REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
****

FINANCIAL TIMES ELECTRONIC PUBLISHING PHILIPPINES, INC., Petitioner,	**CTA EB No. 2223** (CTA Case No. 9631)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO,** and **REYES-FAJARDO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** SEP 2 3 2021 2:50 p.m.

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DECISION

UY, *J.*:

Before the Court *En Banc* is a *Petition for Review* filed on February 5, 2020[1] by Financial Times Electronic Publishing Philippines, Inc., petitioner, against the Commissioner of Internal Revenue (CIR), respondent, praying to vacate the *Decision* dated October 7, 2019, and *Resolution* dated January 16, 2020,[2] both rendered by the Second Division of this Court in CTA Case No. 9631, entitled *"Financial Times Electronic Publishing, Philippines, Inc., petitioner, v. Commissioner of Internal Revenue, respondent"*, and another one be entered holding that petitioner is entitled to the

[1] EB Docket, pp. 1 to 18.
[2] *Decision* dated October 7, 2019, and *Resolution* dated January 16, 2020, penned by Associate Justice Jean Marie A. Bacorro-Villena, concurred by Associate Justice Juanito C. Castañeda, Jr. and Associate Justice Cielito N. Mindaro-Grulla, Division Docket – Vol. 2 (CTA Case No. 9631), pp. 569 to 589, and pp. 606 to 609, respectively.

issuance of tax credit certificate from the excess unutilized input value-added tax (VAT) attributable to its VAT zero rated sales for the period January 1, 2015 to March 31, 2015 in the amount of ₱2,583,112.90. The dispositive portions thereof respectively read:

***Decision* dated October 7, 2019:**

> "**WHEREFORE,** premises considered, this Petition for Review filed by Financial Times Electronic Publishing Philippines, Inc. is **DENIED** for lack of merit
>
> **SO ORDERED.**"

***Resolution* dated January 16, 2020:**

> "**WHEREFORE,** the foregoing considered, petitioner-movant's Motion for Reconsideration filed on 23 October 2019 is **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE FACTS

Petitioner is a domestic corporation duly organized and existing under Philippine laws, with principal address at 16th Floor Net Park, 5th Avenue, E-Square, Crescent Park West, Bonifacio Global City, Taguig, Metro Manila.

On the other hand, respondent is the duly appointed CIR, empowered to perform the duties of his Office, including acting upon the protest cases and approval of claims for refund or tax credit as provided by law and implementing regulations.

On February 21, 2017, petitioner filed before the Bureau of Internal Revenue (BIR) – Revenue District No. 044, an Application for Tax Credits/Refunds. To support its claim, it also submitted a duly accomplished BIR Form 1914 and a Letter Summary of other supporting documents, both of which respondent received and stamped.

In its application for tax credit/refund, petitioner claimed for the issuance of tax credit certificates representing unutilized input taxes directly attributable to its supposed VAT zero-rated sales as declared in its VAT Returns for the first taxable quarter of calendar year (CY) 2015 (or from January 1, 2015 to March 31 2015), amounting to ₱2,583,112.90. However, due to respondent's inaction on the aforementioned claim within 120 days, petitioner's application for tax credit/refund was deemed denied in accordance with Section 112 (D) of the National Internal Revenue Code (NIRC), in relation to Revenue Memorandum Circular 54-2014.[3]

Subsequently, petitioner elevated its claim to the Court in Division via a *Petition for Review* filed on July 19, 2017 docketed as CTA Case No. 9631, and entitled *"Financial Times Electronic Publishing Philippines, Inc. v. Commissioner of Internal Revenue"*.

On September 22, 2017, respondent filed his *Answer* in CTA Case No. 9631 interposing the following defenses, to wit: (a) that petitioner has the burden of proof to not only prove its entitlement to the tax refund or credit claimed under substantive law, but also to satisfactorily substantiate the same with proper documentary evidence; and (b) that claims for refund are to be construed strictly against the claimant as the same partake the nature of exemption from taxation.

After the pre-trial conference held on January 25, 2018, the parties filed their *Joint Stipulation of Facts and Issues* on February 8, 2018, wherein the genuineness and authenticity of the following documents were admitted, namely:

1. Petitioner's BIR Certificate of Registration (COR) No. 9RC0000781891E with tax identification number (TIN) 204-611-007-00000.

2. Petitioner's accomplished BIR Form 1914 for the period of January 1, 2015 to March 31, 2015, duly stamped received by the BIR on February 21, 2017.

3. Letter Summary of the Supporting documents duly stamped and received by the BIR on February 21, 2017.

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[3] Clarifying Issues Relative to the Application for Value Added Tax Refund/Credit under Section 112 of the NIRC, as amended.

4. Letter of Authority No. eLA201500050020 dated March 1, 2017 issued to Revenue Officer Gloria Beltran, and Group Supervisor Luzviminda Sabile.

On February 19, 2018, the Court in Division approved the parties' *Joint Stipulation of Facts and Issues*. Thereafter, the Court in Division issued a *Pre-Trial Order* dated May 7, 2018.

During trial, petitioner presented two (2) witnesses, namely: (1) Paulito B. De Pano, petitioner's Financial Controller, and (2) Court-commissioned Independent Certified Public Accountant (ICPA), Emmanuel Y. Mendoza.

On July 25, 2018, petitioner filed its *Formal Offer of Evidence with Omnibus Motion for Leave* to schedule a hearing date to recall the ICPA to the witness stand to rectify errors in his report. On July 25, 2018, petitioner filed a separate *Motion for Leave* to schedule a Commissioner's Hearing for comparison and marking of petitioner's documents[4] and to admit the same as part of its *Formal Offer of Evidence*. The Court in Division resolved both motions in petitioner's favor.

Meanwhile, in the *Order* dated September 27, 2018, CTA Case No. 9631 was transferred to the Second Division pursuant to CTA Administrative Circular No. 02-2018.[5]

On December 10, 2018, petitioner filed its *Formal Offer of Evidence with Manifestation*. In his *Comment (To Petitioner's Formal Offer of Evidence)* dated December 13, 2018, respondent did not object to the admission of petitioner's evidence but reserved his objections to the admissibility, materiality and relevance of the offered exhibits.

In the *Resolution* dated January 28, 2019, the Court in Division admitted petitioner's exhibits except for Exhibit "P-25-57". On February 8, 2019, petitioner filed a *Motion for Reconsideration* and sought the admission of excluded evidence.

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[4] Exhibits "P-10-A", "P-11-A", and "P-12-A".
[5] *"Reorganizing the Three Divisions of the Court"* issued on September 18, 2018.

During the hearing held on February 13, 2019, the Court in Division granted said *Motion* and admitted Exhibit "P-25-57" as part of petitioner's exhibit. Moreover, respondent's counsel also manifested that there being no report of investigation submitted by the Revenue Officer handling the administrative claim for refund, respondent will no longer present any evidence.

On March 8, 2019, petitioner filed a *Motion for Substitution of Documentary Evidence and for Suspension of the Submission of Memorandum*, seeking to substitute its Exhibit "P-34". In the resolution dated March 15, 2019, the Court in Division granted the *Motion for Substitution of Documentary Evidence and for Suspension of the Submission of Memorandum* and suspended the period for the submission of memoranda.

Meanwhile, in the resolution dated May 10, 2019, the Court in Division denied petitioner's *Motion for Substitution of Documentary Evidence,* which sought to substitute Exhibit "P-34".

Thereafter, CTA Case No. 9631 was submitted for decision on July 15, 2019 after the filing of respondent's *Memorandum* on March 15, 2019, and petitioner's *Memorandum* on June 13, 2019.

On October 7, 2019, the Court in Division rendered the assailed *Decision*[6] denying petitioner's *Petition for Review* for lack of merit.

Dissatisfied with the Court in Division's *Decision*, petitioner filed a *Motion for Reconsideration*[7] on October 23, 2019 seeking the reversal of the *Decision* dated October 7, 2019. Respondent did not file his *Comment*[8] thereto.

In the assailed *Resolution*[9] dated January 16, 2020, the Court in Division denied petitioner's *Motion for Reconsideration* for lack of merit.

Thus, on February 5, 2020, petitioner filed the instant *Petition for Review*[10] docketed as CTA EB No. 2223.

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[6] Division Docket – Vol. 2 (CTA Case No. 9631), pp. 569 to 589.
[7] Division Docket – Vol. 2 (CTA Case No. 9631), pp. 590 to 601.
[8] Records Verification Report dated December 6, 2019, Division Docket – Vol. 2, p. 604.
[9] Division Docket – Vol. 2 (CTA Case No. 9631), pp. 606 to 609.
[10] EB Docket, pp. 1 to 18.

On February 19, 2020, the Court *En Banc* issued a *Resolution*[11] directing respondent to file its *Comment* to the *Petition for Review.*

On February 21, 2020, petitioner filed a *Manifestation and Motion*[12] praying that the Court *En Banc* consider and admit the additional furnished documents[13] as part of its *Petition for Review*, and to vacate the *Decision* dated October 7, 2019, and the *Resolution* dated January 16, 2020, and to rule that petitioner is entitled to the issuance of tax credit certificate from the excess unutilized input VAT attributable to its VAT zero rated sales for the period January 1, 2015 until March 31, 2015 in the amount of ₱2,583,112.90.

In the *Resolution* dated March 10, 2020,[14] the Court *En Banc* directed respondent to file his *Comment* to the *Petition for Review* . It appears however that respondent did not file his *Comment.*[15] Thus, the Court *En Banc* issued the *Resolution* dated October 28, 2020[16] granting petitioner's *Manifestation and Motion*, and submitting the case for decision.

Hence, this *Decision*.

ISSUE

The sole issue for resolution of the Court *En Banc* is:

> "Whether the Honorable Court's Second Division erred in ruling that petitioner is not entitled to the issuance of tax credit certificates for the excess and unutilized input value added tax (VAT), directly attributable to its value-added tax zero-rated sales from 01 January 2015 to 31 March 2015, amounting to ₱2,583,112.90."[17]

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[11] EB Docket, pp. 48 to 49.
[12] EB Docket, pp. 50 to 52.
[13] (1) Certification issued by the Register of Companies for England and Wales dated February 7, 2020; (2) Certificate of Incorporation of Financial Times (1928), Limited certified as true copy on February 7, 2020; and (3) Certificate of Change of Name certified as true copy on February 7, 2020.
[14] EB Docket, pp. 57 to 58.
[15] Records Verification Report dated October 21, 2020, EB Docket, p. 59.
[16] EB Docket, pp. 62 to 64.
[17] EB Docket, p. 6.

Petitioner's arguments:

Petitioner argues that the Court in Division erred in holding that it failed to satisfactorily establish that Financial Times Limited (FTL) is not engaged in business in the Philippines.

Petitioner insists that it has adequately discharged the burden of proving that FTL is a non-resident foreign corporation not doing business in the Philippines by presenting as evidence the Authenticated Articles of Incorporation (AOI) of FTL, Services Agreement, and testimony of Paulito B. De Pano.

According to petitioner, there must be continuity of conduct and intention to establish a continuous business before a foreign corporation is treated as doing business in the Philippines. Allegedly, FTL did not have a continuous business in the Philippines because it merely entered into a Services Agreement with petitioner.

Likewise, petitioner claims that the Certificate of Incorporation (COI) of FTL and Certificate of Change of Name (COCN) which shows that FTL was and is currently registered in England, Certification from the Registrar of Companies For England (CRCE), and SEC Certificate of Non-Registration, satisfactorily support its claim on FTL's status.

Petitioner further asserts that considering that it has presented evidence as to the status of FTL as a non-resident foreign corporation not doing business in the Philippines, respondent now has the burden to prove otherwise. According to petitioner, respondent failed to present evidence contrary to petitioner's claim.

THE COURT *EN BANC*'S RULING

The instant *Petition for Review* lacks merit.

Petitioner failed to discharge the burden of proving that FTL is a non-resident foreign corporation not engaged in business in the Philippines.

Petitioner argues that it has satisfactorily discharged its burden of proving FTL's status by presenting the FTL's Authenticated AOI, Services Agreement which show that FTL did not have a continuous business in the Philippines, and testimony of Paulito B. De Pano.

Moreover, petitioner insists that the Certification issued by David Noel Lloyd Fawcett, Notary Public of the City of London, England, states, among other things, that the COI and COCN are true and faithful photographic copies of the originals filed at the Companies Registration office, and that the CRCE has been signed by Lisa Prosser, an Authorized Officer of the Registration Office of Companies Incorporated in England and Wales.

As alleged by petitioner, said Certification is compliant with the requirement concerning a document executed in a foreign country, to be admitted in evidence, it must be certified by a secretary of embassy or legation, consul-general, consul, vice-consul or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept of said public document and authenticated by the seal of office.[18]

According to petitioner, the Apostille was issued by A. Khan of the Foreign and Commonwealth Office certifying that the Certification has been signed by David Noel Lloyd Fawcett acting in the capacity of Notary Public and bears the seal/stamp of the latter certified at London by Her Majesty's Principal Secretary of State for Foreign and Commonwealth Affairs with number APO-191769. A Certificate of Authentication in turn was issued by Voltaire O. C. Mauricio, Consul for the Embassy of the Philippines, London, United Kingdom, with the seal of his office, relative to the Apostille issued by A. Khan.

As it has discharged the burden of proving that FTL is a non-resident foreign corporation not engaged in business in the Philippines, petitioner insists that the burden of evidence has shifted

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[18] *Angelita Lopez, et al. v. Court of Appeals, et al.*, G.R. No. 77008, December 29, 1987.

to respondent to prove that FTL is engaged in business in the Philippines.

Petitioner is mistaken.

Contrary to its assertion, petitioner has not discharged its burden of proving that FTL is a non-resident foreign corporation not engaged in business in the Philippines. Thus, the burden of evidence has not shifted to respondent.

In *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.,*[19] (Deutsche case) the Supreme Court ruled that SEC Certifications of Non-Registration together with articles of association/COIs showing that an entity is registered in another country are required in order to establish an entity's status as a non-resident foreign corporation not engaged in business in the Philippines, to wit:

> "For purposes of zero-rating under Section 108 (B) (2) of the Tax Code, the **claimant must establish the two components of a client's NRFC status, *viz.*: (1) that their client was established under the laws of a country not the Philippines or, simply, is not a domestic corporation; and (2) that it is not engaged in trade or business in the Philippines. To be sure, there must be sufficient proof of *both*[20] of these components: showing not only that the clients are foreign corporations, but also are not doing business in the Philippines**.
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> Such proof must be especially required from ROHQs such as DKS. That the law expressly authorizes ROHQs to render services to local and foreign affiliates alike only stresses the ROHQ's burden to distinguish among their clients' nationalities and actual places of business operations and establish that they are seeking refund or credit of input VAT only to the extent of their sales of services to foreign clients doing business outside the Philippines.

[19] G.R. No. 234445, July 15, 2020.
[20] Italics by the Supreme Court.

To recall, the CTA found that the SEC Certification of Non-Registration of Company and Authenticated Articles of Association and/or Certificates of Registration/Good Standing/Incorporation sufficiently established the NRFC status of 11 of DKS's affiliates clients.

The Court upholds these findings.

The Court accords the CTA's factual findings with utmost respect, if not finality, because the Court recognizes that it has necessarily developed an expertise on tax matters. Significantly, both the CTA Division and CTA *En Banc* gave credence to the aforementioned documents as sufficient proof of NRFC status. The Court shall not disturb its findings without any showing of grave abuse of discretion considering that the members of the tax court are in the best position to analyze the documents presented by the parties.

In any case, after a judicious review of the records, the Court still do not find any reason to deviate from the court *a quo*'s findings. To the Court's mind, **the SEC Certifications of Non-Registration show that their affiliates are foreign corporations. On the other hand, the articles of association/certificates of incorporation stating that these affiliates are registered to operate in their respective home countries, outside the Philippines are *prima facie* evidence that their clients are not engaged in trade or business in the Philippines**.

Proof of the above-mentioned second component sets the present case apart from *Accenture, Inc. v. Commissioner of Internal Revenue* and *Sitel Philippines Corp. v. Commissioner of Internal Revenue*. In these cases, the claimants similarly presented **SEC Certifications and client service agreements. However, the Court consistently ruled that documents of this nature only establish the *first*[21] component (*i.e.*, that the affiliate is foreign). The absence of any other competent evidence (e.*g.*, articles of association/ certificates of incorporation) proving the**

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[21] *Id.*

> ***second*[22] component (*i.e.*, that the affiliate is not doing business here in the Philippines) shall be fatal to a claim for credit or refund of excess input VAT attributable to zero-rated sales.**" *(Emphasis supplied)*

In the present case, petitioner was not able to comply with the second component required under the *Deutsche* case to prove that FTL is a non-resident foreign corporation not engaged in business in the Philippines.

While petitioner was able to present FTL's SEC Certificate of Non-Registration and the Services Agreement between petitioner and FTL, it was not able to present FTL's duly authenticated articles of association/COI to prove that FTL is not engaged in trade or business in the Philippines.

We agree with the Court in Division in ruling that pursuant to *Sitel Philippines Corporation (Formerly Clientlogic Phils., Inc.) v. Commissioner of Internal Revenue*,[23] as reiterated in the *Deutsche* case, the Services Agreement between petitioner and FTL did not establish that FTL was not engaged in business in the Philippines. The Services Agreement, together with FTL's SEC Certificate of Non-Registration, merely established the first component, *i.e.*, that FTL is established under the laws of a foreign country.

Moreover, the testimony of Paulito B. De Pano that FTL is a non-resident person not engaged in business who was outside the Philippines when the services were performed is self-serving. Petitioner failed to satisfy the second component by presenting FTL's duly authenticated articles of association/COI stating that FTL is registered to operate in its home country, which is *prima facie* evidence that FTL is not engaged in trade or business in the Philippines.

We do not agree with petitioner's claim that the alleged duly Authenticated AOI of FTL, which consists of the COI, COCN and CRCE,[24] were properly authenticated.

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[22] *Id.*
[23] G.R. No. 201326, February 8, 2017.
[24] Division Docket – Vol. 1 (CTA Case No. 9631), pp. 393 to 398.

Rule 132, Section 24 of the Revised Rules on Evidence provides, to wit:

> "SECTION 24. *Proof of Official Record.* — The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. **If the office in which the record is kept is in foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office**." *(Emphasis supplied).*

From the foregoing, it is clear that if the record of the public document is in a foreign country, the copy of the public document must be accompanied with a certificate that the attesting officer has the legal custody thereof. The certificate may be issued by any of the authorized Philippine embassy or consular officials stationed in the foreign country in which the record is kept, and authenticated by the seal of his office. The attestation must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be, and must be under the official seal of the attesting officer.[25]

As correctly pointed out by the Court in Division, it must be the appropriate officer of the Philippine Embassy in England who should certify the COI, COCN, and CRCE, or attest to the foreign certifying officer's authority to authenticate the same.

In this case, the Certificate of Authentication issued by Voltaire O. C. Mauricio, Consul for the Embassy of the Philippines, London, United Kingdom, **only endorsed A. Khan's authority to authenticate David Noel Lloyd Fawcett's Certification**, without making any reference to the COI, COCN, and CRCE. Neither does the Apostille issued by A. Khan mention the COI, COCN, and CRCE. NB

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[25] *Manufacturers Hanover Trust Co. and/or Chemical Bank v. Rafael Ma. Guerrero*, G.R. No. 136804, February 19, 2003.

Clearly, the COI, COCN and CRCE were not authenticated in accordance with Rule 132, Section 24 of the Revised Rules on Evidence. It bears noting that what was authenticated by Voltaire O. C. Mauricio, Consul for the Embassy of the Philippines, London, United Kingdom was the Apostille certifying to the authenticity of the Certification.

Moreover, petitioner avers that the Court *En Banc* should consider FTL as a non-resident corporation not engaged in business in the Philippines because it has presented SEC Certificate of Non-Registration and the Certificate of Authentication with the attached Certification and Apostille to which the COI, COCN and CRCE are attached. Allegedly, these have been ruled as sufficient evidence to consider an entity as a non-resident foreign corporation not doing business in the Philippines, pursuant to this Court's ruling in *AIG Shared Services Corporation (Philippines) [Formerly: Chartis Technology and Operations Management Corporation (Philippines)] v. Commissioner of Internal Revenue.* (*AIG* case)[26]

We do not agree.

The doctrine of *stare decisis* applies only to cases decided by the Supreme Court. It becomes operative only when judicial precedents are set by pronouncements by the Supreme Court to the exclusion of lower courts.[27] Notably, the AIG case invoked by petitioner is a decision rendered by this Court.

It must be stressed that judicial decisions which form part of our legal system are only decisions of the Supreme Court.[28] Suffice it to state that decisions of the CTA are not given the same level of recognition.[29] Hence, the *AIG* case cannot be considered as a binding precedent.

In view of the foregoing, We find no reason to vacate the assailed *Decision* and *Resolution*.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is hereby **DENIED** for lack of merit.

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[26] CTA Case No. 9100, January 24, 2019.
[27] *United Coconut Planters Bank v. Spouses Walter Uy and Lily Uy*, G.R No. 204039, January 10, 2018.
[28] *Government Service Insurance System vs. Cadiz*, G.R. No. 154093, July 8, 2003.
[29] *San Roque Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 203249, July 23, 2018.

The *Decision* dated October 7, 2019 and the *Resolution* dated January 16, 2020 by the Second Division of this Court in CTA Case No. 9631 are hereby **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

(On Leave)
MARIAN IVY F. REYES-FAJARDO
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