REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

MCKINSEY & CO. (PHILS.)., Petitioner,	CTA EB No. 1588 (CTA Case No. 8805)
-versus-	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	
x - - - - - - - - - - - - - - - - x	
COMMISSIONER OF INTERNAL REVENUE, Petitioner,	CTA EB No. 1592 (CTA Case No. 8805)
	Present:
-versus-	DEL ROSARIO, *PJ*; CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ*.
MCKINSEY & CO. (PHILS.)., Respondent.	Promulgated:
	JUN 03 2019 2:03 p.m.

x- x

RESOLUTION

Fabon-Victorino, J.:

Assailed in the Motions for Reconsideration dated October 26, 2018[1] and December 21, 2018[2] respectively filed by the Commissioner of Internal Revenue (CIR) and

[1] *Rollo*, pp. 126-131.
[2] Ibid. at pp. 140-145.

McKinsey & Co. (Phils.) (McKinsey), is the Decision of October 2, 2018,[3] the *fallo* of which reads:

> **WHEREFORE**, the Petition for Review dated February 23, 2017 filed by McKinsey & Co. (Phils.), and the Petition for Review dated January 25, 2017, filed by the Commissioner of Internal Revenue are hereby **DENIED**, for lack of merit.
>
> **SO ORDERED**.

The *CIR's Motion for Reconsideration:*

The CIR maintains that the numerous Certificates of Creditable Withholding Tax at Source (BIR Form No. 2307) presented by McKinsey are hearsay evidence. Citing Section 36, Rule 130 of the Rules of Court, he argues that a document must be identified by a witness who has personal knowledge of its execution or contents, lest it be considered hearsay, and bereft of evidentiary value. Since Mckinsey's witness Elena Cabahug has no personal knowledge on the execution and preparation of the aforementioned Certificates, her testimony, as well as the Certificates may not be given any evidentiary weight. For McKinsey's failure to establish the existence and validity of the Certificates subject of the present case, its refund claim must be totally rejected.

On the other hand, McKinsey counters[4] that the issue of the inadmissibility of the subject Certificates on the ground of being hearsay has been squarely addressed and passed upon by the Court in the assailed Decision of October 2, 2018. There being no new matters raised, the Motion for Reconsideration filed by the CIR must be denied.

McKinsey's Motion for Reconsideration:

McKinsey concedes that some of the CWTs it presented were not under its registered name McKinsey & Co. (Phils.). Such error however is merely clerical in nature given that

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[3] Id. at pp. 110-125.

[4] McKinsey & Co. (Phils.) Comment to the Commissioner of Internal Revenue's Motion for Reconsideration dated December 26, 2018, id. at pp. 150-153.

the said Certificates bear its taxpayer's identification number (TIN). Hence, the said Certificates may be a valid source of CWTs, opines McKinsey.

McKinsey as well maintains that the figures and information appearing in its AITRs for TYs 2011 and 2012 are presumed to be true and correct. Further, its non-presentation of AITRs for TYs 1999-2006 is not fatal to its cause since it was duly shown in CTA EB No. 1368 (CTA Case No. 8472) involving the same issues and parties that indeed, it has extra tax credits for the foregoing periods sufficient to cover its Minimum Corporate Income Tax (MCIT) liability. With the foregoing, McKinsey concludes that it is entitled to an additional CWT refund of ₱40,779,317.96.

Despite directive, the CIR failed to file any comment/opposition to McKinsey's Motion for Reconsideration.[5]

THE RULING OF THE COURT

The respective Motions for Reconsideration of the CIR and McKinsey are denied for lack of merit.

CIR's Motion for Reconsideration:

To be sure, the Court is not unmindful of the time-honored rule that a witness can testify only as to his own personal perception or knowledge of the actual facts or events. His testimony cannot be proof as to the truth of what he learned or heard from others.[6] However, to set this rule in motion, a proper and seasonable objection is imperative.

Section 36, Rule 132 of the Rules of Court states, among others, that in cases of a written formal offer of evidence, a party must interpose his objections, if any, within three (3) days after notice of the offer unless the Court prescribes a different period. Evidence not objected to

[5] Records verification report dated March 12, 2019, *rollo,* unpaged.
[6] See Section 36, Rule 130 of the Rules of Court; and *People of the Philippines vs. Estibal,* G.R. No. 208749, November 26, 2014.

is deemed admitted and may be validly considered by the court in arriving at its judgment.[7] This is true even if by its nature the evidence is inadmissible and would have surely been rejected if it had been challenged at the proper time.[8]

The CIR's Comment to McKinsey's Formal Offer of Evidence[9] reveals that he explicitly declared that he has no objection as to the admissibility of McKinsey's evidence. Thus, even granting *arguendo* that the pieces of evidence offered were indeed hearsay evidence, for want of CIR's proper and timely objection thereto, the Court in Division correctly admitted McKinsey's various Certificates of Creditable Withholding Tax at Source (BIR Forms No. 2307). Note that a party's right to impugn the admissibility of evidence is a mere privilege which can be waived. Necessarily, the objection must be made at the earliest opportunity, lest silence when there is opportunity to speak may operate as a waiver of objections.[10]

Besides, the Certificates of Creditable Withholding Tax at Source (BIR Forms No. 2307) presented by McKinsey which are *complete* in pertinent details are no ordinary documents. These certificates were duly signed and prepared under the penalties of perjury, for which reason the figures appearing therein are presumed to be true and correct.[11] Since the CIR did not present any formidable proof to overturn such presumption,[12] the data as appearing on such Certificates of Creditable Withholding Tax at Source (BIR Forms No. 2307) must be sustained.

McKinsey's Motion for Reconsideration:

The Court digresses with McKinsey's posture that some of the Certificates of Creditable Taxes Withheld which do not bear its registered name may be a valid source of CWTs.

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[7] *Caraan vs. Court of Appeals,* G.R. No. 140752, November 11, 2005.
[8] *Lorenzana vs. Lelina,* G.R. No. 187850, August 17, 2016.
[9] Docket (CTA Case No. 8805), p. 859.
[10] See *Catuira vs. Court of Appeals,* G.R. No. 105813, September 12, 1994.
[11] See *Commissioner of Internal Revenue vs. TEAM [Philippines] Operations Corporation [Formerly Mirant (Phils) Operations Corporation],* G.R. No. 179260, April 2, 2014.
[12] The CIR manifested that he has no evidence to present relative to this case. See Minutes of Hearing dated June 22, 2015, docket (CTA Case No. 8805), p. 935.

As discussed above, only Certificates of Creditable Taxes Withheld at Source which are *complete* in pertinent details may be regarded as *prima facie* true and correct, and may be taken at face value.[13] Conversely, those Certificates containing *incomplete* or *inaccurate* data or information may not be utilized for proving the validity or existence of CWTs. Given that some of the subject Certificates adduced by McKinsey were not issued under its registered name, such Certificates are deemed deficient for purposes of establishing the corresponding CWTs, precisely they were disallowed.

Anent the remaining argument by McKinsey in its Motion for Reconsideration, suffice it to say that it has been laid to rest first, by the Court in Division and subsequently, by the Court *En Banc*. To repeat, with McKinsey's neglect to substantiate by convincing proof its alleged prior years' excess tax credits in the proceedings before the Court in Division, a denial of its existence and validity is justified.

WHEREFORE, the Commissioner of Internal Revenue's Motion for Reconsideration dated October 26, 2018 and McKinsey & Co. (Phils.)'s Motion for Reconsideration dated December 21, 2018 are **DENIED**. The assailed Decision of October 2, 2018 is **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

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[13] See *Philippine Airlines, Inc. (PAL) vs. Commissioner of Internal Revenue*, G.R. Nos. 206079-80, January 17, 2018; and *Banco Filipino Savings and Mortgage Bank vs. Court of Appeals*, G.R. No. 155682, March 27, 2007.

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

ERLINDA P. UY
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

(On Leave)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice