REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

WNS GLOBAL SERVICES PHILIPPINES, INC.,
Petitioner,

- *versus* –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1188
(CTA Case No. 8219)

Present:

Del Rosario, P.J.
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, *and*
Ringpis-Liban, JJ.

Promulgated:

DEC 01 2015

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RESOLUTION

CASTAÑEDA, JR., J.:

This resolves petitioner's Motion for Reconsideration dated May 28, 2015 which seeks reconsideration of the Court *En Banc*'s Decision promulgated on April 28, 2015 (the "Assailed Decision") affirming the judgment of Special First Division (the "Court in Division") of this Court in CTA Case No. 8219 denying petitioner's claim for input value-added tax (VAT) refund for insufficiency of evidence. The dispositive portion of the Assailed Decision reads as follows:

"**WHEREFORE**, the petition is **DENIED** for lack of merit. The May 2, 2013 Decision and June 2, 2014 Resolution of the Court in Division in CTA Case No. 8219 are **AFFIRMED**."

Petitioner raises the following grounds in its Motion for Reconsideration, to wit:

I.

WITH DUE RESPECT, PETITIONER PRESENTED SUFFICIENT EVIDENCE THAT WNS UK AND WNS NA ARE NON-RESIDENT COMPANIES DOING BUSINESS OUTSIDE THE PHILIPPINES.

II.

WITH DUE RESPECT, CONSIDERATIONS OF SUBSTANTIAL JUSTICE DICTATE THAT PETITIONER'S ADDITIONAL EVIDENCE SHOULD IN ANY EVENT BE ADMITTED AND CONSIDERED IN THE PROPER DETERMINATION OF THE MERITS OF THE CASE.

Petitioner maintains that the SEC Certificate of Non-Registration, taken together with petitioner's Service Contracts with WNS UK and WNS North America as well as the testimony of its witness, Ms. Gaudelia Villanueva, constitute sufficient proof that WNS UK and WNS North America are foreign companies doing business outside the Philippines. With respect to the second ground, petitioner insists that, in the interest of substantial justice, it should be allowed to present additional evidence considering that it showed willingness and good faith in complying with the Court's orders through the submission of its *Manifestation with Motion to Admit Supplemental Offer of Evidence and/or Proffer of Evidence (with attached Offer/Proffer of Evidence)* dated June 25, 2014.

The Court *En Banc* resolves to deny the Motion for Reconsideration for lack of merit.

After a careful perusal of the Motion for Reconsideration, it appears that the arguments raised therein by petitioner are mere restatements of the arguments previously raised in its Petition for Review and Memorandum. These matters had already been adequately discussed and passed upon by the Court in the Assailed Decision. Indeed, the Court *En Banc* finds no substantial matter or compelling reason that would justify the reversal or even modification thereof.

As the Court *En Banc* ruled in the Assailed Decision, the pieces of evidence presented by petitioner failed to establish that petitioner's customers are foreign companies doing business outside the Philippines.

The Securities and Exchange Commission (SEC) Certificates of Non-Registration of Company presented by petitioner merely show that the records of the SEC do not indicate the registration of the two companies as corporations or partnerships. On the other hand, the Service Agreements only indicate the names of petitioner's customers to whom petitioner renders services. Even taken together, these pieces of documentary evidence, at most, merely established that petitioner's clients are foreign companies.

In *Accenture, Inc. v. Commissioner of Internal Revenue,*[1] the Supreme Court held that in order to satisfy the third requisite under Section 108 (B)(2) of the National Internal Revenue Code of 1997, as amended, *i.e.*, that the recipient of the service must be doing business outside the Philippines, it is not enough that such recipient of service be proven to be a foreign entity. To come with the purview of Section 108 (B)(2), it must be specifically proven it is a nonresident foreign corporation.

As the Supreme Court aptly held:

> "The evidence presented by Accenture may have established that its clients are foreign. This fact does not automatically mean, however, that these clients were doing business outside the Philippines. After all, the Tax Code itself has provisions for a foreign corporation engaged in business within the Philippines and vice versa, to wit:
>
> > SEC. 22. Definitions – When used in this Title:
> >
> > x x x x x x x x x
> >
> > (H) The term *"resident foreign corporation"* applies to a foreign corporation engaged in trade or business within the Philippines.
> >
> > (I) The term *'nonresident foreign corporation'* applies to a foreign corporation not engaged in trade or business within the Philippines. (Emphasis in the original)

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[1] G.R. No. 190102, July 11, 2012, 676 SCRA 325.

> Consequently, to come within the purview of Section 108 (B)(2), it is not enough that the recipient of the service be proven to be a foreign corporation; rather, it must be specifically proven to be a nonresident foreign corporation."[2]

Accordingly, for failure to sufficiently prove that its clients are doing business outside the Philippines, petitioner's claim for refund was properly denied.

With respect to petitioner's plea for the admission of additional evidence in the interest of substantial justice, the Court *En Banc* is not persuaded. Petitioner ought to be reminded that the bare invocation of "interest of substantial justice" is not a magic wand that will automatically compel the Court to suspend procedural rules.[3] As the Supreme Court in *Systra Philippines, Inc. v. Commissioner of Internal Revenue*[4] instructively stated:

> "It is true that procedural rules may be relaxed in the interest of substantial justice. They are not, however, to be disdained as mere technicalities that may be ignored at will to suit the convenience of a party. They are intended to ensure the orderly administration of justice and the protection of substantive rights in judicial proceedings. Thus, procedural rules are not to be belittled or dismissed simply because their non-observance may have resulted in prejudicing a party's substantive rights. Like all rules, they are required to be followed except only when, for the most persuasive of reasons, they may be relaxed to relieve a litigant of negative consequences commensurate with the degree of thoughtlessness in not complying with the prescribed procedure."

Besides, the Court in Division already afforded petitioner ample opportunity to present additional evidence to establish that the recipients of its services are foreign companies doing business outside the Philippines. This was done after a decision was already rendered by the Court in Division.

As borne by the records, on May 30, 2013, petitioner filed a Motion for Reconsideration of the denial of its claim for refund by the Court in

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[2] *Ibid.*, pp. 344-345.
[3] *Philippine National Bank v. Deang Marketing Corporation and Berlita Deang,* G.R. No. 177931, December 8, 2008, 573 SCRA 312, 321; *People of the Philippines et. al. v. Hon. Court of Appeals et. al,* G.R. No. 187409, November 16, 2011, 660 SCRA 323, 329; *Sps. Bergonia et. al. v. Court of Appeals (4th Division),* G.R. No. 189151, January 25, 2012, 664 SCRA 322, 331.
[4] G.R. No. 176290, September 21, 2007, 533 SCRA 776, 780.

Division.[5] Through a Resolution dated September 10, 2013, the Court in Division allowed the reopening of the case, in the interest of substantial justice, for petitioner to present additional evidence to prove that the recipients of its call center services are foreign companies doing business outside the Philippines.[6] In a Resolution dated January 6, 2014, the Court in Division granted petitioner's Motion for Leave to Take Deposition By Written Interrogatories dated October 23, 2013 and considered the judicial affidavits of Messrs. Anil Patil and Michael Garber attached to the said Motion as their respective direct testimonies taken through deposition.[7] In the same Resolution, the Court in Division ordered respondent to file, within 10 days from notice, her written cross interrogatories of Messrs. Anil Patil and Michael Garber. In a Resolution dated March 12, 2014, the Court in Division noted respondent's failure to file written interrogatories and set the case for Commissioner's Hearing on March 18, 2014 for the purpose of marking of petitioner's additional evidence.[8] However, petitioner failed to appear. Petitioner likewise failed to inform the Court of the reason for its non-appearance at the scheduled Commissioner's Hearing. Hence, on June 2, 2014, the Court in Division issued a Resolution denying petitioner's Motion for Reconsideration.[9]

Petitioner is now asserting that the reason for its non-appearance at the scheduled Commissioner's Hearing was the belated service of the notice of Resolution dated March 12, 2014. But then, it bears stressing that petitioner admitted in paragraph 21 of its Petition for Review[10] as well as paragraphs 19 and 43 of its Memorandum[11] filed before the Court *En Banc* that petitioner's counsel received the originals/authenticated copies of the documents annexed to the judicial affidavits of Messrs. Anil Patil and Michael Garber only on June 16 and 23, 2014. Note that copies of these documents constitute the additional evidence which petitioner intends to present.

Obviously, even if petitioner received the notice of the Resolution dated March 12, 2014 much earlier, petitioner still cannot present the originals/authenticated copies of the aforesaid documents for comparison and marking during the Commissioner's Hearing scheduled on March 18, 2014. Petitioner could have easily informed the Court in Division regarding its alleged difficulty in securing the necessary documents abroad and it could have requested for the re-setting of the Commissioner's Hearing to another date. Petitioner failed to do so. Thus, petitioner has only itself to blame for its failure to present further evidence.

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[5] Division Docket (CTA Case No. 8129), pp. 1017-1024.
[6] *Ibid.*, pp. 1047-1050.
[7] *Id.*, pp. 1190-1197.
[8] *Id.*, pp. 1199-1201.
[9] *Id.*, pp. 1204-1206.
[10] Court *En Banc*'s Docket, p. 25.
[11] *Ibid.*, pp. 222 and 231.

To conclude, the Court *En Banc* finds no reversible error in the Assailed Decision to warrant reconsideration thereof.

WHEREFORE, the instant Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

with dissenting opinion
ROMAN G. DEL ROSARIO
Presiding Justice

I CONCUR WITH PJ'S DISSENTING OPINION
LOVELL R. BAUTISTA
Associate Justice

I CONCUR WITH PJ DEL ROSARIO'S DISSENTING OPINION
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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RINGPIS-LIBAN, *JJ.*

Promulgated:

DEC 01 2015 4:00 pm

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DISSENTING OPINION

DEL ROSARIO, PJ.:

With all due respect, I maintain my vote to **REMAND** the subject case to the Court *a quo* for further reception of evidence, as expressed in my *Dissenting Opinion* dated April 28, 2015. I, however, wish to expound on the infirmity of the service of the Notice of Resolution dated March 12, 2014 upon petitioner and its consequence to the precept of due process.

The majority opinion found petitioner at fault for its inability to mark its additional evidence due to its failure to attend the commissioner's hearing set on March 18, 2014. It also noted that even if petitioner was properly notified of the scheduled Commissioner's Hearing, it would nonetheless be unable to mark its additional documents as it did not have in its possession the originals/authenticated copies of said documents by then. The majority likewise opined that petitioner could have easily informed the Court in Division regarding its alleged difficulty in securing the necessary documents abroad and it could have requested for the re-setting of the commissioner's hearing to another date.

I would like to reiterate, however, that when the Court in Division granted petitioner's motion to present additional evidence, petitioner received the Notice of Resolution dated March 12, 2014 on March 18, 2014 at 1:17 in the afternoon or **forty-three (43) minutes before the scheduled hearing.** The March 18, 2014 setting was not even a date requested by either party to the case, so much so that petitioner could not have anticipated the presentation of its evidence on that date. Expectedly, petitioner was unable to attend the said hearing, which led to the denial of its Motion for Reconsideration.

On the basis of this belatedly served notice, there is a clear infirmity in the proceedings. **The right to present evidence must carry with it a reasonable opportunity for the party litigant to do so. As events turned out, petitioner was granted a feigned relief of being allowed to present additional evidence, when in truth, such opportunity could not have been reasonably availed of. Due process cries foul.**

Of course, it is opined that petitioner's documentary evidence could not have been produced on the scheduled hearing, even if there was timely service of the Resolution dated March 12, 2014. But there is a whale of difference between a party litigant's right to present evidence **and** a party litigant's inability to present evidence on a specific day in court. While both involve the precept of due process, the latter instance revolves on the reasonableness of the non-availability of the intended evidence. The fact that petitioner's evidence was not available on the scheduled Commissioner's Hearing on March 18, 2014 did not in any way cure the infirmity that attended the service of the Resolution dated March 12, 2014.

In effect, the Resolution dated September 10, 2013 granting the presentation of additional evidence for the petitioner became a sham when the Court in Division ultimately denied and foreclosed the further presentation of evidence after merely one setting where the notice of hearing was infirmly served.

As in regular proceedings, the Court *motu proprio* re-sets scheduled hearings whenever there is no certainty that its notice of hearing has been served upon the party scheduled to present evidence. Thus, petitioner had a valid and reasonable expectation to wait for a subsequent resolution setting the Commissioner's Hearing anew.

Interestingly, there was not even any resolution issued by the court declaring petitioner to have waived the presentation of additional evidence or considering the motion for reconsideration submitted for resolution *sans* additional evidence. Had this procedure been followed, petitioner could have explained the reason for its non-appearance or for the non-availability of the documents on March 18, 2014.

Accordingly, in the interest of justice, the case must be remanded to the Court in Division for the reception of additional evidence.

ROMAN G. DEL ROSARIO
Presiding Justice