REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

SPECIAL SECOND DIVISION

PPD PHARMACEUTICAL DEVELOPMENT PHILIPPINES CORP., Petitioner,	CTA CASE NO. 10249
	Members:
- versus -	**BACORRO-VILLENA,** *Acting Chairperson, and* **CUI-DAVID,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: NOV 20 2023 1:10 p.m.

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RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution is the "Motion for Partial Reconsideration (Re: Decision dated 19 May 2023)"[1] (**MPR**) filed by petitioner PPD Pharmaceutical Development Philippines, Corp. (**petitioner**) on 16 June 2023, without comment from respondent Commissioner of Internal Revenue (**respondent**).[2]

The MPR seeks the reversal of the Decision dated 19 May 2023[3] (**assailed Decision**) dismissing petitioner's claim for refund of value-added tax (**VAT**) for its failure to prove that its sales to customer qualify as zero-rated transactions. The dispositive part states:

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1 Division Docket, Volume III, pp. 1081-1106.
2 See Records Verification dated 26 July 2023, id., p. 1111.
3 Id., pp. 1053-1080.

> ...
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> **WHEREFORE**, in view of all the foregoing, the Petition for Review of petitioner PPD Pharmaceutical Development Philippines [Corp.] filed on 23 January 2020 is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**
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> ...

In the MPR, petitioner argues that it should not be condemned for filing its administrative claim before Revenue District Office (**RDO**) No. 44 after it followed the advice of its external consultant to file it with the said office. According to petitioner, it relied on the advice in good faith since they are more familiar with the transactions.

Banking on the case of *Zuellig-Pharma Asia Pacific Ltd. Phils. ROHQ v. Commissioner of Internal Revenue (CIR)*[4], where the Supreme Court ruled that a taxpayer cannot be faulted for merely acting on the representations of the government, petitioner also argues that it also cannot be blamed for relying in good faith the RDO No. 44's representations that it will endorse the docket to the VAT Credit Audit Division (**VCAD**) in case the latter has no jurisdiction to process the claim.

Petitioner also avers that it was deprived of the opportunity to file the administrative claim with the correct venue since RDO No. 44 belatedly acted on its application. Later, when it filed the same before the VCAD, the latter office refused to receive it as well. Left with no remedy, it then prays for the liberal application of the rules in the interest of substantial justice.

Moreover, petitioner posits that there is nothing in Section 112[5] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, nor in Revenue Memorandum Circular (**RMC**) No. 54-2014[6] that would require the administrative claim for refund to be filed with a particular Bureau of Internal Revenue (**BIR**) office. Although the Court cited Revenue

[4] G.R. No. 244154, 15 July 2020.
[5] **SEC. 112.** *Refunds or Tax Credits of Input Tax.*
[6] Clarifying Issues Relative to the Application for Value Added Tax (VAT) Refund/Credit under Section 112 of the Tax Code, As Amended.

Regulations (**RR**) No. 13-2018[7], RMC Nos. 17-2018[8] and 47-2019[9] in its assailed Decision as the legal bases for the filing of administrative claim before the VCAD, petitioner submits that it is erroneous for this Court to depend on mere BIR issuances to determine its jurisdiction over the instant case. It insists that administrative issuances cannot amend the law. Hence, without clear and unequivocal directive in the Tax Code, the concerned issuances cannot supplant additional requirements in the filing of administrative claim for VAT refund.

As to the merits of the case, petitioner claims that this Court erred gravely in requiring it to submit a higher degree of evidence to prove that its customer, PPD Global Limited (**PPD Global**), is a non-resident foreign corporation (**NRFC**) not doing business in the Philippines. According to it, the records already contained PPD Global's Securities and Exchange Commission (**SEC**) Certificate of Non-Registration, Apostilled Articles of Incorporation, Apostilled Affiliates Services Agreement, Apostilled Confirmation of the Affiliate Services Agreement, and the UK Certificates of Tax Residency. Hence, with the presentation of all the foregoing documents, petitioner laments that it sufficiently established that PPD Global is an NRFC not doing business in the Philippines pursuant to the requirements laid down in *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.*[10] (**Deutsche**). It adds that the *Deutsche* case is the controlling precedent in determining the required evidence to prove that sales to an NRFC qualify as zero-rated sales as it recently held in the 2022 case of *Chevron Holdings, Inc. (Formerly Caltex Asia Limited) v. Commissioner of Internal Revenue*[11] (**Chevron**).

Petitioner also claims that it was erroneous for this Court to have considered respondent's belated allegation that PPD Global is doing business in the Philippines despite the latter's failure to present any evidence to prove it. The Court should have noted instead that he or

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7 Regulations Implementing the Value-Added Tax Provisions under the Republic Act (RA) No. 10963, or the "Tax Reform for Acceleration and Inclusion (TRAIN)," Further Amending Revenue Regulations (RR) No. 16-2005 (Consolidated Value-Added Tax Regulations of 2005), as Amended.

8 Amending Revenue Memorandum Circular (RMC) No. 89-2017 and Certain Provisions of RMC No. 54-2014 Regarding the Processing of Claims for Issuance of Tax Refund/Tax Credit Certificate (TCC) in Relation to Amendments Made in the National Internal Revenue Code of 1997, as Amended by Republic Act No. 10963, Known as the Tax Reform for Acceleration and Inclusion (TRAIN).

9 Revised Guidelines and Mandatory Requirements for the Processing and Grant of Value-Added Tax (VAT) Refund Claims within the 90-day Period Pursuant to Section 112 of the Tax Code of 1997, as Amended.

10 G.R. No. 234445, 15 July 2020.

11 G.R. No. 215159, 05 July 2022.

she has not even raised this issue in the pleadings or during the trial proper. Petitioner adds that as the instant is a civil case, it is only required to present a preponderance of evidence, thus, its documents that are not rebutted by any contrary evidence should have been sufficient to prove that PPD Global is not doing business in the Philippines.

Petitioner further argues that under Republic Act (**RA**) No. 7042[12] or the Foreign Investment Act (**FIA**) of 1991, for a company to be considered doing business in the Philippines, it should have a physical presence of at least 180 calendar days in the country and is engaged in a profit-making activity. Absent these two (2) requirements, it is impossible to consider PPD Global as doing business in the country solely on the basis of the renewable Affiliate Service Agreement (executed between PPD Global and petitioner). Petitioner also points out that the receipts of the sponsors issued in PPD Global's name do not prove that the latter has derived income from the Philippines.

Moreover, petitioner avers that this Court improperly interpreted and applied the cases of *Agilent Technologies Singapore (PTE) Ltd. v. Integrated Silicon Technology Philippines Corporation, et al.*[13] (**Agilent**), *Sitel Philippines Corporation (Formerly Clientlogic Phils., Inc.) v. Commissioner of Internal Revenue*[14] (**Sitel**) and *Saint Wealth Ltd. v. Bureau of Internal Revenue, et al.*[15] (**Saint Wealth**) since these are not in all fours in the instant case. Petitioner explains that: (1) in *Agilent*, the Supreme Court was able to rule that the NRFC therein was not doing business in the Philippines solely on the ground that it was not engaged in a profit-making activity and without considering the five-year service agreement that has an annual renewal clause; (2) in *Sitel*, the Supreme Court denied the allegation that the NRFC therein was not doing business in the Philippines on account of the claimant's failure to submit the required documentary proof; and, (3) in *Saint Wealth*, the Supreme Court applied the jurisprudential test to determine if foreign corporations can be taxed in the Philippines and not in the context of proving entitlement to VAT refund.

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[12] AN ACT TO PROMOTE FOREIGN INVESTMENTS, PRESCRIBE THE PROCEDURES FOR REGISTERING ENTERPRISES DOING BUSINESS IN THE PHILIPPINES, AND FOR OTHER PURPOSES.

[13] G.R. No. 154618, 14 April 2004.

[14] G.R. No. 201326, 08 February 2017.

[15] G.R. Nos. 252965, 07 December 2021.

Assuming *arguendo* that the jurisprudential test can be applied in this case, petitioner elaborates that under the four (4) tests in *Saint Wealth* (namely Substance, Contract, Intention, and Actual Performance Tests), it is inconceivable to arrive at the conclusion that PPD Global is doing business in the Philippines. In the application of the Substance Test, there is no record showing that PPD Global's transactions are conducted in the Philippines; in Contract Test, there is no commercial transactions from which PPD Global is earning profit from the Philippines; in Intention Test, PPD Global has no physical presence in this country; and in Actual Performance Test, this Court misinterpreted the witness's testimony and mistakenly attributed petitioner's performance of service in the Philippines to that of PPD Global.

Lastly, petitioner contends that a perusal of the services addendum attached to the Affiliate Service Agreement reveals that it is a separate and independent entity that provides services to PPD Global from the Philippines to United Kingdom. Contrary to the Court's findings, PPD Global does not conduct business that generate revenues within the Philippines.

We resolve.

After a careful perusal of the present MPR and the arguments raised therein, petitioner still failed to convince Us that its claim for input VAT refund should be granted.

PETITIONER FAILED TO FILE ITS ADMINISTRATIVE CLAIM FOR VALUE-ADDED TAX (VAT) REFUND WITH THE PROPER OFFICE.

In the assailed Decision, We have ruled that administrative claims for VAT refund or issuance of tax credit certificate (**TCC**) of direct exporters shall be exclusively filed with the VCAD pursuant to Section 4.112-1(c) of RR No. 13-2018:[16]

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16 Supra at note 3, pp. 1067-1068; Citations omitted and emphasis in the original text.

> ...
>
> In fact, as early as in the issuance of Revenue Regulations (**RR**) No. 13-2018, the BIR has already implemented the rule that claims for input VAT refund of direct exporters shall be **exclusively filed with the VCAD**:
>
> ...
>
> > SEC. 4.112-1. Claims for Refund/Credit of Input Tax. –
> >
> > ...
> >
> > **(c) Where to file the claim for refund/credit**
> >
> > Claims for refunds shall be filed with the appropriate Bureau of Internal Revenue (BIR) Office (Large Taxpayers Service (LTS), Revenue District Office (RDO)) having jurisdiction over the principal place of business of the taxpayer. **Claims for input tax refund of direct exporters shall be exclusively filed with the VAT Credit Audit Division (VCAD).**
> >
> > ...
>
> From the foregoing, petitioner, being a direct exporter of services, should have filed its claim for VAT refund with VCAD and *not* with RDO 44. Thus, while the filing of the administrative claim was timely made, petitioner erroneously filed the same with RDO 44 when the same should have been filed with the VCAD, pursuant to RR No. 13-2018, RMC No. 17-2018 and RMC No. 47-2019 (all of which were already in effect at the time when petitioner filed its administrative claim on 25 September 2019). As such, petitioner's administrative claim is deemed as not made nor filed as a result of its filing with the wrong venue.
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> ...

We do not share petitioner's view that We erred in relying on the abovementioned regulation. It must be recalled that tax revenue regulations are issuances signed by the Secretary of Finance (upon the CIR's recommendation) that specify, prescribe or define rules and regulations for the effective enforcement of the provisions of the NIRC of 1997, as amended, and other related statutes. As these issuances are mandated by the Tax Code itself, they are in the nature of a subordinate legislation that are as compelling as the provisions of the tax law they implement.[17] Thus, they can rightfully be considered to provide a binding set of rules in the filing of claims for VAT refund or TCC. Absent any showing that Section 4.112-1(c) of RR No. 13-2018 contravenes the Tax Code, petitioner's argument must fail.

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[17] *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. No. 187485, 12 February 2013.

PETITIONER FAILED TO PROVE THAT PPD GLOBAL IS A NON-RESIDENT FOREIGN CORPORATION (NRFC) NOT DOING BUSINESS IN THE PHILIPPINES.

Petitioner vehemently insists that We also erred in disqualifying its sales of services to PPD Global as zero-rated transactions. It argues that under the FIA of 1991, an entity may only be considered doing business in the Philippines if it has stayed in the country for a period of 180 days or more and is engaged in profit-making activity. It likewise avers that even if We apply the jurisprudential tests in *Saint Wealth*, PPD Global would still not be considered as doing business in the Philippines.

Unfortunately, these arguments still fail to sway Us to agree.

Petitioner's interpretation of the phrase "doing business" under the FIA of 1991 is restrictive since it limited the meaning to only two (2) descriptions namely: (a) *who in any calendar year stay in the country for a period or periods totalling one hundred eighty (180) days or more*; and, (b) *any other act or acts that imply a continuity of commercial dealings or arrangements*. Contrary to its confined explanation, the complete definition "doing business" under the relevant law reads:

> ...
>
> d) The phrase "doing business" shall include soliciting orders, service contracts, opening offices, whether called "liaison" offices or branches; appointing representatives or distributors domiciled in the Philippines or who in any calendar year stay in the country for a period or periods totalling one hundred eighty (180) days or more; participating in the management, supervision or control of any domestic business, firm, entity or corporation in the Philippines; and any other act or acts that imply a continuity of commercial dealings or arrangements, and contemplate to that extent the performance of acts or works, or the **exercise of some of the functions normally incident to, and in progressive prosecution of,** commercial gain **or of the purpose and object of the business organization**: *Provided, however*, That the phrase "doing business: shall not be deemed to include mere investment as a shareholder by a foreign entity in domestic corporations duly registered to do business, and/or the exercise of rights as such investor; nor having a nominee director or officer to represent its interests in such corporation; nor appointing

> a representative or distributor domiciled in the Philippines which transacts business in its own name and for its own account[.][18]
>
> ...

As aforestated, the exercise of functions that are incident to the purpose and object of the business organization is considered as doing business. Relevant thereto, in the assailed Decision, We have judiciously determined that petitioner is performing functions that are incidental to the purpose of PPD Global as reflected in the Affiliate Service Agreement and the Service Addendum:[19]

> ...
>
> In the present case, it is undisputed that PPD Global, as shown in the Affiliate Services Agreement, is engaged in the business of managing clinical research programs and providing clinical development and other related services for clients. On the other hand, petitioner is primarily engaged in the similar business of "conduct[ing] contract research, including monitoring clinical trials, providing project management services and conducting clinical feasibility assessments," as evinced in its Articles of Incorporation (**AOI**).
>
> Moreover, in the said Affiliate Services Agreement, petitioner is tasked to provide **services related to clinical research and development to sponsors or clients of PPD Global** and the latter would compensate petitioner at cost plus mark-up, to wit:
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> > ...
> >
> > 1. <u>SERVICES</u>.
> >
> > 1.1 <u>Scope of Services</u>. Affiliate shall provide those certain services ("**Services**") *related to a Sponsor clinical trial or project* ("**Project**") *identified by PPDG*, described in the Services Addendum attached hereto as <u>Exhibit A</u>, and further described in the services agreement between any of the Hubs and Sponsor ("**Sponsor Agreement**"). Affiliate shall perform the Services *in compliance with* (i) *the protocol for the Project* ("**Protocol**"); (ii) the terms and conditions of this Agreement, (iii) *the terms and conditions of the relevant Sponsor Agreement*, the applicable terms of which shall be incorporated by reference herein; (iv) *instructions provided by PPDG or Sponsor*; and (v) all applicable laws, rules and regulations. To the extent any terms contained herein conflict with terms contained in the Sponsor Agreement, the terms of the Sponsor Agreement shall govern and control.

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18 Emphasis supplied.

19 Supra at note 3, pp. 1074-1075; Citations omitted, emphasis, italics and underscoring in original text.

...

Exhibit A

Services Addendum

Affiliate may provide, from time to time, the following Services in addition to other Services as requested by PPDG:

Clinical Trial Co-ordination and Support Services

Clinical trial co-ordination and support services for clinical trials being conducted locally comprising the following key activities:

...

Petitioner's claim that the jurisprudential tests in *Saint Wealth* is inapplicable also fails to convince Us since the Supreme Court itself stated that these parameters are used to determine whether a foreign corporation is "doing" or "engaging in" or "transacting" business in the Philippines.[20] Thus, as exhaustively discussed in the assailed Decision, PPD Global is doing business in the Philippines:[21]

...

Applying the jurisprudential tests laid down in *Saint Wealth*, the Court is constrained to hold that PPD Global is doing business in the Philippines through petitioner.

Firstly, the *Substance Test* looks at the nature and scope of the activities being conducted by the foreign corporation in the Philippines, that is, whether the same is normally incident to and in progressive prosecution of, the purpose of its organization.

As aforementioned, PPD Global is a clinical research organization engaged in the business of **managing clinical research programs and providing clinical development and other related services for clients** while petitioner's primary purpose is to **conduct contract research, including clinical trials**, providing management services and conducting clinical feasibility assessment and is actually tasked, through the Affiliate Services Agreement, to provide certain services (described in the Services Addendum) as may be requested by PPD Global, which are related to the Sponsor clinical trial or project identified also by PPD Global.

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20 See *Saint Wealth Ltd. v. Bureau of Internal Revenue, et al.*, supra at note 15.

21 Supra at note 3, pp. 1075-1077; Citation omitted, emphasis, italics and underscoring in the original text.

From the foregoing, it is evident that petitioner is performing functions that are integral to PPD Global's business purpose.

Secondly, the *Contract Test* examines whether a series of commercial dealings reflects an intention on the part of a foreign corporation to engage in business in the Philippines. In the instant case, the agreement between PPD Global and petitioner stipulates a five-year term with automatic renewal, during which petitioner is to perform significant or core transactions of PPD Global in the Philippines under the name of PPD Global. This is an *indicium* of intent on the part of PPD Global to engage in business in the Philippines by having continuing commercial dealings and arrangements, rather than an isolated transaction.

Thirdly, the *Intention Test* looks at nature and character of the transaction or whether the activities performed are in furtherance of the foreign corporation's business purpose and objectives (as opposed to isolated transactions or those which are "apart from the common business of a foreign enterprise"), and not on the frequency of the transaction. In this case, it is evident that petitioner's services are directly related to PPD Global's business purpose and objectives of conducting clinical research programs and delivering clinical development services to its clients. This demonstrates that the petitioner is not just providing ancillary or administrative support services but is actively engaged in conducting PPD Global's business activities in the country.

Finally, the *Actual Performance Test* looks at whether the services were performed within the country in question. In this case, petitioner's witness, Dormile, testified that petitioner's services to PPDG's clients or sponsors were all rendered in the Philippines, to wit:

> ...
>
> 44. Q: **What was PPD's basis for classifying said sales for the third and fourth quarters of CY 2017 as subject to zero-rated VAT?**
>
> A: PPD's sales for the third and fourth quarters of CY 2017 were zero-rated because they consisted of *<u>sale of services rendered in the Philippines in favor of PPD Global Limited ("PPD Global")</u>*, an entity that is not engaged in business in the Philippines pursuant to a contract for services entered into between PPD and PPD Global and which was paid for in foreign currency.
>
> ...
>
> 47. Q: **What were these services rendered by PPD to PPD Global?**
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> A: Clinical trial coordination and support services, global clinical data management services. Global biostatistics and programming services, clinical

> shared services, administrative shared services, and local contracting with sponsors.

...

Lastly, it bears to emphasize that although petitioner was able to submit PPD Global's Articles of Incorporation, and Certificate of UK residence pursuant to the requirements under *Deutsche*, these authenticated corporate documents merely constitute *prima facie* evidence that PPD Global is not engaged in trade or business in the Philippines. Considering that respondent disproved such fact (by contending that the Affiliate Service Agreement shows PPD Global's continuity of commercial dealings, through petitioner, in the Philippines), the burden of proof has shifted back to petitioner to establish the factual basis of its claim for refund or issuance of TCC. However, it failed to do so.

WHEREFORE, premises considered, the "Motion for Partial Reconsideration (Re: Decision dated 19 May 2023)" filed by petitioner PPD Pharmaceutical Development Philippines Corp. on 16 June 2023 is hereby **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice