REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PROCTER & GAMBLE INTERNATIONAL OPERATIONS SA-ROHQ,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 2740
(CTA Case No. 9768 & 9829)

Present:

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

Promulgated:

SEP 13 2024 2:05 p.m.

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DECISION

RINGPIS-LIBAN, *J.*:

The Case

Before the Court *En Banc* is a *Petition for Review*[1] filed by Procter & Gamble International Operations SA-ROHQ under Section 18 of Republic Act No. (RA) 1125 as amended by RA 9282. The petition assails the October 5, 2022 Decision[2]

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[1] *Rollo*, pp. 5-32.
[2] *Rollo*, pp. 41-79. Penned by Associate Justice Marian Ivy Reyes-Fajardo, with a *Dissenting Opinion* by Presiding Justice Roman G. Del Rosario and a *Separate Concurring Opinion* by Associate Justice Catherine T. Manahan.

and the February 21, 2023 Resolution[3] of the Court of Tax Appeals (CTA) First Division. The relevant portions of the assailed decision and resolution read:

October 5, 2022 Decision

"In view of petitioner's failure to prove that its alleged VAT zero-rated sales were performed in the Philippines, petitioner failed to show that it is entitled to the claim for refund or tax credit under the substantive law. A claim for unutilized input value-added tax is in the nature of a tax exemption. Thus, strict adherence to the conditions prescribed by the law is required of the taxpayer. Refunds need to be proven and their application raised in the right manner as required by law.

Consequently, it becomes unnecessary to determine petitioner's compliance with the remaining requisites for granting a refund for the subject periods.

WHEREFORE, in light of the foregoing considerations, the *Petitions for Review* are **DENIED**, for insufficiency of evidence."

February 21, 2023 Resolution

"**WHEREFORE**, petitioner's *Motion for Reconsideration (Re: Decision dated October 5, 2022)* is **DENIED** for lack of merit.

SO ORDERED."

The Parties

Petitioner is the Philippine Regional Operating Headquarters (ROHQ) of a Procter & Gamble International Operations SA,[4] a *multinational* company organized and existing under and by virtue of the laws of Switzerland. It is licensed by the Securities and Exchange Commission (SEC) to transact business in the Philippines under SEC Registration No. FS201104304 dated March 24, 2011, with registered office address at 11th Floor, Net Park, 5th Avenue, Crescent Park West, Bonifacio Global City, Taguig 1634. It is also registered with the Bureau of Internal Revenue (BIR), as a VAT taxpayer, with Tax Identification Number (TIN) 406-931-778-00000.[5]

Respondent is the duly appointed Commissioner of Internal Revenue (CIR) vested under the appropriate laws with the authority to carry out the functions, duties, and responsibilities of said office, including *inter alia*, the duty to act upon and approve claims for refund pursuant to the provisions of the

[3] *Id.*, pp. 89-92.
[4] *SEC Amended License*, Exhibit P-1.1, Docket, Vol. V, p. 2377.
[5] October 5, 2022 Decision, *Rollo*, p. 42.

National Internal Revenue Code of 1997 (NIRC), as amended, and other tax laws, rules and regulations. Respondent holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.[6]

The Facts

Petitioner is engaged in "corporate finance advisory services; training and personnel management; logistics services; technical support and maintenance; data processing and communication; and, business development".[7]

In 2011, petitioner entered into several *Services Agreements* with various affiliated companies of The Procter & Gamble Company, USA (P&G USA), which are engaged in business support / distribution / export / import /manufacturing / toll manufacturing / marketing / procurement / production / provision of services / selling / trading of various products in other countries worldwide. Under these agreements, petitioner rendered *financial service and solutions services* to these affiliates and, in return, was paid at stipulated *service fees*[8] for the purpose of improving overall operational efficiency.

On September 18, 2017, petitioner filed with the BIR-Large Taxpayers Services Regular Audit Division (BIR-LTRAD), an *administrative claim* for refund of and/or the issuance of tax credit certificate (TCC) of its unutilized input VAT attributable to zero-rated sales of service during the 1st quarter of FY 2016 covering the period from July 1, 2015 to September 30, 2015, in the total amount of PhP37,374,865.93[9] (1st quarter- FY2016).

Subsequently, on December 5, 2017, petitioner also filed with the BIR-LTRAD another *administrative claim* for the refund and/or issuance of tax credit certificate for its unutilized input VAT attributable to zero-rated sales of service during the 2nd quarter of FY 2016 covering the period from October 1, 2015 to December 31, 2015, in the total amount of PhP14,367,836.27[10] (2nd quarter - FY2016)

Respondent has *neither* approved *nor* denied petitioner's *administrative claim* for the 1st quarter- FY2016.[11]

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[6] *Id.*
[7] *SEC Amended License*, Exhibit P-1.1, Docket, Vol. V, p. 2377.
[8] Exhibits P-4.2 to P-4.45, Docket, Vol. V, pp. 2303-2307; see the contract Preambles, pp. 2402, 2419, 2437, 2457, 2473, 2489, 2507, 2528, 2554, 2566, 2584, 2598, 2614, 2650, 2665, 2685, 2702, 2720, 2737, 2755, 2773, 2790, 2809, 2827, 2846, 2864, 2882, 2900, 2919, 2939, 2953, 2980, 2993, 3014, 3036 (Exhibit P-4.36 was entered into in the year 2014), 3059, 3079, 3098, 3120, 3142, 3160, 3177, 3191, 3027 (Exhibit P-4.44 was entered into in the year 2015), 3231 (Exhibit P-4.45 was entered into in the year 2015).
[9] *Id.*, pp. 42-43.
[10] *Id.*, p. 43.
[11] *Id.*

However, on April 2, 2018, petitioner received respondent's letter dated March 5, 2018, *denying* its *administrative claim* for the 2nd quarter of FY 2016.[12]

CTA Case No. 9768 (1st quarter - FY 2016)

On February 14, 2018, alleging inaction, petitioner filed a *Petition for Review*, which was raffled to the CTA Second Division.[13]

On April 26, 2018, respondent filed an *Answer*.[14]

The parties filed their *Pre-Trial Briefs*.[15]

Thereafter, petitioner filed an *Omnibus Motion (I. Motion to Consolidate Cases; and II. Motion to Defer Pre-Trial Conference)*.[16]

CTA Case No. 9829 (2nd quarter - FY 2016)

On April 30, 2018, petitioner filed a *Petition for Review*, which was raffled to the CTA Third Division.[17]

On June 4, 2018, petitioner filed a *Motion to Consolidate*, CTA Case No. 9829 with CTA Case No. 9768.[18]

In a *Resolution* dated August 22, 2018, the Court's Third Division granted petitioner's *Motion to Consolidate*, and the present cases were consolidated, subject to the conformity of the Court's Second Division.[19]

On August 24, 2018, respondent filed her *Answer*.[20]

On August 30, 2018, respondent submitted the *BIR Records* of this case.[21]

Consolidated CTA Cases (Nos. 9768 and 9829)

[12] *Id.*
[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] *Id.*
[17] *Id.*, p. 44.
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id.*

In the *Resolution* dated September 4, 2018, the Court's Second Division stated that it had no objection to the *Resolution* of the Court's Third Division, which consolidated CTA Case No. 9829 with CTA Case No. 9768, the case bearing the lower number.[22]

However, the consolidated cases were transferred to the First Division due to reorganization authorized by CTA Administrative Circular No. 02-2018 dated September 18, 2018.[23]

On September 21, 2018, petitioner filed its *Pre-Trial Brief*, while respondent filed a *Consolidated Pre-Trial Brief* on November 8, 2018.[24]

On November 15, 2018, the *Pre-Trial Conference* was held.[25]

On December 5, 2018, the parties filed their *Joint Stipulation of Facts and Issues*, which the Court approved in the *Resolution* dated December 20, 2018.[26]

On February 19, 2019, the Court issued the *Pre-Trial Order*.[27]

During trial, petitioner presented Mr. Carlos Ben C. Ignacio, petitioner's Comptroller and Compliance Manager; and Mr. Jay A. Ballesteros, the Court-commissioned Independent Certified Public Accountant (ICPA).[28]

The Report of the ICPA was submitted to the Court on March 22, 2019.[29]

On May 16, 2019, petitioner filed its *Formal Offer of Evidence*, to which respondent filed her *Comment (on Petitioner's Motion to Amend Pre-Trial Order)* on May 22, 2019.[30]

In the *Resolution* dated August 15, 2019, the Court admitted petitioner's offered exhibits, except for the following:

1. Exhibits "P-4," "P-6.5," "P-6.7," "P-6.8," "P-6.10," "P-6.22," "P-6.23," "P-7.22," "P-7.23," "P-21.9," and "P-21.12," for failure to present their originals for comparison; *and*,

2. Exhibits "P-6.42," "P-20-26," "P-20-27," "P-20-47," "P-20-65," "P-20-84," "P-20-93," "P-20-96," "P-20-113," "P-20-

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[22] *Id.*
[23] *Id.*
[24] *Id.*, p. 45.
[25] *Id.*
[26] *Id.*
[27] *Id.*
[28] *Id.*
[29] *Id.*
[30] *Id.* Should have been entitled "*Comment to Petitioner's Formal Offer of Evidence*" by respondent.

117," "P-20-118," "P-20-127," "P-20-138," "P-20-141," "P-20-144," "P-20-154," "P-20-158," "P-20-159," "P-20-160," "P-20-182," "P-20-183," "P-20-184," "P-20-186," "P-20-190," "P-20-191," "P-20-192," "P-20-203," "P-20-204," "P-20-271," and "P-22-272," for failure of document formally offered and identified to correspond with the document marked.[31]

On June 7, 2019, the Court issued an *Amended Pre-Trial Order.*[32]

On September 11, 2019, petitioner filed its *Omnibus Motion [(i) Motion for Reconsideration Re: Resolution dated August 15, 2019; (ii) Motion for Leave of Court to Recall Witness]*. Respondent failed to file his comment thereto.[33]

In the *Resolution* dated January 23, 2020, the Court granted petitioner's *Motion for Leave of Court to Recall Witness.* Thus, the Court-commissioned ICPA, Mr. Jay A. Ballesteros, was recalled.[34]

In the *Resolution* dated November 24, 2020, the Court partially granted petitioner's *Motion for Reconsideration Re: Resolution dated August 15, 2019*, and admitted Exhibits "P-6.22," "P-6.23," "P-7.22," "P-7.23," "P-20-26," "P-20-27," "P-20-47," "P-20-65," "P-20-84," "P-20-93," "P-20-96," "P-20-113," "P-20-117," "P-20-118," "P-20-127," "P-20-138," "P-20-141," "P-20-144," "P-20-154," "P-20-158," "P-20-159," "P-20-160," "P-20-182," "P-20-183," "P-20-184," "P-20-186," "P-20-190," "P-20-191," "P-20-192," "P-20-203," "P-20-204," "P-20-271," "P-22-272," "P-21.9," and "P-21.12"; but still denied the following:

1. Exhibits "P-4," "P-6.5," "P-6.7," "P-6.8," "P-6.10," and "P-6.22," for failure to present their originals for comparison; *and*,

2. Exhibits "P-6.42", for failure of document formally offered and identified to correspond with the document marked.[35]

Petitioner then rested its case.[36]

Respondent presented Revenue Officers Carolyn Mendoza (CTA Case No. 9768) and Ms. Olivia Sison (CTA Case No. 9829) as witnesses.[37]

On February 11, 2021, respondent filed a *Formal Offer of Evidence*, to which petitioner filed its *Comment (Re: Respondent's Formal Offer of Evidence)* on March 2, 2021.[38]

[31] *Id.*, p. 46.
[32] *Id.*
[33] *Id.*
[34] *Id.*
[35] *Id.*, pp. 46-47.
[36] *Id.*, p. 47.
[37] *Id.*
[38] *Id.*

In the *Resolution* dated June 15, 2021, the Court admitted respondent's offered exhibits.[39]

On July 23, 2021, respondent filed her *Memorandum*, while on July 30, 2021, petitioner filed its *Memorandum*.[40]

The consolidated cases were then submitted for decision on October 27, 2021.[41]

Hence, the assailed October 5, 2022 *Decision* and February 21, 2023 *Resolution*.

Proceedings Before the CTA En Banc

On March 21, 2023, petitioner filed a *Motion for Extension of Time to File Petition for Review*.[42]

On March 23, 2023, the Court *En Banc* issued a *Minute Resolution* granting petitioner a final and non-extendible period of fifteen (15) days from March 21, 2023, or until April 5, 2023, within which to file its petition.[43]

On April 4, 2023, petitioner filed its *Petition for Review*.[44]

On April 17, 2023, petitioner filed its *Submission* with attached certified true copy of the authenticated/apostilled *Special Power of Attorney* dated March 27, 2023 in satisfaction of its undertaking in the petition.[45]

On May 22, 2023, the Court issued the *Resolution*, which noted the *Submission* and ordered respondent to file a comment on the petition.[46]

On June 9, 2023, respondent filed the *Manifestation with Motion*, which stated that the counsels of record at the Litigation Division, BIR National Office did not receive a copy of the petition because it was served on Revenue Region No. 8A instead.[47]

On June 23, 2023, petitioner filed the *Manifestation* with attached copy of the petition and furnished a copy of the same to the counsels of record.[48]

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[39] *Id.*
[40] *Id.*
[41] *Id.*
[42] *Id.*, pp. 1-3.
[43] *Id.*, p. 4.
[44] *Id.*, pp. 5-32.
[45] *Id.*, pp. 93-95.
[46] *Id.*, pp. 99-100.
[47] *Id.*, pp. 101-104.
[48] *Id.*, pp. 107-109.

On September 13, 2023, the Court issued the *Resolution*, which (a) *noted* that despite receipt of the copy of the petition respondent failed to file a comment thereon and, thus, was deemed to have waived the right to file the same; and (b) *submitted* the case for decision.[49]

Issues/Petitioner's Arguments

Petitioner assails the decision, which denied its petitions for *insufficiency of evidence*. It submits that it has presented both testimonial and documentary evidence to sufficiently establish its entitlement to refund or the issuance of a TCC for its excess and unutilized input VAT for the period of the claim.

Particularly, it asserts that:

- It sufficiently proved that the services it rendered to its client-affiliates were performed *in* the Philippines.

- It presented sufficient evidence to establish that the recipient of the services are persons engaged in business conducted *outside* the Philippines or *nonresident persons who are outside* the Philippines when the services were performed; *and*,

- It sufficiently proved that the discrepancy found in the schedule of *Comparison of Zero-Rated Official Receipts against Certificates of Inward Remittance* pertained to withholding taxes, billing adjustments, and reimbursements.

The Ruling of the Court *En Banc*

This 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 procedural but jurisdictional aspect.

Petitioner received a copy of the assailed decision on October 13, 2022.[50] Thus, under Rule 15 Section 1 of the RRCTA, petitioner had fifteen (15) days to file a motion for reconsideration of the decision, or until October 28, 2022, which the petitioner did.[51]

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[49] *Id.*, pp. 206-208.
[50] Division Docket, Vol. VII, p. 4529.
[51] Petitioner filed its *Motion for Reconsideration (Re: Decision dated October 5, 2022)* on October 28, 2022; Division Docket, Vol. VII, p. 4578.

This petition was filed under Section 18 of RA 1125, as amended by RA 9282. Section 18 of RA 1125, as amended by RA 9282[52] in relation to Rule 8 Section (b) of the 2005 RRCTA,[53] provides that a party may appeal 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 March 6, 2023, petitioner's counsel received the February 21, 2023 *Resolution*, which denied petitioner's *Motion for Reconsideration (Re: Decision dated October 5, 2022)*.[54] Thus, it had fifteen (15) days from March 6, 2023 or until March 21, 2023 to file a petition or a motion for an extension to file a petition. Within the deadline, petitioner filed a *Motion for Extension of Time to File Petition for Review* on March 21, 2023.[55] The motion was granted in the *Minute Resolution* dated March 23, 2023,[56] which gave petitioner until April 5, 2023 to file its petition.

Accordingly, the *Petition for Review* filed on April 4, 2023 is clearly within the reglementary period.

The Court *En Banc* can properly take cognizance of the present case.

Petitioner failed to establish that the services it rendered to its client-affiliates were performed only in the Philippines.

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[52] 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.*

[53] SEC. 3. *Who may appeal; period to file petition.* —

xxx xxx xxx

(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.

[54] Notice of Resolution, *Rollo*, p. 87.
[55] *Rollo*, pp. 1-3.
[56] *Rollo*, p. 4.

Petitioner anchored its refund claim on Section 108(B)(2)[57] in relation to Sections 110(B),[58] 112(A) and (C)[59] of the NIRC, as amended. It appealed the

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[57] "**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 the gross sales derived from the sale or exchange of services, including the use or lease of properties.

xxx xxx xxx

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

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

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

xxx xxx xxx"

[58] "**SEC. 110. *Tax Credits.*** –

(A) Creditable Input Tax. –

xxx xxx xxx

(B) Excess Output or Input Tax. - If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the Vat-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters. *Provided, however,* That any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.

[59] ***SEC. 112. Refunds of Input Tax.*** -

(A) Zero-rated or Effectively Zero-rated Sales. - Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales. *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B) (6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

xxx xxx xxx

(C) Period within which Refund of Input Taxes shall be Made. - In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: Provided, That for this purpose, the VAT refund claims shall be classified into low-, medium-, and high-risk claims, with the risk classification based on amount decision, which *denied* its claim, and questions the CTA First Division's appreciation of the evidence that was presented to prove that its services to these affiliates were performed here in the Philippines.

The Court notes that petitioner does *not* dispute that Section 108(B)(2) requires that it must carry out these services *in the Philippines* in order for these sales of services to qualify as zero-rated sales. Petitioner contends, however, that the *unrebutted* testimony of its Comptroller and Compliance manager[60] was already *sufficient* to prove that its services were actually performed in the Philippines:

> "Q16: What is Petitioner's basis for its claim for input VAT refund?
>
> A: Under Section 112(A), 1997 National Internal Revenue Code of 1997 (the 'Tax Code'), Petitioner is entitled to the refund of its excess and unutilized input taxes on its purchases of goods and services which are attributable to zero-rated sales of services to nonresident entities engaged in business conducted outside the Philippines, 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).
>
> Q17: How did Petitioner incur the input VAT credits subject of its claim for refund for the Period of Claim?
>
> A: <u>For the Period of Claim, Petitioner rendered services in the Philippines to entities located and conducting business outside the Philippines</u>. For and in consideration of these services, Petitioner was paid in acceptable foreign currencies and accounted for in accordance with rules and regulations of the BSP." (*Underscoring supplied*)

The Court is *not* convinced.

First, the issue presented to the Court is *not* one of admissibility of the testimonial evidence quoted *but of its weight.* Admissibility refers to the question of whether certain pieces of evidence are to be considered at all, while probative value refers to the question of whether the admitted evidence proves an issue.

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of VAT refund claim, tax compliance history, frequency of filing VAT refund claims, among others: Provided, further, that medium- and high-risk claims shall be subject to audit or other verification processes in accordance with the Bureau of Internal Revenue's national audit program for the relevant year: *Provided*, finally, That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial within the ninety (90)-day period.

In case of full or partial denial of the claim for tax refund, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, or after the expiration of the ninety (90)-day period, appeal the decision with the Court of Tax Appeals: *Provided, however*, That failure on the part of any official, agent, or employee of the Bureau of Internal Revenue to act on the application within ninety (90) days period shall be punishable under Section 269 of this Code.

[60] Exhibit "P-31", Docket (9768), Vol. 1, pp. 213-214.

Thus, a particular item of evidence may be admissible, but its evidentiary weight depends on judicial evaluation within the guidelines provided by the rules of evidence.[61]

Respondent had the opportunity to cross-examine the witness during trial and, therefore, his testimony stood admissible[62] and was correctly considered by the court *a quo*. However, the issue lies in the fact this witness's version remains *self-serving*, that is, it comes from the party solely interested in the grant of the petition.[63] Thus, while a witness's interest alone is *not* a ground for disregarding his testimony, a party's interest may to some extent affect his credibility.[64] The Court must consider it with caution.

Second, while the testimony of petitioner's witness may have been *unrebutted* by respondent's evidence, its weight was *offset* by several of petitioner's own evidence. If considered *alone*, such unrebutted evidence *may* have been sufficient to sustain the refund claim. But the Court has to consider the *totality of the evidence* presented.

The court *a quo* correctly concluded that petitioner's various *Service Agreements* with its affiliates, which governed their zero-rated sales transactions subject of the refund, expressly allow it to perform its services *both* in the Philippines and *abroad*.[65] As the law between the parties,[66] these agreements even permit petitioner to subcontract its services or activities to any affiliated company and, thus, pave the prospect of rendering them *abroad*, closer to its client-affiliates, which are incidentally also doing business *abroad*.

The provisions are quite clear:

"4.2 Performance of Services

4.2.1 In order to make optimum use of its facilities and organizations, it is agreed that THE SERVICE PROVIDER may enter into specific agreements with any third party and with any affiliated P&G company, with the purpose to sub-contract some services or activities which THE SERVICE PROVIDER deems appropriate or necessary to render the Services referred to in Article 4.1. THE SERVICE PROVIDER shall however supervise and guarantee the quality of the services it subcontracts to any third party and with any affiliated P&G company.

4.2.2 THE SERVICE PROVIDER shall render the Services referred to in Article 4.1 from all or any of its operational locations,

[61] *Magsino v. Magsino*, G.R. No. 205333, February 18, 2019.
[62] *National Development Company v. Workmen's Compensation Commission*, G.R. No. L-21724, April 27, 1967.
[63] *Santos-Gantan v. Gantan*, G.R. No. 225193, October 14, 2020.
[64] *National Development Company v. Workmen's Compensation Commission*, G.R. No. L-21724, April 27, 1967. Supreme Court *En Banc*.
[65] Decision, *Rollo*, p. 78.
[66] *Development Bank of the Philippines v. Heirs of Julieta L. Danico*, G.R. No. 196476, September 28, 2020.

> provided however that nothing herein shall be construed to require THE SERVICE PROVIDER to establish or maintain an office or other place of business other than its current and future places of business as deemed appropriate by THE SERVICE PROVIDER itself or be construed to require THE SERVICE PROVIDER to provide the services of its employees, agents, or subcontractors, to SERVICE RECIPIENT outside of THE SERVICE PROVIDER's normal place of business on other than on an occasional basis.
>
> xxx xxx xxx" (*Underscoring supplied*)[67]

As stated, the *single* testimonial proof found in Exhibit "P-31" was *qualified* by *several* documentary proofs spelled out in these agreements and offered by petitioner as "P-4.1" to "P-4.45".[68]

Proofs are said to be *inconsistent* when they are contrary to each other, so that one infers the negation of the other.[69] In this case, there is inconsistency between the testimony, which states that the services were provided in the Philippines, when it is *negated* by the contracts that expressly permit their performance outside. It did not help that this inconsistency was *not* explained or reconciled by the petitioner.

Third, Book III, Section 2(3) of Executive Order No. (EO) 226, otherwise known as the Omnibus Investments Code of 1987, as amended by Republic Act No. (RA) 8756, defines an ROHQ as "a *foreign business entity* which is allowed to derive income in the Philippines by performing qualifying services to its affiliates, subsidiaries or branches in the Philippines, *in the Asia-Pacific Region* and *in other foreign markets.*"[70]

In addition, under Article 29 of EO 226 as amended by RA 8756, an ROHQ can perform qualifying services to its related parties *abroad*:

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

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[67] *See* Exhibit "P-4.1", Docket (9768), Vol. V, p. 2406.
[68] *Formal Offer of Evidence*, Docket (9768), Vol. V, pp. 2406-3252.
[69] Words and Phrases, Permanent Edition, Vol. 20, p. 549.
[70] Italicization supplied.

Petitioner, as an ROHQ, is a *mere extension* of a foreign entity and does *not* have a separate and distinct *legal* personality apart from the same entity. Since a foreign entity, by virtue of the EO 226 definition, earns income from activities *worldwide* --- both domestically and outside the Philippines, petitioner *fails* to convince the Court that this refund pertains *only* to the input VAT attributable to services performed domestically *to the exclusion of the rest.*

Petitioner contends that the "fact the petitioner is an ROHQ is sufficient to establish that the services are rendered in the Philippines."[71] This is a *non-sequitur.* Precisely because an ROHQ is a foreign entity, which is based abroad and came to establish a local presence, RA 8756 intentionally recognized that it can still "service its own affiliates, subsidiaries or branches... *in the Asia-Pacific Region* and *other foreign markets.*"[72] Consequently, an ROHQ can derive its sales/income from sources *outside* the Philippines. And in such cases, the Court cannot just rely on the fact that petitioner is an ROHQ and safely concede that its services, subject of this claim, are confined to those performed domestically. In *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.*[73] The Supreme Court observed that [because] EO 226 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."

Finally, the Concurring Opinion of *J. Manahan* clarifies what petitioner needs to hurdle to prove its claim because of the foregoing considerations:

> "A close reading of the aforequoted section of the Services Agreement reveals that services to the recipients/ foreign clients may be rendered outside of petitioner's place of business **on an occasional basis**.
>
> Thus, petitioner must prove that indeed **ALL** of its services rendered to its foreign client were done in the Philippines."[74]

Petitioner also fails to convince the Court that it presented sufficient evidence to establish that the client-affiliates are entities engaged in business conducted outside the Philippines

The assailed decision resolved that six of petitioner's client-affiliates did *not* qualify as non-resident foreign entities because of *insufficiency* of evidence.[75] Because of these disqualifications, petitioner's sales/receipts in the amount of

[71] *Petition for Review, Rollo*, p. 25.
[72] Article 59, Executive Order No. 226 as amended by Republic Act No. 8756. *Italicization supplied.*
[73] G.R. No. 234445, July 15, 2020.
[74] *Rollo*, p. 85.
[75] *Rollo*, pp. 59-61.

PhP18,996,007.51 / US$428,867.31 (1st Quarter) and PhP28,426,524.33 / US$634,370.80 (2nd Quarter) were disallowed by the court a *quo*.[76]

Petitioner, however, begs to differ and mapped out the other pieces of evidence for the Court to consider.[77]

After due consideration, the Court remains *unconvinced.*

The ruling of the Supreme Court in *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.*[78] is instructive as to what proofs are needed to prove that the sale of services was made to non-resident foreign entities. Specifically, the Supreme Court reiterated that *both* the SEC Certification of Non-Registration *and* proof of foreign incorporation/association are necessary to establish the non-resident foreign status of a client-affiliate, and that service agreements or contracts by themselves would *not* suffice to prove such status:

> "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 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 second 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 and underscoring supplied*)

A review of the documents highlighted by petitioner does *not* iron out the *deficiencies* or *discrepancies* in these documents. For example:

[76] Decision, Rollo, p. 66.
[77] *Petition for Review, Rollo*, pp. 16-19.
[78] G.R. No. 234445, July 15, 2020.

- While *Gillette Pakistan Limited* had a negative certification from the Philippine SEC, it did *not* have a business registration from Pakistan because the document submitted was denied admission by the court *a quo.*

- Also, while *Procter & Gamble Egypt* had a negative certification from the Philippine SEC, it had *no* business registration from Egypt, since none was offered in evidence. The *Service Agreement* (Exhibit-4.13) petitioner referred to as additional proof that the entity was doing business outside the country actually pertains to *another* entity *Procter & Gamble Egypt Ltd.* No explanation was provided for the discrepancy in the names stated in the documents.

- Finally, although *Procter & Gamble Egypt Distribution* had a negative Philippine SEC certification, it had no business registration from Egypt and the *Service Agreement* (Exhibit-4.4) petitioner referred to as additional proof pertains to another entity in Singapore *Procter & Gamble International Operations SA Singapore Branch.*

To facilitate reference, the table below summarizes the Court's evaluation of petitioner's exhibits relevant to the issue:

Name of Client-Affiliates	SEC Certificates of Non-Registration (Exhibit Nos.)	Business Registration Documents (Exhibit Nos.)	Service Agreements (Exhibit Nos.)	Sworn Statement from Authorized Representatives (Exhibit Nos.)
1. Gillette Pakistan Limited	P-5.44[79]	P-6.42[80] Evidence was *denied* admission by the court *a quo*	No evidence	P-7.41[81]
2. P&G Israel M.D.O. Ltd.	P-5.33[82]	P-6.33[83] The words Proctor & Gamble were *not* spelled out	P-4.41[84]	P-7.36[85]
3. Procter & Gamble	P-5.13[86]	No evidence	P-4.21[87]	No evidence

[79] Docket, Vol. V, p. 3316.
[80] Docket, Vol. VI, p. 4008.
[81] Docket, Vol. VI, p. 4173.
[82] Docket, Vol. V, p. 3300.
[83] Docket, Vol. V, p. 2316.
[84] Docket, Vol. V, p. 3160.
[85] Docket, Vol. VI, p. 4159.
[86] Docket, Vol. V, p. 3272.
[87] Docket, Vol. V, p. 2754.

Name of Client-Affiliates	SEC Certificates of Non-Registration (Exhibit Nos.)	Business Registration Documents (Exhibit Nos.)	Service Agreements (Exhibit Nos.)	Sworn Statement from Authorized Representatives (Exhibit Nos.)
Distributing New Zealand Limited				
4. Procter & Gamble Egypt	P-5.5[88]	No evidence	P-4.13[89] Pertains to Procter & Gamble Egypt <u>Ltd</u>.	No evidence
5. Procter & Gamble Egypt Distribution	P-5.37[90]	No evidence	P-4.4[91] Pertains to Procter & Gamble <u>International Operations SA Singapore Branch</u>	No evidence
6. Procter & Gamble Egypt Supplies Ltd.	P-5.38[92]	No evidence	P-4.5[93]	No evidence

Even if assuming that the Court were to *accept* these documents as sufficient to prove that its client-affiliates are non-resident foreign entities doing business *outside* the Philippines, the issue on the *situs* of petitioner's services remains, as discussed in the first part.

The Court is unconvinced of petitioner's explanation for the discrepancies found between the zero-rated sales/receipts and the inward remittances.

The court *a quo* disallowed the sales/receipts for the first and second quarters of 2015 in the total amount of PhP619,624,912.14 (US$13,892,900.07) due to petitioner's failure to prove that the same were paid in acceptable foreign currency and accounted for per *Bangko Sentral ng Pilipinas* rules. Specifically, the court *a quo* noted that the sales/receipts do not tie up with the inward remittances

[88] Docket, Vol. V, p. 3261.
[89] Docket, Vol. V, p. 2598.
[90] Docket, Vol. V, p. 3306.
[91] Docket, Vol. V, p. 3140.
[92] Docket, Vol. V, p. 3308.
[93] Docket, Vol. V, p. 2473.

listed in the "Comparison of Zero-Rated Official Receipts against Certificates of Inward Remittance".[94]

Petitioner states that it sufficiently proved that the discrepancy pertained to withholding taxes, billing adjustments, and reimbursements based on the testimony of the independent Certified Public Accountant (ICPA).

Petitioner's contention is *untenable.*

Findings of the ICPA are *not* conclusive upon the Court as it makes its own independent evaluation of the evidence presented to support the claim. Rule 13, Section 3 of the Revised Rules of the Court of Tax Appeals provides:

> "SEC. 3. Findings of independent CPA. — The submission by the independent CPA of pre-marked documentary exhibits shall be subject to verification and comparison with the original documents, the availability of which shall be the primary responsibility of the party possessing such documents and, secondarily, by the independent CPA. <u>The findings and conclusions of the independent CPA</u> may be challenged by the parties and <u>shall not be conclusive upon the Court, which may, in whole or in part, adopt such findings and conclusions subject to verification</u>." (*Underscoring supplied*)

From the above provision, this Court is *not* bound by the findings of the ICPA. The ICPA merely aids the Court in the resolution of the case. The determination of the merit or the probative value of the ICPA's findings is still within the province of the Court. As such, the Court is free to adapt or disregard, completely or partially, these findings. It can even make its own audit and evaluation of the documents pertinent to the case presented during the trial in order to resolve the issues brought before it.[95]

In *Republic of the Philippines, represented by the Commissioner of Internal Revenue v. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation)*,[96] 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."

Finally, because this is a *refund* case, the Court has adopted a narrow interpretation of the laws and a stringent appreciation of the facts *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

[94] Decision, *Rollo*, pp. 73-75; Exhibit P-17.
[95] *Manulife Data Services, Inc. v Commissioner of Internal Revenue*, CTA Case No. 9881, May 2, 2024 (Resolution).
[96] G.R. No. 188016, January 14, 2015, citing *Sea-Land Service, Inc. v. Court of Appeals*, G.R. No. 122605, April 30, 2001.

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*.[97]

All told, petitioner failed to raise any issue that has convinced the Court *En Banc* 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.[98]

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:

(With due respect, I reiterate my Dissenting Opinion in the assailed Decision and Resolution)
ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
Associate Justice

(With due respect, I join the Dissenting Opinion of the Presiding Justice in the assailed Decision and Resolution)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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[97] *Resins Inc. v. Auditor General of the Philippines*, G.R. No. L-17888, October 29, 1968, Supreme Court *En Banc*.
[98] *Commissioner of Internal Revenue v. Union Shipping Corporation and The Court of Tax Appeals*, G.R. No. L-66160, May 21, 1990.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

maria Ivy F. Reyes - Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

(With due respect, I join the Dissenting Opinion of Presiding Justice Del Rosario in the assailed Decision and Resolution)
CORAZON G. FERRER-FLORES
Associate Justice

(With due respect - I join the Dissenting Opinion of the Presiding Justice in the assailed decision and resolution)
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