REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

MANULIFE DATA SERVICES, INC., Petitioner,	**CTA CASE NO. 9881**
	Members:
- versus -	**RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAY 0 2 2024 10:00 a.m.

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RESOLUTION

RINGPIS-LIBAN, J.

Submitted for resolution are the following:

1. Petitioner's *Motion [Re: Partial Reconsideration of Decision dated 29* [sic] *November 2023]* filed on December 18, 2023, with respondent's *Opposition (Re: Motion for Partial Reconsideration of the Decision dated 23 November 2023)* filed on January 30, 2024; *and,*

2. Respondent's *Motion for Partial Reconsideration (Re: Decision promulgated 23 November 2023)* filed on December 19, 2023, with petitioner's *Comment (Re: Motion for Partial Reconsideration dated 11 December 2023)* filed on January 25, 2024.

On November 23, 2023, the Court promulgated a *Decision,*[1] partially granting petitioner's claim for refund of its unutilized input value-added tax (VAT) attributable to its zero-rated sales of service for failing to satisfactorily prove that the subject sales of service were entirely rendered to non-resident foreign corporations (NRFC), the dispositive portion of which reads as follows:

> "**WHEREFORE,** in light of the foregoing considerations, the present *Petition for Review* is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** or **ISSUE A TAX CREDIT CERTIFICATE**

[1] Docket – Vol. 5, pp. 261 to 304.

in favor of petitioner the amount of ₱9,818,762.53, representing the latter's excess and unutilized input VAT attributable to its zero-rated sales for the 1st to 4th quarters of calendar year 2016.

SO ORDERED."

Undaunted, both parties filed their respective *Motions for Partial Reconsideration* with the Court.

Petitioner's Motion for Partial Reconsideration

In its motion, petitioner insists that the sales of service it rendered to its client, The Manufacturers Life Insurance Company (MLIC), should be considered as zero-rated VAT since the latter's constituting document, *Letters Patent*, was offered to and admitted by the Court into evidence as Exhibit "P-74-a". Petitioner points out that aside from being authenticated by the Philippines Consulate in Ottawa, Canada, the opening page of said *Letters Patent* declares that MLIC is incorporated under a foreign law – the Canadian and British Insurance Companies Act. Petitioner continues that the same *Letters Patent* features several "Whereas" clauses indicating MLIC's: (1) corporate history, including its initial incorporation under a different name by Special Act of the Canadian Parliament; (2) business purpose which is to carry the business of insurance; and, (3) place of business which is in Toronto, Ontario. As such, petitioner maintains that MLIC is a foreign corporation since it owes its existence to the laws of another country.

Petitioner further cites the ruling in *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.* (Deutsche),[2] arguing that the *Letters Patent* fulfill the criteria in said case as it proves that MLIC is registered to operate in a foreign jurisdiction – a *prima facie* evidence that it does not engage in trade or business in the Philippines. Petitioner also posits that the articles of association/certificates of incorporation that were labeled in the *Deutsche* case as competent evidence were merely described by way of illustration to prove foreign registration, which does not categorically disqualify functionally equivalent documents. Simply put, petitioner advances that the submission of *Letters Patent* may be considered substantial compliance to prove that MLIC is a non-resident foreign corporation for VAT refund purposes considering that the articles of association/certificates of incorporation were merely described in the *Deutsche* as an example or illustration.

Petitioner likewise asserts that Section 108(B)(2) of the National Internal Revenue Code (NIRC) of 1997, as amended, deals with two types of service recipients. Petitioner explains that the provision contains a disjunctive "or" between *person engaged in business conducted outside the Philippines* and *non-resident person not engaged in business who is outside the Philippines*, which clearly shows that the term

[2] G.R. 234445, July 15, 2020.

"non-resident" only pertains to the second part of the provision which is the second type of service recipient. Petitioner expounds that the non-resident service recipient mentioned in the second part should be disassociated from the first type of service-recipient which is the *person engaged in business conducted outside the Philippines.*

Lastly, petitioner claims that the court-commissioned independent certified public accountant (ICPA) already reviewed its records and have ascertained that its sales to MLIC pertained to services consumed *outside* the Philippines, as such, petitioner insists that there is no reason to deny zero-rating on such services.

On the other hand, in his *Opposition*, respondent insists that in cases of refund, the claimant has the burden of proof to establish the factual basis of his claim for tax credit or refund. Respondent reiterates that in all tax refunds, like tax exemptions, are construed strictly against the claimant and cannot be allowed unless granted in the most explicit and categorical language, citing several jurisprudence on the matter.

After due consideration, the Court finds petitioner's motion bereft of merit.

As to petitioner's claim that the submission of *Letters Patent* should be considered sufficient to prove that MLIC is a non-resident foreign corporation for VAT refund purposes, the Court finds petitioner's argument misplaced.

It must be stressed that admissibility of evidence should not be confused with its probative value. Admissibility refers to the question of whether certain pieces of evidence are to be considered at all, while probative value refers to the question of whether the admitted evidence proves an issue. Thus, a particular item of evidence may be admissible, but its evidentiary weight depends on judicial evaluation within the guidelines provided by the rules of evidence.[3]

In other words, the admissibility of evidence depends on its relevance and competence, while the weight of evidence pertains to evidence already admitted and its tendency to convince and persuade.[4] Thus, the evidence may be offered and admitted during trial but its evidentiary weight depends upon the evaluation of the Court. In this case, although Exhibit "P-74-a" was admitted, it was deemed insufficient to convince the Court to grant petitioner's refund claims.

Again, to prove zero-rated sales of service, the Court has consistently required the submission of, at the very least, *both* a Certification of Non-

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[3] *Ma. Melissa Villanueva Magsino v. Rolando N. Magsino*, G.R. No. 205333, February 18, 2019.

[4] *Fernando Mancol, Jr. v. Development Bank of the Philippines*, G.R. No. 204289, November 22, 2017.

Registration of Corporation/Partnership from the Securities and Exchange Commission (SEC) *and* Articles of Incorporation/Association and/or Tax Residence Certificate from the country of residence, as proof of incorporation/registration in a foreign country. Contrary to petitioner's position, these documents were not merely cited examples of what would constitute "competent evidence". In *Deutsche*, they were specifically mentioned as sufficient to establish that the refund claimant's (a) clients are foreign corporations, and (b) are not doing business in the Philippines, to wit:

> "*Proof of NRFC Status*
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> For purposes of zero-rating under Section 108(B)(2) of the Tax Code, the claimant must establish the two components of a client's NRFC status, *viz.*: (1) that their client was established under the laws of a country not the Philippines or, simply, is not a domestic corporation; and (2) that it is not engaged in trade or business in the Philippines. To be sure, there must, be sufficient proof of *both* of these components: showing not only that the clients are foreign corporations, but also are not doing business in the Philippines.
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> Such proof must be especially required from ROHQ such as DKS. That the law expressly authorizes ROHQs to render services to local and foreign affiliates alike only stresses the ROHQ's burden to distinguish among other clients' nationalities and actual places of business operations and establish that they are seeking refund or credit of input VAT only to the extent of their sales of services to foreign clients doing business outside the Philippines.
>
> To recall, the CTA found that the SEC Certification of Non-Registration of Company and Authenticated Articles of Association and/or Certificates of Registration/Good Standing/Incorporation sufficiently established the NRFC status of 11 of DKS's affiliates clients
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> The Court uphold these findings.
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> The Court accords the CTA's factual findings with utmost respect, if not finality, because the Court recognizes that it has necessarily developed an expertise on tax matters. Significantly, both the CTA Division and CTA *En Banc* gave credence to the aforementioned documents as sufficient proof of NRFC status. The Court shall not disturb its findings without any showing of grave abuse of discretion considering that the members of the tax court are in the best position to analyze the documents presented by the parties.
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> In any case, after a judicious review of the records, the Court still do not find any reason to deviate from the court *a quo*'s findings. To the Court's mind, the SEC Certifications of Non-Registration show that their affiliates are foreign corporations. On the other hand, the articles of association/certificates of incorporation stating that these affiliates are registered to operate in their respective home countries, outside the Philippines are *prima facie* evidence that their clients are not engaged in trade or business in the Philippines."[5] *(Underscoring supplied)*

[5] Supra Note 2.

Clearly, as quoted above from *Deutsche*, the Supreme Court ruled that *both* the SEC Certification of Non-Registration of Corporation/Partnership and Articles of Incorporation/Association and/or Tax Residence Certificate from the country of residence as *prima facie* evidence to prove that they are *not* engaged in trade or business in the Philippines. *Prima facie* evidence is defined as evidence good and sufficient on its face. Such evidence as, in the judgment of the law, is sufficient to establish a given fact, or the group or chain of facts constituting the party's claim or defense, and which if not rebutted or contradicted, will remain sufficient. Evidence which, if unexplained or uncontradicted, is sufficient to sustain a judgment in favor of the issue it supports, but which may be contradicted by other evidence.[6] These documents having been deemed as such, the Court sees no reason to deviate from the said holding.

With regard to petitioner's argument that Section 108(B)(2) of the NIRC of 1997, as amended, contains two types of service-recipients by the use the disjunctive "or" between the phrases "person engaged in business conducted outside the Philippines" and "non-resident person not engaged in business who is outside the Philippines", the Court is not swayed.

Section 108(B)(2) of the NIRC of 1997, as amended, provides as follows:

> "**SEC. 108.** *Value-added Tax on Sale of Services and Use or Lease of Properties.*
>
> x x x
>
> (B) Transactions Subject to Zero Percent (0%) Rate - The following services performed in the Philippines by VAT- registered persons shall be subject to zero percent (0%) rate.
>
> (1) xxx;
>
> (2) Services other than those mentioned in the preceding paragraph, rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
>
> xxx."

Section 108(B)(2) should be read in its entirety and should not be interpreted as separate, unrelated parts. The "second part" of the quoted provision above cannot be isolated from its entire sentence just because the word "or" was added. A statute is passed as a whole, and is animated by one general purpose and intent. Its meaning cannot be extracted from any single part thereof

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[6] *Robert P. Wa-Acon v. People of the Philippines*, G.R. No. 164575, December 6, 2006.

but from a general consideration of the statute as a whole.[7] Besides, petitioner cannot defy the Supreme Court's interpretation of Section 108(B)(2) in *Deutsche.*

At this juncture, it is worthy to emphasize that actions for tax refund or credit, as in the present case, are in the nature of tax exemptions. As such, they are regarded as derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund.[8] The pieces of evidence presented entitling a taxpayer to an exemption are also *strictissimi* scrutinized and must be duly proven.[9] Hence, an applicant for a claim for tax refund or tax credit must not only prove entitlement to the claim but also compliance with all the documentary and evidentiary requirements.[10]

Lastly, as to petitioner's claim that since the ICPA found that petitioner's MLIC-related revenues were earned via export of qualifying services, the Court should therefore also consider the same as zero-rated, the Court finds the claim untenable.

It is worth stressing that under Section 3, Rule 13 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended, the findings of the ICPA are *not* conclusive upon this Court, to wit:

> "SEC. 3. *Findings of independent CPA.* – The submission by the independent CPA of pre-marked documentary exhibits shall be subject to verification and comparison with the original documents, the availability of which shall be the primary responsibility of the party possessing such documents and, secondarily, by the independent CPA. <u>The findings and conclusions of the independent CPA may be challenged by the parties and shall not be conclusive upon the Court, which may, in whole or in part, adopt such findings and conclusions subject to verification</u>." *(Underscoring added)*

From the above, it is plainly stated that the Court is *not* bound by the findings and conclusions of the ICPA. The ICPA is primarily commissioned to assist the Court in the determination of the merit of taxpayer's petition. The Court may or may *not* adopt, totally or partially, the ICPA's report depending on its own appreciation of the evidence upon which the ICPA report is based. In other words, the Court will still examine and verify the documents audited or examined by the ICPA. Moreover, the ICPA Report is but a tool or guide to aid the Court in the resolution of the case. The determination of the merits or

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7 *Romeo P. Gerochi v. Department of Energy*, G.R. No. 159796, July 17, 2007; *Freedom from Debt Coalition v. Energy Regulatory Commission*, G.R. No. 161113, June 15, 2004.

8 *Commissioner of Internal Revenue v. S.C. Johnson & Son, Inc.*, G.R. No. 127105, June 25, 1999.

9 *Kepco Philippines Corporation v. Commissioner of Internal Revenue*, G.R. No. 179961, January 31, 2011; citing *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008.

10 *Eastern Telecommunications Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015; citing *J.R.A. Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 171307, August 28, 2013.

probative value of such report belongs to the Court. The ICPA report is only persuasive in nature and not conclusive upon the Court.

As such, petitioner cannot assert that the ICPA's findings are sufficient to validate its claim, since the ultimate determination rests upon the Court based on the evidence presented by the parties. However, this is not to say that the Court disregards the ICPA Report, certainly, the ICPA findings *vis-à-vis* the pertinent pieces of evidence presented by petitioner were duly taken into consideration, and were thoroughly examined by the Court in arriving at the conclusions made in the decision.

Again, the burden of proof to establish the right to a refund lies with the taxpayer-claimant who must show compliance with the statutory requirements of the NIRC of 1997, as amended, and existing jurisprudence. It is an age-old rule that the one who alleges a fact has the burden of proving it and the proof should be clear, positive and convincing. Mere allegation is not evidence.[11] Moreover, it is worthy to note that a judgment has to be based on facts. Conjectures and surmises cannot substitute for the facts – a conjecture is always a conjecture; it can never be admitted as evidence.[12] Here, petitioner was not able to discharge its burden of proving its entitlement to the full amount claimed for refund.

That having been settled, the Court shall now proceed to determine the merits of respondent's Motion for Partial Reconsideration.

Respondent's Motion for Partial Reconsideration

In the motion, respondent maintains that petitioner's claim for VAT refund should be denied in its *entirety*, invoking once again the case of *Pilipinas Total Gas Inc. v. Commissioner of Internal Revenue* (Pilipinas Total Gas).[13] He continues that based on the *Pilipinas Total Gas*, the present claim for refund is an appeal of the decision rendered by respondent, as such, the Court should have confined its findings as to whether respondent's denial was proper given the evidence submitted at the administrative level. Respondent also avers that petitioner cannot submit documents herein that it did not submit in the administrative level. Respondent further asserts that the interpretation of tax laws by the Bureau of Internal Revenue (BIR) is entitled to great weight because of its recognized expertise on the matter given its special mandate to issue the necessary regulations in implementing the provisions of the NIRC of 1997. Lastly, respondent reiterates the findings contained in the Memorandum Report dated May 15, 2016 which resulted in the denial of on petitioner's VAT refund

[11] *Dionarto Q. Noblejas v. Italian Maritime Academy Phil., Inc. et al.*, G.R. No. 207888, June 9, 2014.

[12] *Spouses William Guidangen and Mary Guidangen v. Devota B. Wooden*, G.R. No. 174445, February 15, 2012.

[13] G.R. No. 207112, December 08, 2015

in the administrative level, specifically insisting that tax refunds are construed *strictissimi juris* against the person claiming the exemption.

On the other hand, in its *Comment*, petitioner contends that respondent failed to specify which exhibits were supposedly improperly considered by the Court and that respondent likewise failed to specifically point out the findings or conclusions in assailed Decision that are not supported by evidence or which are contrary to law pursuant to Section 2, Rule 37 of the Rules of Court.

After due consideration, the Court also finds respondent's motion bereft of merit.

Notably, respondent's motion merely restates, if not repeats, the matters alleged in his *Answer* filed on February 26, 2019 and *Memorandum* filed on September 28, 2022.

Nonetheless, it bears stressing that the role of this Court is not only confined in the determination of whether the denial by the Commissioner of the subject claim in the administrative level is proper, to hold otherwise espouses a limited view of the role of the Court over appeals filed from a decision of the CIR or its representatives.

In *Commissioner of Internal Revenue v. Univation Motor Philippines, Inc. (formerly Nissan Motor Philippines, Inc.)*,[14] the Supreme Court categorically stated that the CTA is not precluded from considering evidence that was not presented in the administrative claim with the BIR, to wit:

> "The law creating the CTA specifically provides that proceedings before it shall not be governed strictly by the technical rules of evidence. **The paramount consideration remains the ascertainment of truth. Thus, the CTA is not limited by the evidence presented in the administrative claim in the Bureau of Internal Revenue. The claimant may present new and additional evidence to the CTA to support its case for tax refund.**
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> Cases filed in the CTA are litigated *de novo* as such, respondent 'should prove every minute aspect of its case by presenting, formally offering and submitting x x x to the Court of Tax Appeals all evidence x x x required for the successful prosecution of its administrative claim.' Consequently, the CTA may give credence to all evidence presented by respondent, including those that may not have been submitted to the CIR as the case is being essentially decided in the first instance." *(Emphasis added)*

Time and again, this Court held that Section 8 of Republic Act No. 1125 (An Act Creating the Court of Tax Appeals) explicitly provides that the CTA shall be a court of record and as such it is required to conduct a formal trial (trial

[14] G.R. No. 231581, April 10, 2019.

de novo) where the parties must present their evidence accordingly if they desire the Court to take such evidence into consideration.[15] Suffice it to say, petitioner's failure to submit documents in the administrative level is not fatal to its case filed and pending in the judicial level since the said case is litigated *de novo,* and decided based on what has been presented and formally offered by the parties during trial.

As to the other arguments advanced by respondent, the same have already been weighed and considered in the assailed *Decision* and to discuss them anew would only be superfluous.

There being no new matter or substantial issue raised by the parties in their respective *Motions for Partial Reconsideration*, the Court finds no compelling reason to reverse, amend, or modify the *Decision* promulgated on November 23, 2023.

WHEREFORE, premises considered, petitioner's *Motion [Re: Partial Reconsideration of Decision dated 29* (sic) *November 2023]* and respondent's *Motion for Partial Reconsideration (Re: Decision promulgated 23 November 2023)* are both **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

We Concur:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

[15] See *Rafael Arsenio S. Dizon, et al. v. Court of Tax Appeals, et al.,* G.R. No. 140944, April 30, 2008.