Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

NOKIA (PHILIPPINES), INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1313
(CTA Case No. 8405)

Present:

DEL ROSARIO, *PJ,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

Promulgated:

FEB 15 2017 3:37 p.m.

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RESOLUTION

CASANOVA, *J.*:

Submitted for consideration is respondent's **Motion for Reconsideration (Re: Decision dated 22 September 2016)**[1] filed, through registered mail, on October 18, 2016, with petitioner's **Comment**[2] filed on December 12, 2016.

In his Motion, respondent seeks that the Court *En Banc* reconsider and set aside its Decision[3] dated September 22, 2016, and that a new one be rendered affirming the Decision dated November 7, 2014 and Resolution dated May 11, 2015 of the Court of Tax Appeals (CTA) First

[1] CTA *En Banc* Rollo, pp. 203-211
[2] *Ibid.*, pp. 216-220
[3] *Id.*, pp. 169-184

Division in CTA Case No. 8405. The dispositive portion of the *En Banc* Decision reads as follows:

> "**WHEREFORE,** the instant Petition for Review is hereby **PARTIALLY GRANTED**. The Decision dated November 7, 2014 and Resolution dated May 11, 2015 in CTA Case No. 8405 are **REVERSED** and **SET ASIDE**. Accordingly, the instant case is hereby **REMANDED** to the CTA First Division for determination of the amount refundable.
>
> **SO ORDERED.**"

In assailing the *En Banc* Decision, respondent primarily claims that, contrary to the findings thereof, the Notes to Financial Statements as of and for the years ended December 31, 2009 and 2008 do not fall as hearsay testimony. He argues that such are public documents which are admissible in evidence even without proof of their due execution and genuineness, following the jurisprudence in the case of *ERNESTO L. SALAS vs. STA. MESA MARKET CORPORATION and the HEIRS OF PRIMITIVO E. DOMINGO*[4] *("Salas case").* Also, the statements made in the Financial Statements by the external auditor were verified statements in the performance of his duties, which, therefore, cannot be considered as hearsay considering that the external auditor may be held criminally liable for any false entries. In any case, the said Notes are considered as exception to the hearsay rule as entries made in the course of business under Section 43, Rule 130 of the Rules of Court. More so, respondent further argues that the mere fact the Nokia Corporation (Finland) was able to provide Certification of Non-Registration of Corporation/Partnership duly issued by the SEC, Extract from the Trade Register of Finland and Certificate of Fiscal Residence issued by the Tax Authority of Finland are not adequate to prove that it is indeed a non-resident foreign corporation doing business outside the Philippines. Citing the case of *ERIKS PTE. LTD vs. COURT OF APPEALS and DELFIN F. ENRIQUEZ, JR.*[5] *("Eriks case"),* respondent asserts that the question of whether or not a foreign entity is doing business or not in the Philippines must be adjudged in the light of its own environmental circumstance, such as clearly indicated in Note 1 of the Audited Financial Statements.

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[4] G.R. No. 157766, July 12, 2007
[5] G.R. No. 118843. February 6, 1997

On the other hand, in its Comment, petitioner points out that respondent's Motion states nothing new. Petitioner asserts that the arguments therein are mere rehash of the Dissenting Opinions in the assailed *En Banc* Decision.

Accordingly, after due consideration of the arguments advanced by the parties, *We* find no merit in the instant Motion for Reconsideration.

As correctly pointed out by petitioner, the arguments proffered in respondent's Motion contain the same facts and issues which have already been analyzed and passed upon in the assailed *En Banc* Decision. In fact, respondent substantially reiterated the Dissenting Opinions of Honorable Justices Erlinda P. Uy and Cielito N. Mindaro-Grulla and, thereafter, adopted them as his own.

Nonetheless, at the risk of being repetitive, *We* shall address the issues raised herein. Respondent primarily relies on the *Salas case* to prove that the Notes to the Audited Financial Statements do not fall as hearsay testimony. On that aspect, *We* adhere to the wisdom of the pronouncements made by the High Court in the said case in light of the factual circumstances therein. However, the factual milieu is different in the present case; for one, it must be emphasized that it is not the Financial Statements as of and for the years ended December 31, 2009 and 2008[6] per se that *We* consider as hearsay testimony, but rather the personal inference made by the external auditor on Note 1 of the Notes to Financial Statements in concluding that Nokia Corporation (Finland) is doing business within the Philippines. The pertinent portion of the *En Banc* Decision is quoted hereafter for ease of reference, *viz*:

> "Perusal of the Financial Statements as of and for the years ended December 31, 2009 and 2008 reveals that whether or not Nokia Corporation (Finland) is doing business in the Philippines cannot be merely inferred from Note 1 thereof. This is so because the Independent Auditor's Report to the Board of Directors and Stockholder of Nokia (Philippines), Inc. explicitly states that the report was based on their opinion founded on the management's fair representation of the financial documents presented. In other words, the Notes to Financial Statements as of and for the years ended December 31, 2009

[6] Exhibit "R"

and 2008 were based on the materials presented by petitioner for the main purpose of conducting an audit report. It does not fairly determine whether or not Nokia Corporation (Finland) is actually doing business in the Philippines, a portion of the report provides:

> *Auditor's responsibility*
>
> Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with Philippines Standards on Auditing. *x x x*
>
> An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An Audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.
>
> We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Accordingly, the conclusion that Nokia Corporation (Finland) is doing business within the Philippines is a mere personal inference of the external auditor who prepared petitioner's Financial Statements based on the documents it reviewed. It was a deduction based on not of what the auditor knows himself but of what he has heard from others, such remark would therefore constitute as hearsay statement."[7] *(Citations Omitted)*

Furthermore, by admitting the Financial Statements as one of petitioner's exhibits during the proceedings with the court *a quo* shows

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[7] At pp. 12-13 of the Decision

that it had been thoroughly considered in arriving at the conclusion reached in that trial. Clearly, there is no conflict between the *Salas case* and the present case. It's just unfortunate, however, that after re-evaluation of the records of the case, *We* find that sole reliance on Note 1 of the Financial Statements is insufficient to affirm the conclusion made by the court *a quo*. It cannot be gainsaid that, an exhibit's probative value and weight to the issues involved in a case are subject to the court's final evaluation.

With regard to the *Eriks case*, *We* find respondent's dependence on the doctrinal pronouncements made therein may be applied in the present case as erroneous. Perusal of the *Eriks case* exposes that the main issue addressed by the Supreme Court therein was whether a foreign corporation doing business in the Philippines without the required license is barred from access to our court system. To answer such query, the High Court defined what constitutes doing, engaging in, or transacting business in comparison with isolated transactions so to fill the gap in the Corporation Code, thus:

> "The accepted rule in jurisprudence is that each case must be judged in the light of its own environmental circumstances. **It should be kept in mind that the purpose of the law is to subject the foreign corporation doing business in the Philippines to the jurisdiction of our courts**. It is not to prevent the foreign corporation from performing single or isolated acts, but to bar it from acquiring a domicile for the purpose of business without first taking the steps necessary to render it amenable to suits in the local courts.
>
> *x x x*
>
> Thus, we hold that the series of transactions in question could not have been isolated or casual transactions. **What is determinative of 'doing business' is not really the number or the quantity of the transactions, but more importantly, the intention of an entity to continue the body of its business in the country.** The number and quantity are merely evidence of such intention. The phrase 'isolated transaction' has a definite and fixed meaning, i.e. a transaction or series of transactions set apart from the common business of a foreign enterprise in the sense that there is no intention to engage in a progressive pursuit of the purpose and object of the business organization. **Whether a foreign**

> **corporation is 'doing business' does not necessarily depend upon the frequency of its transactions, but more upon the nature and character of the transactions.**" *(Emphases Ours)*

As gleaned above, the doctrine pronounced in the *Eriks case* refers to the capacity of a foreign corporation to maintain a suit in the Philippines without first securing permits and licenses as required by our government. The High Court justifies that "[i]t was never the intent of the legislature to bar court access to a foreign corporation or entity which happens to obtain an isolated order for business in the Philippines. Neither, did it intend to shield debtors from their legitimate liabilities or obligations. But it cannot allow foreign corporations or entities which conduct regular business any access to courts without the fulfillment by such corporations of the necessary requisites to be subjected to our government's regulation and authority. By securing a license, the foreign entity would be giving assurance that it will abide by the decisions of our courts, even if adverse to it."

However, by some stretch of imagination, respondent believes that the "accepted rule" in cases of refund of creditable input value-added tax (VAT), the determination of whether the services rendered by the taxpayer-claimant were performed in the Philippines, and whether the recipient of such service is a non-resident corporation doing business outside the Philippines, should be judged in the light of its own environmental circumstances on a case-to-case basis. As such, the Note 1 of the Audited Financial Statements explicitly shows that Nokia Corporation (Finland) is a non-resident corporation, doing business within the Philippines.

We cannot subscribe to respondent's belief.

While it is true that there is indeed a need to fully determine whether the services rendered by the taxpayer-claimant were performed in the Philippines, and whether the recipient of such service is a non-resident corporation doing business outside the Philippines, the requisites and procedure in the determination of such have already been well settled. As held in the *En Banc* Decision, *viz*:

> "*x x x*. As correctly held by the court *a quo*, the determination of whether a certain sale or lease of a good or service is performed within or outside of the Philippines is a

question of fact which should, therefore, be duly proven and substantiated.

x x x

Time and again, *We* have consistently held in a plethora of cases that for an entity to be considered a non-resident foreign corporation doing business outside the Philippines, the said entity must be supported **at the very least** by the Certification of Non-Registration of Corporation/Partnership duly issued by the SEC **<u>and</u>** proof of incorporation or registration in a foreign country (e.g., Certificate of Incorporation, Memorandum and Articles of Association, and Certificate of Registration) or any other equivalent document."[8] *(Citations Omitted)*

As such, in view of the foregoing, *We* find no cogent justification to disturb the findings and conclusions reached by Court *En Banc* in the Decision dated September 22, 2016.

WHEREFORE, respondent's Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

(Inhibited)
ROMAN G. DEL ROSARIO
Presiding Justice

J. C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

[8] At pp. 7-12, *Ibid.*

(I maintain my Dissenting Opinion)
ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

(I join the Dissenting Opinion of Justice Uy)
CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With Concurring Opinion)
CATHERINE T. MANAHAN
Associate Justice

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Promulgated:
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Concurring Opinion

MANAHAN, J.:

I concur with the majority in denying the Motion for Reconsideration. Further, I agree with the ruling in the assailed Decision[1], dated September 22, 2016, that Nokia Corporation (Finland) is a non-resident foreign corporation doing business outside the Philippines.

The issue stems from the relevance and weight that should be given to a statement found in the Notes to the Financial Statements, as opposed to a SEC-issued Certificate of Non Registration of Company, and proof of registration in a foreign country.

In the instant case, petitioner's Certificate of Non Registration of Company issued by the SEC, Extract from the Trade Register of Finland and Certificate of Fiscal Residence

[1] Promulgated prior to my appointment as CTA Justice.

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issued by the Tax Authority of Finland are deemed adequate to prove that Nokia Corporation (Finland) is indeed a non-resident foreign corporation doing business outside the Philippines.[2]

This ruling is consistent with previous CTA decisions that these two documents must be presented. The SEC Certificate of Non-Registration shows that the named entity is not registered in the Philippines, but does not prove that such entity is a non-resident foreign corporations doing business outside the Philippines; while proof of registration abroad only proves that said entity is incorporated/organized abroad, but does not establish that such entity is not doing business in the Philippines.[3] One without the other is not sufficient.

In addition, I agree with the majority that it cannot be concluded that Nokia Corporation (Finland) is doing business in the Philippines, if based only on the Notes to Financial Statements (Notes). The Court in Division referred to Note 1, which states:

> With the change of business structure, the Company's business operations are now focused in providing support services to Nokia and other affiliates. <u>The Company has an existing agreement with Nokia which states that Company shall provide services to Nokia in handling any specific or general business matter that may arise with respect to Nokia's business in the Philippines and other territories defined in the agreement</u>. These services include marketing support service related to Nokia products and solutions, market research in the Philippines and other support services as defined in the service agreement.[4]

However, one must raise the question whether the use of the word "business" in the said Notes equates to the term "doing business in the Philippines," or is sufficient for this Court to conclude that Nokia Corporation (Finland) is doing business in the Philippines.

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[2] *Rollo*, CTA EB No. 1313, Decision, p. 180.
[3] Chevron Holdings, Inc. v. Commissioner of Internal Revenue, CTA EB No. 940, May 6, 2014.
[4] *Rollo*, Division Decision, pp. 71-72 (underscoring supplied).

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I must answer in the negative.

First, a distinction must be made as to who made the statement in Note 1. The preparation of the Financial Statements and the Notes thereto are the responsibility of management. The external auditor's responsibility is to express an opinion on said financial statements based on the audit. Such an opinion includes whether the financial statements presented fairly the financial picture of the company audited. The financial statements and auditor's opinion thereon do not present any evidence as to whether another company [which was not the one audited, and in this case, Nokia Corporation (Finland)] is doing business in the Philippines or not.

Second, Note 1 refers to an "existing agreement" from which the statement or conclusion that "[the] Company shall provide services to Nokia in handling any specific or general business matter that may arise with respect to Nokia's business in the Philippines and other territories defined in the agreement" was derived. There is already a layer of interpretation from said "existing agreement" to the statement in Note 1. Between the provisions of the "existing agreement" and Note 1, there may be a difference in word usage and meaning. Thus, dependence on the original document itself (here, the said existing agreement) is essential since a slight variation of words may mean a great difference.[5]

Word choice is particularly important for legal considerations. It is my opinion that the statement containing the word "business" in Note 1 cannot be taken to mean that Nokia Corporation (Finland) is doing business in the Philippines. Collectively, the services provided such as: marketing support services, global services, market research and support services, to name a few, may already be referred to as "business". But this does not imply, nor should be taken to mean, that the entity performing such services is already "doing business" for the purpose of classifying such as "doing business in the Philippines." Mere usage of the word "business" in relation to a non-resident foreign corporation should not result to its classification as a non-resident foreign corporation doing business in the Philippines.

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[5] Peralta, Jr., Perspectives of Evidence, 2005 Edition, p. 119.

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To illustrate, if Note 1 had used the word "concerns" instead of "business", the sense would still be the same, but would it have readily led to the conclusion that Nokia Corporation (Finland) is doing business in the Philippines? Certainly not.

> Note 1
>
> The Company has an existing agreement with Nokia which states that Company shall provide services to Nokia in handling any specific or general <u>business</u> matter that may arise with respect to Nokia's <u>business</u> in the Philippines and other territories defined in the agreement.
>
> *versus*
>
> The Company has an existing agreement with Nokia which states that Company shall provide services to Nokia in handling any specific or general <u>concern/</u> matter that may arise with respect to Nokia's <u>concerns</u> in the Philippines and other territories defined in the agreement.

Thus, when Nokia (Philippines), Inc.'s management made the abovestated statement in Note 1, it cannot be inferred or concluded that they intended said statement to mean that Nokia Corporation (Finland) is "doing business in the Philippines" without any evidence.

Finally, as ruled in the *En Banc* Decision, the Service Agreement (the existing agreement referred to in Note 1) employed the words "may" and "potential customers", indicating that the existence of the condition connotes uncertainty that can, but has not yet, come into being.[6] Thus, to prove that Nokia Corporation (Finland) is doing business in the Philippines, there should have been allegations and evidence towards that point.

For all the foregoing, I **concur** with the denial of the motion for reconsideration.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

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[6] *Rollo*, Decision, p. 181.