REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

ORGANISATIONAL SUPPORT SERVICES, INC., Petitioner,	**CTA CASE NO. 10525** Members:
- versus -	**RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: AUG 1 3 2025 4:00 pm

x - x

RESOLUTION

FERRER-FLORES, J.:

Before this Court is petitioner's **Motion for Reconsideration** filed on March 12, 2025, with respondent's **Comment/Opposition (To Petitioner's Motion for Reconsideration dated 12 March 2025)** filed through registered mail on April 15, 2025, and received by the Court on April 23, 2025.

On February 14, 2025, the Court promulgated a Decision denying petitioner's claim for refund of excess and unutilized input value-added tax (VAT) attributable to its zero-rated sales of services for the third and fourth quarters of calendar year 2018, in the amount of ₱1,782,368.41, for failing to sufficiently prove that the said services were performed in the Philippines, the dispositive portion of which is quoted as follows:

> **WHEREFORE**, in light of the foregoing considerations, the present *Petition for Review* is **DENIED** for lack of merit.
>
> **SO ORDERED**.

In its *Motion*, petitioner prays for the Court to reconsider the above Decision based on the following grounds:

i. respondent never raised the issue of lack of proof on where petitioner's services were rendered;

ii. petitioner performed the services to Therapeutic Case Management Services Limited in the Philippines; and,

iii. petitioner complied with the requisites of Section 108(B)(2) of the National Internal Revenue Code (NIRC) of 1997, as amended, to establish that it is engaged in zero-rated sales.

As to the first ground, petitioner asserts that respondent never raised the issue of the lack of proof of the location for the performance of its services in the VAT Refund/Credit Notice dated February 22, 2021 issued by the Bureau of Internal Revenue (BIR) or in his *Answer* filed on January 10, 2022 with the Court. Petitioner continues that respondent did not also dispute or present any contravening evidence to the Service Agreement dated July 1, 2018 between petitioner and Therapeutic Case Management Services Limited (TCMS) when it was offered in the *Formal Offer of Evidence* filed on March 13, 2023. As such, petitioner contends that respondent should not be allowed to raise the said issue after trial since it was only raised for the first time when respondent filed his *Memorandum* on January 3, 2024.

With regard to the second ground, while the Service Agreement did not explicitly state that petitioner will be performing its services in the Philippines, petitioner, however, insists that the pieces of evidence and circumstances in the present case readily prove that it operated and provided services to TCMS in the Philippines. *First*, the principal office of petitioner indicated in its Amended Articles of Incorporation (AOI) is at Taguig, Metro Manila, Philippines. As such, petitioner's Amended AOI itself restricts, limits, and confines petitioner's place of operations, to operate only within the Philippines as it has no authority to establish branch offices or even undertake business operations beyond the territorial jurisdiction of the Philippines. *Second*, the "Application to Do Business Under the Foreign Investments Act of 1991 (RA 7042)", appended to its Amended AOI, declares that petitioner intended to operate an export market enterprise. *Third*, petitioner's status as a direct exporter of services to a "foreign investor" was twice recognized and acknowledged by the BIR, through Revenue District Office No. 044, in its letter to petitioner dated January 29, 2021, and again, in the VAT Refund/Credit Notice dated February 22, 2021. *Fourth*, the provisions of the Service Agreement point to a substantial connection with the Philippines, as petitioner is recognized as "a company organized under the laws of the Republic of the Philippines," and the governing law for the said Service Agreement is Philippine law. Petitioner, thus, submits that the above-mentioned pieces of evidence readily show the fact that it performed services to TCMS in the Philippines.

Moreover, petitioner also maintains that the quantum of proof required in cases involving claims for refund of taxes is preponderance of evidence. As such, the information on where the services were rendered or performed is not limited to the stipulation in the Service Agreement but reference to petitioner's corporate documents and other relevant documents may be resorted to, so as to determine the location of its operations. Petitioner further avers that the statements of the Independent Certified Public Accountant (ICPA) may also be relied upon since he was commissioned by the Court to verify the documents in support of petitioner's claim for VAT refund.

As to the last and third ground, petitioner insists that it has complied with the requisites of Section 108(B)(2) of the NIRC of 1997, as amended, and has established that it is engaged in zero-rated sales as: (1) it provided services other than processing, manufacturing or repacking of goods; (2) TCMS is a corporation that is not doing business in the Philippines; and, (3) TCMS paid for the services in foreign currency inwardly remitted and accounted for in conformity with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).

On the other hand, in his *Comment*, respondent contends that contrary to petitioner's argument that its Amended AOI restricts, limits and confines the petitioner's place of operations within the Philippines, hence, it is constrained to operate only within the Philippines, a simple reading of Section 8 of said Amended AOI states that it can conduct or transact any and all lawful activities, among others, within or without the Philippines. Furthermore, petitioner's "Application to Do Business under the Foreign Investments Act", which was appended to the Amended AOI, does not specifically indicate that petitioner's services are performed in the Philippines.

Nonetheless, even assuming that petitioner has established that it is engaged in zero-rated or effectively zero-rated sales, respondent asserts that petitioner is still not entitled to its claim for refund considering that petitioner's sole recipient of its services (*i.e.*, TCMC) is deemed to be doing business in the Philippines. Respondent expounds that petitioner's sole client, TCMS, was an original subscriber of capital stock with 99.99% ownership over petitioner as stated in the Eighth Provision of petitioner's Amended AOI. Respondent, thus, submits that TCMS may be deemed as "doing business" in the Philippines for having full control over petitioner's business.

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

As to petitioner's first argument, the Court has, time and again, ruled that it is not bound by the issues stipulated by the parties, but may also rule on related issues necessary to achieve an orderly disposition of the case. This authority has been recognized by the Supreme Court in the case of *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.,*[1] as follows:

> **On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.**
>
> Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. The text of the provision reads:
>
> > SECTION 1. – *Rendition of judgment* – xxx
> >
> > **In deciding a case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.**
>
> **The above section is clearly worded.** x x x. *(Emphasis added)*

More so, the Supreme Court has applied the above-quoted provision in the case of *Commissioner of Internal Revenue v. Yumex Philippines Corporation*,[2] wherein it had the opportunity to rule that "as the Court of Tax Appeals (CTA) *En Banc* held, the CTA Division was justified in ruling on the issue that respondent was denied due process <u>even though it was not expressly raised by respondent in its petition for review</u>."

Furthermore, in the case of *Salvador Comilang v. Francisco Burcena, et al.*,[3] the Supreme Court held that "[o]nce a court acquires jurisdiction over a case, <u>it has wide discretion to look upon matters which, although not raised as an issue, would give life and meaning to the law</u>. Indeed, the Rules of Court recognize the broad discretionary power of an appellate court to consider errors not assigned."[4]

Based on the foregoing, it is clear that this Court has discretion to look upon matters or rule upon issues not particularly raised by the parties for it to achieve proper disposition of the case. In this case, the issue of whether services were performed in the Philippines is directly related to the principal issue to be resolved by the Court on whether petitioner is entitled to refund the amount of ₱1,782,368.41. More so, it is part of the requisites, *i.e.*, in relation to the taxpayer's output VAT (fourth and fifth essential requisites)

---

[1] G.R. No. 183408, July 12, 2017.
[2] G.R. No. 222476, May 5, 2021.
[3] G.R. No. 146853, February 13, 2006.
[4] Cited also in *M/V "Don Martin Voy 047 and its Cargoes of 6,500 Sacks of Imported Rice, et al. v. Hon. Secretary of Finance, et al.,* G.R. No. 160206, July 15, 2015, wherein the Supreme Court recognizes this Court's jurisdiction to determine an issue not raised by the parties.

which the taxpayer-applicant must comply with to successfully obtain a credit/refund of input VAT.

Hence, in order to properly determine that the taxpayer is engaged in zero-rated or effectively zero-rated sales, the Court may resolve the issue on the lack of proof of the location for the performance of petitioner's services, even if said issue was not mentioned in respondent's VAT Refund/Credit Notice and *Answer* and was only raised in his *Memorandum*.

With regard to the second and third arguments, suffice it to say 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.[5] 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."[6]

The Court recognizes further, as it always has, that the burden of proof to establish entitlement to refund is on the claimant taxpayer. Being in the nature of a claim for exemption, refund is construed in *strictissimi juris* against the entity claiming the refund and in favor of the taxing power. This is the reason why a claimant must positively show compliance with the statutory requirements provided for under the NIRC of 1997, as amended, in order to successfully pursue one's claim.[7]

Here, no evidence was offered by petitioner that directly proves that the subject services were performed in the Philippines. The Court cannot simply assume or surmise that the subject services were performed in the Philippines on the basis that petitioner's principal office is in the Philippines or that respondent acknowledged petitioner's status as a direct exporter of services. The circumstances or other documents pointed out by petitioner do not sufficiently prove that the subject services were actually performed in the Philippines.

Similarly, the Court reiterates that the findings and conclusions of the ICPA shall not be conclusive upon the Court, which may in whole or in part, adopt such findings and conclusions subject to verification.[8] Petitioner cannot merely rely on the ICPA's findings to validate its claim, since the ultimate determination rests upon the Court after making its own verification and evaluation based on the evidence submitted by the parties. This is not, however, to say that the Court disregarded the findings of the ICPA in its

---

5 *Dionarto Q. Noblejas v. Italian Maritime Academy Phils., Inc., et al.*, G.R. No. 207888, June 9, 2014.

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

7 *Winebrenner & Iñigo Insurance Brokers, Inc. v. Commissioner of Internal Revenue*, G.R. No. 206526, 28 January 2015.

8 Section 3, Rule 13 of the Revised Rules of the Court of Tax Appeals.

Report, as this Court took into consideration the ICPA's findings on petitioner's compliance with the invoicing requirements vis-à-vis the pertinent pieces of evidence presented by the parties.

Again, the burden is on the taxpayer to show that it has strictly complied with the conditions for the grant of the tax refund or credit since actions for tax refund or credit are regarded as derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund.[9] The pieces of evidence presented entitling a taxpayer to an exemption are also *strictissimi* scrutinized and must be duly proven.[10] 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.[11]

Accordingly, the Court maintains its ruling in the assailed Decision that petitioner failed to establish that the services provided to TCMS were performed in the Philippines. Consequently, petitioner failed to establish that it is engaged in zero-rated sales pursuant to Section 108(B)(2) of the NIRC of 1997, as amended.

In view of the foregoing disquisitions, there being no new matter or substantial issue raised by petitioner in its *Motion for Reconsideration*, the Court finds no compelling reason to reverse or modify the Decision promulgated on February 14, 2025.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

---

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

10 *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.

11 *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.

We Concur:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice