REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,* *-versus-* **SABRE TRAVEL NETWORK (Philippines), (formerly ABACUS DISTRIBUTIONS SYSTEMS PHILIPPINE INC.),** *Respondent.*	**CTA *EB* NO. 1932** *(CTA Case No. 8678)*
SABRE TRAVEL NETWORK (PHILIPPINES), INC. (formerly ABACUS DISTRIBUTION SYSTEMS PHILIPPINES, INC.), *Petitioner,* *-versus-* **COMMISSIONER OF INTERNAL REVENUE,** *Respondent.*	**CTA *EB* NO. 1937** *(CTA Case No. 8678)* Present: **DEL ROSARIO, P.J.,** **CASTAÑEDA, JR.,** **UY,** **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.* Promulgated: JUN 10 2021 1:39 p.m.

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RESOLUTION

MODESTO-SAN PEDRO, J.:

The following are for the Court *En Banc*'s resolution:

a) Sabre Travel Network (Philippines)'s (hereinafter referred to as "Sabre Philippines") **Motion for Partial Reconsideration (Of the Decision dated 03 September 2020)** (hereinafter referred to as "Sabre Philippines' Motion), filed on 30 September 2020;[1] and

b) The Commissioner of Internal Revenue's ("CIR") **Motion for Partial Reconsideration [re: Decision dated September 03, 2020]** (hereinafter referred to as "CIR's Motion"), filed on 1 October 2020,[2] with Sabre Philippines' **Comment/Opposition (To CIR's Motion for Partial Reconsideration dated 01 October 2020)** (hereinafter referred to as "Comment"), filed on 3 November 2020.

In Sabre Philippines' Motion, it reiterates that the Communications Expenses and Marketing Fees it remitted to Abacus International Pte. Ltd. ("Sabre Singapore") are not income. It explains that these are reimbursements for advance payments made by Sabre Singapore, on its behalf, to Sabre Technology Holland, BV ("Sabre Holland"). Sabre Philippines insists that it was able to establish this through the various documentary and testimonial evidence presented during trial.

Sabre Philippines argues that in finding the aforementioned pieces of evidence insufficient, the Court applied a higher degree of proof other than substantial evidence, which it argues is the quantum of proof required by law in tax cases.

Sabre Philippines posits that the Court *En Banc* erred in affirming the denial of its Motion to Reopen Trial. It states that, contrary to the findings of the Court, the pieces of evidence it intends to additionally present are not forgotten.

It reiterates that these documents were in possession of Sabre Singapore and that it only learned of their existence after it had formally offered its evidence. It adds that it immediately asked Sabre Singapore for these documents but was only granted access after the latter changed management and ownership and after various negotiations took place between them thereafter.

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1 Sabre Philippines filed its Motion within 15 days from its receipt of the assailed Decision on 15 September 2020. Hence, this Motion was timely filed.

2 CIR filed its Motion within 15 days from his receipt of the assailed Decision on 16 September 2020. Hence, this Motion was timely filed.

It belies the findings of the Court *En Banc,* specifically, that the additional documents are forgotten on the ground that it took Sabre Philippines more than two (2) years to file the Motion to Reopen Trial from the time Sabre Singapore changed ownership. It opines that the Court *En Banc* failed to take into account that it still had to negotiate with Sabre Singapore, after it changed management, before it was able to access the said documents.

Lastly, it argues that even assuming that the Communications Expenses and Marketing Fees are income of Sabre Singapore, the same are not subject to Final Withholding Value-Added Tax ("FWVAT") and Final Withholding Tax ("FWT"). It explains that Sabre Singapore is a non-resident foreign corporation which is in the service of processing flight reservation requests via a mainframe located in Tulsa, Oklahoma in the United States. On this basis, it insists that the services rendered by Sabre Singapore were rendered outside the Philippines and, therefore, not subject to Philippine Tax.

As for the CIR, he insists that the Certificate of Inward Remittances presented by Sabre Philippines is insufficient to prove that its revenue from booking commissions were received in acceptable foreign currency. He explains that the Certificate of Inward Remittances only shows a list of fund wire transfers without indication that it pertains to the booking commissions received by Sabre Philippines. On this ground, he insists that Sabre Philippines' revenue does not qualify for Value-Added Tax ("VAT") zero-rating.

In response, Sabre Philippines explains that the contention of the CIR is without merit considering that both the Court in Division and Court *En Banc* had already found that the Certificate of Inward Remittances tallies with its official receipts for 2009 and, therefore, is sufficient proof that its revenue qualifies for VAT zero-rating.

Sabre Philippines also stresses that the Court *En Banc* can no longer disturb the factual findings of the Court in Division in the absence of proof that the latter committed grave abuse of discretion in rendering its Decision. Lastly, it cites the case of ***Intel Technology Philippines, Inc. v. CIR,***[3] where the Supreme Court ruled that Certificates of Inward Remittances are sufficient proof in attesting the fact that the payment was made in acceptable foreign currency.

After a careful perusal of the foregoing arguments, the Court finds the contentions of both parties bereft of merit.

[3] G.R. No. 166732, 27 April 2007.

Sabre Philippines' Motion

As pointed out in the assailed Decision, the quantum of proof required in resolving cases lodged in the Court of Tax Appeals is not substantial evidence but preponderance of evidence. This is in accordance with ***Section 1, Rule 133 of the Rules of Court*** which is suppletorily applicable to the ***Revised Rules of the Court of Tax Appeals.***

In ***Encinas et., al. v. National Bookstore, Inc.***,[4] the Supreme Court defined preponderance of evidence as "the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term greater weight of the evidence" or "greater weight of the credible evidence. Preponderance of evidence is a phrase which, in the last analysis, means probability of the truth. It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto."

In this case, Sabre Philippines failed to discharge the required burden of proof. As emphasized in the assailed Decision, the pieces of evidence submitted by Sabre Philippines only proved its payments to Sabre Singapore. These documents do not establish that these payments correspond to charges initially billed by Sabre Holland to Sabre Singapore. Considering this, Sabre Philippines failed to prove with sufficient evidence that the amount it remitted constitutes reimbursements and not income of Sabre Singapore.

Neither is the Court *En Banc* convinced that the additional pieces of evidence Sabre Philippines intends to present are newly discovered, warranting the reopening of trial. The allegation raised by Sabre Philippines, specifically, that the delay in the filing of the Motion to Reopen Trial was caused not only by the change in Sabre Singapore's ownership but also due to the negotiations that took place between them thereafter, is suspicious.

The Court *En Banc* observes that this is the first time Sabre Philippines mentioned that it had negotiations with Sabre Singapore after the same changed management. This is also the first time it argued that these negotiations were the main cause for the delay in the filing of its Motion to Reopen Trial. Aside from this, Sabre Philippines did not even present evidence to support this allegation. On these grounds, the Court *En Banc* considers Sabre Philippines' assertion as self-serving and devoid of any probative value.

Furthermore, even assuming that the Court *En Banc* considers Sabre Philippines' explanation, its argument will still fail. Its allegation that its negotiations between Sabre Singapore caused the delay in the filing of its

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[4] G.R. No. 162704, 19 November 2004.

Motion to Reopen Trial was couched in general terms without any indication, at the very least, of when the negotiations ended. Without said information, Sabre Philippines failed to convince the Court that it exercised due diligence in procuring the additional documents during trial.

Likewise, the Court *En Banc* finds no merit in the argument of Sabre Philippines that the payments it made to Sabre Singapore, assuming it concedes that the same constitutes income, are not subject to FWT and FWVAT since the same were rendered outside the Philippines.

In Sabre Philippines' Motion, it alleges that Sabre Singapore's services are limited to the following activities:

> "a. The Respondent [Sabre Philippines] provides the subscribers like travel agents with personal computers or other equipment through which they can access the Abacus System;
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> b. Data consisting in the request for flight availability using the personal computers or terminals is then relayed to the Abacus System;
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> c. The Abacus System is housed in the mainframe or central computer which stores and process all the flight information, airfares and reservation data *i.e.* the mainframe located in Tulsa, Oklahoma in the United States;
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> d. Once the data request reaches the mainframe in Tulsa, it begins to process the request by looking at the database for flight availability;
>
> e. After processing, the reply to the data request generated by the mainframe (which may consist in a ticket reservation), is transmitted back to the subscriber's terminal."

However, a close scrutiny of the foregoing even bolsters the CIR's argument that the said transaction involves Sabre Philippines' payment of income to Sabre Singapore in exchange for the privilege to use the Abacus System in the Philippines, which is akin to transfers of copyright rights of software subject to FWVAT and FWT in accordance with ***Sections 108(A)(1), 114(C), and 28(B)(1) of the Tax Code*** as implemented by ***Revenue Memorandum Circular ("RMC") No. 44-2005.***[5]

Hence, having failed to establish that the FWT and FWVAT assessments issued against Sabre Philippines are erroneous, the Court *En Banc* has no option but to uphold the assessment.

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[5] Subject: Taxation of Payments for Software, 1 September 2005.

CIR's Motion

Similarly, the Court *En Banc* finds no merit with the argument of the CIR. As discussed in the assailed Decision, the Court in Division was able to reconcile the figures stated in the Certificate for Inward Remittances with Sabre Philippines' official receipts. This constitutes sufficient proof that the booking commissions, to the extent of ₱108,545,820.00, were indeed paid in acceptable foreign currency and, thus, qualified for VAT zero-rating.

In view of the foregoing, this Court finds no reason to disturb the findings of the Court *En Banc* in the assailed Decision.

WHEREFORE, premises considered, the Motion for Partial Reconsideration (Of the Decision dated 03 September 2020) filed by Sabre Travel Network (Philippines) and the Motion for Partial Reconsideration [re: Decision dated September 03, 2020] filed by the Commissioner of Internal Revenue are hereby both denied for lack of merit.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice