REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

FOUNDEVER PHILIPPINES CORPORATION (*formerly*: SITEL PHILIPPINES CORPORATION),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10200

Members:

BACORRO-VILLENA, *Acting Chairperson*, and
CUI-DAVID, *JJ.*

Promulgated:
JUN 04 2024 4:20 pm

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RESOLUTION

CUI-DAVID, J.:

On January 31, 2024, the Court promulgated a Decision denying petitioner's *Petition for Review* for lack of merit. The dispositive portion of which reads:

> **WHEREFORE**, premises considered, the *Petition for Review* filed by petitioner Sitel Philippines Corporation is **DENIED,** for lack of merit.
>
> **SO ORDERED.**

In the said Decision, the Court found, among others, that the registration of petitioner's Palawan and Technopoint Facilities with the Bureau of Internal Revenue (BIR) is not one of "branch," as required to be registered under Section 236 of the National Internal Revenue Code (NIRC) of 1997, Section 9.236-1(a) of Revenue Regulations (RR) No. 16-2005, and the pertinent provisions of RR No. 7-2012. Hence, for the Court, petitioner cannot be considered a "VAT-registered person" with regard to the said facilities to successfully obtain a refund or tax credit of input VAT thereon.

Relentless in its cause, petitioner filed the instant *Omnibus Motion [A] For Reconsideration (Re: Decision dated January 31, 2024); and [B] To Recall Petitioner's Witness* on February 19, 2024, asking for the Court to reconsider the aforesaid Decision based on the following grounds:

> THIS HONORABLE COURT ERRED IN HOLDING THAT PETITIONER CANNOT BE CONSIDERED A "VAT-REGISTERED PERSON."
>
> THIS HONORABLE COURT ERRED IN HOLDING THAT PETITIONER FAILED TO ESTABLISH THAT SERVICES WERE RENDERED IN THE PHILIPPINES.

Petitioner argues that at the time it secured the registration of its sites as facilities, it was guided by the provisions of the NIRC of 1997 and relevant regulations then available and/or existing. Based on RR No. 7-2012, an establishment or place of business shall be registered as a branch if sales transactions are <u>conducted independently</u> from the head office. Allegedly, its Palawan and Technopoint sites do not operate independently or conduct transactions separately from the Main Office. Further, the services being performed by petitioner's contact center agents in the Palawan and Technpoint sites are allegedly monitored and recorded in petitioner's Main Office, which issues billing statements and official receipts. For petitioner, the presence of the call center agents in each site is not sufficient to constitute said site as conducting sales transactions or sales activity independently of the Main Office as the sites do not have any administrative office or an office where records of sales and/or cash collections are kept. Thus, petitioner asserts that its Palawan and Technopoint sites were properly registered as "facilities."

Petitioner likewise argues that it rendered its services in the Philippines during the 2nd quarter of the taxable year 2017. According to petitioner, while the Service Agreements do not expressly provide that services are to be performed in the Philippines, its other documents, taken together, show that:

a. Petitioner is registered in the Philippines to provide only outsourced call center services from the Philippines to domestic and offshore business;

b. Petitioner is not authorized, licensed nor registered to engage in call center services outside the Philippines;

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c. Petitioner, through its Palawan and Technopoint sites located in the Philippines, generated services;

d. Sitel Operating Corporation and Sitel UK Limited, which are non-resident foreign corporations, paid petitioner for services it rendered by inwardly remitting acceptable foreign currency in the Philippines; and

e. Petitioner issued official receipts for said payments in consideration for services generated through its Palawan and Technopoint sites.

For petitioner, to overlook and ignore the testimonial and documentary evidence simply because the Service Agreements and Confirmation Agreements failed to expressly indicate that the services will be performed in the Philippines is unfair, unreasonable, and oppressive.

Anent its *Motion to Recall Petitioner's Witness*, petitioner moves for leave of court to recall its witness, Mr. Ronald Portula, to testify on the circumstances regarding the *late* registration of its sites with the BIR and the need for the prior registration with the relevant local government units. Citing relevant jurisprudence, petitioner submits that the paramount consideration in the resolution of cases remains to be the ascertainment of truth. Hence, in the interest of substantial justice and to further elicit the truth, petitioner asks for leave of court to recall Mr. Ronald Portula.

By way of *Comment/ Opposition (Re: Petitioner's Omnibus Motion (A) for Reconsideration [Re: Decision dated January 31, 2024]; and (B) to Recall Petitioner's Witness] dated Feb. 16, 2024)* filed on March 11, 2024, respondent submits that petitioner's *Motion for Reconsideration* does not warrant the reversal of the assailed Decision of January 31, 2024, contending that:

I. THE HONORABLE COURT CORRECTLY DENIED PETITIONE'S CLAIM FOR REFUND IN THE TOTAL AMOUNT OF PHP38,457,558.61

A. The Honorable (*sic*) correctly ruled that the petitioner's Palawan and Technopoint sites are improperly registered as "facility."

B. The Honorable Court correctly ruled that petitioner failed to establish that it was engaged in zero-rated or effectively zero-rated sales,

II. PETITIONER HAS ALREADY RESTED ITS CASE AND THE HONORABLE COURT HAS ALREADY RENDERED A DECISION. THUS, PETITIONER CANNOT BE ALLOWED TO PRESENT ADDITIONAL EVIDENCE.

Petitioner's plea for reconsideration has no merit.

Let it be emphasized that in the assailed Decision of January 31, 2024, the Court ruled that every person subject to any internal revenue tax within a certain period is mandated to register with the BIR, and if such person maintains a head office, a branch, or a facility, such registration shall be made with the BIR office having jurisdiction over said branch or facility, pursuant to Section 236 of the NIRC of 1997, as amended, and as implemented by Revenue Regulations (RR) No. 16-2005, specifically Section 9.236-1(a) thereof.

In the instant case, the Court found:

> It must be pointed out that **petitioner's Palawan Facility (in Puerto Princesa) and Technopoint Facility (in Pasig City) were <u>not yet registered</u> <u>at the time of the period of the subject refund or tax credit claim (*i.e.*, the 2nd quarter of taxable year 2017)</u>**. Yet, it generated sales of call center services to Sitel Operating Corporation and Sitel UK Limited in the same period, in the aggregate amount of ₱277,875,100.00. Since sales transactions occur and emanate from Palawan and Technopoint Facilities, petitioner should have registered these with the BIR as branch before the commencement or start of the business therein and paid the corresponding annual registration fee of ₱500.00, in accordance with the foregoing provisions, especially Section 9.236-1(a) of RR No. 16-2005.
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> The fact that petitioner was able to obtain a *Certificate of Registration of Facility* (OCN: 8RC0001131729E) for its Palawan Facility and *Certificate of Registration of Facility* (OCN: 8RC000000F0024-M) for its Technopoint Facility is of no moment. This is because the same was issued only on August 9, 2017 and October 31, 2019, respectively. Thus, it is apparent that the dates of issuance thereof are already after the 2nd quarter of taxable year 2017, when the subject sales were made, contrary to the aforequoted provisions regarding the requirement of BIR registration.
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> More importantly, **notwithstanding such later registration, the said facilities were not properly registered with the BIR** – both *Certificates of Registration of Facility* stated that *"No Sales Transactions are conducted in this Facility, otherwise, it shall be registered as a branch*

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> *office".* In addition, it is noteworthy that the TIN indicated in both *Certificates* does not bear an additional four (4) digits, which should represent the branch code. **These are indicia that the Palawan and Technopoint Facilities were not registered with the BIR as a branch, and simply as a "facility,"** ***i.e.*****, with no sales activity**.
>
> To repeat, petitioner had sales of call center services conducted in its Palawan and Technopoint Facilities during the subject period. Thus, petitioner should have registered these facilities with the BIR as branch. *(Boldfacing and underscoring supplied*)

Clearly, the reason for the denial of petitioner's claim for refund/tax credit was the non-registration of petitioner's Palawan and Technopoint Facilities at the time of the period of claim for refund/tax credit. More importantly, even if the Court considers Mr. Portula's proposed testimony regarding the *late* registration of the facilities, it does not change the fact that these facilities were not registered with the BIR as a "branch" during the period relevant to the refund or tax credit claim.

Thus, considering the foregoing, allowing Mr. Portula to be recalled to testify on the circumstances surrounding the late registration of petitioner's Palawan and Technopoint Facilities would be an exercise in futility.

WHEREFORE, premises considered, petitioner's *Omnibus Motion [A] For Reconsideration (Re: Decision dated January 31, 2024) and [B] To Recall Petitioner's Witness* is **DENIED** for lack of merit.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice