s length principle.

Sixth, to come within the purview of Section 108(B)(2) of the NIRC, it is not enough that the recipient of the service, PPD Global, be proven to be a foreign corporation; rather, it must be specifically proven to be a *nonresident* foreign corporation.⁸¹ The term “non-resident foreign corporation” applies to a foreign corporation *not* engaged in trade of business within the Philippines.⁸²

Section 3 (d) of Republic Act No. 7042 or the Foreign Investments Act of 1991 defines *doing business* with regard to foreign corporations and enumerates the activities that constitute it:

“SECTION 3. Definitions. — As used in this Act:

xxx

xxx

xxx

⁷⁸ Legal Information Institute, Cornell Law School, https://www.law.cornell.edu/wex/arm%27s_length, last accessed on February 26, 2025; see also *Bangko Sentral ng Pilipinas v. Office of the Ombudsman and Benjamin M. Jamorabo*, G.R. No. 201069, June 16, 2021.

⁷⁹ Arm’s Length Transaction - Corporate Finance Institute, <https://corporatefinanceinstitute.com/resources/valuation/arms-length-transaction/>, last accessed on February 27, 2025.

⁸⁰ Understanding Arm’s Length Transactions in Modern Finance - Accounting Insights, <https://accountinginsights.org/understanding-arms-length-transactions-in-modern-finance/>, last accessed on February 27, 2025.

⁸¹ *Accenture, Inc. v. Commissioner of Internal Revenue*, G.R. No. 190102, July 11, 2012.

⁸² Section 22(I), NIRC.

d. the phrase 'doing business' shall include soliciting orders, service contracts, opening offices, whether called 'liaison' offices or branches; appointing representatives or distributors domiciled in the Philippines or who in any calendar year stay in the country for a period or periods totalling one hundred eighty (180) days or more; participating in the management, supervision or control of any domestic business, firm, entity or corporation in the Philippines; and any other act or acts that imply a continuity of commercial dealings or arrangements, and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to, and in progressive prosecution of, commercial gain or of the purpose and object of the business organization: Provided, however, That the phrase 'doing business' shall not be deemed to include mere investment as a shareholder by a foreign entity in domestic corporations duly registered to do business, and/or the exercise of rights as such investor; nor having a nominee director or officer to represent its interests in such corporation; nor appointing a representative or distributor domiciled in the Philippines which transacts business in its own name and for its own account[.]” (*Underscoring supplied*)

In *Air Canada v. Commissioner of Internal Revenue*,⁸³ the Supreme Court upheld the denial of Air Canada’s refund claim by ruling that Air Canada, a foreign corporation that hired a general sales agent to sell passage documents in the Philippines, was a *resident* foreign corporation *doing business* locally based on the legal definition above:

“II

Petitioner, an offline carrier, is a resident foreign corporation for income tax purposes. Petitioner falls within the definition of resident foreign corporation under Section 28 (A) (1) of the 1997 National Internal Revenue Code, thus, it may be subject to 32% tax on its taxable income:

SEC. 28. Rates of Income Tax on Foreign Corporations.

— (A) Tax on Resident Foreign Corporations. —

(1) In General. — Except as otherwise provided in this Code, a corporation organized, authorized, or existing under the laws of any foreign country, engaged in trade or business within the Philippines, shall be subject to an income tax equivalent to thirty-five percent (35%) of the taxable income derived in the preceding taxable year from all sources within the Philippines: Provided, That effective January 1, 1998, the rate of income tax shall be thirty-four percent (34%); effective January 1, 1999, the rate shall be thirty-three percent (33%); and effective January 1, 2000 and thereafter, the rate shall be thirty-two percent (32%). (*Emphasis supplied*)

The definition of 'resident foreign corporation' has not substantially changed throughout the amendments of the National Internal Revenue Code. All versions refer to 'a foreign corporation engaged in trade or business within the Philippines.'

Commonwealth Act No. 466, known as the National Internal Revenue Code and approved on June 15, 1939, defined 'resident foreign corporation' as

⁸³ G.R. No. 169507, January 11, 2016.

applying to 'a foreign corporation engaged in trade or business within the Philippines or having an office or place of business therein.'

Section 24 (b) (2) of the National Internal Revenue Code, as amended by Republic Act No. 6110, approved on August 4, 1969, reads:

Sec. 24. Rates of tax on corporations. — . . .

(b) Tax on foreign corporations. — . . .

(2) Resident corporations. — A corporation organized, authorized, or existing under the laws of any foreign country, except a foreign life insurance company, engaged in trade or business within the Philippines, shall be taxable as provided in subsection (a) of this section upon the total net income received in the preceding taxable year from all sources within the Philippines. (Emphasis supplied)

Presidential Decree No. 1158-A took effect on June 3, 1977 amending certain sections of the 1939 National Internal Revenue Code. Section 24 (b) (2) on foreign resident corporations was amended, but it still provides that '[a] corporation organized, authorized, or existing under the laws of any foreign country, engaged in trade or business within the Philippines, shall be taxable as provided in subsection (a) of this section upon the total net income received in the preceding taxable year from all sources within the Philippines[.]'

xxx

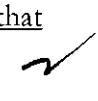
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Republic Act No. 7042 or the Foreign Investments Act of 1991 also provides guidance with its definition of 'doing business' with regard to foreign corporations. Section 3 (d) of the law enumerates the activities that constitute doing business:

d. the phrase 'doing business' shall include soliciting orders, service contracts, opening offices, whether called 'liaison' offices or branches; appointing representatives or distributors domiciled in the Philippines or who in any calendar year stay in the country for a period or periods totalling one hundred eighty (180) days or more; participating in the management, supervision or control of any domestic business, firm, entity or corporation in the Philippines; and any other act or acts that imply a continuity of commercial dealings or arrangements, and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to, and in progressive prosecution of, commercial gain or of the purpose and object of the business organization: Provided, however, That the phrase 'doing business' shall not be deemed to include mere investment as a shareholder by a foreign entity in domestic corporations duly registered to do business, and/or the exercise of rights as such investor; nor having a nominee director or officer to represent its interests in such corporation; nor appointing a representative or distributor domiciled in the Philippines which transacts business in its own name and for its own account[.] (Emphasis supplied)

While Section 3 (d) above states that 'appointing a representative or distributor domiciled in the Philippines which transacts business in its own name and for its own account' is not considered as 'doing business,' the Implementing Rules and Regulations of Republic Act No. 7042 clarifies that



‘doing business’ includes ‘appointing representatives or distributors, operating under full control of the foreign corporation, domiciled in the Philippines or who in any calendar year stay in the country for a period or periods totaling one hundred eighty (180) days or more[.]’

An offline carrier is ‘any foreign air carrier not certificated by the [Civil Aeronautics] Board, but who maintains office or who has designated or appointed agents or employees in the Philippines, who sells or offers for sale any air transportation in behalf of said foreign air carrier and/or others, or negotiate for, or holds itself out by solicitation, advertisement, or otherwise sells, provides, furnishes, contracts, or arranges for such transportation.’

‘Anyone desiring to engage in the activities of an off-line carrier [must] apply to the [Civil Aeronautics] Board for such authority.’ Each offline carrier must file with the Civil Aeronautics Board a monthly report containing information on the tickets sold, such as the origin and destination of the passengers, carriers involved, and commissions received.

Petitioner is undoubtedly ‘doing business’ or ‘engaged in trade or business’ in the Philippines.

Aerotel performs acts or works or exercises functions that are incidental and beneficial to the purpose of petitioner’s business. The activities of Aerotel bring direct receipts or profits to petitioner. There is nothing on record to show that Aerotel solicited orders alone and for its own account and without interference from, let alone direction of, petitioner. On the contrary, Aerotel cannot ‘enter into any contract on behalf of [petitioner Air Canada] without the express written consent of [the latter,]’ and it must perform its functions according to the standards required by petitioner. Through Aerotel, petitioner is able to engage in an economic activity in the Philippines.

Further, petitioner was issued by the Civil Aeronautics Board an authority to operate as an offline carrier in the Philippines for a period of five years, or from April 24, 2000 until April 24, 2005.

Petitioner is, therefore, a resident foreign corporation that is taxable on its income derived from sources within the Philippines. Petitioner’s income from sale of airline tickets, through Aerotel, is income realized from the pursuit of its business activities in the Philippines.” (*Underscoring supplied, citations and other emphases omitted*)

The Court has considered several factors, including the common ownership of petitioner and PPD Global, the similarity of their core business activities, the financial contribution of PPD Global to petitioner’s bottom line, the agency relationship between them, and the degree of control exercised by PPD Global. Taken together, these factors lead to the same conclusion as in *Air Canada*.

In the language of *Air Canada*, the records do not show that petitioner solicited orders alone and without interference from, let alone direction of, PPD Global. On the contrary, PPD Global identifies the clinical trial projects for petitioner,⁸⁴ which, in turn, provides clinical trial coordination and support

⁸⁴ Section 1.1, *Affiliate Services Agreement*, Exhibit P-11, Division Docket, Vol. I, p. 182.

services to the Sponsors⁸⁵ in accordance with PPD Global's required standards. Additionally, as PPD Global owns the intellectual property assets and assumes the associated risks, it must ensure the profitability of its business venture by exercising control, as previously discussed. Thus, through the petitioner, PPD Global engages in economic activity in the Philippines as the principal. Contrary to petitioner's assertion, there is sufficient evidence to support the conclusion that it acted as PPD Global's agent.

Seventh, it bears stressing that in *Republic of the Philippines, represented by the Commissioner of Internal Revenue v. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation)*,⁸⁶ the Supreme Court ruled that "it is fundamental that the findings of fact by the CTA in Division are not to be disturbed without any showing of grave abuse of discretion considering that the members of the Division are in the best position to analyze the documents presented by the parties."

All told, petitioner failed to raise any issue that has successfully convinced the Court to modify or reverse the assailed Decision and Resolution of the court *a quo*. The findings of fact of said court are *not* to be disturbed unless clearly shown to be unsupported by substantial evidence.⁸⁷

WHEREFORE, premises considered, the *Petition for Review* is **DENIED** for lack of merit. The assailed Decision and Resolution of the court *a quo* are hereby **AFFIRMED**.

SO ORDERED.

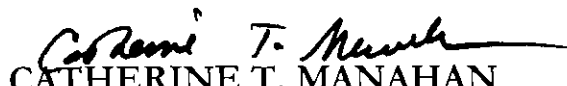


MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:



ROMAN G. DEL ROSARIO
Presiding Justice



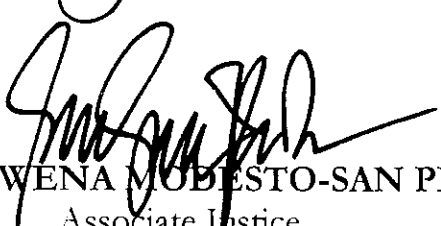
CATHERINE T. MANAHAN
Associate Justice

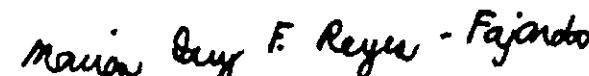
⁸⁵ Service Agendum, *Affiliate Services Agreement*, Exhibit P-11, Division Docket, Vol. I, p. 182.

⁸⁶ G.R. No. 188016, January 14, 2015, citing *Sea-Land Service, Inc. v. Court of Appeals*, G.R. No. 122605, April 30, 2001.

⁸⁷ *Commissioner of Internal Revenue v. Union Shipping Corporation and The Court of Tax Appeals*, G.R. No. L-66160, May 21, 1990.


JEAN MARIE A. BACORRO-VILLENA
Associate Justice


MARIA ROWENA M. OBISPO-SAN PEDRO
Associate Justice


MARIAN IVY F. REYES-FAJARDO
Associate Justice

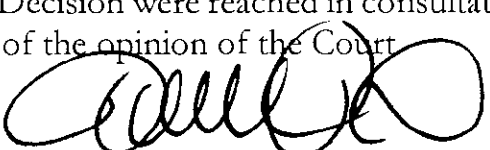

LANEE S. CUI-DAVID
Associate Justice


CORAZON G. FERRER-FLORES
Associate Justice


HENRY S. ANGELES
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.


ROMAN G. DEL ROSARIO
Presiding Justice