REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA *EB* NO. 1932
(CTA Case No. 8678)

-versus-

SABRE TRAVEL NETWORK (Philippines), (formerly ABACUS DISTRIBUTIONS SYSTEMS PHILIPPINE INC.),
Respondent.

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SABRE TRAVEL NETWORK (PHILIPPINES), INC. (formerly ABACUS DISTRIBUTION SYSTEMS PHILIPPINES, INC.),
Petitioner,

CTA *EB* NO. 1937
(CTA Case No. 8678)

-versus-

Present:
DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
SEP 03 2020 3:00pm

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

For resolution are the consolidated Petitions for Review, respectively, filed by the Commissioner of Internal Revenue ("CIR") on 5 October 2018[1] and by Sabre Travel Network (Philippines), Inc. (formerly Abacus Distribution Systems Philippines, Inc.) (hereinafter referred to as "Sabre Philippines") on 10 October 2018,[2] pursuant to *Section 3(b), Rule 8*[3] *of the Revised Rules of the Court of Tax Appeals ("RRCTA").*[4]

Both parties seek the modification of the: (1) Decision dated 19 July 2017[5] (hereinafter referred to as "Assailed Decision"), (2) Amended Decision dated 15 February 2018[6] (hereinafter referred to as "Assailed Amended Decision"), and (3) Resolution dated 31 August 2018[7] (hereinafter referred to as "Assailed Resolution") by the Court of Tax Appeals ("CTA") Second Division (hereinafter referred to as "Court in Division") partially upholding the assessment against Sabre Philippines for taxable year 2009.

The Parties

Sabre Philippines is a corporation duly organized and existing under and by virtue of Philippine laws, with principal office address at 3F Trafalgar Plaza Building, H.V. Dela Costa Street, Salcedo Village, Makati City 1227. It is duly registered with the Bureau of Internal Revenue ("BIR") under Revenue District Office No. 50 with Tax Identification Number 000-103-491-000.

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1 See Petition for Review dated 3 October 2018, *EB* No. 1932 *Rollo*, pp. 8-55, with annexes.

2 See Petition for Review dated 9 October 2018, *EB* No. 1937 *Rollo*, pp. 7-224, with annexes.

3 "SECTION 3. *Who May Appeal; Period to File Petition.* —

xxx xxx xxx

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review."

4 A.M. No. 05-11-07-CTA, November 22, 2005.

5 See Annex "P-2" of the Petition for Review dated 9 October 2018, *EB* No. 1937 *Rollo*, pp. 49-122.

6 See Annex "P-3" of the Petition for Review dated 9 October 2018, *EB* No. 1937 *Rollo*, pp. 123-143; Annex "A" of the Petition for Review dated 3 October 2018, *EB* No. 1932 *Rollo*, pp. 24-42.

7 See Annex "P-3" of the Petition for Review dated 9 October 2018, *EB* No. 1937 *Rollo*, pp. 144-157; Annex "B" of the Petition for Review dated 3 October 2018, *EB* No. 1932 *Rollo*, pp. 43-55.

It is engaged in the business of promotion, development, operation, marketing, and selling out for order of computerized reservation systems, techniques, equipment leasing, maintenance, training, and computer software for travel services distribution and other related services.

The CIR is the chief of the BIR who is vested, among others, with the authority to administer and enforce national internal revenue laws. He holds office at the BIR National Office Building, Diliman, Quezon City.

The Facts

On 31 May 2010, Sabre Philippines received a Letter of Authority dated 14 May 2010, authorizing the examination of its books of accounts and other financial records for taxable year 2009.[8] Pursuant to said examination, the BIR issued a Notice of Informal Conference, dated 21 February 2012, with attached Summary Findings which was received by Sabre Philippines on 9 March 2012.[9]

Meanwhile, on 27 March 2012, Sabre Philippines through its President, Demetrio C. Silverio, executed a Waiver of Defense of Prescription and agreed to extend the period to conduct the audit investigation until 31 December 2012.[10]

On 20 September 2012, Sabre Philippines received a Preliminary Assessment Notice ("PAN") dated 31 July 2012. Petitioner filed its protest to the PAN, dated 3 October 2012, on 4 October 2012.[11]

Subsequently, Sabre Philippines, on 29 November 2012, received a Formal Letter of Demand ("FLD") with Details of Discrepancies and Final Assessment Notice ("FAN") Nos. LTEAD II-IT-09-0003, LTEAD II-VT-09-0002, LTEAD II-WG-09-0004, LTEAD II-WC-09-0004, LTEAD II-WE-09-0004, LTEAD II-WF-09-0001, and LTEAD II-DS-09-0001 dated 12 November 2012.[12] In the FLD, the BIR assessed Sabre Philippines for deficiency taxes in the amount of ₱94,405,463.28 for calendar year 2009, broken down as follows:

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8 *Ibid.*
9 *Ibid.*
10 *Ibid.*
11 *Ibid.*
12 *Ibid.*

Tax Type	Basic	Surcharge	Interest	Total
IT	₱ 28,324,809.39	-	₱ 15,132,432.42	₱ 43,457,241.81
VAT	21,576,991.51	-	12,473,274.55	34,050,266.06
EWT	509,731.84	-	296,063.42	805,795.26
WTC	102,575.34	-	59,578.00	162,153.34
FWT	6,213,282.86	₱ 1,553,320.72	3,608,810.87	11,375,414.45
FWVAT	2,485,313.15	621,328.29	1,443,524.35	4,550,165.79
DST	2,407.00	601.75	1,417.82	4,426.57
TOTAL	**₱ 59,215,111.09**	**₱ 2,175,250.76**	**₱ 33,015,101.43**	**₱94,405,463.28**[13]

Sabre Philippines filed its protest to the FLD on 20 December 2012 through a letter dated 19 December 2012.[14]

On 27 June 2013, Sabre Philippines received the Final Decision on Disputed Assessment ("FDDA") dated 2 May 2013.[15] In the FDDA, the BIR denied Sabre Philippines' protest for lack of factual and legal basis, and upheld the assessment in the FLD.

Thereafter, on 26 July 2013, Sabre Philippines filed a Petition for Review with the Court in Division to appeal the FDDA.[16]

On 19 July 2017, the Court in Division rendered the Assailed Decision. It ordered the cancellation of the deficiency assessment for the Withholding Tax on Compensation ("WTC") and partially upheld the deficiency assessment for Expanded Withholding Tax ("EWT"), Final Withholding Value-Added Tax ("FWVAT"), Final Withholding Tax ("FWT"), Income Tax ("IT"), Value-Added Tax ("VAT"), and Documentary Stamp Tax ("DST").[17]

The Court in Division also ordered Sabre Philippines to pay the amount of ₱31,460,597.17, inclusive of twenty-five percent (25%) surcharge, and to pay deficiency and delinquency interest both at the rate of twenty percent (20%). The dispositive portion of the Decision reads:

> "**WHEREFORE,** the assessment issued by respondent against petitioner for taxable year 2009 covering deficiency WTC in the amount of ₱162,153.34 is **CANCELLED AND WITHDRAWN.** However, the assessments for deficiency EWT, FWVAT, FWT, income tax, VAT and DST are **PARTIALLY UPHELD.** Accordingly, petitioner is ordered to pay respondent the amount of **THIRTY ONE MILLION FOUR**

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13 *Ibid.*
14 *Ibid.*
15 *Ibid.*
16 *Ibid.*
17 *Ibid.*

HUNDRED SIXTY THOUSAND FIVE HUNDRED NINETY-SEVEN PESOS AND 17/100 (₱31,460,597.17) representing basic deficiency EWT, FWVAT, FWT, Income Tax, VAT and DST and the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

Tax Type	Basic Deficiency	25% Surcharge	Total
EWT	₱ 250,073.83	₱ 62,518.46	₱ 312,592.29
FWVAT	2,485,313.15	621,328.29	3,106,641.43
FWT	6,213,282.86	1,553,320.72	7,766,603.58
INCOME TAX	6,829,783.49	1,707,445.87	8,537,229.36
VAT	9,389,799.41	2,347,449.85	11,737,249.26
DST	225.00	56.25	281.25
TOTAL	**₱ 25,168,477.73**	**₱ 6,292,119.43**	**₱ 31,460,597.17**

In addition, petitioner is liable to pay:

a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency EWT, FWVAT, FWT, Income Tax, VAT and DST computed from the dates indicated below until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended:

Tax Type	Basic Tax Due	20% Deficiency Interest Computed from:
EWT	₱ 250,073.83	15-Jan-10
FWVAT	2,485,313.15	10-Jan-10
FWT	6,213,282.86	15-Jan-10
INCOME TAX	6,829,783.49	15-Apr-10
VAT	9,389,799.41	25-Jan-10
DST	225.00	5-Jan-10
TOTAL	**₱ 25,168,477.73**	

b) Delinquency interest at the rate of twenty percent (20%) per annum on the total amount of **₱31,460,597.17** and on the deficiency interest which have accrued as afore-stated in (a) computed from June 27, 2013 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED."[18]

The Assailed Decision was received by the CIR and Sabre Philippines on 20 July 2017.[19]

On 4 August 2017, Sabre Philippines filed a Motion for Partial Reconsideration of Decision and/or to Reopen the Case for Presentation of Evidence.[20] In the said Motion, Sabre Philippines asked the Court to

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18 *Ibid.*

19 See Records, Vol. 3, pp. 1550-1551.

20 See Motion for Partial Reconsideration of Decision and/or to Reopen the Case for Presentation of Evidence dated 4 August 2017, Records Vol. 4, pp. 1552-1643, with annexes.

reconsider its ruling and set aside its remaining deficiency taxes or to reopen trial and allow it to present additional evidence.[21]

On the same day, the CIR also filed his Motion for Partial Reconsideration via registered mail. In his Motion for Partial Reconsideration, the CIR prayed for the Court in Division to uphold the original assessment in the FDDA.[22]

Thereafter, on 29 August 2017, Sabre Philippines filed its Comment/Opposition to the CIR's Motion for Partial Reconsideration.[23] The CIR did not file his Comment, per the Court's Records Verification Report dated 26 September 2017.[24]

On 15 February 2018, the Court in Division issued the Assailed Amended Decision. It denied the CIR's Motion for Reconsideration for lack of merit and partially granted Sabre Philippines' Motion for Reconsideration.[25] The dispositive portion of the Assailed Amended Decision reads:

> "**WHEREFORE,** respondent's Motion for Partial Reconsideration Re: Decision promulgated on July 19, 2017 is **DENIED**, for lack of merit. On the other hand, petitioner's Motion for Partial Reconsideration of Decision and/or to Reopen the Case for Presentation of Evidence is **PARTIALLY GRANTED.** Accordingly, the Decision dated July 19, 2017 is amended to read, as follows:
>
> > "**WHEREFORE,** the assessment issued by respondent against petitioner for taxable year 2009 covering deficiency VAT and WTC in the amounts of ₱34,050,266.06 and ₱162,153.34, respectively, are **CANCELLED AND WITHDRAWN.** However, the assessments for deficiency EWT, FWVAT, FWT, income tax, and DST are **PARTIALLY UPHELD.** Accordingly, petitioner is ordered to pay respondent the amount of **NINETEEN MILLION SEVEN HUNDRED TWENTY-THREE THOUSAND THREE HUNDRED FOURTY-SEVEN AND 92/100 (₱19,723,347.92)** representing basic deficiency EWT, FWVAT, FWT, Income Tax, and DST and the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

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21 *Ibid.*

22 See Motion for Partial Reconsideration dated 4 August 2017, Records Vol. 4, pp. 1708-1716.

23 See Comment/Opposition dated 29 August 2017, Records Vol. 4, pp. 1725-1750.

24 See Records, Vol. 4, p. 1751.

25 See Annex "P-3" of the Petition for Review dated 9 October 2018, *EB* No. 1937 *Rollo,* pp. 123-143; Annex "A" of the Petition for Review dated 3 October 2018, *EB* No. 1932 *Rollo*, pp. 24-42.

Tax Type	Basic Deficiency	25% Surcharge	Total
EWT	₱ 250,073.83	₱ 62,518.46	₱ 312,592.29
FWVAT	2,485,313.15	621,328.29	3,106,641.43
FWT	6,213,282.86	1,553,320.72	7,766,603.58
INCOME TAX	6,829,783.49	1,707,445.87	8,537,229.36
DST	225.00	56.25	281.25
TOTAL	**₱ 15,778,678.33**	**₱ 3,944,669.59**	**₱ 19,723,347.92**

In addition, petitioner is liable to pay:

a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency EWT, FWVAT, FWT, Income Tax, and DST computed from the dates indicated below until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended:

Tax Type	Basic Tax Due	20% Deficiency Interest Computed from:
EWT	₱ 250,073.83	15-Jan-10
FWVAT	2,485,313.15	10-Jan-10
FWT	6,213,282.86	15-Jan-10
INCOME TAX	6,829,783.49	15-Apr-10
DST	225.00	5-Jan-10
TOTAL	**₱ 15,778,678.33**	

b) Delinquency interest at the rate of twenty percent (20%) per annum on the total amount of **₱19,723,347.92** and on the deficiency interest which have accrued as afore-stated in (a) computed from June 27, 2013 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED."[26]

Both parties received the Assailed Amended Decision on 20 February 2018.[27]

On 7 March 2018, Sabre Philippines and the CIR filed their respective Motions for Partial Reconsideration of the Assailed Amended Decision.[28] After which, Sabre Philippines filed its Comment/Opposition to the CIR's Motion for Partial Reconsideration on 2 April 2018.[29] The CIR did not file his

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26 *Ibid.*

27 See Records Vol. 4, pp. 1755-1756.

28 See Motion for Partial Reconsideration and/or Reopen the Case for Presentation of Evidence (Re Amended Decision Promulgated on 15 February 2018) dated 6 March 2018, Records Vol. 4, pp. 1776-1802, and Motion for Partial Reconsideration Re: Amended Decision dated February 15, 2018 dated 7 March 2018, Records Vol. 4, pp. 1803-1809.

29 See Comment/Opposition (To Respondent's Motion for Partial Reconsideration dated 7 March 2018 Re: Amended Decision dated 15 February 2018) dated 2 April 2018, Records Vol. 4, pp. 1812-1823.

Comment, per the Records Verification Report, dated 4 April 2018, issued by the Judicial Records Division.[30]

On 13 April 2018, Sabre Philippines filed an Urgent Manifestation with attached supporting documents in support of its Motion for Partial Reconsideration and/or Reopen the Case for Presentation of Evidence (Re. Amended Decision Promulgated on 15 February 2018).[31] Finding that it is in the nature of a supplemental pleading, the Court in Division, in a Resolution dated 24 April 2018, directed the CIR to file his Comment on the Urgent Manifestation.[32] However, the CIR did not file his Comment per the Court's Records Verification Report dated 21 May 2018.[33]

Meanwhile, on 31 August 2018, the Court in Division issued the Assailed Resolution denying Sabre Philippines' and the CIR's respective Motions for Reconsideration.[34]

Thereafter, on 20 and 24 September 2018, the CIR and Sabre Philippines, respectively, filed their Motions for Extension of Time to File Petition for Review.[35] The parties each requested an additional period of fifteen (15) days to file the said Petitions, specifically, for the CIR until 5 October 2018, and Sabre Philippines until 10 October 2018. The Motions were granted by the Court *En Banc* in a Minute Resolution.[36]

The CIR filed its Petition for Review, which was docketed as CTA *EB* No. 1932 on 5 October 2018.[37]

Sabre Philippines filed its Petition for Review which was docketed as CTA *EB* No. 1937 on 10 October 2018.[38]

Subsequently, CTA *EB* No. 1937 was consolidated with CTA *EB* No. 1932 in accordance with the Minute Resolution issued by the Court *En Banc* dated 12 October 2018.[39]

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30 See Records Vol. 4, p. 1751.
31 See Urgent Manifestation 2 April 2018, Records Vol. 4, pp. 1825-1896.
32 See Resolution dated 24 April 2018, Records Vol. 4, pp-1897-1899.
33 See Records Vol. 4, p. 1900.
34 See Resolution dated 31 August 2008; Records, Vol. 4, pp. 1903-1916.
35 See Motion for Extension of Time to File Petition for Review dated 20 September 2018, *EB* No. 1932 *Rollo*, pp.1-6; Motion for Extension of Time to File Petition for Review (To the Amended Decision dated 15 February 2018 and Denial of Motion for Partial Reconsideration dated 31 August 2018) dated 18 September 2018, *EB* No. 1937 *Rollo*, pp. 1-5.
36 See Minute Resolution dated 24 September 2018, *EB* No. 1932 *Rollo*, p. 7; Minute Resolution dated 26 September 2018, *EB* No. 1937 *Rollo*, p. 6.
37 See Petition for Review dated 3 October 2018, *EB* No. 1932 *Rollo*, pp. 8-55, with annexes.
38 *Id.*, pp. 7-224, with annexes.
39 See Minute Resolution dated 12 October 2018, *EB* No. 1932 *Rollo*, p. 56.

On 3 December 2018, Sabre Philippines filed its Comment/Opposition (To Commissioner of Internal Revenue's Petition for Review dated 03 October 2018).[40] The CIR failed to file his Comment on Sabre Philippines' Petition for Review, per the Court's Records Verification Report dated 16 January 2019.[41]

In a Resolution, dated 13 February 2019,[42] the parties were directed to submit their respective Memoranda. On 20 and 28 March 2019, the CIR and Sabre Philippines filed their respective Motions for Extension of Time to File Memoranda. Each party requested an additional period of thirty (30) days, specifically, the CIR until 20 April 2019, and Sabre Philippines until 28 April 2019 within which to file their respective Memoranda.[43] Both Motions were granted by the Court *En Banc*.[44]

On 29 April 2019 (considering that 28 April 2019 fell on a Sunday), Sabre Philippines filed its Memorandum.[45] The CIR, on the other hand, failed to file its Memorandum, per the Court's Records Verification Report dated 23 May 2019.[46]

On 31 July 2019, the Court *En Banc* issued a Resolution submitting the cases for decision.[47] Hence this Decision.

<u>The Assigned Errors</u>[48]

WHETHER THE COURT IN DIVISION ERRED IN RULING THAT SABRE PHILIPPINES' BOOKING COMMISSIONS QUALIFY AS VAT ZERO-RATED SALES.

WHETHER THE COURT IN DIVISION ERRED IN RULING THAT SABRE PHILIPPINES FAILED TO ADDUCE SUFFICIENT EVIDENCE TO ESTABLISH THAT ITS COMMUNICATIONS EXPENSES AND MARKETING

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40 See Comment/Opposition (To Commissioner of Internal Revenue's Petition for Review dated 03 October 2018) dated 3 December 2018, *EB* No. 1932 *Rollo*, pp. 60-72.

41 See *EB* No. 1932 *Rollo*, p. 73.

42 See Resolution dated 13 February 2019, *EB* No. 1932 *Rollo*, p. 75-76.

43 See Motion for Extension of Time to File Memorandum dated 20 March 2019, *EB* No. 1932 *Rollo*, pp. 77-81; and Motion for Extension of Time to File Memorandum dated 27 March 2019, *EB* No. 1932 *Rollo*, pp. 83-86.

44 See Minute Resolution dated 21 March 2019, *EB* No. 1932 *Rollo*, p. 82; Minute Resolution dated 1 April 2019, *EB* No. 1932 *Rollo*, p. 92.

45 See Memorandum dated 29 April 2019, *EB* No. 1932 *Rollo*, pp. 93-139.

46 See Minute Resolution dated 23 May 2019, *EB* No. 1932 *Rollo*, p. 140.

47 See Resolution dated 31 July 2019, *EB* No. 1932 *Rollo*, pp. 142-143.

48 See Petition for Review dated 3 October 2018, *EB* No. 1932 *Rollo*, p. 4; and Petition for Review dated 9 October 2018, *EB* No. 1937 *Rollo*, pp. 16-18.

FEES CONSTITUTE MERE REIMBURSEMENTS TO SABRE SINGAPORE.

WHETHER THE COURT IN DIVISION ERRED IN DENYING THE PRAYER OF SABRE PHILIPPINES TO REOPEN THE CASE FOR PRESENTATION OF ADDITIONAL EVIDENCE.

WHETHER THE COURT IN DIVISION ERRED IN FINDING THAT THE COMMUNICATIONS EXPENSES AND MARKETING FEES ARE INCOME OF SABRE SINGAPORE SUBJECT TO FWVAT AND FWT AND THAT THE SAME SHOULD BE DISALLOWED AS DEDUCTIONS FROM SABRE PHILIPPINES' TAXABLE GROSS INCOME DUE TO ITS FAILURE TO WITHHOLD FWT THEREON.

WHETHER OR NOT THE COURT IN DIVISION ERRED IN RULING THAT SABRE PHILIPPINES IS SIMULTANEOUSLY LIABLE FOR DEFICIENCY AND DELINQUENCY INTEREST UNTIL FULL PAYMENT THEREOF.

Arguments of the Parties

CIR's Arguments[49]

The CIR argued that, apart from proving that the revenues earned by Sabre Philippines are paid in an acceptable foreign currency, it failed to prove the other requisites laid down in *General Motors Automobiles Philippines, Inc. v. CIR*[50] for its revenues to qualify as VAT zero-rated, namely: (a) that the recipient of the service should be doing business outside the Philippines and (b) that the services performed are other than processing, manufacturing, or repacking of goods.

The CIR contends that the Court in Division failed to discuss its basis in concluding that Sabre Philippines' revenues are VAT zero-rated. Therefore, the CIR opines that the assessment made by the BIR should be upheld for Sabre Philippines' failure to overcome the presumption of regularity and correctness of the assessment.

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49 See Petition for Review dated 3 October 2018, *EB* No. 1932 *Rollo,* pp. 8-55, with annexes.
50 CTA Case No. 8976, 2 December 2016.

Sabre Philippines' Arguments[51]

Sabre Philippines contends that the Court in Division erred in upholding the BIR's assessment in relation to its Communications Expenses amounting to ₱18,976,877.84 and Marketing Fees amounting to ₱1,734,065.04. Sabre Philippines argues that the Court in Division misappreciated the pieces of evidence it presented, proving that the said transactions constitute reimbursements and not income of Sabre Singapore, therefore, applying a higher standard of proof as compared to the required substantial evidence.

Sabre Philippines also contests the Court in Division's action denying its prayer to reopen case and present new evidence. Sabre Philippines explains that the reopening of the case will prove that the Communications Expenses and Marketing Fees are mere reimbursements. Sabre Philippines opines that, contrary to the ruling of the Court in Division, the pieces of evidence they intend to present are not forgotten evidence but are newly-discovered evidence.

It continues to argue that, even assuming that the Communications Expenses and Marketing Expenses are income of Sabre Singapore, it is still not liable for FVAT and FWT and that the said expenses should not be disallowed as deduction from its taxable gross income for failure to withhold FWT thereon, since contrary to the finding of the Court in Division, the services performed by Sabre Singapore do not pertain to the privilege to use the Abacus System in the Philippines, but are expenses in connection with the processing of flight reservation via a mainframe located outside the Philippines. Hence, the service is deemed rendered outside the Philippines and therefore not taxable.

Finally, Sabre Philippines questions the simultaneous imposition of the Deficiency Interest and Delinquency Interest on their tax assessment. It contends that the simultaneous imposition of both interests should only apply until 31 December 2017. Starting 1 January 2018 until full payment of the tax liability, the applicable interest should be at Twelve Percent (12%) or double the legal rate for loans or forbearance of money in the absence of any express stipulation as set by the Bangko Sentral ng Pilipinas, as provided under the TRAIN Law. h

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51 See Petition for Review dated 9 October 2018, *EB* No. 1937 *Rollo,* pp. 7-224, with annexes.

The Ruling of the Court En Banc

The Court *En Banc* rules partly in favor of Sabre Philippines.

Sabre Philippines was able to prove with sufficient evidence that its revenues earned from Sabre Singapore are VAT zero-rated.

The allegation of the CIR that Sabre Philippines' VAT Zero-Rated Revenues amounting to ₱111,154,286.12 are subject to VAT is without basis.

In the case of ***Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao Inc.***,[52] the Supreme Court held that for the supply of services to qualify as VAT zero-rated under ***Section 108 of the Tax Code***, the following requisites must be satisfied:

1. The services must be other than processing, manufacturing, or repacking of goods;
2. The payment for such services must be in acceptable foreign currency accounted for in accordance with the BSP rules and regulation; and
3. The recipient of such services must be doing business outside the Philippines.

For the first requisite, Sabre Philippines was able to prove with sufficient evidence that the services it performed are other than processing, manufacturing, or repacking of goods.

Sabre Philippines presented its Sub-Distribution Agreement[53] which provides for the services it performed to Sabre Singapore. Under the said Agreement, Sabre Philippines was engaged as Sabre Singapore's national marketing company or NMC of the Abacus System in the Philippines and as such became its exclusive distributor and marketer in the country.

In consideration for its services, it receives a sum equivalent to 25% of the net booking fees from Sabre Singapore, which is recorded by Sabre Philippines as booking commissions. The relevant portion of the Sub-Distribution Agreement[54] is hereby quoted, to wit:

52 G.R. No. 153205, 22 January 2007.
53 See Exhibit "P-3", Records Vol III, pp. 1137-1172.
54 *Ibid.*

> "Abacus [Sabre Singapore] operates under license a computer reservation system (hereafter referred to as the "Abacus System") which incorporates a software package which performs various functions, including real-time airline seat reservations, schedules, bookings for a variety of air, car and hotel services, automated ticketing and fare displays; and
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> Abacus [Sabre Singapore] intends to establish through national marketing companies [Sabre Philippines] in the various countries a system for conducting the business of marketing and distributing the Abacus Services available through the Abacus System; and
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> Abacus wishes to market and distribute the services of the Abacus System in the Territory (as defined hereunder) and is willing to grant an exclusive sub-license to the NMC to do so; and
>
> The NMC wishes to operate in its own business to market the Abacus System and the Abacus Services in the Territory under an exclusive sub-license from Abacus.
>
> xxx xxx xxx
>
> 2. Grant
>
> 2.1 Abacus hereby grants to the NMC during the continuance of this Agreement an exclusive sub-license to operate the Business in the Territory under the Tradename in accordance to the terms and conditions set forth in this Agreement.
>
> xxx xxx xxx
>
> 6. Payments
>
> xxx xxx xxx
>
> 6.3 Abacus [Sabre Singapore], in return for each Net Booking made by a Subscriber through the Abacus System for any service of a Travel Supplier offered thereunder, shall pay to the NMC [Sabre Philippines] the amount as specified in Schedule B, as may be revised by Abacus [Sabre Singapore] from time to time upon 3 months' written notice.
>
> xxx xxx xxx
>
> II. Payments to NMC
>
> 1. Abacus will pay the NMC monthly a sum equal to twenty-five (25) per cent of the Net Booking fees it receives from Travel Suppliers on the basis of per passenger segment for air and non-air bookings made by Subscriber in the Territory. No fees will be paid for cancelled bookings."

As for the second requisite, we uphold the findings of the Court in Division that Sabre Philippines' booking commissions were paid in an acceptable foreign currency. Sabre Philippines was able to present a Certificate of Inward Remittances which was reconciled by the Court in

Division, although only up to the extent of ₱108,545,820.00,[55] leaving a difference of ₱2,608,466.12, computed as follows:

	Booking commission (in USD)		**Peso Equivalent**
Per OR	$2,257,881.65	Per VAT Returns	₱ 111,154,286.12
Per accounting of inward remittance	$2,257,881.65	Per accounting of inward remittances (adjusted)	108,545,820.00
Difference	**$ 0.00**	**Difference**	**₱ 2,608,466.12**

Accordingly, the remaining unsupported booking commissions in the amount of ₱2,608,466.12 is subject to VAT at a rate of twelve percent (12%). Nevertheless, considering that Sabre Philippines has more than enough creditable input tax to offset the output tax due, it no longer has any deficiency VAT for taxable year 2009, computed as follows:

Taxable sales per VAT Return		₱ 17,546,815.08
Adjustments:		
(1) Equipment rental	₱ 13,037,315.00	
Others	4,433,299.00	
Total Revenues	₱ 17,470,614.00	
Proceeds from disposal of assets	95,934.82	
Total taxable sales per audit	₱ 17,566,548.82	
Taxable sales per return	(17,546,815.08)	₱ 19,733.74
(2) Unaccounted remittances		-
(3) Zero-rated sales subject to VAT		2,608,466.12
(4) Undeclared income (SLS<SAWT)		139,928.50
(5) Unaccounted source of funds (SLP<EWT)		-
Total adjustments		₱ 2,768,128.36
Taxable sales per audit		₱ 20,314,943.44
Output tax		₱ 2,437,793.21
Less: Creditable input tax		(6,073,492.20)
Deficiency VAT		**₱ (3,635,698.99)**

Coming now to the third requisite, Sabre Philippines was able to prove with sufficient evidence that the recipient of its service, Sabre Singapore, is a foreign corporation doing business outside the Philippines.

55 See Annex "P-3" of the Petition for Review dated 9 October 2018, *EB* No. 1937 *Rollo*, pp. 123-143; Annex "A" of the Petition for Review dated 3 October 2018, *EB* No. 1932 *Rollo*, pp. 24-42.

In *Deutsche Knowledge Services, PTE. LTD v. CIR,*[56] this Court ruled that the presentation of at least both the foreign corporation's SEC Certificate of Non-Registration and the Certificate/Articles of the foreign incorporation, without any indication or proof that it is doing business in the Philippines, is sufficient evidence to prove that the foreign corporation is doing business outside the Philippines, to wit:

> In CTA Case No. 8300, We agree with the ruling of the Court in Division that **to be considered as a non-resident foreign corporation doing business outside the Philippines**, **each entity must be supported, at the very least, by both a certificate of non-registration of corporation / partnership issued by the Philippine Securities and Exchange Commission (SEC) and certificate / articles of foreign incorporation / association.** Parenthetically, it must be emphasized that notwithstanding the presentation of the said documents, there must not be any indication that the recipient of the services is doing business in the Philippines, consistent with the above-quoted ruling in the case of *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*
>
> The **said basic documents are necessary because the Philippine SEC's negative certification establishes that the recipient of the service has no registered business in the Philippines**; while the said certificate / articles of incorporation / association will prove that the said recipient of the service is indeed foreign. Furthermore, the former document will tend to satisfy the requirement that the service-recipient is not engaged in trade or business within the Philippines; while the latter document will indicate whether the same service-recipient is engaged in at all (i.e., a showing of a continuity of conduct and intention to establish a continuous business). In this connection, it must be remembered that the aforequoted Section 108(8)(2) of the NIRC of 1997, as amended by RA No. 9337, requires, inter alia, that the service-recipient is "*a person engaged in business conducted outside the Philippines*", for the transaction to be treated as subject to the 0°/o VAT rate.[57]

In this case, Sabre Philippines was able to present both Sabre Singapore's Certificate of Non-Registration of Company[58] and Memorandum and Articles of Association.[59] Against these, the CIR was not able to cite any fact that would indicate that Sabre Singapore is doing business in the Philippines. Hence, we find that the aforementioned documents sufficiently prove that Sabre Singapore is a non-resident foreign corporation doing business outside the Philippines.

With these three requirements laid down in ***Burmeister*** established, there remains no doubt that the supply of services of petitioner, indeed, qualifies as VAT zero-rated.

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56 Deutsche Knowledge Services, PTE. LTD v. CIR, CTA *EB* No. 1374 and 1383, 15 December 2017.
57 Emphases supplied.
58 See Exhibit "P-29", Records, Vol 1, p. 566.
59 See Exhibit "P-2", Records, Vol 2, pp. 347-395.

Sabre Philippines failed to adduce sufficient evidence to establish that its Communications Expenses and Marketing Fees constitute reimbursements to Sabre Singapore

Sabre Philippines' allegation that the Court in Division misappreciated its evidence when it effectively required a higher degree of proof than substantial evidence is misplaced.

Although the RRCTA is silent on the quantum of proof required by the CTA in resolving its cases, ***Section 1, Rule 133 of the Rules of Court***, which is suppletorily applicable to the RRCTA,[60] mandates that civil cases must be established by preponderance of evidence, and not by substantial evidence, contrary to the assertion of Sabre Philippines.[61]

Preponderance of evidence is defined 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".[62]

Meanwhile, substantial evidence is defined as "such amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion, even if other equally reasonable minds might opine otherwise".[63]

Under ***Section 5 of Rule 133***,[64] substantial evidence is the quantum of proof required before the administrative and quasi-judicial bodies, and not before the courts such as the CTA.

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60 SEC. 3. Applicability of the Rules of Court.- The Rules of Court in the Philippines shall apply suppletorily to these Rules. (n)

61 Section 1. Preponderance of evidence, how determined. — In civil cases, the party having burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which there are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number.

62 Go v. Court of Appeals, GR No. 112550, 5 February 2001.

63 Portuguez v. GSIS Family Bank (Comsavings Bank) and the Hon. CA, G.R. No. 169570, 2 March 2007.

64 Section 5. Substantial evidence. — In cases filed before administrative or quasi-judicial bodies, a fact may be deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. (n)

Therefore, to ascribe to the theory of Sabre Philippines would equate this Court to an administrative or quasi-judicial body, and would result to an absurd situation where the lower courts would require a higher quantum of proof than the CTA.

Furthermore, the issue raised by Sabre Philippines as to the quantum of proof required in the CTA is not novel and has already been answered by this Court in ***Commissioner of Internal Revenue v. The Coca-Cola Export Corporation***,[65] to wit:

> **"A quantum of evidence required to sustain the proponent of an issue is by mere preponderance of evidence since tax cases are civil in nature**. The Supreme Court, in Municipality of Moncada vs. Pio Cajuigan, et al., explained that "'preponderance of evidence' is not necessarily the greater number of witnesses. It does not consist merely in the greater numerical array of witnesses, but it means the weight, credit and the value of the aggregate evidence on either side." In this case, respondent has sufficiently establish the propriety of its claim for a tax refund by means of material and relevant pieces of documentary evidence. Taken as a whole, respondent's evidence showed its entitlement to the refund sought since there was proof that there was an actual over remittance of P10,315,424.46 final withholding taxes on royalties it paid to TCCC for the month of September 2002. The Certificate of Authentication, now being questioned by petitioner, was merely presented to further substantiate respondent's claim that it has made excess payment on its tax on royalties."

However, even assuming that the quantum of proof required in the CTA is substantial evidence, still this Court does not agree with Sabre Philippines' contention that the pieces of evidence it presented are sufficient to meet the aforementioned quantum of proof.

In this case, Sabre Philippines insists that the Communication Expenses and Marketing Fees it paid to Sabre Singapore is not the latter's income but mere reimbursements for the amount it advanced to Sabre Holland, a third-party billing agent of Sabre Holdings which is the owner of the Abacus System. Sabre Philippines discusses the flow of transaction between the aforementioned entities as follows:

> "1) First, the travel agent [subscribers of the Abacus System] would use the Abacus System to inquire on a flight schedule, book a flight, change a booking, etc., such request or command is sent to the mainframe in the USA which in turn transmits the requests to the respective computer reservation system ("CRS") of the corresponding airline.

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[65] CTA EB Case No. 212, 25 September 2007.

> 2) Second, for each transmittal from the mainframe to the CRS, Sabre Holdings (as the owner of the mainframe), via its billing agent, Sabre Holland would send an invoice/billing for *transaction processing fees* and *fees for worldfare messages* generated in the territory, i.e., Asia Pacific region to AIPL [Sabre Singapore]. Simultaneously, Sabre Holdings will also bill the corresponding airline companies for the commissions due.
>
> 3) Third, AIPL [Sabre Singapore] would first advance the payment, as stated in the invoice/billing sent by Sabre Holland;
>
> 4) Fourth, APIL [Sabre Singapore] would then send an invoice which includes the reimbursements for Marketing Fees and Communications Expenses which form part of the *transaction processing fees* and *fees for worldfare messages* generated in the territory, to the different NMCs such as Sabre Philippines/Respondent for the transactions incurred in its territory, at cost.
>
> 5) Lastly, Sabre Philippines would then reimburse AIPL [Sabre Singapore] for the amount it initially paid to Sabre Holland.[66]

To prove its argument, Sabre Philippines presented the following documents: general ledger of the A/P-AIPL Advances, analysis of communications expense, tax invoices and check vouchers, supporting documents of transactions listed under communications expenses, and the Sub-Distribution Agreement.

Unfortunately, these documents fail to prove that the Communication Expenses and Marketing Fees are mere reimbursements to Sabre Singapore. We quote the findings of the Court in Division in the Assailed Decision, to wit:

> "The Court finds, however, that petitioner failed to adduce sufficient evidence to overturn the presumption of correctness of respondent's treatment of the subject payments as income on the part of AIPL.
>
> While the amounts of ₱18,976,877.84 and ₱1,734,065.04 representing communication expense and marketing fees were traced to the Tax Invoices issued by AIPL to petitioner, there were no indications even in the schedules attached to the said invoices that the said expenses were initially billed by Sabre Holdings and paid by AIPL in behalf of the

66 See Memorandum dated 18 December 2018, *EB* No. 1932 *Rollo*, pp. 8-55, with annexes.

> petitioner. In other words, petitioner failed to convince the Court through sufficient evidence that the subject expenses were mere reimbursements."[67]

As found by the Court in Division, the documents failed to provide adequate support to Sabre Philippines' assertion that the Communications Expenses and Marketing Fees are mere reimbursements and not income of Sabre Singapore. Without such evidence that would show a reasonable connection or basis that the said expenses were initially billed by Sabre Holdings and paid by Sabre Singapore in behalf of Sabre Philippines, the assertions of Sabre Philippines are left uncorroborated. Therefore, it failed to meet the required quantum of proof of substantial evidence.

The Court in Division did not err in denying Sabre Philippines Motion to Reopen Trial for Presentation of Additional Evidence.

Before we discuss the issue at bar, we should first look into the correctness of the procedural relief prayed for by Sabre Philippines. In the instant case, it prays for this Court to set aside the denial of the Court in Division of its Motion asking for the reopening of trial for reception of additional evidence. It should be noted that Sabre Philippines filed the said Motion on 4 August 2017 or after the Court in Division already promulgated the Assailed Decision on 19 July 2017.

In ***Agulto v. CA***,[68] the Supreme Court differentiated the remedy of a Motion to Reopen Trial viz-a-viz a Motion for New Trial, to wit:

> A distinction should be made between a Motion for New Trial and a Motion to Reopen Trial.
>
> A Motion for New Trial **<u>may be filed after judgment but within the period for perfecting an appeal</u>** (Sec. 1, Rule 37, Rules of Court).
>
> A Motion to Reopen Trial **<u>may be presented only after either or both parties have formally offered and closed their evidence, but before judgment.</u>** There is no specific provision in the Rules of Court for motions to reopen trial. It is albeit a recognized procedural recourse or devise, deriving validity and acceptance from long established usage. The reopening of a case for the reception of further evidence before judgment is not the granting of a new trial (Alegre vs. Reyes, 161 SCRA 226).

Considering that Sabre Philippines' Motion to Reopen Trial was filed after the promulgation of the Assailed Decision, following ***Agulto***, we shall treat the Motion to Reopen Trial as a Motion for New Trial.

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67 See Annex "P-2" of the Petition for Review dated 9 October 2018, *EB* No. 1937 *Rollo*, pp. 49-122.
68 G.R. No. L-52728, 17 January 1990.

Section 1, Rule 37 of the Rules of Court provides for the grounds of a Motion for New Trial, to wit:

> "Section 1. Grounds of and period for filing motion for new trial or reconsideration. — Within the period for taking an appeal, the aggrieved party may move the trial court to set aside the judgment or final order and grant a new trial for one or more of the following causes materially affecting the substantial rights of said party:
>
> (a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights; or
>
> (b) **Newly discovered evidence, which he could not, with reasonable diligence, have discovered and produced at the trial, and which if presented would probably alter the result.**
>
> Within the same period, the aggrieved party may also move for reconsideration upon the grounds that the damages awarded are excessive, that the evidence is insufficient to justify the decision or final order, or that the decision or final order is contrary to law."[69]

In this case, Sabre Philippines insists that the additional documents it wants to present are newly discovered evidence. It opines that during the course of trial, Sabre Philippines was not aware of the existence of said documents since it did not have access to the same. It explained that it exercised reasonable diligence by requesting from Sabre Singapore any piece of evidence that would have supported the present case. It was only after 21 May 2015 that they were able to obtain said documents when Sabre Singapore had a significant change in ownership, which happened after it formally offered its evidence on 24 February 2015.

Sabre Philippines argues that the reopening of the trial will substantially change or affect the ruling of the CTA.

The Court in Division in its Assailed Amended Decision denied Sabre Philippines's Motion and treated the additional documents as forgotten evidence. The relevant portion of the Assailed Amended Decision is hereby quoted to wit:

> "Here, petitioner failed to justify that the evidence it shall present is newly discovered, or that the same was omitted through inadvertence or mistake. What petitioner seeks is for this Court to allow it to present "an exhaustive and comprehensive set of all relevant evidence", which is broad or vague enough to include even evidence in the nature of forgotten evidence, which is not excusable.

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[69] Emphasis supplied.

Thus, the Court finds no reason to reopen the instant case. As such, the Court shall now proceed to rule on the other issues presented by the parties in their respective motions."[70]

In order for evidence to be considered as newly discovered, the following requisites laid down in ***CIR v. A. Soriano Corporation***[71] must be present, to wit:

"Section 5, Rule 13 of the Rules of the Court of Tax Appeals provides that the provisions of Rule 37 of the Rules of Court shall be applicable to motions for new trial before the Court of Tax Appeals. Under Section 1, Rule 37 of the Rules of Court, the requisites for newly discovered evidence as a ground for a new trial are: **[a] the evidence was discovered after the trial; [b] such evidence could not have been discovered and produced at the trial with reasonable diligence; and [c] that it is material, not merely cumulative, corroborative or impeaching, and is of such weight that, if admitted, will probably change the judgment.** All three requisites must characterize the evidence sought to be introduced at the new trial."[72]

Newly discovered evidence, however, must be differentiated from forgotten evidence. The case of ***Tumang v. Court of Appeals***[73] lays down such difference between the two, to wit:

"**Newly discovered evidence**, under prevailing jurisprudence, need not be newly created evidence; newly discovered evidence in other words, may and does commonly refer to evidence already in existence prior or during the trial but **which could not have been secured and presented during the trial despite reasonable diligence on the part of the litigant offering it or his counsel**. Newly discovered evidence, again, is not limited to evidence which, though already in existence before or during trial was not known to the offering litigant. So-called **"forgotten" evidence may, upon the other hand, be seen to refer to evidence already in existence or available before or during trial, which was known to and obtainable by the party offering it and, which could have been presented and offered in a seasonable manner were it not for the oversight or forgetfullness of such party or his counsel**."[74]

We agree with the ruling of the Court in Division that the additional evidence constitute forgotten evidence and do not qualify as newly discovered evidence. Aside from petitioner's bare assertion that it was not aware of the existence of the documents it wanted to present during trial, Sabre Philippines failed to offer any evidence to prove that the same could not have been produced at the time of trial despite reasonable diligence.

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70 See Annex "P-3" of the Petition for Review dated 9 October 2018, *EB* No. 1937 *Rollo*, pp. 123-143; Annex "A" of the Petition for Review dated 3 October 2018, *EB* No. 1932 *Rollo*, pp. 24-42.
71 G.R. No. 113703, 31 January 1997.
72 Emphasis supplied.
73 G.R. No. 82072, 17 April 1989.
74 Emphasis supplied.

Even assuming that this Court gives credence to the assertion of Sabre Philippines, a perusal of the timeline of the case shows that Sabre Philippines did not immediately file its Motion to Reopen Trial after Sabre Singapore changed ownership on 21 May 2015.

It took Sabre Philippines more than two (2) years to file the said Motion on 4 August 2017. Furthermore, it was only after the promulgation of the Assailed Decision that Sabre Philippines filed its Motion. Hence, the assertions of Sabre Philippines are belatedly presented and do not support their Petition.

Sabre Philippines failed to overturn the presumption of correctness of the assessment made by the BIR.

Sabre Philippines insists that, even assuming that the Communications Expenses and Marketing Fees were income payments made to Sabre Singapore, the same are still not subject to FWT and FVAT on the ground that the services performed by Sabre Singapore do not pertain to the privilege to use the Abacus System in the Philippines, but to services rendered via mainframe located outside the Philippines.

The evidence submitted by Sabre Philippines, however, failed to establish that the nature of the Communications Expenses and Marketing Fees pertain to services rendered via mainframe located outside the Philippines. Sabre Philippines failed to pinpoint the specific provision in the Sub-Distribution Agreement or in the pieces of evidence it presented that would prove its allegation.

Without such evidence, we affirm the ruling of the Court in Division upholding the CIR's assessment in treating the subject payments remitted to Sabre Singapore as income in exchange for the privilege to use the Abacus System in the Philippines, which is subject to FWVAT as provided under ***Sections 108(A)(1) and 114(C) of the Tax Code***, to wit:

> "SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties. -
>
> (A) *Rate and Base of Tax*. - There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties: Provided, That the President, upon the recommendation of the Secretary of Finance, shall, effective January 1, 2006, raise the value-added tax to twelve percent (12%), after any of the following conditions has been satisfied:

xxx xxx xxx

(1) The lease or the use of or the right or privilege to use any copyright, patent, design or model, plan secret formula or process, goodwill, trademark, trade brand or other like property or right;

SEC. 114. Return and Payment of Value-Added Tax. -

xxx xxx xxx

(C) *Withholding of Value-added Tax.* - The Government or any of its political subdivisions, instrumentalities or agencies, including government-owned or -controlled corporations (GOCCs) shall, before making payment on account of each purchase of goods and services which are subject to the value-added tax imposed in Sections 106 and 108 of this Code, deduct and withhold the value-added tax imposed in Sections 106 and 108 of this Code, deduct and withhold a final value-added tax at the rate of five percent (5%) of the gross payment thereof: Provided, That the payment for lease or use of properties or property rights to nonresident owners shall be subject to ten percent (10%) withholding tax at the time of payment. For purposes of this Section, the payor or person in control of the payment shall be considered as the withholding agent."

Likewise, considering that the subject payments represent income derived by Sabre Singapore in the Philippines, it is also subject to FWT as provided under Section 28(B)(1) of the Tax Code, to wit:

"(B) Tax on Nonresident Foreign Corporation. -

(1) In General. - Except as otherwise provided in this Code, a foreign corporation not engaged in trade or business in the Philippines shall pay a tax equal to thirty-five percent (35%) of the gross income received during each taxable year from all sources within the Philippines, such as interests, dividends, rents, royalties, salaries, premiums (except reinsurance premiums), annuities, emoluments or other fixed or determinable annual, periodic or casual gains, profits and income, and capital gains, except capital gains subject to tax under subparagraph 5 (c): Provided, That effective January 1, 2009, the rate of income tax shall be thirty percent (30%)."

Given the foregoing, we find Sabre Philippines liable for basic deficiency FWVAT in the amount of ₱2,485,315.15 and deficiency FWT in the amount of ₱6,213,282.86.

Hence, considering that Sabre Philippines failed to withhold the FWT, the Communications Expense and Marketing Fees in the amount of ₱18,976,877.84 and ₱1,734,065.04, respectively, cannot be deducted for Income Tax purposes pursuant to Section 34(K) of the Tax Code, to wit:

> "(K) *Additional Requirements for Deductibility of Certain Payments.* - Any amount paid or payable which is otherwise deductible from, or taken into account in computing gross income or for which depreciation or amortization may be allowed under this Section, shall be allowed as a deduction only if it is shown that the tax required to be deducted and withheld therefrom has been paid to the Bureau of Internal Revenue in accordance with this Section 58 and 81 of this Code."

Sabre Philippines was able to prove the need to modify the computation of the delinquency and deficiency interests to conform with the provisions of Republic Act (RA) No. 10963, as implemented by Revenue Regulations (RR) No. 21-2018.

Finally, Sabre Philippines argues that the simultaneous imposition of deficiency interest and delinquency interest on the subject assessments should only apply until 31 December 2017. It holds that for the period starting 1 January 2018 until full payment of the tax liability, deficiency interest or delinquency interest should only be at twelve percent (12%) or double the legal rate for loans or forbearance of money in the absence of any express stipulation as set by the Bangko Sentral ng Pilipinas.

On this score, we find for Sabre Philippines.

The Tax Reform for Acceleration and Inclusion ("TRAIN") Law,[75] which became effective on 1 January 2018, prohibits the double imposition of the deficiency and delinquency interests, to wit:

> "Sec. 249. Interest.-
>
> "(A) *In General.*- There shall be assessed and collected on any unpaid amount of tax, interest at the rate of double the legal interest rate for loans or forbearance of any money in the absence of an express stipulation as set by the Bangko Sentral ng Pilipinas from the date prescribed for payment until the amount is fully paid: *Provided,* That in no case shall the deficiency and the delinquency interest prescribed under Subsections (B) and (C) hereof, be imposed simultaneously."

Implementing the aforementioned provision is ***Revenue Regulations No. 21-2018*** dated 14 September 2018 or ***Regulations Implementing Section 249 (Interest) of the National Internal Revenue Code (NIRC) of 1997, as amended under Section 75 of the Republic Act (RA) No. 10963 or the "Tax Reform for Acceleration and Inclusion (TRAIN Law)***, which provides for

[75] Republic Act No. 10963 "Tax Reform for Acceleration and Inclusion (TRAIN)", 19 December 2017.

the guidelines on how to compute interest of tax liabilities that became due before the effectivity of the TRAIN Law and were not fully paid after said effectivity date, to wit:

> "SECTION 6. Transitory Provision. — In cases where the tax liability/ies or deficiency tax/es became due before the effectivity of the TRAIN Law on January 1, 2018, and where the full payment thereof will only be accomplished after the said effectivity date, the interest rates shall be applied as follows:

Period	Applicable Interest Type and Rate
For the period up to December 31, 2017	Deficiency and/or delinquency interest at 20%
For the period January 1, 2018 until full payment of the tax liability	Deficiency and/or delinquency interest at 12%

> The double imposition of both deficiency and delinquency interest under Section 249 prior to its amendment will still apply in so far as the period between the date prescribed for payment until December 31, 2017."

Given the foregoing, and considering that the reckoning date for payment of petitioner's deficiency taxes for taxable year 2009 is on 27 June 2013,[76] which is prior to the effectivity of the TRAIN Law, the applicable interest rates, shall be (a) 20% deficiency interest rate from the date prescribed for its payment until 31 December 2017; (b) 20% delinquency interest from 27 June 2013 until 31 December 2017; and (c) 12% delinquency interest from 1 January 2018 until full payment thereof.

WHEREFORE, the instant Petition for Review filed by the Commissioner of Internal Revenue is hereby **DENIED** for lack of merit, while the Petition for Review filed by Sabre Travel Network (Philippines), Inc. is **PARTIALLY GRANTED.** Accordingly, the Decision dated 19 July 2017, Amended Decision dated 15 February 2018, and Resolution dated 31 August 2018 are amended to read as follows:

> "**WHEREFORE,** the assessment issued by respondent against petitioner for taxable year 2009 covering deficiency VAT and WTC in the amounts of ₱34,050,266.06 and ₱162,153.34, respectively, are **CANCELLED AND WITHDRAWN.** However, the assessment for deficiency EWT, FWVAT, FWT, Income Tax, and DST are **PARTIALLY UPHELD.** Accordingly, petitioner is ordered to pay respondent the amount of **₱71,868,712.65**, inclusive of the 25% surcharge and deficiency and delinquency interests imposed under Section

76 See Exhibit "P-12", Records, Vol 1, p. 505.

248(A)(3) and 249(B) and (C) of the NIRC of 1997, as amended, respectively computed until 31 December 2017, as follows:

	EWT	FWVAT	FWT	Income Tax	DST	TOTAL
Basic Deficiency	**₱250,073.83**	**₱2,485,313.15**	**₱6,213,282.86**	**₱6,829,783.49**	**₱225.00**	**₱15,778,678.33**
Add: 25% Surcharge for late payment[77]	62,518.45	621,328.29	1,553,320.72	1,707,445.87	56.25	3,944,669.58
20% Deficiency Interest 16 January 2010 to 27 June 2013[78]	172,516.69					172,516.69
20% Deficiency Interest 11 January 2010 to 27 June 2013[79]		1,721,334.70				1,721,334.70
20% Deficiency Interest 16 January 2010 to 27 June 2013[80]			4,286,314.04			4,286,314.04
20% Deficiency Interest 16 April 2010 to 27 June 2013[81]				4,374,803.78		4,374,803.78
20% Deficiency Interest 6 January 2010 to 27 June 2013[82]					156.45	156.45
TOTAL BASIC TAX DUE AS OF 27 JUNE 2013	**₱485,108.97**	**₱4,827,976.14**	**₱12,052,917.62**	**₱12,912,033.14**	**₱437.70**	**₱30,278,473.57**
20% Deficiency Interest 28 June 2013 to 31 December 2017[83]						14,248,362.68
20% Delinquency Interest 28 June 2013 to 31 December 2017[84]						27,341,876.40
TOTAL AMOUNT DUE AS OF 31 DECEMBER 2017						**₱ 71,868,712.65**

ɋ

77 Basic Tax Due x 25% Surcharge.

78 Basic Tax Due of P250,073.83 x 20% Deficiency Interest x 1259/365 days.

79 Basic Tax Due of P2,485,313.15 x 20% Deficiency Interest x 1264/365 days.

80 Basic Tax Due of P6,213,282.86 x 20% Deficiency Interest x 1259/365 days.

81 Basic Tax Due of P6,829,783.49 x 20% Deficiency Interest x 1169/365 days.

82 Basic Tax Due of P225.00 x 20% Deficiency Interest x 1269/365 days.

83 Basic Tax Due of P15,778,678.33 x 20% Deficiency Interest x 1648/365 days.

84 Total Amount Due as of 27 June 2013 P30,278,473.57 x 20% Delinquency Interest x 1648/365 days.

In addition, petitioner is liable to pay delinquency interest at the rate of 12% on the total unpaid basic deficiency tax, surcharge and deficiency interest as of 27 June 2013 amounting to **₱30,278,473.57** computed from 1 January 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN).

SO ORDERED.”

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

(With Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
(Please see Separate Concurring Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

CERTIFICATION

Pursuant to *Article VIII, Section 13 of the Constitution*, it is hereby certified that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB No. 1932
(CTA Case No. 8678)

\- versus -

SABRE TRAVEL NETWORK (PHILIPPINES), (formerly ABACUS DISTRIBUTIONS SYSTEMS PHILIPPINE INC.),
Respondent.

x- -x

SABRE TRAVEL NETWORK (PHILIPPINES), (formerly ABACUS DISTRIBUTIONS SYSTEMS PHILIPPINES, INC.),
Petitioner,

\- versus -

COMMISSIONER OF INTERNAL REVENUE
Respondent.

CTA EB No. 1937
(CTA Case No. 8678)

Present:

DEL ROSARIO, PJ,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, and
MODESTO-SAN PEDRO, JJ.

Promulgated:

SEP 03 2020 3:00 pm

x- x

CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* of my esteemed colleague, Honorable Associate Justice Maria Rowena Modesto-San Pedro.

I wish to the stress the following:

1. The Court of Tax Appeals (CTA) is a court of special jurisdiction that hears civil and criminal cases. Its rules in fact outline "Procedure in Civil Cases" (Rule 8, Revised Rules of the Court of Tax Appeals [RRCTA]) and "Procedure in Criminal Cases" (Rule 9, *Id.*). The CTA is not a quasi-judicial body nor an administrative agency.

2. The Rules of Court is plain and categorical in its language anent the quantum of evidence necessary in establishing a party's burden of proof, depending upon the nature of the case, thus:

> **"RULE 133**
> **Weight and Sufficiency of Evidence**
>
> **Section 1.** *Preponderance of evidence, how determined.* — In civil cases, the party having burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which there are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number.
>
> **Section 2.** *Proof beyond reasonable doubt.* — In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof, excluding possibility of error, produces absolute certainly. Moral certainly only is required, or that degree of proof which produces conviction in an unprejudiced mind.
>
> **x x x**
>
> **Section 5.** *Substantial evidence.* — In cases filed before administrative or quasi-judicial bodies, a fact may be deemed established if it is supported by substantial evidence, or that amount of relevant

> evidence which a reasonable mind might accept as adequate to justify a conclusion."

3. Being a civil case, and the CTA not being an administrative or quasi-judicial body, the quantum of evidence necessary to establish a fact in the present cases is plainly "preponderance of evidence".

4. The fact that the CTA is not bound by technical rules of evidence does not *per se* relieve the parties-litigants of the quantum of evidence necessary to establish their respective cases. If the disquisition of my esteemed colleague, Honorable Associate Justice Juanito C. Castañeda, in his Separate Concurring Opinion is pursued, then this would mean that an accused in a criminal case before the CTA may be **convicted** merely on the basis of substantial evidence (instead of proof beyond reasonable doubt) on the flimsy invocation of the rule that the CTA is not bound by technical rules of evidence.

5. The disquisition of the *ponencia* in clarifying "substantial evidence" mentioned in jurisprudence *vis-à-vis* the CTA is just too vivid and enlightening. What jurisprudence simply says is that the findings of the CTA should be respected when supported by substantial evidence; it does not refer to quantum of evidence that the parties need to discharge in presenting their cases before the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB NO. 1932
(CTA CASE NO. 8678)

-versus-

SABRE TRAVEL NETWORK (Philippines), (formerly ABACUS DISTRIBUTIONS SYSTEMS PHILIPPINE INC.),
Respondent.

x------------------------------------x

SABRE TRAVEL NETWORK (Philippines), (formerly ABACUS DISTRIBUTIONS SYSTEMS PHILIPPINE INC.),
Petitioner,

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.*

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

SEP 03 2020 3:00pm

x--x

SEPARATE CONCURRING OPINION

CASTAÑEDA, JR., J.:

I concur with the conclusion in the *ponencia* of our esteemed colleague, Associate Justice Maria Rowena Modesto-San Pedro. However, with due respect, I reiterate my position on the quantum of proof required in civil cases tried before the Court of Tax Appeals (CTA). I am of the view that only *substantial evidence* is required in civil cases tried before the CTA.

In *Ursal v. Court of Tax Appeals*,[1] the Supreme Court *En Banc* held that instead of being another superior administrative agency, as was the former Board of Tax Appeals (BTA), the CTA as created by Republic Act No. 1125 is part of the judicial system, thus:

> "In these two cases Genaro Ursal as City Assessor of Cebu challenges the correctness of the order of the Court of Tax Appeals dismissing his appeals to that body from two rulings of the Cebu Board of Assessment Appeals.
>
> The record shows that said city assessors in the exercise of his powers assessed for taxation certain real properties of Consuelo Noel and Jesusa Samson in the City of Cebu, and that upon protest of the taxpayers, the Cebu Board of Assessment Appeals reduced the assessments. It also shows he took the matter to the Court of Tax Appeals insisting on his valuation; but said Court refused to entertain the appeal saying it was late, and, besides, the assessor had no personality to bring the matter before it under section 11 of Republic Act No. 1125, which reads as follows:
>
>> SEC. 11. *Who may appeal; effect of appeal.* — Any person, association or corporation adversely affected by a decision or ruling of the Collector of Internal Revenue, the Collector of Customs or any provincial or city Board of Assessment Appeals may file an appeal in the Court of Tax Appeals within thirty days after the receipt of such decision or ruling.
>
> We share the view that the assessor had no personality to resort to the Court of Tax Appeals. The rulings of the Board of Assessment Appeals did not 'adversely affect' him. At most it was the City of Cebu[1] that had been adversely affected in the sense that it could not thereafter collect higher realty taxes from the abovementioned property owners. His opinion, it is true had been overruled; but the overruling inflicted no material damage upon him or his office. And the Court of Tax Appeals was not created to decide mere conflicts of opinion between administrative officers or agencies. Imagine an income tax examiner resorting to the Court of Tax Appeals whenever the Collector of Internal Revenue modifies, or lower his assessment on the return of a tax payer!
>
> <u>Republic Act No. 1125 creating the Court of Tax Appeals did not grant it blanket authority to decide any and all tax disputes. Defining such special court's jurisdiction, the Act necessarily limited its authority to those matters enumerated therein</u>. In line with this idea we recently approved said court's order rejecting an appeal to it by Lopez & Sons from the decision of the Collector of Customs, because in our opinion its jurisdiction extended only to a review of the decisions of the *Commissioner* of Customs, as provided by the statute — and not to decisions of the *Collector of Customs*. (Lopez & Sons vs. The Court of Tax Appeals, 100 Phil., 850, 53 Off. Gaz., [10] 3065). *Je*

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[1] G.R. Nos. L-10123 and L-10355, April 26, 1957, 101 Phil. 209.

The appellant invites attention to the fact that the Court of Appeals is the successor of the former Central Board of Tax Appeals created by Commonwealth Act No. 530 and of the Board of Tax Appeals established by Executive Order No. 401-A, and that said Commonwealth Act No. 530 (section 2) *explicitly authorized the city assessor* to appeal to the Central Board of Tax Appeals. Here is precisely another argument against his position: as Republic Act No. 1125 failed to reenact such *express permission*, it is deemed withheld.

Oversight could not have been the clause of such withholding, since there were proper grounds therefor: (a) discipline and command responsibility in the executive branches; and (b) instead of being another superior administrative agency as was the former Board of Tax Appeals the Court of Tax Appeals as created by Republic Act No. 1125 is a part of the judicial system presumably to act only on protests of private persons adversely affected by the tax, custom, or assessment.

There is no merit to the contention that section 2 of Commonwealth Act No. 530 is still in force and justifies Ursal's appeal. Apart from the reasons already advanced, Republic Act No. 1125 is a complete law by itself and expressly enumerates the matters which the Court of Tax Appeals may consider; such enumeration excludes all others by implication. *Expressio unius est exclusio alterius*.

> parts of an original act which act omitted from the act as revised are to be considered as annulled and repealed, provided it clearly appears to have been the intention of the legislature to cover the whole subject by the revision. (82 C. J. S. p. 501.)

Inasmuch as we agree to the appellant's lack of personality before the Court of Tax Appeals, we find it unnecessary to review the question whether or not his appeal had been perfected in due time." (*Citations omitted and underscoring supplied*)

Nonetheless, although an appeal to the CTA is manifestly judicial[2] and the proceedings there are judicial in nature, the CTA as a court of *special* appellate jurisdiction is *not* bound by technical rules of evidence.[3] This doctrine is anchored in Section 8 of Republic Act No. 1125, as amended:

"Section 8. *Court of record; seal; proceedings*. - The Court of Tax Appeals shall be a court of record and shall have a seal which shall be judicially noticed. It shall prescribe the form of its writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the business of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law, but such proceedings shall not be governed strictly by technical rules of evidence." (*Underscoring supplied*) JL

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[2] *Rufino Lopez & Sons v. Court of Tax Appeals*, G.R. No. L-9274, February 1, 1957, 100 Phil. 850.

[3] Republic Act No. 1125, as amended, Section 8; *Commissioner of Internal Revenue v. Ayala Securities Corporation and The Honorable Court of Tax Appeals*, G.R. No. L-29485, March 31, 1976, 70 SCRA 204.

Consistent with this provision, Rule 1 Section 2 of the Revised Rules of the Court of Tax Appeals (RRCTA) expressly provide for the liberal application of the rules[4] and only the *suppletory* application of the Rules of Court.[5]

In fact, in the recent case of *AB Leasing and Finance Corporation v. Commissioner of Internal Revenue*,[6] the Supreme Court reiterated this doctrine:

> "At all events, while the rules of evidence and jurisprudence do not sanction the grant of evidentiary value to evidence which is not formally offered, it must be stressed that technical rules of procedure are not ends in themselves but are primarily designed to help in the administration of justice. Moreover, Section 8 of Republic Act No. 1125 creating the Court of Tax Appeals expressly provides that it shall not be governed strictly by technical rules of evidence." (*Underscoring supplied; citation omitted*)

Aligned with the foregoing principle and consistent with the fiat in R.A. 1125, as amended, there is a *long line* of Supreme Court decisions which support the view that only *substantial evidence* is required for civil cases tried before the CTA.

In 1958, among the earliest cases decided by the Supreme Court using *substantial evidence* as the standard in resolving questions of fact was *Eugenio Perez v. The Court of Tax Appeals and The Collector of Internal Revenue*.[7] It involved an appeal by *certiorari* to review the decision of the CTA where the petitioner was ordered to pay the sum of ₱41,547.77 as deficiency income taxes and surcharges corresponding to the years 1947, 1948, 1949 and 1950. In said case, the Supreme Court upheld the findings of fact of the CTA on the loan extended to the taxpayer Perez, which was grounded upon *substantial evidence*, thus:

> "The last issue is the legality of the action taken by the Collector of Internal Revenue in imposing upon the petitioner the 50% surcharge provided under section 72 of the National Internal Revenue Code. This section authorizes the Collector to impose a surcharge of 50% of the amount of the tax or deficiency tax in a case of a false or fraudulent return. Appellant contends that no fraud has been shown by the Government to warrant the surcharge. In sustaining the Collector, the Court of Tax Appeals expressed the view that the substantial under-declaration of income in the income tax returns of the appellant for four consecutive years, coupled with his

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[4] "SECTION 2. *Liberal Construction.* — The Rules shall be liberally construed in order to promote their objective of securing a just, speedy, and inexpensive determination of every action and proceeding before the Court. (RCTA, Rule 1, sec. 2a)"

[5] "SECTION 3. *Applicability of the Rules of Court.* — The Rules Court in the Philippines shall apply suppletorily to these Rules."

[6] G.R. No. 138342, July 8, 2003.

[7] G.R. No. L-10507, May 30, 1958.

intentional overstatement of deductions, made the imposition of the fraud penalty proper. Certainly, these findings of large, unreported income of the petitioner as found by the tax court, and as substantiated by the expenses and investments shown in the Amended Stipulation of Facts (Rec. p. 225), together with appellant's declaration of substantial and unspecified 'losses' (none of which were explained, since the appellant failed to testify more than suffices to sustain the findings of fraud, and do not warrant a reversal from us. At any rate, we have already ruled that —

> 'The question of fraud is a question of fact which frequently requires a nicely balanced judgment to answer (Mertens, Fed. Income Taxation, chapter 55) x x x. In passing upon petitions to review decisions of the Court of Tax Appeals, we have to confine ourselves to questions of law." (Gutierrez v. Collector, G.R. No. L-9771, May 31, 1957).
>
> On the matter of fraud, although it is fundamental that this is a fact which the Commissioner is required to prove by clear and convincing evidence, it, like other findings of fact, will not be upset unless clearly erroneous. Boyett v. Commissioner, 204 F. 2d 205. The Tax Court, in concluding that the tax deficiencies were due to fraud, expressed the view that consistent substantial understatements of income for a period of four years, together with a clear pattern of reporting deductions with accuracy in detail while being deliberately evasive in the matter of income, made it impossible to believe the understatements were due to inadvertence, negligence or honest errors. Circumstances such as these are competent upon which to base a finding of fraud. Cf. Bryan v. Commissioner, 5 Cir., 1954, 209 F. 2d 322, 828.' (Archer v. Commissioner, 227 F. 2d., 270, 274) (Emphasis supplied)

Again, in the case of *Lee v. Commissioner*, 227 F. 2d 187, the same U.S. Federal Court of Appeals, in affirming the use of the net worth method, has this to say on the fraud issue:

> 'We find ourselves in agreement with the Commissioner in these contentions. Of the fraud issue, we think it need only be said that the Tax Court, in its unreported opinion, correctly placed the burden on the Commissioner, and, marshalling the evidence and making findings in accordance therewith, correctly, we think, determined that that burden was carried. It is settled law that where, as here, there is credible evidence supporting a charge that an understatement of income by taxpayer was due to fraud with intent to evade tax, whether the charge has or has not been proved is a question of fact for the Tax Court to determine, and its finding on this issue, just as any other issue of fact, is final unless shown to be clearly erroneous.' (Emphasis supplied)

<u>The same rule applies to the case of the ₱30,000.00 loans allegedly made by Attorney Juan F. David to the appellant, and which are claimed to be valid deductions from his net worth determination</u>. <u>Whether or not such</u>

loans were made as claimed is essentially a question of fact: and the absence of any credible note or document evidencing the alleged loans and their alleged partial repayment, leaves the entire issue dependent upon the testimony of the supposed creditor, whom the Court of Tax Appeals refused credence. Considering that the creditor is an attorney at law of long practice and established standing who must have been familiar with legal requirements and the notorious fallibility of debtor's memories; the large amount allegedly loaned; the indetermination of their maturity, and his passivity at their non-payment, we can not declare that the Tax Court's rejection of this item was not supported by **substantial evidence** or constituted an abuse of discretion.

Appellant invokes our decision in *Knowles vs. Insular Government*, 60 Phil. 461, to the effect that it is incumbent upon the Collector to establish his claim with certainty. The case is not applicable, for the items in the Collector's claim and which constitute the basis of his determination of the appellant's net worth from 1947 to 1950 are practically uncontested. The issue here centered on the justification for the use of the net worth method as basis for determining unreported income, and such issue is more of law than of fact." (*Underscoring and emphasis supplied*)

Subsequently, in a 1980 decision penned by Chief Justice Fernando, the Supreme Court once again laid down the standard of *substantial evidence* in resolving civil cases before the CTA. In *Raymundo v. De Joya et al.*,[8] the Supreme Court again stated that, in harmony with the holding in the 1958 *Perez* case,[9] there was no denial of due process when the findings of fact of the CTA in an assessment case was founded on *substantial evidence*, thus:

"To repeat, this petition cannot succeed.

xxx xxx xxx

2. An attempt to demonstrate that an affirmance of the appealed decision could be denial of procedural due process on the ground that the Commissioner of Customs as well as the Court of Tax Appeals could not reverse what it considered to be a finding of the then Collector of Customs lacks persuasiveness. The very concept of an appeal implies that the authority to which the matter is elevated could by an exercise of independent judgment reach the conclusion it did. The mere fact that there was a difference of point of view between the subordinate and the official of a higher category who can properly entertain such an appeal does not suffice to warrant a disregard of what under the law is impressed with a decisive effect. It would be a task of superfluity to repeat anew what had been so clearly and categorically set forth above in the **finding of facts by the Court of Tax Appeals**. Only by a showing that there was no **substantial evidence** could a due process question be raised in accordance with the *Ang Tibay* case. That element is not present in this case." (*Underscoring and emphases supplied; citations omitted*)

[8] G.R. No. L-27733, December 3, 1980.
[9] G.R. No. L-10507, May 30, 1958.

In 1980, in the consolidated cases of *Atlas Consolidated Mining Corporation v. Commissioner of Internal Revenue*,[10] the Supreme Court did not disturb the findings of fact of the CTA and affirmed its decision in the assessment case:

> "We do not agree with the contention of Atlas that the conclusion of the Court of Tax Appeals in holding that the expense of ₱25,523.14 was incurred for acquisition of additional capital is not supported by the evidence. The burden of proof that the expenses incurred are ordinary and necessary is on the taxpayer and does not rest upon the Government. To avail of the claimed deduction under Section 30(a)(1) of the National Internal Revenue Code, it is incumbent upon the taxpayer to adduce **substantial evidence** to establish a reasonably proximate relation between the expenses to the ordinary conduct of the business of the taxpayer. A logical link or nexus between the expense and the taxpayer's business must be established by the taxpayer.
>
> xxx xxx xxx
>
> On the third assignment of error, the Commissioner contended that the Court of Tax Appeals erred when it held that the amount of ₱60,000 as 'provisions for contingencies' was in effect added back to Atlas' income.
>
> On this issue, this Court has consistently ruled in several cases adverted to earlier, that in the absence of grave abuse of discretion or error on the part of the tax court its findings of facts may not be disturbed by the Supreme Court. It is not within the province of this Court to resolve whether or not the ₱60,000 representing 'provision for contingencies' was in fact added to or deducted from the taxable income. As ruled by the Court of Tax Appeals, the said amount was in effect added to Atlas' taxable income. **The same being factual in nature and supported by substantial evidence, such findings should not be disturbed in this appeal**." (*Underscoring and emphases supplied; citations omitted*)

In 1985, in *Commissioner of Internal Revenue v. Manila Machinery & Supply Company and the Court of Tax Appeals*,[11] a refund of erroneously paid commercial broker's percentage tax, the Supreme Court again reiterated the quantum of evidence required in case pending before the CTA. More importantly the Court defined *substantial evidence* by differentiating it against *preponderant proof* as required in *ordinary* civil actions:

> "In effect, the instant petition controverts the factual findings of the court *a quo*. It is well settled that in passing upon petitions for review of the decisions of the Court of Tax Appeals, this Court is generally confined to questions of law. The findings of fact of said Court are not to be disturbed unless clearly shown to be unsupported by **substantial evidence**. (Rules of

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[10] G.R. No. L-26911 and G.R. No. L-26924, January 27, 1981.
[11] G.R. No. L-25653, February 28, 1985.

> Court, Rule 44, Section 2. Republic Act 1125, Sections 18-19.) **Substantial evidence** has been construed to mean not necessarily **preponderant proof** as is required in ordinary civil action, **but such kind of 'relevant evidence as a reasonable man might accept as adequate in support of a conclusion**.' (*De Lamera vs. Court of Agrarian Relations*, et al., 17 SCRA 368.) There is no circumstance of record indicating that the findings of the lower court are not supported by substantial evidence.
>
> WHEREFORE, the appealed decision is affirmed." (*Citations omitted; underscoring and emphases supplied*)

In 1987, in *Commissioner of Internal Revenue v. Arnoldus Carpentry Shop. Inc. and Court of Tax Appeals*,[12] the Supreme Court affirmed the decision of the CTA which held that the taxpayer was not liable for deficiency contractor's tax. The Court explained in this manner:

> "Petitioner contends that the fact that private respondent 'designs and makes samples or models that are 'displayed' or presented or 'submitted' to prospective buyers who 'might choose' therefrom" signifies that what private respondent is selling is a kind of service its shop is capable of rendering in terms of woodwork skills and craftsmanship (Brief for Petitioner, p. 6). He further stresses the point that if there are no orders placed for goods as represented by the sample or model, the shop does not produce anything; on the other hand, if there are orders placed, the shop goes into full production to fill up the quantity ordered (Petitioner's Brief, p. 7).
>
> The facts of the case do not support petitioner's claim. Petitioner is ignoring the fact that private respondent sells goods which it keeps in stock and not services. As the respondent Tax Court had found:
>
> xxx xxx xxx
>
> > Petitioner [private respondent herein] claims, and the records bear petitioner out, that it had a ready stock of its shop products for sale to its foreign and local buyers. As a matter of fact, the purchase orders from its foreign buyers showed that they are ordered by referring to the models designated by petitioner. Even purchases by local buyers for television cabinets (Exhs. '2' to '13', pp. 1-13, BIR records) were by orders for existing models, except only for some adjustments in sizes and accessories utilized.
> >
> > With regard to the television cabinets, petitioner presented three witnesses — its bookkeeper, production manager and manager who testified that samples of television cabinets were designed and made by petitioner, from which models the television companies such as Hitachi, National and others might choose, then specified whatever innovations they desired. If found to be saleable, some television cabinets were manufactured for display and

[12] G.R. No. 71122, March 25, 1988.

sold to the general public. These cabinets were not exported but only sold locally. (t.s.n., pp 22-35, February 18, 1982; t.s.n., pp. 7-10, March 25, 1982; t.s.n., pp. 3-6, August 10, 1983.)

xxx xxx xxx

In the case of petitioner's other woodwork products such as barometer cases, knife racks, church furniture, school furniture, knock down chairs, etc., petitioner's above-mentioned witnesses testified that these were manufactured without previous orders. *Samples were displayed, and if in stock, were available for immediate sale to local and foreign customers.* Such testimony was not contradicted by respondent (petitioner herein). And in all the purchase orders presented as exhibits, whether from foreign or local buyers, reference was made to the model number of the product being ordered or to the sample submitted by petitioner.

Respondent's examiners, in their memorandum to the Commissioner of Internal Revenue, stated that petitioner manufactured only upon previous orders from customers and 'only in accordance with the latter's own design, model number, color, etc.' (Exh. '1', p. 27, BIR records.) *Their bare statement that the model numbers and designs were the customer's own, unaccompanied by adequate evidence, is difficult to believe. It ignores commonly accepted and recognized business practices that it is not the customer but the manufacturer who furnishes the samples or models from which the customers select when placing their orders. The evidence adduced by petitioner to prove that the model numbers and designs were its own is more convincing.* [CTA decision, pp. 6-8.] (Emphasis supplied.)

xxx xxx xxx

<u>This Court finds no reason to disagree with the Tax Court's findings of fact. It has been consistently held that while the decisions of the Court of Tax Appeals are appealable to the Supreme Court, the former's findings of fact are entitled to the highest respect. The factual findings can only be disturbed on appeal if not supported by **substantial evidence** or if there has been a showing of gross error or abuse on the part of the tax court</u> [*Collector of Internal Revenue v. Henderson*, L-12954, February 28, 1961, 1 SCRA 649; *Aznar v. Court of Tax Appeals*, L-20569, Aug. 23, 1974, 58 SCRA 519; *Raymundo v. de Joya*, L-27733, Dec. 3, 1980, 101 SCRA 495; *Industrial Textiles Manufacturing Co. of the Phils., Inc. v. Commissioner of Internal Revenue*, L-27718 and L-27768, May 27, 1985, 136 SCRA 549.]" (*Underscoring and emphases supplied*)

Finally, in a Resolution dated April 19, 1988,[13] the Supreme Court *En Banc*, again applied the bench mark of *substantial evidence* in denying the CIR's petition and upholding the CTA decision:

[13] G.R. No. 61509, April 19, 1988.

"A petition for review on *certiorari* of the decision of respondent Court of Tax Appeals, in C.T.A. No. 2488, entitled '*Elevator Service Company, Inc., vs. Commissioner of Internal Revenue*'. That decision declared without legal force and effect the assessment made by petitioner against respondent Company, the elevator Service Co. Inc., for deficiency income taxes for the years 1961, 1962 and 1963 in the respective amounts of ₱136,157.28, ₱10,562.30 and ₱66,827.04, inclusive of surcharge and interest, or a total of ₱213,546.62, on the ground that the right to assess the taxes had already expired.

CONSIDERING that, as found by respondent Court of Tax Appeals (C.T.A.), (1) the assessment against respondent Company for the taxable years 1961, 1962 and 1963 was made only on November 6, 1970, or, beyond the period prescribed in Section 331 of the old Tax Code, which limits the period of assessment and collection to five (5) years after a return has been made; (2) this case does not fall under any of the exceptions to the five-year prescriptive period stated in section 332 of the same Tax Code, which provides that in case of the filing of a false or fraudulent return, the tax may be assessed within (10) years after discovery of the falsity, fraud or omission; (3) it has not been established by clear and convincing evidence that the return filed by respondent company was false in view of the Tax Court's finding that the amounts received by the company were not income but financing "for the direct purchase of elevator parts for installation in the National Orthopedic Hospital, a private scheme having been entered into between respondent Company and the National Orthopedic Hospital whereby the latter, through the Social Security System, furnishes the necessary financing for the purchase and importation of the said elevators and parts to be installed in the building, and that the same were not payment to nor income of private respondent"; (4) that this is a findings of fact of the CTA, **supported by substantial evidence, should not be disturbed upon review of its decision** and that they are well-nigh conclusive (*Nasiad vs. CTA*, No. L-29318, November 29, 1974, 61 SCRA 238; *Commissioner of Internal Revenue vs. P.J. Kiener Co., Ltd.*, No. L-24574, July 18, 1975, 65 SCRA 142); (5) that as a matter of principle it is not advisable for the Appellate Court to set aside the conclusion reached by an agency such as the Court of Tax Appeals which is, by the very nature of its function, dedicated exclusively to the study and consideration of tax problems and has necessarily developed an expertise on the subject unless there has been an abuse or improvident exercise of its authority (Reyes vs. Commissioner of Internal Revenue, Nos. L-24020-21, July 29, 1968, 24 SCRA 198.), which exception is absent herein; and finally, (6) that the finding of said Court as to the existence or non-existence of fraud is final unless clearly shown to be erroneous (Commissioner of Internal Revenue vs. Gonzales, No. L-19495, November 24, 1966, 18 SCRA 757; Commissioner of Internal Revenue vs. Ayala Securities Corporation, No. L-29485, March 31, 1976, 70 SCRA 204); the court Resolved to DENY the petition." (*Underscoring and emphases supplied*)

The case law on substantial evidence subsists in a series of *recent* Supreme Court decisions which consistently applied *substantial evidence* as the norm in adjudicating tax cases.

In *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.)*,[14] the Supreme Court affirmed the decision of the CTA in partially granting the VAT refund of a taxpayer and stated that the factual findings of the CTA, unless such findings are not supported by *substantial evidence*, are binding upon the same Court, thus:

> "Another well-settled principle in this jurisdiction is that this Court is bound by the findings of fact of the CTA. Only errors of law, and not rulings on the weight of evidence, are reviewable by this Court. Findings of fact of the CTA are not to be disturbed unless clearly shown to be unsupported by **substantial evidence**. Quite the reverse, the claim of MPC for refund of input VAT on its purchase of capital goods and services in the present case is found to be supported by substantial evidence, not just by the CTA, but also by the Court of Appeals. The BIR Commissioner failed to convince this Court otherwise." (*Underscoring and emphases supplied*)

Subsequently in 2012, in *Eastern Telecommunications Philippines, Inc. v. The Commissioner of Internal Revenue*,[15] the Supreme Court had the occasion to apply this doctrine anew when it denied the appeal of the taxpayer which questioned the factual findings of the CTA:

> "The CIR is correct in pointing out that ETPI is engaged in mixed transactions and, as a result, its claim for refund covers not only its zero-rated sales but also its taxable domestic sales and exempt sales. Therefore, it is only reasonable to require ETPI to present evidence in order to substantiate its claim for input VAT.
>
> Considering that ETPI reported in its annual return its zero-rated sales, together with its taxable and exempt sales, the CTA ruled that ETPI should have presented the necessary papers to validate all the entries in its return. Only its zero-rated sales, however, were accompanied by supporting documents. With respect to its taxable and exempt sales, ETPI failed to substantiate these with the appropriate documentary evidence. Noteworthy also is the fact that the commissioned independent certified public account did not include in his examination the verification of such transactions.
>
> The Court finds no cogent reason to disturb the decision of the tax court. The CTA has developed an expertise on the subject of taxation because it is a specialized court dedicated exclusively to the study and resolution of tax problems. As such, its findings of fact are accorded the highest respect and are generally conclusive upon this Court, in the absence of grave abuse of discretion or palpable error. Its decisions shall not be lightly set aside on appeal, unless this Court finds that the questioned decision is not supported by substantial evidence or there is a showing of abuse or improvident exercise of authority." (*Citations omitted; underscoring supplied*)

[14] G.R. No. 159593, October 12, 2006.
[15] G.R. No. 168856, August 29, 2012.

In 2014, the Supreme Court, in *Commissioner of Internal Revenue v. Team Sual Corporation (formerly Mirant Sual Corporation)*,[16] denied the petition of the Commissioner of Internal Revenue and affirmed the decision of the CTA which granted the refund claim of the Team Sual Corporation based on the same doctrine:

> "We adopt the above-mentioned findings of fact of the CTA Special First Division, as affirmed by the CTA EB. Whether TSC complied with the substantiation requirements of Section 112 of the NIRC and RR 3-88 is a question of fact, which could only be answered after reviewing, examining, evaluating, or weighing all over again the probative value of the evidence before the CTA, which this Court does not have reason to do in the present petition for review on certiorari. The findings of fact of the CTA are not to be disturbed unless clearly shown to be unsupported by substantial evidence. Since by the very nature of its functions, the CTA has developed an expertise on this subject, the Court will not set aside lightly the conclusions reached by them, unless there has been an abuse or improvident exercise of authority." (*Underscoring supplied; citations omitted*)

In 2018, the Supreme Court in *Commissioner of Internal Revenue v. Bank of Philippine Islands*[17] affirmed the decision of the CTA *En Banc* which affirmed the decision of the CTA Special Third Division cancelling the Warrant of Distraint and/or Levy issued against the Bank of Philippine Islands. Again, the Supreme Court did not disturb the findings of the CTA which were grounded on *substantial evidence*:

> "Anent the other grounds relied upon by petitioner, such are factual in nature. It is doctrinal that the Court will not lightly set aside the conclusions reached by the CTA which, by the very nature of its function of being dedicated exclusively to the resolution of tax problems, has developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority. We thus accord the findings of fact by the CTA with the highest respect. These findings of facts can only be disturbed on appeal if they are not supported by substantial evidence or there is a showing of gross error or abuse on the part of the CTA. In the absence of any clear and convincing proof to the contrary, this Court must presume that the CTA rendered a decision which is valid in every respect. Nevertheless, the factual findings of the CTA are supported by substantial evidence." (*Citations omitted and underscoring supplied*)

In 2019, the Supreme Court in *Commissioner of Internal Revenue v. Interpublic Group of Companies, Inc.*[18] upheld the factual findings of the CTA which it deemed supported by *substantial evidence*:

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[16] G.R. No. 205055, July 18, 2014.
[17] G.R. No. 224327, June 11, 2018.
[18] G.R. No. 207039, August 14, 2019.

> "The well-settled doctrine is that factual findings of the CTA are binding upon this court and can only be disturbed on appeal if not supported by substantial evidence.
>
> The fact of payment of the tax sought to be refunded is essentially a factual finding of the CTA and as such, the same must be accorded weight and respect especially if supported by substantial evidence. Here, it was proven that on June 13, 2006, McCann withheld FWT on the dividends earned by the IGC at the rate of 35% in the amount of ₱21,593,111.93 and remitted the same on June 15, 2006. To prove this, the IGC submitted the Monthly Remittance Return of the Final Income Taxes Withheld of McCann and the accompanying payment transaction." (*Underscoring supplied and citations omitted*)

As a final note, substantial evidence "for a conclusion is enough evidence so that a reasonable person could reach the conclusion reached, but not so much that another reasonable person might not disagree."[19] The Supreme Court *En Banc* stated the it is "construed to mean 'more than a mere scintilla' or 'relevant evidence as a reasonable mind might accept as adequate to support a conclusion,' even if other minds equally reasonable might conceivably opine otherwise."[20]

The foregoing Supreme Court decisions applying doctrine of *substantial evidence* as the quantum of proof required in civil cases before the CTA finds practical application in civil tax cases view of the nature of the CTA as a *specialized tax court*.[21] As a *specialized tax court,* the CTA adjudicates tax cases involving voluminous commercial records which would stretch the court's resources *if* the standard required *were* preponderance of evidence. Furthermore, as previously discussed, this doctrine obtains its legal moorings from Section 8 of R.A. 1125, as amended, the organic law that created the CTA in 1954 and from the subsequent case law that developed which applied the doctrine.

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

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[19] Bouvier Law Dictionary (2011), p. 401.
[20] *In the Matter of the Petition for Habeas Corpus of Teodosio Lansang et al.*, G.R. No. L-33964, December 11, 1971.
[21] Republic Act No. 9282, An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with *Special* Jurisdiction and Enlarging Its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes (2004). *See also Commissioner of Internal Revenue v. Ayala Securities Corporation and The Honorable Court of Tax Appeals*, G.R. No. L-29485, March 31, 1976, 70 SCRA 204 *and* CTA's Vision Statement which states that CTA is "A specialized tax court that is impartial, competent, transparent, and worthy of public trust and confidence, ensuring faithful compliance with tax laws."