REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

AMADEUS MARKETING PHILIPPINES, INC.,
Petitioner,

- *versus* -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA *EB* NO. 2598
(CTA Case No. 10094)

Members:

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

Promulgated:

APR 24 2024 11:56 am

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RESOLUTION

***MODESTO-SAN PEDRO, J.*:**

For this Court *En Banc*'s resolution is petitioner's *Motion for Reconsideration*, filed on October 5, 2023,[1] on the *Decision*, dated September 13, 2023, ("Assailed *EB* Decision"), which denied the Petition for Review and affirmed the Decision and Resolution of the Court's Second Division dated November 17, 2021 and April 4, 2022, respectively. Respondent did not file his comment, per the Court's Records Verification dated December 11, 2023.[2]

The Assailed *EB* Decision upheld the Court in Division in ruling that petitioner is not engaged in zero-rated sales pursuant to *Section 108(B)(2) of the National Internal Revenue Code of 1997, as amended ("the Tax Code").*

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[1] *EB* Docket, pp. 136 to 152.
[2] *Id.*

In the present Motion, petitioner, again insists that the Court in Division erroneously ruled that it failed to overcome respondent's finding that Amadeus Spain is doing business in the Philippines. Petitioner highlights that respondent's sole basis in denying the administrative claim for refund is that Amadeus Spain is doing business in the Philippines as ruled by this Court in Court of Tax Appeals ("CTA") *EB* No. 1532, to wit:

> However, the claim for VAT refund cannot be approved considering that the services rendered by the above taxpayer do not qualify as zero-rated for VAT purposes, based on facts and circumstances Amadeus IT Group S.A. is doing business in the Philippines, pursuant to C.T.A. En Banc Case No. 1532 dated April 5, 201[8], so ordered. . . .[3]

Petitioner asserts that respondent failed to present proof that CTA *EB* No. 1532 already attained finality, where the principle of *res judicata* may apply, and thereby bind petitioner.

Petitioner additionally points out that said *EB* case, aside from not yet attaining finality, is no longer applicable herein because the Amadeus Commercial Organization ("ACO") Agreement involved therein is dated August 3, 1997, as opposed to the ACO Agreement involved in present case, which is dated January 1, 2015.

Further, petitioner faults respondent for not presenting any proof that petitioner is owned and controlled by Amadeus Spain.

Petitioner submits that the Court in Division erroneously appreciated the terms in the ACO Agreement as tantamount to Amadeus Spain having full control over petitioner.

On this respect, petitioner reiterates that mere investment as shareholder is expressly exempted by the implementing rules of Republic Act No. 7042 (Foreign Investment Act) from the definition of doing business in Philippines and that the appointment of a distributor in the Philippines is not sufficient to constitute "doing business" unless it is under the full control of the foreign corporation. Petitioner asserts that the ACO Agreement did not fully control how petitioner would go about its business of distributing/marketing Amadeus Products. On the contrary, the provisions of the ACO Agreement actually show petitioner's independence in performing its contractual obligations.

Lastly, petitioner insists that it presented evidence establishing that it is engaged in zero-rated sales.

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[3] Exhibit "P-40" (BIR Letter received on May 21, 2019 denying Petitioner's Claim for VAT Refund covering 1st to 4th quarters of 2017), Division Docket Vol. II, p. 1060.

Petitioner's arguments lack merit.

Petitioner asserts that it did not fail to overcome respondent's finding that Amadeus Spain is doing business in the Philippines. Instead, petitioner repeatedly points out respondent's fault in not providing proof that his factual findings for denying the administrative claim for refund have proper basis.

When a judicial claim for refund or tax credit in the CTA is an appeal of an unsuccessful administrative claim, the taxpayer has to convince the CTA that the [respondent] CIR had no reason to deny its claim. It thus becomes imperative for the taxpayer to show the CTA that not only is it entitled under substantive law to its claim for refund or tax credit, but also that it satisfied all the documentary and evidentiary requirements for an administrative claim. It is thus crucial for a taxpayer in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place.[4]

Indeed, the burden is on petitioner, as the taxpayer-claimant, to show that respondent should not have denied its administrative claim for refund, and it cannot simply allege that respondent failed to prove the propriety of his basis to deny the claim. Simply stated, it is petitioner who should prove that respondent was wrong in denying the claim, and not respondent having to prove that his basis to deny the claim is proper.

Petitioner failed in this respect. Notably, it did not present any evidence to show that CTA *EB* No. 1532 has not yet attained finality and that the ACO Agreement in said case is no longer applicable in the present case.

Generally, courts are not authorized to "take judicial notice of the contents of the records of other cases even when said cases have been tried or are pending in the same court or before the same judge." They may, however, take judicial notice of a decision or the facts prevailing in another case sitting in the same court if: (1) the parties present them in evidence, absent any opposition from the other party; or (2) the court, in its discretion, resolves to do so.[5] Since petitioner did not present in evidence said CTA *EB* No. 1532 decision, this Court *En Banc* cannot consider, much less give weight to, petitioner's allegations respecting the same.

Anent the argument that respondent failed to show that petitioner is owned and controlled by Amadeus Spain, We emphasize that while Amadeus Spain's 100% ownership over petitioner is indicative that the former owns and controls the latter, it is not the sole reason why the Court ruled that Amadeus Spain is doing business in the Philippines through petitioner. This matter was

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[4] *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*, G.R. No. 207112, December 8, 2015.
[5] *Land Bank of the Phils. v. Yatco Agricultural Enterprises*, G.R. No. 172551, January 15, 2014.

already substantially discussed in the assailed Decision of the Court's Second Division, as upheld by the Court *En Banc*, relying on the relevant provisions in the ACO Agreement, to wit:

> First, the Court notes that Amadeus Philippines is a wholly-owned subsidiary of Amadeus Spain.
>
> Second, to revisit the ACO Agreement between the subsidiary and its parent, it bears stressing that Amadeus Philippines is tasked to promote, make available and facilitate access to the Amadeus System to the subscribers located in the Amadeus ACO Territory (Philippines) and to act as a neutral agent for all Amadeus Spain participants and subscribers under the agreement. More significantly, *the ACO Agreement is replete with provisions that govern Amadeus Spain's control and participation in running the marketing and distribution of the Amadeus System in the Philippines...*
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> . . . .
>
> (Emphasis Ours)

Further, in addressing petitioner's contention that Amadeus Spain does not have full control over it and that it has independence in performing its contractual obligations, the Resolution of the Court's Second Division, dated April 4, 2022, so states:

> Indeed, the restrictive nature of the ACO Agreement shows that it allowed Amadeus Spain through and together with Amadeus Philippines to further its purpose in the Philippines.

While petitioner maintains its independence in its business dealings in the Philippines, the manner of conducting its business is restrictive and must be done in accordance with the terms of the ACO Agreement. This effectively limits petitioner's operations so as to be consistent with the furtherance of Amadeus Spain's purpose in the Philippines.

To further put this matter into rest, the Court *En Banc* elaborates the application of the two tests in determining whether a foreign corporation is doing business in the Philippines, as held in *Mentholatum Co., Inc. v. Mangaliman*[6] ("*Mentholatum* case"), in addition to those already discussed by the Court's Second Division.

In the *Mentholatum* case, the High Court ruled that there is no general rule or governing principle that can be laid down as to what constitutes "doing," "engaging in," or "transacting" business. Indeed, each case must be judged in light of its peculiar environmental circumstances. The true test, however, seems to be whether the foreign corporation is continuing the body

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[6] G.R. No. L-47701, June 27, 1941.

or substance of the business or enterprise for which it was organized or whether it has substantially retired from it and turned it over to another. The term implies a continuity of commercial dealings and arrangements and contemplates, 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, the purpose and object of its organization.

On the other hand, *Agilent Technologies Singapore (Pte.), Ltd. v. Integrated Silicon Technology Phil. Corp.*[7] has broken down the foregoing test into two general tests to determine whether or not a foreign corporation can be considered as "doing business" in the Philippines, thus:

> The first of these is the *substance* test, thus:
>
> > The true test [for doing business], however, seems to be whether the foreign corporation is *continuing the body of the business or enterprise for which it was organized* or whether it has substantially retired from it and turned it over to another.
>
> The second test is the *continuity* test, expressed thus:
>
> > The term [doing business] implies a *continuity of commercial dealings and arrangements*, and contemplates, to that extent, the performance of acts or works or the exercise of some of the functions normally incident to, and *in the progressive prosecution of, the purpose and object of its organization.*

(Emphases Ours)

We now test Amadeus Spain's circumstances against the substance and continuity tests.

Amadeus Spain has these two objectives, among others, as a corporation, based on its By-Laws:[8]

ARTICLE 2.- CORPORATE OBJECT

1. The Company's object is the performance of the following business activities, both in Spain and abroad:

(a) transfer of data from and/or through computer reservation systems, including offers, reservations, tariffs, transport tickets and/or similar, as well as any other services, including information technology services, all of them mainly related to the transport and tourism industry, provision of computer services and data processing systems, management and consultancy related to information systems;

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[7] G.R. No. 154618, April 14, 2004.

[8] Exhibit "P-43", Division Docket Vol. II, p. 521.

> (b) provision of services related to the supply and distribution of any type of product through computer means, including manufacture, sale and distribution of software, hardware and accessories of any type;
>
> . . . .

On the other hand, petitioner's Primary Purpose as set forth in the Amended Articles of Incorporation is "to market an automated computerized reservations system "Amadeus Global Travel Distribution," which incorporates a software package which performs various functions, including real-line airlines seat reservations, schedules bookings for a variety of air, boat, train, package tours, car rental and hotel services, automatic ticketing, and fare pricing displays in the Philippines."[9]

The exclusivity of petitioner's primary purpose, limiting its marketing activities only for the "Amadeus Global Travel Distribution" is apparent. The said automated computerized reservations system is referred to as the AMADEUS System in the ACO Agreement.[10] Simply stated, petitioner is created for the sole purpose of marketing the AMADEUS System in the Philippines.

Notably, petitioner's purpose and object to market the AMADEUS System in Philippines is consistent with the purpose and object of Amadeus Spain to distribute the system.

In fact, Amadeus Spain's purpose and object to distribute the system is also recited in the ACO Agreement, thus:

> **Whereas**, AMADEUS, within the AMADEUS Group structure, is responsible for, among other marketing and commercial activities, the widespread availability of the computerized information, and products and services stored in the AMADEUS System;

Based on the foregoing, Amadeus Spain is doing business in the Philippines in accordance with the substance test.

With respect to the continuity test, it is apparent that Amadeus Spain contemplated the continuity of its commercial dealings and arrangements in the Philippines by entering into an ACO Agreement with petitioner, where it is recited that:

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[9] Exhibit "P-2", *id.* at 972.
[10] Exhibit "P-50", *id.* at 486.

> **Whereas**, AMADEUS ACO, is willing to promote, make available and facilitate access to the AMADEUS System to the Subscribers located in the AMADEUS ACO Territory and act as a neutral agent for all AMADEUS participants and subscribers under this agreement;

In light of the foregoing circumstances, We can conclude that Amadeus Spain is doing business in the Philippines.

All told, it is not entirely on the matter of full ownership which led this Court *En Banc* and Second Division to rule that Amadeus Spain is doing business in the Philippines. Rather, We give strong weight to the substance and continuity tests in ultimately ruling that Amadeus Spain is indeed doing business in the Philippines and thereby disqualifying petitioner from being engaged in zero-rated sales under *Section 108(B)(2) of the Tax Code*.

On a final note, the Court *En Banc* stresses that the assailed Decision and Resolution of the Court's Second Division did not reach its ruling that petitioner failed to prove it is engaged in zero-rated sales just because it failed to overcome respondent's factual findings. The Court made its own factual findings by meticulously appreciating all the relevant evidence submitted by petitioner and discussed the merits thereof in the said Decision and Resolution, and, ultimately, in the Assailed *EB* Decision.

All told, petitioner failed to impress the Court with cogent arguments to justify the reversal, amendment, or modification of the Court *En Banc*'s Decision, dated September 13, 2023. The same shall therefore not be disturbed.

ACCORDINGLY, in light of the foregoing considerations, the instant *Motion for Reconsideration* is **DENIED** for lack of merit.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
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