REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

NOKIA (PHILIPPINES), INC.
Respondent.

CTA EB NO. 1227

(CTA Case No. 8481)

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

Promulgated:
AUG 11 2016 11:20a.m.

x- -x

DECISION

RINGPIS-LIBAN, *J*.:

The Case

Before the Court is a Petition for Review[1] seeking the modification of the Decision dated July 2, 2014[2] and the Resolution dated September 16, 2014[3] promulgated by the Court of Tax Appeals (CTA) Second Division (Second

[1] Under Sec. 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals.
[2] Penned by Associate Justice Juanito C. Castañeda, Jr. with Associate Justice Caesar A. Casanova concurring. EB Docket, pp. 30-58.
[3] Penned by Associate Juanito C. Castañeda, Jr. with Associate Justices Caesar A. Casanova and Amelia R. Cotangco-Manalastas concurring. EB Docket, pp. 56-62.

Division) in CTA Case No. 8481, entitled *Nokia (Philippines), Inc. v. Commissioner of Internal Revenue.*

The Facts

Petitioner is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), vested with power to decide disputed assessments, grant tax refunds and issue tax credit certificates, pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997 and other laws, rules and regulations. She holds office at the BIR National Office Building, Agham Road, Diliaman, Quezon City

Respondent Nokia (Philippines), Inc. is a corporation registered with the Securities and Exchange Commission (SEC) on April 5, 1994, primarily to engage in importing, distributing and other related services for telecommunications equipment, electronic products, including, but not limited to, their parts and components, and all kinds of works, machinery, apparatus, conveniences and things capable of being used in connection therewith. Its principal office address is at the 40th Floor, Philamlife Tower, 8767 Paseo de Roxas, Makati City.

On December 2, 2011, respondent filed before the BIR Large Taxpayer Regular Audit Division 3 an administrative claim for refund/tax credit in the amount of ₱57,594,670.73.

On April 27, 2012, respondent filed before the Court in Division a Petition for Review[4] pursuant to Section 112(A) of the NIRC of 1997, as amended, docketed as CTA Case No. 8481 and was raffled to the Second Division.

Petitioner filed her Answer[5] therein on June 29, 2012. She alleged, among others, that respondent is not entitled to a refund or tax credits in the amount of ₱57,594,670.73 representing unutilized input tax because it failed to submit all necessary and relevant documents in the administrative claim for refund or tax credit of excess input tax attributable to zero-rated sales.

After the pre-trial conference held on August 2, 2012, the parties filed their Joint Stipulation of Facts and Issues on September 17, 2012,[6] which was approved by the Second Division in its Resolution dated September 19, 2012. Thereafter, the Second Division issued a Pre-Trial Order dated September 25, 2012[7] that terminated the pre-trial and set the presentation of the parties' respective oral and documentary evidence.

[4] Division docket, vol. I, pp. 6-15.
[5] Id. at pp. 40-46
[6] Id. at pp. 92-94
[7] Id. at pp. 110-113.

Respondent presented two witnesses, namely Bridgette C. Redolfin and ICPA Glenn Ian D. Villanueva. On the other hand, petitioner presented Revenue Officers Melinda Rugayan and Linda Macaspac. The case was submitted for decision on October 1, 2013,[8] after respondent and petitioner filed their respective memoranda on September 20, 2013[9] and September 25, 2013.[10]

The Rulings of the Second Division

The Second Division partially granted respondent's Petition for Review in the Decision dated July 2, 2014 (assailed Decision), thus:

> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of ₱27,619,940.71, representing petitioner's unutilized input VAT for the four quarters of taxable year 2010.[11]

Aggrieved, petitioner filed her Motion for Partial Reconsideration (Re: Decision dated July 2, 2014) on July 18, 2014.[12] Respondent filed its Comment (To Respondent's Motion for Partial Reconsideration) on August 15, 2014,[13] in compliance with the Second Division's Resolution dated August 4, 2014.[14]

The Second Division denied petitioner's motion for partial reconsideration in a Resolution dated September 16, 2014, thus:

> **WHEREFORE**, premises considered, respondent's Motion for Partial Reconsideration is hereby **DENIED** for lack of merit.[15]

Hence, this petition.

Petitioner filed a Motion for Extension of Time to File Petition for Review on October 3, 2014,[16] which the Court granted in a Resolution dated October 8, 2014.[17]

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[8] Division docket, vol. III, p. 1003.
[9] Division docket, vol. II, pp. 966-978.
[10] Id. at pp. 983-1001.
[11] Supra, note 2.
[12] Division docket, vol. III, pp. 1054-1069.
[13] Id. at pp. 1075-1077.
[14] Id. at p. 1074.
[15] Supra, note 3.
[16] EB Docket, pp. 1-4.

Petitioner filed the instant Petition for Review on October 17, 2014,[18] praying that the Decision dated July 2, 2014 and the Resolution dated September 16, 2014 be modified and another one be rendered denying respondent's claim for refund/tax credit in its entirety.

The Court ordered respondent to comment on the petition, to which respondent complied, with the filing of its Comment on February 2, 2015.[19]

On February 25, 2015, the Court gave due course to the petition and ordered the parties to submit their respective memoranda within thirty days from notice.[20]

On April 16, 2015, petitioner filed a Manifestation[21] stating that she is adopting the arguments/discussion raised in her Petition for Review filed on October 17, 2014 as her Memorandum. On the other hand, respondent filed its Memorandum on May 25, 2015,[22] which was within the extension period granted by the Court.[23]

The Issues

Petitioner raises the following issues:

1. Whether respondent has complied with the governing rules and regulations with regard to the recovery of taxes collected/received within the periods provided in Section 112 of the Tax Code, as amended.

2. Whether respondent has complied with the submission of complete documents in support of its administrative claim for refund.

3. Whether respondent is entitled to a tax refund or tax credit certificate for its alleged input VAT payments allegedly allocated to its zero-rated sales for the 1st, 2nd, 3rd, and 4th quarters of taxable year 2010 in the reduced amount of ₱27,619,940.71.[24]

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17 Id. at p. 6
18 Id. at pp. 7-26.
19 Id. at pp. 69-77.
20 Resolution dated February 25, 2015, EB Docket, pp. 79-80.
21 EB Docket, pp. 81-82.
22 Id. at pp. 89-99.
23 Id. at p. 88.
24 Id. at p. 9.

According to petitioner, respondent's failure to submit complete documents in support of its administrative claim for refund/tax credit in accordance with Section 112 of the NIRC of 1997, as amended, is the sole reason that the claim should be denied.[25] She reasons that, as to what documents to submit, taxpayers are guided by Revenue Memorandum Order No. 53-98.[26] Failing such, respondent cannot be held to have submitted all relevant documents in support of its claim for refund/tax credit.[27]

Petitioner further argues that, assuming the CTA has jurisdiction over the case, the claim for refund of creditable input VAT should still be denied for respondent's failure to establish that recipients of its services are doing business outside the Philippines.[28]

The Ruling of the Court

We deny the petition.

The CTA has Jurisdiction

It is not disputed that the administrative claim was filed on time. What petitioner questions is the timeliness of the judicial claim, which bears on the jurisdiction of the Court. Section 112 of the NIRC of 1997, as amended, pertinent to the claim for refund of unutilized input VAT attributable to zero-rated or effectively zero-rated sales, states:

> SEC. 112. *Refunds or Tax Credits of Input Tax.* –
>
> (A) *Zero-Rated or Effectively Zero-Rated Sales.* - Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of

[25] Docket, p. 10.
[26] Docket, p. 12.
[27] Docket, p. 20.
[28] Id.

properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally,* That for a person making sales that are zero-rated under Section 108 (B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

x x x

(C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* - In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.

The Commissioner of Internal Revenue (CIR) has 120 days within which to decide the taxpayer's request for refund/tax credit. The 120-day period is reckoned from the date of submission of complete supporting documents. The remedy of the taxpayer if the CIR denies his claim is to appeal the denial to the CTA within 30 days. In the event the CIR does not act on his request for refund/tax credit within 120 days, the same is deemed a denial, and the taxpayer has 30 days after the expiration of the 120-day period to file his judicial claim.

The following dates are determinative of the timeliness of the filing of the judicial claim:

Filing of administrative claim with supporting documents	December 2, 2011
+ 120 days	*March 31, 2012*
+ 30 days	***April 30, 2012***
Filing of judicial claim	**April 27, 2012**

Clearly, the judicial claim was timely filed, as correctly held in the assailed Decision. However, petitioner argues the 120 days did not run because the documents submitted by respondent were incomplete. Petitioner insists that it is the BIR that determines what supporting documents are relevant as to deem them complete. Petitioner harps on respondent's alleged non-compliance with RMO No. 53-98.

Petitioner's insistence that the judicial claim was prematurely filed for failure of respondent to submit the necessary documents is misplaced. The Supreme Court has held that it is the taxpayer that determines the completeness of the documents submitted for the purpose of determining the running of the 120-day period:

> The term relevant supporting documents should be understood as those documents necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer. The BIR can only inform the taxpayer to submit additional documents. **The BIR cannot demand what type of supporting documents should be submitted.** Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit.[29] (Emphasis supplied.)

Hence, petitioner also cannot insist that the documents were incomplete, in reference to RMO No. 53-98. In *Commissioner of Internal Revenue v. Team Sual Corporation (formerly Mirant Sual Corporation)*,[30] the Supreme Court held:

> The CIR's reliance on RMO 53-98 is misplaced. <u>There is nothing in Section 112 of the NIRC, RR 3-99 or RMO 53-98 itself that requires submission of the complete documents enumerated in RMO 53-98 for a grant of refund or credit of input VAT. The subject of RMO 53-98 states that it is a "Checklist of Documents to be Submitted by a Taxpayer upon **Audit** of his Tax Liabilities x x x."</u> In this case, TSC was applying for a grant of refund or credit of its input tax. There was no allegation of an audit being conducted by the CIR. Even assuming that RMO 53-98 applies, it specifically states that some documents are required to be submitted by the taxpayer "if applicable."
>
> Moreover, <u>if TSC indeed failed to submit the complete documents in support of its application, the CIR could have informed TSC of its failure</u>, consistent with Revenue Memorandum Circular No. (RMC) 42-03. However, the CIR did not inform TSC of the document it failed to submit, even up to the present petition. x x x[31] (Emphasis in the original. Underscoring ours.)

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[29] *Commissioner of Internal Revenue v. First Express Pawnshop Company, Inc.*, G.R. Nos. 172045-46, June 16, 2009.
[30] G.R. No. 205055, July 18, 2014.
[31] Id.

In *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*,[32] the Supreme Court discussed why the power to determine completeness of documents submitted is not lodged in the CIR, but in the taxpayer:

> Indeed, the 120-day period granted to the CIR to decide the administrative claim under Section 112 is primarily intended to benefit the taxpayer, to ensure that his claim is decided judiciously and expeditiously. After all, the sooner the taxpayer successfully processes his refund, the sooner can such resources be further reinvested to the business translating to greater efficiencies and productivities that would ultimately uplift the general welfare. **To allow the CIR to determine the completeness of the documents submitted and, thus, dictate the running of the 120-day period, would undermine these objectives, as it would provide the CIR the unbridled power to indefinitely delay the administrative claim, which would ultimately prevent the filing of a judicial claim with the CTA.**
>
> A hypothetical situation illustrates the hazards of granting the CIR the authority to decide when complete documents have been submitted – A taxpayer files its administrative claim for VAT refund/credit with supporting documents. After 121 days, the CIR informs the taxpayer that it must submit additional documents. Considering that the CIR had determined that complete documents have not yet been submitted, the 120-day period to deicide the administrative claim has not yet begun to run. In the meantime, more than 120 days have already passed since the application with the supporting documents was filed to the detriment of the taxpayer, who has no opportunity to file a judicial claim until the lapse of the 120+30 day period in Section 112(C). With no limitation to the period of the CIR to determine when complete documents have been submitted, the taxpayer may be left in a limbo and at the mercy of the CIR, with no adequate remedy available to hasten the processing of its administrative claim.[33]

The danger of which the Supreme Court warned is precisely extant in the present case. Were it up to the CIR, the 120 days would not have, even to this day, begun to run. This, despite the fact that even petitioner's own witness admitted that respondent submitted documents upon the filing of the administrative claim on December 2, 2011.[34]

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[32] G.R. No. 207112, December 8, 2015.
[33] Id.
[34] Cross-examination of Revenue Officer Melinda Rugayan, TSN, June 17, 2013, p. 9.

To support her argument, petitioner cites four documents[35] to show that she repeatedly requested respondent to submit additional documents. However, a perusal of said documents, particularly Exhibit "2," reveals that it is a letter informing respondent of the audit to be performed in connection with respondent's claim for refund with a checklist of documents. Nowhere in said exhibit is it stated that the BIR has evaluated the documents submitted on December 2, 2011, and had found them wanting. In fact, the checklist includes some documents already submitted on December 2, 2011. The other letters are mere reiterations and follow-up of the submission of the items in the checklist. Surely, these are not the requests for additional documents contemplated by law. A misplaced reliance on an erroneous interpretation, such as in this case, would cause much prejudice to a taxpayer claiming for refund/tax credit.

In *Commissioner of Internal Revenue v. San Roque Power Corporation*,[36] the Supreme Court held that compliance with the 120-day waiting period is mandatory and jurisdictional. In this case, when respondent filed its administrative claim with supporting documents on December 2, 2011, petitioner had a period of 120 days, or until March 31, 2012, to act on the claim. Respondent filed its petition for review with the CTA on April 27, 2012 or within the 30 days after the expiration of the 120-day period. Accordingly, there is no merit in petitioner's argument that the judicial claim was prematurely filed.

The Issuance of a Refund/ Tax Credit Certificate is Warranted

Petitioner argues that the claim for refund for creditable input VAT should be denied because respondent failed to establish that the recipients of its services are doing business outside the Philippines, citing Section 108(B)(2) of the NIRC of 1997, as amended, and the case of *Accenture, Inc. v. Commissioner of Internal Revenue*.[37] On the other hand, respondent avers that the present case differs from *Accenture* because respondent duly submitted evidence establishing that Nokia Corporation (Finland) is a nonresident foreign corporation doing business within the Philippines.

We agree with respondent. *N*

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[35] Checklist of Requirements for Tax Investigation dated February 20, 2012, marked as Exhibit "2" for respondent (found on pages 59-60 of the BIR Records); First Notice for the Presentation of Books of Accounts and Other Accounting Records (Exhibit 3 for respondent found on page 57 of the BIR Records); Second and Final Notice for Presentation of Books of Accounts and Other Accounting Records dated June 1, 2012 marked as Exhibit "4" for respondent found on page 56 of the BIR Records); and Follow up through a Letter dated September 20, 2012 (Exhibit "5" for respondent, found on page [944, Division docket, vol. II]).

[36] G.R. No. 187485, February 12, 2013.

[37] G.R. No. 190102, July 11, 2012.

The rate and base of the VAT is provided in Section 108(A) of the 1997 NIRC, as amended, as follows:

> 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 and 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 rate of value-added tax to twelve percent (12%)x x x.
>
> The phrase "*sale or exchange of services*" means the performance of all kinds of services <u>in the Philippines</u> for others for a fee, remuneration or consideration x x x. (Underscoring supplied.)

Therefore, to be subject to VAT, the service must be rendered in the Philippines. In *Commissioner of Internal Revenue v. American Express International, Inc. (Philippine Branch)*,[38] the Supreme Court held:

> The VAT is a tax on consumption expressed as a percentage of the value added to goods or services purchased by the producer or taxpayer. **As an indirect tax on services, its main objective is the transaction itself or, more concretely, the performance of all kinds of services <u>conducted in the course of trade or business in the Philippines</u>.** These services must be regularly conducted in this country; undertaken in pursuit of a commercial or an economic activity; for a valuable consideration; and not exempt under the Tax Code, other special laws, or any international agreement.[39] (Emphasis and underscoring supplied.)

As a general rule, the VAT system uses the destination principle as a basis for the jurisdictional reach of the tax: goods and services are taxed only in the country where they are consumed.[40] However the law provides for an exception. In *American Express*, the Supreme Court held:

> However, the law clearly provides for an exception to the destination principle; that is, for a zero percent VAT rate for services that are *performed in the Philippines*, paid for in acceptable foreign currency and accounted for in accordance with the rules and

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[38] G.R. No. 152609, June 29, 2005.
[39] Id.
[40] Id.

regulations of the [BSP]. Thus, **for the supply of service to be zero-rated as an exception, the law merely requires that *first*, the service be performed in the Philippines; *second*, the service fall under any of the categories in Section 102(b) of the Tax Code; and *third*, it be paid in acceptable foreign currency accounted for in accordance with BSP rules and regulations.**[41] (Citations omitted. Emphasis supplied.)

Although *American Express* was decided under the NIRC of 1977, Section 108(B) of the NIRC of 1997, as amended, is a mere reproduction of Section 102 (b) of the NIRC of 1977. Pertinent to this case is paragraph 2 of Section 108(B), which provides:

> Sec 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –
>
> x x x
>
> (B) *Transactions Subject to Zero Percent (0%) Rate.* – The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> > (1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
> >
> > (2) Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP); x x x

Hence, we are guided by the following requirements in determining whether a transaction is zero-rated:

1. The service must be performed in the Philippines;

[41] Id.

2. The service must be for a person doing business outside the Philippines; and
3. The services must be paid in acceptable foreign currency and accounted for in accordance with BSP rules.

The first requirement, *i.e.*, that the services were performed in the Philippines is the threshold requirement to determine whether the service is subject to VAT at all. Here, the fact that the subject services were rendered in the Philippines was sufficiently substantiated,[42] and was never in question. Similarly, the third requirement was sufficiently proved by a preponderance of evidence,[43] and is not questioned by petitioner.

It is the second requirement that petitioner argues is lacking in this case, citing *Accenture* as basis.

In *Accenture*, the Supreme Court denied the claim for VAT refund for failure of Accenture to prove that their clients were doing business outside the Philippines. The Supreme Court held:

> A taxpayer claiming tax credit or refund has the burden of proof to establish the factual basis of that claim. Tax refunds, like tax exemptions, are construed strictly against the taxpayer.
>
> Accenture failed to discharge this burden. It alleged and presented evidence to prove *only* that its clients were foreign entities. However, as found by both the CTA Division and the CTA *En Banc*, no evidence was presented by Accenture to prove the fact that the foreign clients to whom petitioner rendered its services were clients doing business outside the Philippines.
>
> As ruled by the CTA *En Banc*, the <u>Official Receipts, Intercompany Payment Requests, Billing Statements, Memo Invoices-Receivable, Memo Invoices-Payable, and Bank Statements</u> presented by Accenture merely substantiated the existence of sales, receipt of foreign currency payments, and inward remittance of the proceeds of such sales duly accounted for in accordance with BSP rules, <u>all of these were devoid of any evidence that the clients were doing business outside the Philippines</u>.[44] (Underscoring supplied.)

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[42] Exhibits "Q" and "Q-1".

[43] Bank Statements, marked as Exhibit "R"; Zero-rated VAT official receipts, marked as Exhibit "Q"; and Zero-rated VAT sales invoices, marked as Exhibit "Q-1". See page 15 of the assailed Decision, docket, p. 44.

[44] Supra, note. 37.

In contrast, respondent herein presented the following documents to prove that its client Nokia Corporation (Finland) is a non-resident foreign corporation not registered to engage in business in the Philippines:

1. Notarized and certified Extract From Trade Register issued by the National Board of Patents and Registration of Finland showing that Nokia OYJ is its registered company name and Nokia Corporation is auxiliary company name in English; and its domicile is Helsinki, Finland;[45] and

2. Certificate of Non-Registration of Nokia OYJ (Nokia Corporation Finland) from the Securities and Exchange Commission (SEC).[46]

We find that the Second Division correctly held these documents sufficient to prove that respondent's client is a non-resident foreign corporation doing business outside the Philippines. As elucidated in *Deutsche Knowledge Services, PTE, LTD v. Commissioner of Internal Revenue*,[47] to be considered as non-resident foreign corporation doing business outside the Philippines, each entity must be supported, at the very least, by both SEC Certificate of Non-registration of Corporation/ Partnership and Certificate/ Articles of Foreign Incorporation/ Association/ Registration.

This case should be distinguished from *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*,[48] where the recipient of service was actually shown to be doing business in the Philippines. Here, although there is a statement in the Notes to Financial Statements for the years ended December 31, 2010 and 2009[49] (Notes to Financial Statements) that might be construed to mean that respondent's client has an existing business in the Philippines, the same cannot be taken as proof thereof.

Note 1 of the Notes to Financial Statements states, in part:

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

[45] Exhibit "L", Division docket, vol. II, pp. 541-560.
[46] Exhibit "S".
[47] CTA Case No. 7808, December 14, 2014.
[48] G.R. No. 153205, January 22, 2007.
[49] Exhibit "T".

> other support services as defined in the service agreement (Note 12).[50] (Emphasis supplied)

The truth of the matter provided for under Note 1 of the Notes to Financial Statements cannot be proven as such, for being hearsay and for being unsupported by evidence of the agreement pertained therein. Further, judgment must be based on facts.

Section 36 of the Revised Rules of Court provides:

> **Sec. 36.** *Testimony generally confined to personal knowledge; hearsay excluded.* – A witness can testify only to those facts which he knows of his personal knowledge; that is, which are derived from his own perception, except as otherwise provided in these rules.

Under this rule, any evidence whether oral or documentary is hearsay if its probative value is not based on the personal knowledge of the witness, but that of some other person who is not on the witness stand. Hence, information that is relayed to the former by the latter before it reaches the court is considered hearsay.[51]

In this case, it is notable that nowhere from the records can it be found that the person who prepared the Notes to Financial Statements testified, either as witness for respondent or as adverse witness for petitioner, as to the contents thereof. At any rate, assuming for the sake of argument, that the person who prepared said document testified as to the contents thereof, the Court cannot accord any probative value to the same for being mere hearsay, *i.e.*, the truth of the matter pertained to in the agreement cannot be proven by the person who prepared the Notes to Financial Statements because he is not a party to the agreement.

Moreover, the agreement pertained to was not produced in Court. Therefore, any conclusion that may arise from evidence not produced in Court or from evidence consisting merely of a hearsay audit report is suspect to an invalid premise.

It is a time-honored principle that a judgment has to be based on facts.[52] Further, a conclusion cannot be based on a premise which, in itself, requires proof.

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[50] Id. at p. 8.

[51] *Leodegario Bayani v. People of the Philippines*, G.R. No. 155619, August 14, 2007, citing *Bon v. People of the Philippines*, G.R. No. 152160, January 13, 2004.

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

There is no evidence presented before the Court showing that respondent's client has an existing business in the Philippines. The Court's conclusion must be based on facts. Hence, we cannot conclude, based on Note 1 of the Notes to Financial Statements, that respondent's client is doing business in the Philippines.

We can, however, and so hold that respondent duly proved that its client is a nonresident foreign corporation based on the following evidence presented in court: (1) Extract From Trade Register issued by the National Board of Patents and Registration of Finland;[53] and (2) Certification of Non-registration of Company issued by the SEC.[54]

Finally, petitioner argues that tax refunds are regarded as tax exemptions that are construed *strictissimi juris* against the person or entity claiming the exemption. It is true, that tax refunds in relation to VAT are in the nature of such exemptions. However, they are not the same.

A claim for tax credit or refund, arising out of zero-rated transactions, is essentially based on excess payment.[55] The Government, under the principle of *solutio indebiti*, has the obligation to return erroneous payments of taxes. Once a taxpayer has established by sufficient evidence that it is entitled to a refund or issuance of a tax credit certificate, in accordance with the requirements of Section 112(A) of the NIRC, its claim should be granted.[56]

WHEREFORE, premises considered, the Court hereby **DENIES** the instant Petition. The Decision dated July 2, 2014 and Resolution dated September 16, 2014 of the Second Division are hereby **AFFIRMED**.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

(*with Dissenting Opinion*)
ROMAN G. DEL ROSARIO
Presiding Justice

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[53] Supra, note 45.
[54] Supra, note 46.
[55] *Southern Philippines Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 179632, October 19, 2011.
[56] *Intel Technology v. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007.

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

LOVELL R. BAUTISTA
Associate Justice

(*with separate Dissenting Opinion*)
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to *Section 13 of Article VIII of the Constitution*, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was 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,
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Mindaro-Grulla,
Cotangco-Manalastas, *and*
Ringpis-Liban, *JJ.*

Promulgated:
AUG 11 2016 11:20 a.m.

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DISSENTING OPINION

DEL ROSARIO, PJ:

With due respect, I hesitate to give my assent to the *ponencia* of Hon. Justice Ma. Belen M. Ringpis-Liban denying the Petition for Review thereby affirming the assailed Decision and Resolution of the Court in Division. The *ponencia* finds that the judicial claim was timely filed, and sustains the grant of refund in favor of herein respondent.

I cannot subscribe to the *ponencia's* findings that respondent was **able to establish** the requirement for zero-rating under Section 108 (B)(2) of the 1997 National Internal Revenue Code, **particularly the requirement that the service was rendered to a person doing business outside the Philippines**. While the Notes to Financial Statements provides a statement that *"the Company shall provide services to Nokia in handling any specific or general business matters that may arise with respect to Nokia's business in the Philippines*", the ponencia did not give probative value thereto for being hearsay and for being unsupported by evidence of the agreement referred to therein.

The Audited Financial Statements (Exhibit T), which necessarily includes its Notes to Financial Statements, is entitled to probative value which may be given weight in resolving the issue of whether respondent's sale of service is made to a person doing business outside the Philippines. The Audited Financial Statements submitted before the Bureau of Internal Revenue and Securities and Exchange Commission upon filing of an Income Tax Return is in the nature of a public document following the pronouncement of the Supreme Court in *Salas vs. Sta. Mesa Market Corporation, G.R. No. 157766, July 12, 2007*, *viz.*:

> "The documents in question were supposedly copies of the audited financial statements of SMMC. Financial statements (which include the balance sheet, income statement and statement of cash flow) show the fiscal condition of a particular entity within a specified period. The financial statements prepared by external auditors who are certified public accountants (like those presented by petitioner) are audited financial statements. Financial statements, whether audited or not, are, as general rule, private documents. **However, once financial statements are filed with a government office pursuant to a provision of law, they become public documents.**
>
> Whether a document is public or private is relevant in determining its admissibility as evidence. **Public documents are admissible in evidence even without further proof of their due execution and genuineness.** On the other hand, private documents are inadmissible in evidence unless they are properly authenticated." (Emphasis supplied)

Being a public document, the Audited FS which had been submitted before the BIR and SEC is admissible in evidence.

Moreover, an Audited FS cannot simply be rejected as hearsay because the person who prepared the Notes to FS is not a party to the agreement. Truth to tell, an Audited FS is not considered complete in the absence of a **Statement of Management Responsibility for Financial Statements** approved by the management of the company. In other words, the management is aware of whatever information contained in the Audited FS. Thus, the Court could not just brush aside the statements contained in the Notes to FS in the present case.

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While such Audited FS may be considered as a declaration on a relevant fact within the context of Sec. 26, Rule 130 of the Rules of Court[1] that is necessarily admissible against respondent, its probative value cannot casually be ignored. In the language of *Manatad vs. Philippine Telegraph and Telephone Corporation*:[2]

> "**That the financial statements are audited by independent auditors safeguards the same from the manipulation of the figures therein to suit the company's needs. The auditing of financial reports by independent external auditors are strictly governed by national and international standards and regulations for the accounting profession.** It bears to stress that the financial statements submitted by respondent were audited by reputable auditing firms. Hence, petitioners assertion that respondent merely manipulated its financial statements to make it appear that it was suffering from business losses that would justify the retrenchment is incredible and baseless.
>
> In addition, the fact that the **financial statements were audited by independent auditors settles any doubt on the authenticity of these documents** for lack of signature of the person who prepared it. xxx"

Finally, the Audited FS was actually **offered in evidence by respondent itself and the same was admitted by the Court in Division in its May 7, 2013 Resolution**.[3] Thus, the Audited FS should be considered in determining respondent's compliance with the requirements for the grant of its claim for refund or tax credit.

All told, I **VOTE** to **GRANT** the Petition for Review filed by the Commissioner of Internal Revenue. The Decision dated July 2, 2014 and Resolution dated September 16, 2014, both rendered by the Court in Division in CTA Case No. 8481 should be **SET ASIDE**.

Accordingly, the judicial claim for refund or issuance of tax credit certificate of respondent in the amount of P57,594,670.73, allegedly representing respondent's unutilized input VAT for the four quarters of taxable year 2010 should be **DENIED**.

ROMAN G. DEL ROSARIO
Presiding Justice

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[1] Rule 130. Rules of Admissibility
SEC. 26. *Admissions of a party.* – The act, declaration or omission of a party as to a relevant fact may be given in evidence against him.
[2] G.R. No. 172363, March 7, 2008; 548 SCRA 64-82, 79.
[3] CTA Division Docket, p. 899.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

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COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 1227** (CTA Case No. 8481)
	Present:
- versus -	**DEL ROSARIO**, *P.J.*, **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS**, and **RINGPIS-LIBAN**, *JJ.*
NOKIA (PHILIPPINES), INC., Respondent.	**Promulgated:** AUG 11 2016 11:20a.m.

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DISSENTING OPINION

UY, *J.*:

With all due respect to my esteemed colleagues, I join Presiding Justice Roman G. Del Rosario in his Dissenting Opinion, and therefore, vote to **GRANT** the instant Petition for Review upon the ground that respondent Nokia (Philippines), Inc. is not engaged in zero-rated or effectively zero-rated sales.

While I totally concur with discussions made by His Honor's Dissenting Opinion, may I add that even assuming *arguendo* that the Audited Financial Statements (Exhibit "T") of respondent may be treated as hearsay, the same may still be considered, particulary Note 1 thereof, in concluding that respondent Nokia (Philippines), Inc. is not engaged in zero-rated or effectively zero-rated sales. For easy reference, part of said Note 1 reads:

> "The Company's business operations are now currently focused in providing support services to Nokia and other facilities. **The Company has an existing agreement with Nokia which states that Company shall provide services to Nokia in handling any specific or general business matter that may arise <u>with respect to Nokia's business in the Philippines</u> and other territories defined in the agreement.** These services include marketing support service related to Nokia products and solutions, market research in the Philippines and other support services as defined in the service agreement (Note 12).
>
> The Company's parent company is Nokia Corporation (Nokia), incorporated in Finland and which shares of stock are listed in the Stock Exchanges of Helsinki, Frankfurt and New York.
>
> xxx xxx xxx." *(Emphasis and underscoring supplied).*

Needless to state, the hearsay rule is not absolute. There are exceptions, such as that stated in Section 43, Rule 130, of the Rules of Court, to wit:

> "SEC. 43. *Entries in the course of business.* Entries made at, or near the time of the transactions to which they refer, by a person deceased, or unable to testify, who was in a position to know the facts therein stated, may be received as *prima facie* evidence, if such person made the entries in his professional capacity or in the performance of duty and in the ordinary or regular course of business or duty."

Under this exception to the hearsay rule, the requisites for admission in evidence of entries in the course of business are: (1) the person who made the entry is dead, outside the country, or unable to testify; (2) the entries were made at or near the time of the transactions to which they refer; (3) the person who made the entry was in a position to know the facts stated in the entries; (4) the entries were made in a professional capacity or in the performance of a duty; and (5) the entries were made in the ordinary or regular course of business or duty.[1]

[1] *Jose,Jr. vs. Michaelmar Phils., Inc., et al.*, G.R. No. 169606, November 27, 2009.

Here, all the requisites are present: (1) Isla Lipana & Co, the firm who audited petitioner and prepared Exhibit "T" (including the Notes to Financial Statements), represented by Ms. Gina S. Detera, is unable to testify; (2) the entry, *i.e.*, Note 1, was made near the time the audit was conducted; (3) Isla Lipana & Co, through Ms. Gina S. Detera, was in a position to know the facts made in the said entry; (4) Isla Lipana & Co, through Ms. Gina S. Detera, made the same Note 1 in their professional capacity and in the performance of their duty; and (5) the said Note 1 was made in the ordinary or regular course of business or duty.

As can be gleaned from the aforequoted Note 1, the services rendered or to be rendered by respondent primarily consists of *"handling any specific or general business matter that may arise with respect to Nokia's business in the Philippines".* Thus, respondent's services to Nokia Corporation are anticipatory and premised on the fact that the latter has an existing business in the Philippines. Such being the case, Nokia Corporation cannot be treated as a *"nonresident foreign corporation"* or *"a foreign corporation not engaged in trade or business within the Philippines".*

Correspondingly, the transaction between respondent and Nokia Corporation cannot be treated as subject to zero-rated VAT under Section 108(B)(2) of the National Internal Revenue Code of 1997, as amended by Republic Act No. 9337. Therefore, the subject claim for refund or tax credit of input VAT must perforce be denied.

Finally, it must be emphasized that statues that grant tax exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. Tax refunds in relation to the VAT are in the nature of such exemptions.[2]

All the foregoing considered, I vote to **GRANT** the instant Petition for Review.

ERLINDA P. UY
Associate Justice

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[2] *Panasonic Communication Imaging Corporation of the Philippines vs. Commissioner of Internal Revenue,* G.R. No. 178090, February 8, 2010.