REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

REGUS SERVICE CENTRE PHILIPPINES B.V.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA *EB* NO. 2640
(CTA Case No. 10124)

Present:

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

Promulgated:
FEB 07 2024 4:30 pm

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RESOLUTION

MANAHAN, *J.:*

For resolution is respondent's *Motion for Partial Reconsideration (RE: Decision promulgated September 15, 2023)* posted on October 10, 2023 which was received by the Court on October 17, 2023 with respondent's *Comment (Re: Decision Promulgated dated 19 October 2023)* posted on October 31, 2023 and received by the Court on November 8, 2023.

Respondent seeks reconsideration of the Court *En Banc's* Decision promulgated on September 15, 2023, the dispositive portion of which reads as follows:

> "**WHEREFORE**, premises considered, the Petition for Review is **PARTIALLY GRANTED**.

The assailed Decision and Resolution dated February 9, 2022 and May 23, 2022, respectively, are **MODIFIED** as regards the Court in Division's conclusion that petitioner failed to prove that the services were performed in the Philippines, for reasons above-stated.

Accordingly, let this case be **REMANDED** to the Court in Division for the determination of petitioner's compliance with the other requisites to merit a grant of its claim for refund of alleged unutilized input VAT for CY 2017.

SO ORDERED."

Respondent seeks the reconsideration of the assailed Decision on the following ground:

THE HONORABLE COURT ERRED IN RULING THAT THE PETITIONER DULY SATISFIED THE EVIDENTIARY REQUIREMENTS TO PROVE THAT SERVICES WERE PERFORMED IN THE PHILIPPINES.

Respondent attempts to persuade the Court to re-evaluate and revisit the assailed Decision and instead rule that petitioner failed to prove that its client Franchise International S.A.R.L. is a non-resident foreign corporation within the purview of Section 108(B)(2) of the 1997 National Internal Revenue Code (NIRC), as amended.

The main argument of respondent rests on the alleged lack of evidence to convince the Court that petitioner fulfilled all the requirements to prove that it was engaged in zero-rated sales during the taxable quarters covered by the instant claim for refund.

Premised on the stringent requirements provided by law and jurisprudence, respondent asserts that petitioner was not able to substantially prove that the recipient of the services is a foreign corporation, and that the said corporation is doing business outside the Philippines, or is a non-resident person not engaged in business who is outside the Philippines when the services were performed. Further, the alleged dearth of evidence echoes the original decision of the Second Division of this Court (Court in Division) when it found that petitioner was not able to show that the subject services were performed in the Philippines, resulting to the outright denial of petitioner's claim for refund.

In its Comment to the Petition for Review, petitioner contends that its nature as a Regional Operating Headquarters (ROHQ) will dispel any doubt that the services rendered to its client Franchise International S.A.R.L were performed in the Philippines. As defined, an ROHQ is 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. In addition, petitioner avers that as a foreign corporation licensed by the Philippine Securities and Exchange Commission (SEC) to transact business in the Philippines, it is mandated to strictly comply with the terms and conditions inherent in said license, *e.g.*, to render services in the Philippines and not elsewhere.

Petitioner contravenes the position of respondent and claims that the evidence it presented in Court, both testimonial and documentary, clearly proves that the services it rendered to its sole client were performed in the Philippines. It points to its Annual Income Tax Return (ITR) which shows that corresponding income taxes were paid to the Bureau of Internal Revenue (BIR) on the payments received from said client proving that the *situs* of taxation or the place where the income was earned, is here in the country.

RULING OF THE COURT

We deny respondent's Motion for Partial Reconsideration for lack of merit.

In modifying the Decision of the Court in Division, the Court *En Banc* in the assailed Decision dated September 15, 2023, re-evaluated the evidence presented by petitioner[1] and found that on the sole issue of whether or not it proved that the subject services were rendered in the Philippines, petitioner was found to have satisfactorily established this fact.

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[1] Respondent no longer filed his Formal Offer of Evidence. *om*

First, petitioner submitted the Service Agreement[2] which shows that it entered into an agreement to render services for Franchise International S.A.R.L, a company incorporated under the laws of Luxembourg. Noteworthy is the non-objection of respondent to the presentation of said Service Agreement and his option not to present any evidence during trial.

Second, the unrebutted testimony of the Independent Certified Public Accountant (ICPA), Ms. Krista V. Bambao, describing her findings that the value-added tax (VAT) Official Receipts (ORs) issued by petitioner refer to the fees collected by petitioner for services rendered in the Philippines for Franchise International S.A.R.L.

Third, its nature as an ROHQ allows petitioner to provide qualifying services to its foreign affiliates and is allowed to derive income in the Philippines and this was proven by its Annual ITR for taxable year 2017 showing that income was earned from said client during the period covered by the claim. Considering that petitioner only had one client, it is safe to conclude that such services were performed for this one client.

Fourth, petitioner as an ROHQ is considered as a resident foreign corporation which is taxable only on its income from sources within the Philippines pursuant to Section 23(F) of the 1997 NIRC, as amended.

All of these point to the undisputed fact that the services rendered to its sole client, Franchise International S.A.R.L., were performed here in the Philippines.

The Court *En Banc*, at this point, adverts to the quantum of proof required in tax cases particularly in claims for refund as established by jurisprudence. As cited in the assailed *En Banc* Decision, the Supreme Court in the case of *Winebrenner and Iñigo Insurance Brokers vs. Commissioner of Internal Revenue*,[3] declares that claims for tax refunds, being civil in nature, require a mere preponderance of evidence, which in this same case refers to "evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto."

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[2] Exhibit "P-41", Division Docket, pp. 459-468.
[3] G.R. No. 206526, January 28, 2015.

Taken as a whole, the evidence presented by petitioner comprehensively established that the services were performed in the Philippines, thus, fulfilling one of the requirements for proving zero-rated sales under Section 108(B)(2) of the 1997 NIRC, as amended.

WHEREFORE, premises considered, the *Motion for Partial Reconsideration (RE: Decision promulgated September 15, 2023),* filed by respondent CIR is hereby **DENIED** for lack of merit.

Accordingly, the *En Banc* Decision dated September 15, 2023, remanding the case to the Court in Division for the determination of petitioner's compliance with the other requisites to merit a grant of its claim for refund, is **AFFIRMED**.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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