REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
****

IBEX PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 2533
(CTA Case No. 9802)

Present:

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

Promulgated:

APR 18 2023 4:20 pm

x - x

RESOLUTION

UY, J.:

For resolution is petitioner's *Motion for Reconsideration (of the Decision promulgated on 10 November 2022)*[1] filed on December 6, 2022, without respondent's Comment[2] despite due notice.[3]

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[1] EB Docket, pp. 94 to 102.

[2] Records Verification dated February 14, 2023 issued by Leocadia D. Victoria, Records Officer I, Receiving Unit – Judicial Records Division (JRD), and noted by Benjamin D. Pineda, Jr., Chief Judicial Staff Officer, JRD, states that respondent failed to file his Comment on petitioner's *Motion for Reconsideration (of the Decision promulgated on 10 November 2022)*, EB Docket, p. 110.

[3] Per *Notice of Resolution* dated January 13, 2023, respondent received the *Resolution* dated January 13, 2023 ordering him to file his Comment on the *Motion for Reconsideration (of the Decision promulgated on 10 November 2022)* within five (5) calendar days from notice, on January 18, 2023, EB Docket, p. 107.

In the said *Motion*, petitioner prays that: 1) the *Decision* dated November 10, 2022 be reversed and set aside; 2) the *Decision* dated November 18, 2020 and the *Resolution* dated October 7, 2021 of the First Division of this Court be reversed and set aside; 3) it be declared that petitioner is entitled to a refund or issuance of a tax credit certificate (TCC) of its unutilized excess input value-added tax (VAT) attributable to its zero-rated sales for the quarters ended December 31, 2015, March 31, 2016, and June 30, 2016, in the amount of ₱8,773,448.31; and 4) respondent be ordered to refund or issue a TCC to petitioner in the amount of ₱8,773,448.31.

The dispositive portion of the assailed *Decision* reads:

Decision **dated November 10, 2022:**

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is hereby **DENIED** for lack of merit. Accordingly, the Court in Division's Decision and Resolution promulgated on November 18, 2020 and October 7, 2021, respectively, are **AFFIRMED**.
>
> **SO ORDERED.**"

Petitioner's arguments:

In its *Motion*, petitioner asserts that there are other facts on record that establish that its services to IBEX Global Bermuda Ltd. (IBEX Global) were rendered in the Philippines.

Allegedly, petitioner's VAT returns marked as Exhibits "P-5-B" to "P-8-B" prove that petitioner's services to IBEX Global were rendered in the Philippines considering that under Section 108 of the National Internal Revenue Code (NIRC) of 1997, as amended, VAT is levied, assessed, and collected on "the performance of all kinds of services in the Philippines for others for a fee, remuneration, or consideration".

Moreover, petitioner avers that official receipts and certificates of inward remittance marked as Exhibits "P-18-H", "P-18-H-1" to "P-18-H-53" likewise support the fact that petitioner's services to IBEX Global were rendered in the Philippines, as these prove that the consideration for petitioner's services to IBEX Global were remitted by the latter into, and received by the former, in the Philippines.

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Petitioner further explains that following the presumption under Rule 131, Section 3 (ff) of the Rules of Court that the law has been obeyed, petitioner's declaration of its sale of services to IBEX Global in its VAT returns, the remittance into the Philippines by IBEX Global of its payment for said services, and petitioner's subsequent filing of an application for refund of excess and unutilized input VAT attributable to its zero-rated sales, should lead to the presumption that in accordance with Section 108 of the NIRC of 1997, as amended, petitioner's services to IBEX Global were rendered in the Philippines.

Allegedly, it is inconceivable that petitioner would declare its sales of ₱482,366,818.30, receive said amount into the Philippines, and subject itself to possible audit, and mandatory audit with respect to the refund claim filed, if its services to IBEX Global were not performed in the Philippines.

Moreover, petitioner claims that it is duty-bound to report to the Bureau of Internal Revenue (BIR) its income and sales from services performed in the Philippines, and the salaries and benefits earned by its employees from performing their tasks in the Philippines considering its Certificate of Registration with the BIR (Exhibit "P-4). Supposedly, the foregoing support the fact that petitioner's call center services to IBEX Global were performed in the Philippines.

Petitioner also argues that its purchases and expenses amounting to ₱81,076,865.58, evidenced by Exhibits "P-18-J-1" to "P-18-J-6", "P-18-K-1" to "P-18-K-269", "P-18-L-1" to "P-18-L-12", which were admitted as part of petitioner's evidence, relate to petitioner's call center services to IBEX Global performed in the Philippines.

Finally, petitioner claims that all evidence it presented to support its claim for refund of excess and unutilized input VAT are uncontroverted considering that respondent waived his right to present evidence. According to petitioner, only preponderance of evidence is needed to substantiate a claim for tax refund. As such, given that preponderance of evidence is on the side of petitioner, there is sufficient evidence to establish the fact that petitioner's services to IBEX Global were performed in the Philippines.

THE COURT *EN BANC*'S RULING

After a careful review of the arguments raised by petitioner, the Court *En Banc* finds no merit in petitioner's *Motion*.

Petitioner's declaration in its VAT returns of its sales of services to IBEX Global, IBEX Global's remittance into the Philippines of its payment for petitioner's call center services, and petitioner's incurred expenses in the Philippines in connection with call center services to IBEX Global, are insufficient to prove that petitioner's services to IBEX Global were performed in the Philippines.

It bears reiterating that cases filed before this Court are litigated *de novo*. As such, party litigants should prove **every minute aspect** of their cases.[4] The issue as to whether or not petitioner performed services in the Philippines is a question of fact which must be proven by specific evidence.

We also find no merit in petitioner's contentions that: (1) its VAT returns prove that its services to IBEX Global were rendered in the Philippines because under Section 108 of the NIRC of 1997, as amended, VAT is levied, assessed, and collected on "the performance of all kinds of services in the Philippines for other for a fee, remuneration, or consideration"; and (2) it is inconceivable that it would declare its sales of services and subject itself to possible audit if petitioner's services to IBEX Global were not performed in the Philippines.

Petitioner's declaration of its sales of services to IBEX Global in its VAT returns does not automatically prove that petitioner performed its call center services in the Philippines. This is because the initial assessment evidenced by the tax return is a self-assessment of the taxpayer.[5] It is still incumbent upon petitioner to adduce evidence to support the veracity of its declarations. Further, the failure of a taxpayer to file his or her return will not hinder respondent from permitting the taxpayer's examination.[6] Thus, even if petitioner did not file VAT returns, respondent is not precluded from conducting an audit of petitioner's books of accounts and other accounting records.

IBEX Global's remittance into the Philippines of its payment for petitioner's call center services also do not prove that the subject services were performed in the Philippines. The rule is that "source of income" relates to the property, activity or service that produced the income. With respect to rendition of labor or personal service, it is the place where the labor or service was performed that determines the

[4] *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014.
[5] *Commissioner of Internal Revenue v. Fitness by Design, Inc.*, G.R. No. 215957, November 9, 2016.
[6] *Id.*

source of the income. There is therefore no merit in petitioner's interpretation which equates source of income in labor or personal service with the place of payment of the income.[7]

Likewise, petitioner's argument that it incurred expenses in the Philippines in connection with call center services to IBEX Global does not necessarily prove that it performed the subject services in the Philippines. Given that call center services can be performed not only in the Philippines but also in other countries, petitioner should have presented more convincing evidence to show that these services were indeed performed in the Philippines. In the instant case, petitioner failed to show any service agreement or contract to prove that its services to IBEX Global were indeed performed in the Philippines.

Thus, considering that it was never established that the place of performance of the subject services was in the Philippines, petitioner's sales of services to IBEX Global cannot qualify as subject to zero percent (0%) VAT under Section 108 (B) (2) of the NIRC of 1997, as amended.

Statutes that grant tax exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. Tax refunds in relation to the VAT are in the nature of such exemptions.[8] It is a claimant's burden to prove the factual basis of a claim for refund or tax credit.[9]

Accordingly, the Court *En Banc* finds no compelling reason to reconsider, modify, or reverse the assailed *Decision*.

WHEREFORE, in light of the foregoing considerations, the instant *Motion for Reconsideration (of the Decision promulgated on 10 November 2022)* is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

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[7] *Commissioner of Internal Revenue v. Juliane Baier-Nickel, as represented by Marina Q. Guzman (Attorney-in-fact)*, G.R. No. 153793, August 29, 2006.
[8] *Panasonic Communications Imaging Corporation of the Philippines (formerly Matsushita Business Machine Corporation of the Philippines) v. Commissioner of Internal Revenue*, G.R. No. 178090, February 8, 2010.
[9] *Eastern Telecommunications Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Ma. Belen M. Ringpis-Liban

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice