REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

AIG SHARED SERVICES CORPORATION (PHILIPPINES) [*Formerly:* CHARTIS TECHNOLOGY AND OPERATIONS MANAGEMENT CORPORATION (PHILIPPINES)], Petitioner,	**CTA CASE NO. 9351**
	Members:
	UY, *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
- versus -	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUL 02 2021 11:58 a.m.

x---x

RESOLUTION

RINGPIS-LIBAN, J.:

Submitted for before this Court are the following:

1. petitioner's **Motion for Partial Reconsideration (Re: Decision dated 02 December 2020)** filed on January 5, 2021, with respondent's **Comment/Opposition [On Petitioner's Motion for Partial Reconsideration (Re: Decision dated 02 December 2020) dated 4 January 2021]** filed through registered mail on February 3, 2021, and received by the Court on February 17, 2021; and,

2. respondent's **Motion for Partial Reconsideration** filed through registered mail on January 12, 2021, and received by the Court on January 19, 2021, with petitioner's **Comment/Opposition (Re: Respondent's Motion for Reconsideration dated 12 January 2021)** filed on February 10, 2021.

On December 2, 2020, the Court promulgated a Decision partially granting petitioner's claim for refund of its unutilized excess input value added tax (VAT) attributable to zero-rated sales, the dispositive portion of which states:

> "**WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **₱33,998.77**, representing latter's unutilized excess input VAT attributable to zero-rated sales/receipt for the short period of December 2013.
>
> **SO ORDERED.**"

Undaunted, both parties move for the partial reconsideration of the above Decision.

<u>Petitioner's Motion for Partial Reconsideration (Re: Decision dated 02 December 2020)</u>

In its Motion, petitioner primarily claims that the Court erred in only considering six (6) out of its forty-eight (48) client-affiliates as non-resident foreign corporations doing business outside the Philippines. As such, petitioner argues that (i) its client-affiliates for the short period 2013 were non-resident foreign corporations not doing business in the Philippines based on the printed screenshots from the official government websites of foreign jurisdiction where its client are registered; (ii) through preponderance of evidence, it sufficiently showed that its services where indeed performed in the Philippines; and (iii) it has proven that it is entitled to the refund of its unutilized input VAT for the short period 2013.

Petitioner asserts that the Court should have considered the printed screenshots from the official government websites of foreign jurisdictions where petitioner's clients are registered. It explains that while the Articles of Incorporation are *prima facie* evidence to prove the non-resident foreign corporation status of its client-affiliates, a party may also resort to other evidence to prove its claim. Petitioner claims that in several cases, the Court has honored these printed screenshots as equivalents of the consularized Articles of Incorporation of taxpayer's clients. Nonetheless, petitioner submits that the printed screenshots were authenticated in accordance with the Rules on Electronic Evidence.

Nonetheless, petitioner also prays that the Court re-opens the case and allow petitioner to present further evidence on the place of performance of services and to submit an additional judicial affidavit of its witness.

On the other hand, in his comment, respondent claims that the Court correctly held that the screenshots themselves were not enough to support the fact that the clients are not doing business in the Philippines. Respondent reiterates that petitioner failed to present adequate evidence that the service performed for its client-affiliates were done in the Philippines in accordance with the requirements discussed in the Court's Decision.

With regard to petitioner's plea to re-open the case, respondent asserts that the Court should not grant the same since the basis for re-opening the case are general and vague which do not specify any ground to warrant the reopening of petitioner's presentation of evidence. Lastly, respondent added that petitioner failed to identify the document it intends to present as well as state its materiality and relevancy.

This Court finds petitioner's Motion for Partial Reconsideration bereft of merit.

With emphasis, this Court consistently ruled that in order to prove that a non-resident foreign corporation is doing business outside the Philippines, the petitioner must present, at the very least, **both** the Securities and Exchange Commission (SEC) Certificate of Non-registration of Corporation/Partnership **and** a Proof of Incorporation/Association/ Business Registration in a foreign country.

The foregoing documents are relevant and necessary because the SEC's negative certification establishes that the service-recipient has no registered business in the Philippines and that it is not engaged in trade or business within the Philippines, while the foreign country's certificate/articles of incorporation/association will prove that the said service-recipient is indeed foreign, and determinative of whether the same service-recipient is engaged in business at all.

As mentioned in the assailed Decision, not only did petitioner failed to present any witness from the said foreign governments to attest to the authenticity of the said websites and to the registration of the purported petitioner's foreign clients found therein, but the said printed screenshots also failed to establish that the said clients are not doing business here in the Philippines. Accordingly, the Court finds no cogent reason to depart from its findings and ruling in the assailed Decision that the printed screenshots of foreign government websites database cannot be given weight or probative value.

This Court does not agree with petitioner's argument that it sufficiently showed that its services were indeed performed in the Philippines.

To prove that its services were performed in the Philippines, petitioner presented the testimony of its witness, Ms. Glaiza Baroro, on the location of the two offices as well as its submission of the Certificates of Registration of the said offices. However, the statement of petitioner's witness[1] and petitioner's Certificates of Registrations[2] merely show the location of petitioner's offices but failed to prove that the services to its client-affiliates were actually performed therein. Aside for the Service Agreement with AIG Vietnam Insurance Company Limited,[3] the other service agreements do no clearly state that the services are to be performed in the Philippines. Hence, considering the foregoing, the Court still stand by the conclusion reached in the assailed Decision.

This Court likewise finds no merit the petitioner's prayer to re-open the case and be allowed to present further evidence on the place of performance of services.

To start with, while the court is not unaware that the caption of a pleading is not determinative of the nature of the action therein, a motion for reopening, unlike motions for new trial or reconsideration, is not specifically mentioned and prescribed as a remedy by the Rules of Court and as such must be pleaded as an independent motion. Indeed, there is no specific provision in the Rules of Court governing motions to reopen. It is albeit a recognized procedural recourse or device, deriving validity and acceptance from long, established usage. *xxx* The reopening of a case for the reception of additional evidence after a case has been submitted for decision but before judgment is actually rendered is, it has been said, controlled by no other rule than that of the paramount interests of justice, resting entirely in the sound judicial discretion of the court; and its concession, or denial, by said court in the exercise of that discretion will not be reviewed on appeal unless a clear abuse thereof is shown.[4]

In the case of *Alejandro B. Ty v. Sylvia S. Ty*,[5] the Supreme Court reiterated that motion to reopen a case after the case has been submitted for decision, but before judgment is actually rendered, is controlled by the principle of paramount interest of justice and rests entirely upon the sound judicial discretion of the court, *viz*:

> "On the propriety of the reception of additional evidence, this Court falls backs (sic) upon the holding of the High Court in *Alegre v. Reyes*, 161 SCRA 226 (1961) to the effect that even as there is no specific provision in the Rules of Court **governing motions to reopen a civil case for the reception of additional evidence after the case has been submitted for decision, but <u>before judgment is actually rendered</u>**, nevertheless such

---

[1] Exh. No. "P-119"; Q&A Nos. 14 to 19, Sworn Statement of Ms. Glaiza A. Baroro in lieu of Direct Testimony dated February 9, 2017, Docket – Vol. 1, pp. 251 to 253
[2] Exh. Nos. "P-5" and "P-6", Docket – Vol. 2, pp. 596 to 597.
[3] Exh. No. "P-106", Docket – Vol. 4, pp. 1644 to 1653.
[4] See *Ramon J. Alegre v. Hon. Manuel T. Reyes, et al.*, G.R. No. L-56923, May 9, 1988.
[5] G.R. No. 165696, April 30, 2008.

> reopening is **controlled by no other principle than that of the <u>paramount interest of justice</u>**, and **rests entirely upon the <u>sound judicial discretion of the court</u>**." *(Emphasis supplied)*

While, in the case of *Lolita R. Alamayri v. Rommel Pabale, et. al.*,[6] the Supreme Court held that:

> "The parties must diligently and conscientiously present all arguments and available evidences in support of their respective positions to the court before the case is deemed submitted for judgment. **Only under exceptional circumstances may the court receive new evidence after having rendered judgment**; otherwise, its judgment may never attain finality since the parties may continually refute the findings therein with further evidence." *(Emphasis supplied)*

In the present case, petitioner did not raise any compelling reason that would justify the reopening of the case. Petitioner's recall of its witness and presentation of additional evidence to prove that the services were performed in the Philippines does not fall under exceptional circumstances, but are in fact considered as *"forgotten evidence."* As held by the Supreme Court in the case of *Office of the Ombudsman, Represented by Hon. Simeon V. Marcelo v. Carmencita D. Coronel*,[7] *viz.*:

> "xxx Forgotten evidence refers to evidence already in existence or available before or during a trial; known to and obtainable by the party offering it; and could have been presented and offered in a seasonable manner, were it not for the sheer oversight or forgetfulness of the party or the counsel. **Presentation of forgotten evidence is disallowed, because it results in a piecemeal presentation of evidence, a procedure that is not in accord with orderly justice and serves only to delay the proceedings**. A contrary ruling may open the floodgates to an endless review of decisions, whether through a motion for reconsideration or for a new trial, in the guise of newly discovered evidence." *(Emphasis supplied)*

It is worth mentioning that presentation of additional evidence is allowed when it is newly discovered, or where it has been omitted through inadvertence or mistake, or where the purpose of the evidence is to correct evidence previously offered. It is an accepted tenet that rules of procedure must be faithfully followed except only when, for persuasive and weighting reasons, they may be relaxed to relieve a litigant of an injustice commensurate with his

---

[6] G.R. No. 151243, April 30, 2008.
[7] G.R. No. 164460, June 27, 2006.

failure to comply with the prescribed procedure.[8] In this case, however, petitioner has not demonstrated any cogent reason for this Court to take exception. Hence, the motion to reopen case is denied.

Respondent's Motion for Partial Reconsideration

In his Motion, respondent mainly argues that petitioner is not entitled to the subject claim for refund. He insists that petitioner failed to comply with the requirements under Section 112(A) and (C) of the National Internal Revenue Code of 1997 (NIRC), as amended. He assert that the timeliness of petitioner's filing of the Petition for Review as well as it being VAT-registered entity are only based on stipulated facts and not on evidentiary matters. Respondent also points out that during the administrative proceedings, petitioner failed to submit complete documents to support its claim.

Respondent further asserts that petitioner failed to prove that its sales are zero-rated sales since it failed to establish the authenticity of the evidence presented. Thus, respondent claims that the amount of difference between the alleged total sales receipts and amount qualified as valid zero-rated sales should be considered as vatable sales of services subjected to VAT, giving an amount of output VAT liability due from petitioner.

On the other hand, in its comment, petitioner avers that the timeliness of filing the present Petition for Review and its VAT registration were matters subject of judicial admissions that do not require proof. It also maintains that the evidence presented to prove its zero-rated sales were properly authenticated and the complete set of supporting documents were submitted for both administrative and judicial claims. Lastly, petitioner claims it is not liable for output VAT as respondent must prove that petitioner's output exceeds its input VAT.

This Court finds respondent's Motion for Partial Reconsideration bereft of merit.

In the case of *Toshiba Information Equipment (Phils.), Inc. v. Commissioner of Internal Revenue*,[9] the Supreme Court held that a stipulated fact at pre-trial is categorized as a judicial admission, and does not require further proof, to wit:

> "The admission having been made in a stipulation of facts at pre-trial by the parties, it must be treated as a judicial admission. Under Section 4, Rule 129 of the Rules of Court, a judicial admission requires no proof. The admission may be contradicted only by a showing that it was made through palpable mistake or

---

[8] *Ma. Rosario Suarez v. Judge Martin S. Villarama, Jr., et al.*, G.R. No. 124512, June 27, 2006
[9] G.R. No. 157594, March 9, 2010.

> that no such admission was made. The Court cannot lightly set aside a judicial admission especially when the opposing party relied upon the same and accordingly dispensed with further proof of the fact already admitted. **An admission made by a party in the course of the proceedings does not require proof.**" *(Emphasis supplied)*

It is well-settled that a judicial admission conclusively binds the party making it. He cannot thereafter take a position contradictory to, or inconsistent with his pleadings. Acts or facts admitted do not require proof and cannot be contradicted unless it is shown that the admission was made through palpable mistake or that no such admission was made.[10] A judicial admission also removes an admitted fact from the field of controversy. Consequently, an admission made in the pleadings cannot be controverted by the party making such admission and are conclusive as to such party, and all proofs to the contrary or inconsistent therewith should be ignored, whether objection is interposed by the party or not. The allegations, statements, or admissions contained in a pleading are conclusive as against the pleader.[11]

Applying the foregoing in the present case, this Court notes that in the parties' Joint Stipulation of Facts and Issues filed on May 24, 2017, respondent admitted as stipulated facts the timeliness of the judicial claim for refund and petitioner being a VAT-registered entity.[12] As such, by conceding thereto, respondent cannot escape the binding effects of his judicial admission.

Respondent further claims that petitioner failed to show that its sales are zero-rated sales as the evidence presented were not authenticated. Respondent insists that petitioner's witnesses, Mr. Edward L. Roguel and Atty. Geronimo Randy Recinto, have no personal knowledge on the documentary evidence presented to support petitioner's claim.

However, this Court holds otherwise.

As the court-commissioned independent certified public accountant (ICPA), the duties of Mr. Roguel are provided under Section 2 of Rule 13 of the 2005 Revised Rules of the Court of Tax Appeals, as amended, enumerated below as follows:

---

[10] *Viola Cahilig, et al. v. Hon. Eustaquio G. Terencio, et al.*, G.R. No. 164470, November 28, 2011; citing *Lynn Maagad, et al. v. Juanito Maagad*, G.R. No. 171762, June 5, 2009.

[11] *Oscar Constantino, et al. v. Heirs of Pedro Constantino, Jr., et al.*, G.R. No. 181508, October 2, 2013; citing *Joshua S. Alfelor, et al. v. Josefina M. Halasan, et al.*, G.R. No. 165987 March 31, 2006.

[12] Paragraphs 1.2 and 1.6 to 1.8, Stipulation of Facts, Joint Stipulation of Facts and Issues, Docket – Vol. 1, pp. 363 to 364.

> "SEC. 2. *Duties of independent CPA.* – The independent CPA shall perform audit functions in accordance with the generally accepted accounting principles, rules and regulations, which shall include:
>
> (a) Examination and verification of receipts, invoices, vouchers and other long accounts;
>
> (b) Reproduction of, and comparison of such reproduction with, and certification that the same are faithful copies of original documents, and pre-marking of documentary exhibits consisting of voluminous documents;
>
> (c) Preparation of schedules or summaries containing a chronological listing of the numbers, dates and amounts covered by receipts or invoices or other relevant documents and the amount(s) of taxes paid;
>
> (d) Making findings as to compliance with substantiation requirements under pertinent tax laws, regulations and jurisprudence;
>
> (e) Submission of a formal report with certification of authenticity and veracity of findings and conclusions in the performance of the audit;
>
> (f) Testifying on such formal report; and
>
> (g) Performing such other functions as the Court may direct."

Basically, the duty of the ICPA is to examine and verify the receipts and other documents of the petitioner to be presented in Court. Accordingly, personal knowledge on the transactions, official receipts, sales invoices and other documents to be presented by petitioner is not required.

With regard to the testimony of Atty. Recinto, the Court also finds that he properly authenticated the documents, particularly the Master Service Agreements in accordance with Section 20 of Rule 132 of the Rules of Court, to wit:

> "Section 20. *Proof of private document.* — Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either:
>
> (a) By anyone who saw the document executed or written; or

(b) By evidence of the genuineness of the signature or handwriting of the maker.

Any other private document need only be identified as that which it is claimed to be."

Based above, the due execution and authenticity of a private document may be proved by anyone who saw the document executed or written or by evidence of the genuineness of the signature or handwriting of the maker.

In the case of Atty. Recinto, he stated that he is the custodian of all legal and corporate documents relating to petitioner's registration and operations, as well as the agreements with its affiliates.[13] Atty. Recinto further testified that he recognized the signatures in the Master Service Agreements considering said signatures were made by the former Chief Executive Officer, President and current Chief Executive Officer, who he has been closely working with.[14] Clearly, Atty. Recinto established the due execution and authenticity of the Master Service Agreements.

As to the respondent's claim that petitioner failed to submit complete documents in the administrative proceeding and that it is crucial for petitioner in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place, the Court again does not agree.

Verily, Section 8 of Republic Act (RA) No. 1125,[15] as amended by RA Nos. 9282[16] and 9503,[17] provides that:

> "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."

---

[13] Q&A No. 6, Sworn Statement of Atty. Geronimo Randy Recinto in lieu of Direct Testimony dated February 9, 2017, Docket – Vol. 1, pp. 299 to 300

[14] Q&A Nos. 163 to 168, Sworn Statement of Atty. Geronimo Randy Recinto in lieu of Direct Testimony dated February 9, 2017, Docket – Vol. 1, pp. 333 to 334

[15] "AN ACT CREATING THE COURT OF TAX APPEALS."

[16] "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."

[17] "AN ACT ENLARGING THE ORGANIZATIONAL STRUCTURE OF THE COURT OF TAX APPEALS, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES."

Perforce, proceedings of this Court is not governed strictly by technical rules of evidence, hence, it may consider any evidence whether presented or not before any jurisdiction, and that this Court may conduct a new trial as if the case submitted before it has not been tackled in said jurisdiction, as pronounced in the case of *Commissioner of Internal Revenue v. Manila Mining Corporation,*[18] *viz.*:

> "Section 8 of Republic Act 1125 (An Act Creating the Court of Tax Appeals) provides categorically that **the Court of Tax Appeals shall be a court of record and as such it is required to conduct a formal trial (trial de novo) where the parties must present their evidence accordingly** if they desire the Court to take such evidence into consideration."

This mandate is reiterated by the Supreme Court in the case of *Commissioner of Internal Revenue v. Philippine National Bank,*[19] to wit:

> "More importantly, **the Court of Tax Appeals is not precluded from accepting respondent's evidence assuming these were not presented at the administrative level. Cases filed in the Court of Tax Appeals are litigated de novo.** Thus, respondent "should prove every minute aspect of its case by presenting, formally offering and submitting... to the Court of Tax Appeals [all evidence]... required for the successful prosecution of [its] administrative claim." *(Emphasis supplied)*

Evidently, this Court may take in new evidence not presented during the administrative level and conduct a new trial. Thus, respondent is totally mistaken in its claim that the petitioner must show that it submitted complete documents in the administrative level prior to the filing of the judicial claim.

As to his last argument, respondent claims that the amount of difference between the alleged total sales receipts and amount qualified as valid zero-rated sales should be considered as vatable sales of services subjected to VAT, giving an amount of output VAT liability due from petitioner.

Unfortunately, this Court is not convinced.

In the case of *Commissioner of Internal Revenue v. Toledo Power Company,*[20] the Supreme Court held that since a claim for tax refund under Section 112 of the NIRC, as amended, is not a claim for refund under Section 229, and as such

[18] G.R. No. 153204, August 31, 2005.
[19] G.R. No. 180290, September 29, 2014.
[20] G.R. Nos. 196415 and 196451, December 2, 2015.

the correctness of VAT returns is not an issue, thus, there is no need for the court to determine whether the taxpayer is liable for deficiency VAT, to wit:

> "But while TPC's sales of electricity to CEBECO, ACMDC, and AFC are not zero-rated, we cannot hold it liable for deficiency VAT by imposing 10% VAT on said sales of electricity as what the CIR wants us to do.
>
> As a rule, taxes cannot be subject to compensation because the government and the taxpayer are not creditors and debtors of each other. However, we are aware that in several cases, we have allowed the determination of a taxpayer's liability in a refund case, thereby allowing the offsetting of taxes.
>
> In *Commissioner of Internal Revenue v. Court of Tax Appeals*, we allowed offsetting of taxes in a tax refund case because there was an existing deficiency income and business tax assessment against the taxpayer. We said that '[t]o award such refund despite the existence of that deficiency assessment is an absurdity and a polarity in conceptual effects' and that 'to grant the refund without determination of the proper assessment and the tax due would inevitably result in multiplicity of proceedings or suits.'
>
> Similarly, in *South African Airways v. Commissioner of Internal Revenue*, we permitted offsetting of taxes because the correctness of the return filed by the taxpayer was put in issue.
>
> In the recent case of *SMI-ED Philippines Technology, Inc. v. Commissioner of Internal Revenue*, we also allowed offsetting because there was a need for the court to determine if a taxpayer claiming refund of erroneously paid taxes is more properly liable for taxes other than that paid. We explained that the determination of the proper category of tax that should have been paid is not an assessment but is an incidental issue that must be resolved in order to determine whether there should be a refund. However, we clarified that while offsetting may be allowed, the BIR can no longer assess the taxpayer for deficiency taxes in excess of the amount claimed for refund if prescription has already set in.
>
> **But in all these cases, we allowed offsetting of taxes only because the determination of the taxpayer's liability is intertwined with the resolution of the claim for tax refund of erroneously or illegally collected taxes under Section 229 of the NIRC. A situation that is not present in the instant case.**
>
> **In this case, TPC filed a claim for tax refund or credit under Section 112 of the NIRC, where the issue to be resolved is whether TPC is entitled to a refund or credit of its**

> **unutilized input VAT for the taxable year 2002. And since it is not a claim for refund under Section 229 of the NIRC, the correctness of TPC s VAT returns is not an issue. Thus, there is no need for the court to determine whether TPC is liable for deficiency VAT.**
>
> **Besides, it would be unfair to allow the CIR to use a claim for refund under Section 112 of the NIRC as a means to assess a taxpayer for any deficiency VAT, especially if the period to assess had already prescribed. As we have said, the courts have no assessment powers, and therefore, cannot issue assessments against taxpayers. The courts can only review the assessments issued by the CIR, who under the law is vested with the powers to assess and collect taxes and the duty to issue tax assessments within the prescribed period.**" (*Emphases supplied*)

Applying the above-cited jurisprudence, considering that petitioner's claim for refund of unutilized input VAT is based under Section 112 of the NIRC, the amount of difference of the alleged total sales receipts and amount qualified as valid zero-rated sales cannot be considered as vatable sales of services.

In view of the foregoing disquisitions, the Court finds no compelling and justifiable reason to reverse or modify the Decision assailed by the parties.

WHEREFORE, in light of the foregoing considerations, petitioner's Motion for Partial Reconsideration (Re: Decision dated 02 December 2020) and respondent's Motion for Partial Reconsideration are both **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

We Concur:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice