REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

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

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NOS. 8615 & 8647

Members:

CASTAÑEDA, JR., *Chairperson, and*
MANAHAN, *JJ.*

Promulgated:

JAN 2 9 2019 10:53 Am

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RESOLUTION

CASTAÑEDA, JR., *J.*:

For the Court's resolution is petitioner's **Motion (For Reconsideration and/or New Trial and to Reopen Case for Submission of Exhibits/Soft Copies)**, filed through registered mail on October 19, 2018, and received by the Court on November 8, 2018, with respondent's **Comment (to Petitioner's Motion for Reconsideration and/or New Trial and to Reopen Case for Submission of Exhibits/Soft Copies dated October 19, 2018)**, filed via registered mail on November 28, 2018, and received by the Court on December 4, 2018, and petitioner's **Reply (Re: Comment dated 28 November 2018)**, filed on December 17, 2018.

Petitioner seeks reconsideration of the Decision (assailed Decision) promulgated on October 4, 2018, the dispositive portion of which reads:

"**WHEREFORE**, premises considered, petitioner's Petitions for Review are **DENIED** for lack of merit.

SO ORDERED."

Petitioner claims that the Court erred in not considering Exhibits "P-182" to "P-199" and "P-201" to "P-234" despite of the fact that it was able to comply with the following requisites provided under the Rules of Court for the admission of secondary evidence: (i) execution or existence of the original; (2) loss and destruction of the original or its non-production in court; and (3) the unavailability of the original is not due to bad faith on the part of the offeror.

As regards proof of the execution and authenticity of the foregoing exhibits, petitioner insists that the same were duly proven by its witness, Pradeep Bhanotha, who accordingly was able to identify the following: his own signatures on Exhibits "P-190" to "P-198" and "P-201" to P-234"; signature of petitioner's former Chief Executive Officer, Mr. Jon-Paul Jones, on Exhibits "P-182" to "P-199"; and signatures of the alleged authorized representatives of petitioner's foreign clients.

Petitioner also avers that the authenticity of the signatures appearing on the said documents was deemed admitted on the ground that there was no question raised by respondent on the said matter.

With regard to the second requisite, petitioner justifies the non-presentation of the originals thereof by simply quoting the testimony of Mr. Bhanotha, who explained the paperless system adopted by petitioner and its affiliates in executing their respective service agreements.

With respect to the third requisite, petitioner avers that no bad faith can be ascribed to it since its company adopted such paperless system to make the transactions with its foreign clients easier and faster.

Petitioner, likewise, asserts that its failure to present the original receipts, invoices, vouchers or other documents covered by Exhibits "P-242" to "P-288" was due to its belief that the hard copies thereof need no longer be submitted, as the same have already been examined and marked by the Court-commissioned Independent

Certified Public Accountant. Petitioner also thought that the soft copies of the same were already included in the compact discs (CD) submitted to the Court. Consequently, petitioner now submits the scanned copies of the foregoing exhibits in CD Format and assures the Court that it will make available the originals thereof for verification and comparison, if necessary.

Thus, in the instant motion, petitioner prays for the admission of the exhibits contained in the CD and re-opening of the case for the submission of the same.

On the other hand, respondent opposes the re-opening of the case on the ground that, as early as March 2, 2017, petitioner already rested its case and filed its Formal Offer of Evidence. Thus, petitioner was already given an ample opportunity by the Court to present its case.

Respondent also claims that there is no basis for the re-opening of the case on the ground that the documents sought to be presented by petitioner cannot be considered as newly discovered evidence as the same could have been produced had it exercised reasonable diligence; that neither the presentation of the said documents is through inadvertence or mistake, in as much as the petitioner is very much aware that they need those documents from the start of the case.

Respondent further claims that this is the third motion filed by petitioner asking for the reopening of the case. Thus, to sustain the same would, accordingly, smack of procedural disorder and spawn a reversion of the proceedings; and would also violate respondent's right to speedy trial.

Respondent, likewise, objects to the admissibility of Exhibits "P-182" to "P-199" and "P-201" to "P-234" (including their sub-markings) for violation of the best evidence rule. Accordingly, the records of this case failed to show proof or evidence that petitioner exercise reasonable diligence and good faith in the search for or attempt to produce the originals of said exhibits.

Lastly, respondent points out that the arguments raised in the instant motion contains merely a reiteration or rehash of the arguments which have already been denied by this Court.

In its Reply, petitioner argues that this Court is not governed strictly by rules of procedure but instead, deems the ascertainment of truth and the ends of substantial justice the paramount considerations.

Moreover, petitioner emphasizes that it is not moving for the reopening of the instant case in order to admit additional evidence never before presented; rather, the motion is merely for the reopening of the case in order to admit evidence already presented but did not form part of the Court's records. Accordingly, Exhibits "P-242" to "P-288" were among the documents already examined and identified by the ICPA. Thus, the same already formed part of the ICPA's Report.

It also argues that the right to speedy trial is inapplicable to respondent since the same is applicable only in criminal cases.

Finally, petitioner claims that Exhibits "P-182" to "P-234" are admissible as secondary evidence since it complied with all requisites for the admission of secondary evidence, as it was able to demonstrate the following: the execution and existence of the Master Service Agreements; that the originals thereof are unavailable due to petitioner's paperless system; and that there is no bad faith in petitioner's adoption of such system.

The Court finds no merit in petitioner's motion.

Exhibits "P-182" to "P-199" and "P-201" to "P-234"

As regards the arguments raised by petitioner in claiming that the Court erred in not considering Exhibits "P-182" to "P-199" and "P-201" to "P-234", suffice it to say that the same had already been resolved by this Court in its Resolution dated October 6, 2015 in this wise:

> "3. Exhibits 'P182', 'P-183', 'P-184', '184', 'P-185', 'P-186', 'P-187', 'P-188', 'P-189', 'P-190', 'P-191', 'P-192', 'P-193', 'P-194', 'P-195', 'P-196', 'P-197', 'P-198', 'P-199', 'P-201', 'P-202', 'P-203', 'P-204', 'P-205', 'P-206', 'P-207', 'P-208', 'P-209', 'P-210', 'P-211', 'P-212', 'P-

213', 'P-214', 'P-215', 'P-216', 'P-217', 'P-218', 'P-219', 'P-220', 'P-221', 'P-222', 'P-223', 'P-224', 'P-225', 'P-226', 'P-227', 'P-228', 'P-229', 'P-230', 'P-231', 'P-232', 'P-233', and 'P-234', 'P-182' to 'P-234' are still denied as discussed below:

Petitioner posits that the abovementioned exhibits were presented as secondary evidence. Petitioner expresses that the original copies of the aforementioned exhibits, which pertain to Master Service Agreements, Letters of Intent or the Statements of Work, are not in petitioner's custody because of its mutual policy with its affiliates that the execution and documentation of the service agreements are done electronically.

Petitioner's witness, Mr. Pradeep Bhanotha, testified as follows:

'5 Q: Can you briefly discuss this company practice?

A: It is AIG world-wide practice and its affiliates including the herein petitioner in the Philippines that execution and documentation of our service agreements are done electronically. These clients all reside abroad and the paperless practice makes transacting with them easier and faster.

The Master Service Agreement, the Letter of Intent, or the Statement of Work is first sent electronically to our client abroad for the signature of its president, chief executive officer, or their designated authorized officer. The president or chief executive officer, or designated authorized officer prints the document and then signs it. The signed copy is then scanned, and sent back to us electronically, as well. This copy is then printed and signed by our incumbent chief executive officer. It is then scanned and electronically transmitted back to the client abroad. Following this practice, we do not have in our possession an original copy of the agreements, which contains the wet signatures of both parties.

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7. Q: I am showing you this document marked as Exhibit P-182 labelled 'Master Agreement for Professional Services American Home Assurance Company (UAE) and Chartis Technology and Operations Management Corporation (Philippines)'. How does this document relate to what you explained earlier regarding your company practice?'

A: This is a printed copy of the scanned Master Agreement with American Home Assurance Company (UAE). A foreign corporation domiciled in United Arab Emirates and our company, which reflects the signatures of both parties.'

Petitioner wants to impress before this Court that it adopts the paperless practice for easier and faster transaction.

However, upon analysis of the above testimony, it appears that petitioner is not adopting a paperless practice. It is worthy to point out that the president or the chief executive officer, or designated authorized officer of petitioner's client would **print the document and sign it**. Thereafter, the signed document would be scanned and sent back electronically to petitioner. Then, petitioner **would print it again so that its incumbent chief executive officer would sign the copy**.

In the case of *MCC Industrial Sales Corporation v. Ssangyong Corporation*, the Supreme Court explained the paperless environment in this manner:

> 'There is no question then that when Congress formulated the term 'electronic data message,' it intended the same meaning as the term 'electronic record' in the Canada law. This construction of the term 'electronic data message,' which *excludes telexes or faxes, except computer-generated faxes*, is in harmony

> with the Electronic Commerce Law's focus on 'paperless' communications and the 'functional equivalent approach' that it espouses. In fact, the deliberations of the Legislature are replete with discussions on paperless and digital transactions.
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> Accordingly, in an ordinary facsimile transmission, there exists an original *paper-based* information or data that is scanned, sent through a phone line, and re-printed at the receiving end. Be it noted that in enacting the electronic Commerce Act of 2000, Congress intended *virtual or paperless* writings to be the *functional* equivalent and to have the same *legal functions* as paper-based documents. Further, in a virtual or paperless environment, technically, there is no original copy to speak of, as all direct printouts of the virtual reality are the same, in all respects, and are considered as originals. Ineluctably, the law's definition of 'electronic data message', which, as aforesaid, is interchangeable with 'electronic document,' could not have included *facsimile transmissions*, which have an *original paper-based copy as sent* and a *paper-based facsimile copy as received*. These two copies are distinct from each other, and have different legal effects.' (underlining ours)

In a paperless environment, there is no original copy since all direct printouts of the virtual reality *are the same and are considered as originals*. Here, there is no paperless practice as both petitioner and its clients separately print the documents and manually sign on such printed documents before it would be scanned and sent electronically.

Furthermore, a thorough scrutiny of the abovementioned exhibits reveals that they are not computer printouts but mere photocopies of the said print outs. Even assuming the exhibits were computer printouts, it is incumbent upon petitioner to establish the authenticity of the documents pursuant to Sections 1 and 2, Rule 5 of the Rules on Electronic Evidence, *viz:*

RULE 5
AUTHENTICATION OF ELECTRONIC DOCUMENTS

SECTION 1. *Burden of proving authenticity.* – The person seeking to introduce an electronic document in any legal proceeding has the burden of proving its authenticity in the manner provided in this Rule.

SEC. 2. *Manner of authentication.* – Before any private electronic document offered as authentic is received in evidence, its authenticity must be proved by any of the following means:

(a) by evidence that it had been digitally signed by the person purported to have signed the same;

(b) by evidence that other appropriate security procedures or devices as may be authorized by the Supreme Court or by law for authentication of electronic documents were applied to the document; or

(c) by other evidence showing its integrity and reliability to the satisfaction of the judge.

As regards petitioner's argument that these exhibits are being offered as secondary evidence, We cite Section 3(a), Rule 130 of the Rules of Court which provides:

SEC. 3. *Original document must be produced; exceptions.*— When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:

(a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;

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In relation hereto is Section 5, Rule 130 of the same Rules which states that: ʔ

> SEC. 5 *When original document is unavailable.*— When the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated.

'The Court set down the requirements before a party may present secondary evidence to prove the contents of the original document whenever the original copy has been lost:

> Before a party is allowed to adduce secondary evidence to prove the contents of the original, the offeror must prove the following: (1) the existence or due execution of the original; (2) the loss and destruction of the original or the reason for its non-production in court; and (3) on the part of the offeror, the absence of bad faith to which the unavailability of the original can be attributed. The correct order of proof is as follows: existence, execution, loss, and contents.

To substantiate the due execution and authenticity of private document, Section 20, Rule 132 of the Rules of Court provides:

> SEC. 20. *Proof of private document.*— Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either:
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> (a) By anyone who saw the document executed or written; or
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> (b) By evidence of the genuineness of the signature or handwriting of the maker.

After careful evaluation of the records, petitioner failed to prove the due execution and authenticity of Exhibits "P-182" to "P-234". Although petitioner's witness, Mr. Bhanotha, testified that he is familiar with the signature of Jon-Paul Jones, petitioner's previous CEO, he did not mention that he saw the document being signed by the

> representative of petitioner's client or that he is familiar with the same. As such, the due execution and authenticity of the subject exhibits were not proven."[1] (Citations omitted)

Exhibits "P-242" to "P-288"

The Court also cannot lend credence on the claim of petitioner that its failure to present the original receipts, invoices, vouchers or other documents covered by Exhibits "P-242" to "P-288" was due to its belief that the hard copies thereof need no longer be submitted, as the same have already been examined and marked by the ICPA.

It bears noting at the outset that Exhibit "P-242" was already admitted by the Court in its Resolution[2] promulgated on November 24, 2018. Thus, said exhibit will no longer be included in the discussion below.

With respect to the remaining exhibits, the Court, upon scrutiny of the records, notes that petitioner already used the same justification in seeking to admit Exhibits "P-9" to "P-19-a", "P-24" to "P-24-b", "P-180", "P-30" to "P-33", "P-34-a" to "P-37-f", "P-167" to "P-170", "P-38" to "P-96", "P-182" to "P-234", "P-324" to "P-324-o", "P-26" to "P-29", and "P-9" in its Motion for Reconsideration (And to Reopen Trial for Reception of Additional Evidence)[3] filed, via registered mail, on December 24, 2014, and received by the Court on January 7, 2015. It even categorically stated therein that "(s)ince the ICPA had already compared these exhibits against their originals and ascertained these to be either original copies or faithful reproductions of the originals, the petitioner dispensed with the submission of the original copies to this Honorable Court after it had adopted the very same markings made by the ICPA."[4]

Despite the foregoing excuse, the Court still required it petitioner to submit the originals of the subject exhibits in its Resolution[5] dated March 10, 2015. Thus, petitioner cannot

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[1] CTA Case No. 8615 docket, vol. VI, pp. 2778-2784.
[2] CTA Case No. 8615 docket vol. IV, pp. 2002-2010.
[3] Pars. 4-8, Motion for Reconsideration (And to Reopen Trial for Reception of Additional Evidence), CTA Case No. 8615 docket, vol. IV, pp. 2015-2017.
[4] Par. 6, Motion for Reconsideration (And to Reopen Trial for Reception of Additional Evidence, CTA Case No. 8615 docket, vol. IV, p. 2016.
[5] CTA Case No. 8615 docket, vol. IV, pp. 2035-2041.

now feign ignorance on the indispensability of presenting the hard copies of the subject exhibits in substantiating its claim for refund.

It should likewise be noted that in same Motion for Reconsideration (And to Reopen Trial for Reception of Additional Evidence) dated December 24, 2014, petitioner prayed, among others, for the re-opening of the case to submit the originals of Exhibits "P-243" to "P-250", "P-251", "P-251.1", "P-252" to "P-288", and "P-324-o"[6], which the Court granted in its Resolution[7] dated March 10, 2015.

Unfortunately, despite of the several scheduled commissioner's hearings[8] before the Clerk of Court, petitioner did not bother to present said exhibits.

For such reason, the Court denied once again the subject exhibits in its Resolution[9] promulgated on October 6, 2015, for not being found on records.

Notwithstanding such ruling, petitioner still failed to present/submit the originals of the said documents when it asked the Court for the second time to reopen[10] the instant cases.

Records also show that the subject exhibits were already available during the trial of the cases at bar. But despite the considerable length of time given to petitioner to substantiate its claim for refund, it still failed to present the originals of Exhibits "P-243" to "P-288". This could have been avoided had petitioner exercised ordinary prudence and diligence in prosecuting its case. Consequently, petitioner has no one to blame but itself for failing to prove its claim.

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[6] Prayer, Motion for Reconsideration (And to Reopen Trial for Reception of Additional Evidence, CTA Case No. 8615 docket, vol. IV, p. 2025.

[7] See Footnote No. 5.

[8] As per Commissioner's Report (On Exhibits Marked) Hearing on April 15, 2015, 1:30 p.m., CTA Case No. 8615 docket, vol. V, p. 2047; Commissioner's Report (On Exhibits Marked) Hearing on April 22, 2015, 1:30 p.m., CTA Case No. 8615 docket, vol. V, p. 2061; Commissioner's Report (On Exhibits Marked) Hearing on April 29, 2015, 1:30 p.m., CTA Case No. 8615 docket, vol. V, p. 2074; Commissioner's Report Hearing on June 29, 2015, 1:30 p.m., CTA Case No. 8615 docket, vol. V, p. 2122.

[9] CTA Case No. 8615 docket, vol. VI, p. 2777.

[10] Motion to Defer Submission of Memorandum with Prayer to Re-open the Case for Submission of Additional Documentary and Testimonial Evidence, CTA Case No. 8615 docket, vol. VI, pp. 2799-2810.

Let it be emphasized that litigation is not a "trial and error" proceeding. To allow a party to submit such evidence which could have been offered with the exercise of due diligence goes against the orderly administration of justice; more so when a decision has already been rendered.[11]

In light of the foregoing, the Court sees no valid justification to re-open the instant cases for the sole purpose of submitting of Exhibits "P-243" to "P-288".

WHEREFORE, all the foregoing considered, the petitioner's **Motion (For Reconsideration and/or New Trial and to Reopen Case for Submission of Exhibits/Soft Copies)** is hereby **DENIED** for lack of merit.

SO ORDERED.

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

I CONCUR:

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

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[11] *Nippon Express (Philippines) Corp. vs. Commissioner of Internal Revenue*, C.T.A. EB Case No. 492 (CTA Case No. 7429), December 15, 2009, citing the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008.