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. 10395

Members:

RINGPIS-LIBAN, *PJ,*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ.*

Promulgated:

2:12 pm

x - x

RESOLUTION

***MODESTO-SAN PEDRO, J.*:**

For the Court's resolution is petitioner's *Motion for Reconsideration (of the Decision dated September 5, 2024)*, filed on October 1, 2024,[1] with respondent's *Comment/Opposition (on Motion for Reconsideration dated October 1, 2024)*, filed on November 4, 2024.[2]

The petition was filed against this Court's *Decision* dated September 5, 2024 ("Assailed Decision"), which denied petitioner's claim for refund of its unutilized input value-added tax ("VAT") for the 1st to 4th quarter of taxable year ("TY") 2018, primarily on the ground that petitioner failed to prove: *(1)* that it is a VAT-registered entity; and *(2)* that it is engaged in zero-rated sales (*i.e.* the services are performed in the Philippines).

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1 *Rollo* Vol. 4, pp. 1171 to 1176.
2 *Id* at 1214 to 1217.

Petitioner insists that it is considered a VAT taxpayer for purposes of claiming a refund of its unutilized input VAT for the 1st to 4th quarters of TY 2018 and that it has established with uncontroverted evidence that the services it rendered to its non-resident affiliates were performed in the Philippines.

After due consideration, the Court finds petitioner's Motion for Reconsideration bereft of merit.

Petitioner insists that its Palawan and Technopoint Sites are facilities not requiring BIR registration and primarily argues that:

1.) its Palawan and Technopoint Sites are its facilities but with no sales activity and do not conduct transactions independently from the head office, and, hence, do not need separate registrations as a branches pursuant to *Revenue Regulations ("RR") No. 7-2012*;
2.) the two sites do not maintain separate books of accounts and accounting records;
3.) it is the head office which transacts with clients, market services, records and account for sales, issues billing statements and official receipts and not the two sites;
4.) the Palawan and Technopoint Sites are akin to a place of production as they merely house the call center agents who performs the tasks being routed to them by the head office, but the realization and recording of the sales transaction is with the head office;
5.) the mere generation of services in the Palawan and Technopoint Sites does not mean that the said facilities also sold the services to petitioner's non-resident foreign affiliates; and
6.) the BIR issued the two sites with Certificates of Registration of Facility, which confirms that both sites are indeed a facility, not requiring registration.

Further, petitioner insists that the following pieces of evidence, which are uncontroverted, conclusively point to the fact that its alleged zero-rated sales were performed in the Philippines:

1.) SEC Certificates, BIR Registrations, Service Agreements with non-resident foreign affiliates;
2.) Testimony of petitioner's witness Ronald Portula stating that the services were rendered in the Philippines;
3.) Certificate of Inward Remittances showing that payments in acceptable foreign currency were inwardly remitted in the Philippines to petitioner for the services it rendered;
4.) Official receipts (ORs) were issued by petitioner to its non-resident foreign clients for the services it rendered showing the particular site which generated the service; and

5.) Petitioner's Articles of Incorporation stating that it is registered to provide outsourced call center services *from the Philippines* to domestic and offshore businesses.

These arguments fail to fully convince the Court.

Petitioner's Palawan and Technopoint Sites qualify as branches for VAT registration purposes as they properly fall under the classification of a facility with sales activity. They thus fall under the requirement for registration with their own branch TIN codes and payment of Annual Registration Fees.

Sales activity under the context of *RR No. 7-2012* pertains to activities which produce the sale. As defined therein, a facility shall be registered as a branch *whenever sales transactions/activities are* ***conducted*** *thereat.*

As stated in the Assailed Decision:

> Since *the sales transactions supposedly* <u>*occur and emanate*</u> *from the Palawan and Technopoint Facilities*, petitioner should have registered these with the BIR as branches before the commencement or start of the business therein and paid the corresponding annual registration fee of P500.00, in accordance with the above provisions, especially Section 9. 236-1 (a) of RR No. 16-2005.
> (Italics, Ours.)

Contrary to petitioner's stance, sales transactions/activities are not confined within the mere technicalities as to where the sales contract was commenced and consummated or where the sales transaction is recorded. They cannot be likened to a place of production because the performance of the service itself is the very activity which produces the sale. This is unlike the production of goods where there is no sale that transpires yet or where such activity is mere preparatory to sale.

Even the Certificates of Registration of Facility[3] (with Facility Type as a SHOWROOM), albeit issued in 2019, fail to convince us that the Palawan and Technopoint sites are indeed facilities with no sales transactions/activities. As discussed in the Assailed Decision, *these sites were registered contrary to the [provisions of Section 236 of the NIRC, as amended, Section 9.236-1 (a) of RR No. 16-2005, and Section 3.8 of RR No. 7-2012] regarding the requirement of BIR registration.* Said facilities were not properly registered with the BIR as both Certificates of Registration of Facility stated that "No Sales Transactions are conducted in this Facility, otherwise, it shall be registered as a branch office."

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[3] Exhibits "P-26" and "P-27", *id.* at 913 and 1521.

Further, the two sites cannot be considered as just "showrooms". As clearly established, these sites are for the actual rendition of the activity which produces the sale and not places of mere exhibition. The activities conducted there are not merely preparatory to sale or administrative function. They comprise the sale itself – the very subject matter of the service contract with petitioner's clients.

On the other hand, We find merit in petitioner's insistence that its services were performed in the Philippines. Upon revisiting petitioner's evidence on the matter, the Court finds that petitioner has established that its services were indeed performed in the Philippines, particularly in Palawan and Pasig City. Petitioner's witness, Mr. Ronald Portula, categorically stated that the alleged zero-rated sale of services, which is the subject of the claim for refund herein, were generated from its Palawan and Technopoint Facilities, to wit:[4]

> Q17: You mentioned that petitioner registered some of its sites with PEZA. What are the sites that are not registered with PEZA?
>
> A17: Petitioner has *two sites* that are currently not registered with PEZA. These are our Eastville Citywalk site in *Puerto Princesa, Palawan* ("Palawan Facility") and Ortigas Technopoint site in *Pasig City* ("Technopoint Facility").
>
> . . . .
>
> Q55: For the 1st to 4th quarters of taxable year 2018, who are the non-resident affiliates or clients for whom petitioner rendered services?
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> A55: For the 1st to 4th quarters of taxable year 2018, the non-resident clients or customers of petitioner are Sitel UK Limited. Sitel Australia Pty Ltd, Sitel New Zealand Limited, Sitel Operating Corporation, Sitel Europe Limited and Sitel Teleservices Canada Inc.
>
> However, *for purposes of the present case*, only Sitel Operating Corporation, Sitel UK Limited and Sitel Australia Pty Ltd. are relevant since they are the only non-resident affiliates to whom *petitioner rendered services generated from its Palawan and Technopoint Facilities.*
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> (Italics, Ours.)

However, such finding is rendered irrelevant considering that petitioner failed to prove, first and foremost, that it is a VAT-registered entity in order to be qualified for any VAT refund in the first place.

Nevertheless, the Court revisits the matter of jurisdiction over the present case. As can be recalled, petitioner's appeal before the Court was on the basis of respondent's inaction over its administrative claim for refund.

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[4] Exhibit "P-30", *Rollo* Vol. I, pp. 34 to 63.

At the time the administrative and judicial claims for refund were filed on July 10, 2020 and November 6, 2020, respectively, the law in effect was *Republic Act ("RA") No. 10963*, or the *Tax Reform for Acceleration and Inclusion ("TRAIN") Law*, where *Section 112(C) of the National Internal Revenue Code ("Tax Code")* was amended, as follows:

> SEC. 112. *Refunds or Tax Credits of Input Tax.* –
>
> . . . .
>
> (C) *Period within which Refund of Input Taxes shall be Made.* – In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: Provided, That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.
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> *In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals*: Provided, however, That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code.
> (Italics, Ours.)

Based on the foregoing, there is only one ground when a taxpayer may appeal its VAT refund claim before the Court of Tax Appeals ("CTA") – in case of full or partial denial of the claim. On the other hand, in case of BIR's failure to act on the claim within the 90-day period, the remedy is to punish the erring BIR official, agent, or employee under *Section 269 of the Tax Code*. As such, inaction by the BIR on VAT refund claims was effectively removed as a ground for appeal before the CTA.

On the other hand, *RA No. 9282*, or the *CTA Law*, grants jurisdiction to the CTA in cases of inaction by respondent on refunds of internal revenue taxes, to wit:

> SEC. 7. *Jurisdiction.* – The CTA shall exercise:
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> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
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> . . . .
>
> 2. *Inaction by the Commissioner of Internal Revenue in cases involving* disputed assessments, *refunds of internal revenue taxes*, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, *in which case the inaction shall be deemed a denial;*

(Italics, Ours.)

The foregoing was not repealed by the enactment of the *TRAIN Law*. Despite such, the Court is of the view that the inaction of the BIR on VAT refund claims is not a ground for appeal before the CTA during the effectivity of *TRAIN Law*. In *CITCO International Support Services Limited – Philippine ROHQ vs. Commissioner of Internal Revenue*,[5] the CTA *En Banc* shed light on the matter:

> *TRAIN, as written, does not allow appealing the CIR's failure to act on a claim for input tax refund*
>
> Without any jurisprudence that directly addresses the issue at hand, the Court En Banc must focus first on TRAIN as it was written. We now thus turn to the fact that *TRAIN removed any mention of the CIR's inaction or the expiration of the period for acting on VAT refund claims from Section 112 (c) of the NIRC.*
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> An amendment to a law that removes certain provisions must be treated as important. Drawing from the book Statutory Construction by Ruben E. Agpalo, the Supreme Court has decreed that "the deliberate selection of language differing from that of the earlier act on the subject indicates that a change in the meaning of the law was intended" and that an amendment to a statute should not be treated as "mere semantic exercise" but must instead be seen as expressing some purpose, which must be given effect. In other words, a change made to the language used in a law must be understood as a change in the law itself.
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> To be even more specific, the High Court has held that "an amendment by the deletion of certain words or phrases indicates an intention to change its meaning." Clearly, then, the removal of a course of action previously provided by law must be understood as the law being modified to no longer allow such.
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> Furthermore, "when there is a reasonable certainty that a particular person, object, or thing has been omitted from a legislative enumeration," such omission must be taken as intentional. The provision in question must consequently be treated as inapplicable to the entity omitted from the enumeration.
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> Finally, as often emphasized, when the laws do not distinguish, neither should the Courts.
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> Considering the above, *TRAIN's explicit removal of the CIR's inaction as either a condition of raising an appeal or the reckoning point of the 30-day prescriptive period cannot be brushed aside. To treat the old option, of raising a judicial claim for refund from the CIR's inaction, as still available even after said removal would be to treat TRAIN's amendments to Section 112 (c) as meaningless, effectively nullifying said changes.* It would conflict with the explicit deletion of said option from the NIRC. It would ignore the provision's telling omission of appeals from inaction. It would

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[5] CTA *EB* No. 2900 (CTA Case No. 10258), August 7, 2025.

distinguish (between cases where the CIR does and does not act on an administrative claim within the 90-day period) when the law does not. It would thus contradict the law itself.

TRAIN's removal of the relevant phrases must consequently be construed as the explicit removal of said option. *Under TRAIN, a judicial claim could not be raised based on the CIR's inaction. A taxpayer's only option, as far as raising a judicial claim goes, was to await the CIR's decision.*

Legislators intentionally removed the reference to the CIR's inaction from Section 112 (c) of the NIRC

The above discussions are sufficient to ground this Court En Banc's finding that the CIR's inaction on an administrative claim under Section 112 (c) of the NIRC was no longer deemed a denial of such claim under TRAIN. However, another source of clarity on the issue is available to Us: the transcript of the consultative meeting, held on February 2, 2023, on EOPTA, as attached to petitioner's Motion for Reconsideration before the Court a quo. While the meeting was for the drafting of EOPTA and not TRAIN, it is still enlightening for the present purposes as it specifically addresses the lack of a "deemed denied" provision in TRAIN.

. . . .

Both a BIR Assistant Chief and a Senate official present during the TRAIN deliberations practically admitted that Section 112 (c) did not have a "deemed denied" provision under said law

Reading through the transcript, the Court notes two members of the committee who seem directly knowledgeable on TRAIN: Atty. Jayson R. Payapag, Assistant Chief of the BIR's Assessment Division, and Atty. Rodelio T. Dascil, Director General of the Senate Tax Study and Research Office. Both had much to reply to a perceived issue in Section 112 (c) of the NIRC, as specifically amended by TRAIN — an issue raised by Chairperson Hon. Win Gatchalian, Ms. Kathleen Marcelo, a member of Hon. Gatchalian's staff, Atty. Cresencio T. Meneses I, Vice President of Corporate Tax at SM Investments Corporation, and Atty. Euney Marie Mata J. Perez, Chair of the Tax Committee at the Management Association of the Philippines.

That TRAIN no longer included a "deemed denied" provision is most directly seen in Atty. Payapag's repeated insistence that the 30-day reckoning point for appealing the CIR's denial is the taxpayer's receipt of such:

. . . .

As a last aside, the above also bolsters Our present interpretation against counterarguments that invoke Section 7 (a) (2) of Republic Act No. 1125, as amended ("CTA Law"), which states:

. . . .

Drawing from the above, one may argue that since Section 112 (c) provides a "specific period for action" (90 days), the expiration of the same is "deemed a denial."

This, however, is mistaken. As pointed out by Presiding Justice Hon. Roman G. del Rosario in his Dissenting Opinion to the assailed Decision, *Section 112 (c) of the NIRC governs judicial claims for VAT refunds specifically, making it a special law. Section 7 (a) (2) of the CTA Law, meanwhile, deals with cases filed before the CTA from inactions of the CIR in general, making it a general law. The former must therefore prevail over the latter.*

Even assuming arguendo that the CTA Law is the special law, the position is still untenable. *Bank of Commerce v. Planters Development Bank*, as later quoted by *First Philippine Holdings Corporation v. Securities and Exchange Commission*, is instructive here:

> An implied repeal transpires when a substantial conflict exists between the new and the prior laws. In the absence of an express repeal, a subsequent law cannot be construed as repealing a prior law unless an irreconcilable inconsistency and repugnancy exist in the terms of the new and the old laws. Repeal by implication is not favored, *unless manifestly intended by the legislature*, or unless it is convincingly and unambiguously demonstrated, that the laws or orders are clearly repugnant and patently inconsistent with one another so that they cannot co-exist; *the legislature is presumed to know the existing law and would express a repeal if one is intended.*
> (Italics supplied.)

From the above, later laws generally cannot be considered impliedly repealing a prior law. An exception exists, however, when such repeal is "manifestly intended by the legislature." As discussed above, the drafters of TRAIN intended to remove the "deemed denied" provision from Section 112 (c) of the NIRC. It thus falls under the identified exception. *Consequently, the "deemed denied" provision of Section 7 (a) (2) of the CTA Law must be deemed to have been repealed during the effectivity of TRAIN, at least for cases involving Section 112 (c) of the NIRC.*

In brief, then, the comments of those involved in the drafting and implementation of TRAIN show that said bill did, indeed, remove the "deemed denied" provision from Section 112 (c) of the NIRC and that said removal was intentional and deliberate.
(Citations omitted. Italics, Ours.)

However, despite the foregoing being the case, Our ruling herein shall not be affected considering that there was a decision denying petitioner's administrative claim in a Letter dated October 1, 2020.[6] The same was

[6] Exhibit "R-5", BIR Records, pp. 307 to 320.

admitted by petitioner to be received only after the Petition for Review was already filed with this Court.[7]

At its inception, then, the present Petition for Review filed with the Court is dismissible for being prematurely filed, given that at the time of its filing, there was yet no decision rendered on petitioner's administrative claim for refund that is appealable before the CTA. However, *Rule 10, Section 5 of the 2019 Amended Rules on Civil Procedure*[8] authorizes pleadings to conform to evidence without necessarily amending the same:

> **RULE 10**
> Amended and Supplemental Pleadings
>
> . . . .
>
> SECTION 5. *No Amendment Necessary to Conform to or Authorize Presentation of Evidence.* — When issues not raised by the pleadings are tried with the express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. No amendment of such pleadings deemed amended is necessary to cause them to conform to the evidence.

Thus, by virtue of respondent's assertion, and presented evidence therefor, that a decision had been rendered on petitioner's administrative claim and petitioner's admission on its receipt, there was express consent of both parties on the matter. As such, we shall deem the Petition amended in order to conform to evidence as if the same had been raised therein. Accordingly, the Court can properly take cognizance of the present case since there was indeed a BIR decision on administrative claim for refund appealable to the CTA and had been made part of the records.

Given the circumstances, We find it necessary to treat it in such way so as not to prejudice a taxpayer whose first Petition would be dismissed for being prematurely filed, only to be dismissed on its second Petition for being belatedly filed considering that the trial and promulgation of the decision in the first Petition takes up more than 30 days from the receipt of the BIR decision on the administrative claim for refund.

In summary, petitioner failed to impress the Court with cogent arguments to justify the reversal, amendment, or modification of the Assailed Decision. The same shall therefore not be disturbed.

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7 Refer to par. 91, Memorandum for Petitioner, *Rollo* Vol. 4, p. 1631.

8 A.M. No. 19-10-20-SC dated October 19, 2019, as adopted in CTA *En Banc* Resolution No. 9-2020 dated August 7, 2020.

ACCORDINGLY, petitioner's *Motion for Reconsideration (of the Decision dated September 5, 2024)* is **DENIED** for lack of merit.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

I vote to affirm the assailed Decision
CORAZON G. FERRER-FLORES
Associate Justice