REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

AIG SHARED SERVICES CORPORATION (PHILIPPINES) [Formerly: CHARTIS TECHNOLOGY AND OPERATIONS MANAGEMENT CORPORATION (PHILIPPINES)],
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 2424
(CTA Case No. 8850)

x - x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

AIG SHARED SERVICES CORPORATION (PHILIPPINES) [Formerly: CHARTIS TECHNOLOGY AND OPERATIONS MANAGEMENT CORPORATION (PHILIPPINES)],
Respondent.

CTA EB NO. 2433
(CTA Case No. 8850)

Present:

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

Promulgated:
MAY 26 2023 1:53 pm

x - x

RESOLUTION

BACORRO-VILLENA, J.:

For the Court *En Banc*'s resolution are the following:

1. AIG Shared Services Corporation (Philippines)'s (**AIG**'s) "Motion for Partial Reconsideration (Re: Decision dated 17 November 2022)"[1] (**MPR**) filed on 09 December 2022, with Commissioner of Internal Revenue's (**CIR**'s) "Manifestation"[2] filed on 06 February 2023[3]; and,

2. CIR's "Motion for Reconsideration"[4] (**MR**) filed on 16 December 2022, with AIG's "Comment/Opposition (Re: the CIR's Motion for Reconsideration dated 14 December 2022)"[5] (**Comment/Opposition**) filed on 06 February 2023.

The said MPR and MR seek the modification and reversal, respectively, of the Court *En Banc*'s Decision promulgated on 17 November 2022[6] (**assailed Decision**). The dispositive portion of the said assailed Decision pertinently reads:

> ...
>
> **WHEREFORE**, in view of the foregoing, AIG Shared Services Corporation (Philippines)'s Petition for Review filed on 18 February 2021 is hereby **PARTIALLY GRANTED** while the Petition for Review filed by the Commissioner of Internal Revenue on 24 February 2021 is **DENIED** for lack of merit.
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> Accordingly, the Decision dated 29 June 2020 and Resolution dated 08 January 2021, respectively, of the Third Division in CTA Case No. 8850, entitled *AIG Shared Services Corporation (Philippines) [formerly: Chartis Technology and Operations Management Corporation (Philippines)] v. Commissioner of Internal Revenue*, are hereby **MODIFIED.** Consequently, the Commissioner of Internal Revenue is hereby **ORDERED TO REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in the total increased amount of **₱17,385,673.38** in

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[1] *Rollo* (CTA EB No. 2424), pp. 198-204.
[2] Id., pp. 249-251.
[3] Received by the Court on 09 February 2023.
[4] *Rollo* (CTA EB No. 2424), pp. 217-234.
[5] Id., pp. 240-247.
[6] Id., pp. 145-183.

favor of AIG Shared Services Corporation (Philippines), representing its unutilized excess input taxes attributable to its zero-rated sales for the four (4) quarters of the fiscal year ended 30 November 2012.

SO ORDERED.

...

In the MPR, AIG claims that the Court *En Banc* erred in not considering several screenshots of official government websites which show that AIG's clients were non-resident foreign corporations (**NRFCs**) doing business outside the Philippines. Particularly, AIG maintains that a closer look of its Exhibits "P-128(a)", "P-130(e)", "P-132(a)", "P-133(a)", "P-145(a)", "P-146(a)", "P-149(a)", "P-150(a)", "P-151(a)", "P-152(a)", "P-160(a)", "P-163(a)", "P-165(a)", "P-166(a)", "P-168(a)", "P-173(a)", "P-174(a)" and "P-175" would reveal that the same are screenshots of entries found in the official website of the United States Securities and Exchange Commission (**US SEC**).

On the other hand, in the CIR's MR (which likewise constitutes as his or her comment to AIG's MPR), he or she contends that the printed screenshots should not have been given probative value for failure to authenticate the same.

The CIR further argues that AIG's services were not performed in the Philippines, as its Bureau of Internal Revenue (**BIR**) Certificate of Registration (**COR**) as well as the official receipts (**ORs**) it issued, by themselves, do not prove such fact. Moreover, the stipulations in some of its Master Agreements do not provide that services of AIG will be performed in the Philippines.

The CIR adds that AIG's documentary and testimonial evidence are inadmissible in evidence. Specifically, that its witnesses are neither the signatory nor had any participation in the certificates, contracts, agreements, letters and other documents presented and offered before the Third Division.

The CIR likewise maintains that AIG failed to comply with the provision of Section 108(B)(2)[7] of the National Internal Revenue Code

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7 **Sec. 108**. *Value-Added Tax on Sale of Services and Use or Lease of Properties.* –

...

(**NIRC**) of 1997, as amended (requiring the recipient of services to be doing business outside the Philippines), which must be read in relation to Sections 2(3) and 4[8] of Republic Act (**RA**) No. 8756[9] (stating that Regional Operating Headquarters' [**ROHQ's**] services should be limited only to its affiliates, subsidiaries or branches). Upon perusal of the evidence presented by AIG, nothing therein would indicate that the recipients of AIG's services are its affiliates, subsidiaries or branches.

Lastly, the CIR reiterates that the burden of proof to establish entitlement to refund is on the claimant-taxpayer and the latter must

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

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

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

...

8 **Sec. 2.** *Definition of Terms.* - For purposes of this Act, the term:

...

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

...

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

"CHAPTER II
"LICENSING OF REGIONAL OPERATING HEADQUARTERS

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

...

9 AN ACT PROVIDING FOR THE TERMS, CONDITIONS AND LICENSING REQUIREMENTS OF REGIONAL OR AREA HEADQUARTERS, REGIONAL OPERATING HEADQUARTERS, AND REGIONAL WAREHOUSES OF MULTINATIONAL COMPANIES, AMENDING FOR THE PURPOSE CERTAIN PROVISIONS OF EXECUTIVE ORDER NO. 226, OTHERWISE KNOWN AS THE OMNIBUS INVESTMENTS CODE OF 1987.

positively show compliance with the statutory requirements in order to successfully pursue the said claim. Here, AIG failed to do so.

AIG counters and claims that the Court *En Banc* correctly gave probative value to its printed screenshots of the foreign government websites for the CIR's failure to object to its admissibility or refute the same by its own evidence.

In addition, AIG asserts that the testimonies of its witnesses are not hearsay as they were competent to testify and identify its documentary evidence. Specifically, its witness, Mary Cris Barayuga (**Barayuga**) is the custodian of AIG's financial and accounting documents and in charge of the timely filing and payment of its tax returns. On the other hand, Pradeep Bhanotha (**Bhanotha**) testified to AIG's procedures in executing its Master Service Agreements with its client-affiliates as well as to being the custodian of these agreements and the officer charged with their faithful implementation. Relatedly, the CIR was able to test these testimonies through cross-examination which belie the CIR's claim that AIG's evidence is hearsay.

Finally, AIG avers that the Court *En Banc* correctly found that its services were performed in the Philippines to client-affiliates which are not doing business in the Philippines, given the categorical statements of its witnesses to that effect. In addition, there is no basis for the CIR's claim that the recipient of its services should be limited only to its affiliates, subsidiaries or branches as the law makes no qualification nor adds a condition in determining the service recipients.

We resolve.

After considering the arguments in both AIG's MPR and the CIR's MR, the Court *En Banc* is constrained to deny them.

It must be emphasized that both parties failed to raise any new argument or present a novel matter which the Court *En Banc* has not previously scrutinized, studied and discussed.

A closer examination of both the MPR and MR would reveal that AIG and the CIR's present submissions contain the similar arguments that they have earlier raised in their respective Petitions for Review and/or their pertinent comment or opposition thereto. Furthermore, both parties palpably failed to refute the factual and legal justifications laid down in the assailed Decision, as to warrant its modification or reversal.

Nonetheless, for emphasis, the Court *En Banc* shall oblige to briefly discuss its reasons for denying the said MPR and MR.

AIG SHARED SERVICES CORPORATION (PHILIPPINES)'S MOTION FOR PARTIAL RECONSIDERATION

Even after a second hard look of the exhibits mentioned by AIG in its MPR, the Court *En Banc* could still not give probative value to the alleged screenshots.

As held in the assailed Decision, only those printed screenshots which are accessible and verifiable from the official websites of the respective foreign jurisdictions can be given probative value. Here, other than Exhibits "P-130(e)" and "P-175", the aforementioned documentary evidence for AIG are a mere list of corporations apparently sourced from "AIG 2013 Form 10K".

With respect to Exhibit "P-130(e)" or the supporting document for AIG Korea, Inc., while it appears to be a screenshot of a website[10], the same is not sourced from an official government website.

Anent Exhibit "P-175" or the supporting document for Sourcing and Procurement NY (**SPNY**) and Specialty Workers' Compensation (**SWC**), while the same appears to be a screenshot of a US SEC website, none of the corporations listed thereon[11] correspond to SPNY or SWC.

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10 The source is indicated to be http://investing.businessweek.com/research/stocks/private/snapshot.asp?privcapId=10636430.

11 American International Group, Inc. and its subsidiaries AIA Aurora LLC, AIG Capital Corporation, AIG Consumer Finance Group, Inc., AIG Global Asset Management Holdings Corp., AIG Asset Management (Europe) Limited, AIG Asset Management (U.S.), LLC, AIG Global Real Estate Investment Corp., AIG Securities Lending Corp., International Lease Finance Corporation, Fleet Solutions Holdings Inc., AeroTurbine, Inc., AIG Federal Savings Bank, AIG Financial Products

From the foregoing, the Court *En Banc* reiterates its ruling that only Direct DME, Inc. is supported by a screenshot[12] of a foreign government website.

COMMISSIONER OF INTERNAL REVENUE'S MOTION FOR RECONSIDERATION

First, the CIR argues that printed screenshots cannot be given credence or probative value considering that these can be easily manipulated and that none from the foreign governments attested to the authenticity of the said websites and to the registration of the purported AIG's clients.

We do not agree.

As held in *Commissioner of Internal Revenue v. De La Salle University, Inc.*[13] (**De La Salle**), this Court is not governed strictly by technical rules of evidence and that failure to object to the offered evidence renders it admissible thus the court cannot, on its own, disregard such evidence.

Here, not only did the CIR fail to timely object to AIG's offer of evidence, he or she also opted to not present his or her own evidence or file his or her memorandum to contradict AIG's claims.

Moreover, in the recent case of *Chevron Holdings, Inc. (formerly Caltex Asia Limited) v. Commissioner of Internal Revenue*[14] (**Chevron**), the Supreme Court likewise gave its imprimatur on the use of printed screenshots of foreign government websites to prove that the taxpayer-claimant's client is not engaged in trade or business in the Philippines, *viz*:

Corp., AIG-FP Matched Funding Corp., AIG Management France S.A., AIG Matched Funding Corp., AIG Funding, Inc., AIG Global Services, Inc., AIG Shared Services Corporation, AIG Life Insurance Company (Switzerland) Ltd., AIG Markets, Inc., AIG Trading Group Inc., AIG International Inc., AIUH LLC and AIG Property Casualty Inc.

12 Exhibit "P-161(a)", CD.

13 G.R. No. 196596, 09 November 2016.

14 G.R. No. 215159, 05 July 2022; Citation omitted, emphasis in the original text and underscoring supplied.

...

Therefore, the taxpayer-claimant must present, at the very least, **both** the SEC Certificates of Non-Registration - to prove that the affiliate is foreign; **and** the Articles or Certificates of Foreign Incorporation, printed screenshots of US SEC website showing the state/province/country where the entity was organized, or any similar document - to prove the fact of not engaging in trade or business in the Philippines at the time the sales are rendered.

...

Furthermore, the said printed screenshots are public documents which, although generally evidenced by an official publication or by a copy attested by the officer having the legal custody of the record[15], do not exclude the presentation of other equally competent evidence to prove the same as long as, in the light of all the circumstances, the Court is "satisfied of the authenticity of the written proof offered".[16]

Here, Bhanotha sufficiently testified as to how they accessed and printed the foreign government websites, to wit:

...

51. Q: Do you have in your possession original copies of the consularized SEC-equivalent registration documents that would establish that these clients are not doing business in the Philippines?

A: No. I personally requested from our foreign clients via electronic mail copies of consularized SEC-equivalent registration documents since the filing of the Petition for Review of this case in February 2013. I followed up my request by sending repeated emails and making telephone calls to the legal officers of these foreign clients. However, we were unable to obtain copies of the documents that we requested. We were constrained to search on the internet the information we needed. So, we printed from their websites documents such as U.S. Form 851 (U.S. Department of Treasury Internal Revenue Service *Affiliation Schedule*), U.S. Form 5471 (U.S. Department of Treasury Internal Revenue Service *Information Return of U.S. Persons With Respect to Certain Foreign Corporations*), Certifications from the U.S. Department of Treasury, screenshots of U.S. S.E.C. registrations,

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15 See Sections 24 and 25, Rule 132 of the Rules on Evidence, as amended.

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

Commercial License (Dubai), and Certificate of Commercial Registrations (Japan).

52\. Q: How did you go about printing these screenshots?

A: We accessed websites of SEC-equivalent government offices and that of our affiliates, and printed copies of the screenshots. - such as the U.S. Securities and Exchange website, the Private Banking website, BN Americas website, the Company Registration Office website, the JLT Group website, the Chinese Insurance Regulatory Commission website, the Businessweek website, the Ministry of Finance of the Republic of Uzbekistan website, the Inland Revenue Authority of Singapore website, the Kenya Revenue Authority website, the Cyber Search Centre of the Integrated Companies Registry Information System, Government of Hong Kong Special Administrative Region website, the Shanghai Administration for Industry and Commerce website, the IBR Regulatory and Risk website, the China Insurance Regulatory Commission website, the HM Revenue & Customs website, the State of Delaware [website], the Securities and Exchange Commission of Pakistan website, the AIG website, the AIG Czech Republic website, the AIG France website, the AIG Italy website, the AIG Spain website, the AIG Sweden website, the AIG China website, and the AIG Pakistan website. I personally supervised this entire process.[17]

...

Thus, in the absence of proof that the printed screenshots were manipulated or the source thereof is unreliable or corrupted, and in the absence as well of contrary evidence from the CIR, the Court *En Banc* finds no reason not to give probative value thereto.

Second, the CIR also argues that AIG presented no proof that its services were rendered in the Philippines.

We also do not agree.

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[17] Question and Answer (Q&A) Nos. 51 and 52, Sworn Statement of Pradeep Bhanotha, Exhibit "P-248", Division Docket, Volume I, p. 489; Italics in the original text.

It must be noted that in the *unrebutted* testimony of Bhanotha, he categorically stated that AIG has two locations for the services it provides, in Makati, and in Muntinlupa.[18] Furthermore, when Barayuga was asked as to how AIG renders its services to its foreign clients considering that it is operating here in the Philippines and its clients are all based abroad, she testified that AIG renders services to its foreign clients *via* phone calls, e-mail, and other electronic means.[19]

From the foregoing, the Court *En Banc* concludes that AIG was able to sufficiently establish the fact that it rendered its services here in the Philippines.

As further held in *Chevron*:[20]

> ...
>
> We reiterate that although the burden of proof to establish entitlement to a refund is on the taxpayer-claimant, the Court has consistently held that once the minimum statutory requirements have been complied with, the claimant should be considered to have successfully discharged their burden to prove its entitlement to the refund. <u>After the claimant has successfully established a *prima facie* right to the refund by complying with the requirements laid down by law, the burden is shifted to the opposing party, *i.e.*, the BIR, to disprove such claim. Otherwise, we would unduly burden the taxpayer-claimant with additional requirements which have no statutory nor jurisprudential basis</u>. ...
>
> ...

Lastly, the CIR claims that AIG failed to prove that its services were rendered only to its affiliates, subsidiaries or branches.

Again, We disagree.

The Court *En Banc* noted in the assailed Decision that AIG declared in its Income Tax Return (ITR) a total sales of ₱2,354,297,563.48[21] which is the same amount reflected as its revenue for entities under common control in its Audited Financial Statements

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18 Q&A No. 15, Sworn Statement of Pradeep Bhanotha, Exhibit "P-248", id., p. 480.
19 Q&A No. 19, Sworn Statement of Mary Cris Barayuga, Exhibit "P-241", id., p. 365.
20 Supra at note 14; Citations omitted, italics in the original text and underscoring supplied.
21 See Line 16, Part II, Exhibit "P-6", CD.

(AFS).[22] Thus, it only means that all of AIG's services were rendered in favor of its affiliates.

In sum, as both AIG and the CIR merely recycled their previous submissions and arguments and that were already previously resolved or passed upon, the Court *En Banc* finds no cogent reason to disturb the assailed Decision.

WHEREFORE, with the foregoing, AIG Shared Services Corporation (Philippines)'s "Motion for Partial Reconsideration (Re: Decision dated 17 November 2022)" filed on 09 December 2022 and Commissioner of Internal Revenue's "Motion for Reconsideration" filed on 16 December 2022 are both **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

Ma. Belen M.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

22 See Note 17 – Related party transactions, Exhibit "P-7", CD.

CATHERINE T. MANAHAN
Associate Justice

ON OFFICIAL BUSINESS

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

(I reiterate my CDO in the assailed Decision)
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice