REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

NIPPON EXPRESS PHILIPPINES CORPORATION,
Petitioner,

-versus-

HON. CAESAR R. DULAY - In his capacity as the Commissioner of Internal Revenue,
Respondent.

CTA *EB* NO. 2442
(CTA Case No. 9873)

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, *and*
CUI-DAVID, *JJ.*

Promulgated:
JUN 23 2022 3:12 pm

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DECISION

MANAHAN, J.:

This resolves the *Petition for Review (Re: Decision dated 27 July 2020 and Resolution dated 20 January 2021)*[1] filed by petitioner Nippon Express Philippines Corporation (NEPC) on February 22, 2021 pursuant to Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended[2], which prays for the reversal and setting aside of the *Decision* dated July 27, 2020[3] (Assailed Decision) and the *Resolution* dated January 20, 2021[4] (Assailed Resolution) promulgated by the Second Division of the Court of Tax

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[1] *Rollo*, CTA EB No. 2442, pp. 1-34.
[2] Rules of the Court of Tax Appeals – approved by the Supreme Court on November 22, 2005 (A.M. No. 05-11-07-CTA); Amendments to the 2005 Rules of Court of the Court of Tax Appeals – approved by the Supreme Court on September 16, 2008 (A.M. No. 05-11-07-CTA; and Additional Amendments to the 2005 Revised Rules of the Court of Tax Appeals – approved by the Supreme Court on February 10, 2009 (A.M. No. 05-11-07-CTA).
[3] *Rollo*, pp. 36-60.
[4] *Id.*, pp. 62-69.

Appeals (CTA) in CTA Case No. 9873 entitled "*Nippon Express Philippines Corporation vs. Commissioner of Internal Revenue*", and the rendition instead of a new judgment granting petitioner's claim for refund/tax credit.

The Facts

Petitioner NEPC is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with business address at Lot 85A & B Avocado Road, Food Terminal Inc. Complex, East Service Road, Taguig City. It is registered with the Bureau of Internal Revenue (BIR), with Taxpayer Identification Number (TIN) 004-669-434-000.[5]

Respondent is the incumbent Commissioner of Internal Revenue, and, thus, the government official and functionary principally charged with the implementation, enforcement, and collection of internal revenue taxes in the Philippines, inclusive of the power to grant and/or deny, among others, the administrative application for the issuance of tax refunds/tax credits in accordance with law. He is being represented by the Litigation Division, BIR, Room 703, National Office Building, Diliman, Quezon City.[6]

On March 15, 2018, petitioner filed with the BIR its administrative claim, accompanied by an Application for Tax Credits/Refunds (BIR Form No. 1914), requesting for the refund and/or issuance of tax credit certificate amounting to Php120,869,099.12, allegedly representing excess/unutilized input value-added tax (VAT) from January 1 to December 31, 2016.[7]

An investigation was conducted, pursuant to Tax Verification Notice No. TVN201700023453 dated March 23, 2018.[8]

On May 28, 2018, respondent, through Ms. Teresita M. Dizon, OIC-Assistant Commissioner, Large Taxpayer Service (L

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[5] *Rollo*, Decision dated July 27, 2020, pp. 36-37.
[6] *Id.* at 37.
[7] *Id.*
[8] *Id.*

TS), denied petitioner's claim for tax refund/tax credit. Said decision was received by petitioner on June 11, 2018.[9]

On July 10, 2018, petitioner filed a Petition for Review.[10]

After trial, the Court in Division rendered the Assailed Decision where the dispositive portion reads as follow:

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for lack of merit.
>
> **SO ORDERED**."

Petitioner then moved for the reconsideration of the Assailed Decision but was denied anew under the Assailed Resolution where the dispositive portion reads as follows:

> "**WHEREFORE**, premises considered, petitioner's Motion for Reconsideration (Re: Decision dated 27 July 2020) is **DENIED** for lack of merit.
>
> **SO ORDERED**."

Hence, the instant Petition for Review was filed by petitioner on February 22, 2021.

On March 9, 2021, petitioner is ordered to submit a compliant Amended Verification and Certification and a Secretary's Certificate or similar proof of petitioner's authority to file the instant petition.[11]

On May 18, 2021, petitioner filed a *Manifestation and Compliance (Re: Resolution dated 9 March 2021)*[12] submitting the above-mentioned requirements. Thus, on May 28, 2021, respondent is ordered[13] to file his comment on said petition.

On June 8, 2021, respondent submitted his *Comment (Re: Petition for Review)*.[14]

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[9] *Rollo*, Decision dated July 27, 2020, p. 37.
[10] *Id.*
[11] *Rollo*, Resolution dated March 9, 2021, pp. 71-72.
[12] *Id.* at pp. 73-75.
[13] *Rollo*, Resolution dated May 28, 2021, pp. 82-83.
[14] *Id.* at pp. 84-89.

Hence, the case was submitted for decision on July 14, 2021.[15]

The Issue

Whether petitioner NEPC is entitled to the refund or issuance of tax credit certificate in the amount of P120,869,099.12, allegedly representing its unutilized input tax credits for the period from January 1, 2016 to December 31, 2016.

Arguments of Petitioner[16]

Petitioner argues that the Court in Division committed a reversible error by denying its claim for refund considering that such was expressly authorized by the facts of the law and jurisprudence, and that it substantiated its claim by presenting documentary requirements relative to such claim for refund.

Petitioner faulted the Court in Division for completely disregarding the authoritative findings and opinion of the Independent Certified Public Accountant (ICPA) which examined in details its documentary evidence.

Argument of Respondent[17]

On the other hand, respondent argues that petitioner failed to establish that it is engaged in zero-rated sales or effectively zero-rated sales during the four quarters of calendar year (CY) 2016.

Ruling of the Court *En Banc*

This Court shall determine first whether the instant petition is filed on time. Sections 1 and 3(b), Rule 8 of the RRCTA provide that:

> SECTION 1. *Review of cases in the Court en banc.*- In cases falling under the exclusive appellate jurisdiction of the Court *en banc,* the petition for review of a decision or

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[15] Rollo, Resolution dated July 14, 2021, pp. 92-93.
[16] *Supra,* Note 1.
[17] *Supra,* Note 14.

> resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division.
>
> xxx xxx xxx
>
> SEC. 3. *Who may appeal; period to file petition.*- (a) xxx xxx xxx
>
> (b) **A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration** or new trial **may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution**. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (*Emphasis supplied*)

The instant petition was preceded by a Motion for Reconsideration, the subject of the assailed *Resolution* dated January 20, 2021, of which petitioner allegedly received a copy on February 5, 2021. The records of this case reveal that petitioner received such copy on same date as evidenced by the Registry Return Receipt.[18]

Applying the above-cited provision, petitioner had fifteen (15) days from February 5, 2021 or until February 20, 2021 within which to file its Petition for Review with the Court *En Banc*. However, the latter date fell on Saturday. The next working day is February 22, 2021. Thus, the filing of the instant Petition for Review on February 22, 2021 was on time.

Now, we shall rule on the substantive aspects of the instant petition.

Factual findings of Court in Division cannot be disturbed in the absence of evidence of grave abuse of discretion.

In the Assailed Decision, the Court in Division found that petitioner failed to prove that its non-resident foreign corporation clients were doing business outside the Philippines. Petitioner also failed to present evidence to show that: (1) its alleged services are those that constitute as other

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[18] Docket, CTA Case No. 9873, Vol. II, p. 0514.

than "processing, manufacturing or repacking of goods" under Section 108(B)(2) of the 1997 National Internal Revenue Code (NIRC), as amended; (2) such services were performed in the Philippines; and (3) the payments are in acceptable foreign currency accounted for in accordance with Bangko Sentral ng Pilipinas (BSP) rules and regulations.

The Court in Division also found that petitioner failed to substantiate its alleged VAT zero-rated sales with zero-rated official receipts issued to its clients as required under Section 113(B)(2)(c) of the 1997 NIRC, as amended, which provides:

> "SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* – xxx xxx xxx
>
> (B) *Information Contained in the VAT Invoice or VAT Official Receipt.* - The following information shall be indicated in the VAT invoice or VAT official receipt: xxx xxx xxx
>
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax. Provided, That:
>
> (a) xxx xxx xxx;
>
> (b) xxx xxx xxx;
>
> (c) If the sale is subject to zero percent (0%) value-added tax, the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt; xxx xxx xxx"

These provisions have likewise been implemented by Revenue Regulations (RR) No. 16-2005, particularly Section 4.113-1(B)(2)(c) which reads, to wit:

> "SECTION 4.113-1. *Invoicing Requirements.* — xxx xxx xxx
>
> (B) *Information contained in VAT invoice or VAT official receipt.* — The following information shall be indicated in VAT invoice or VAT official receipt: xxx xxx xxx
>
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; Provided, That:
>
> (a) xxx xxx xxx;
>
> (b) xxx xxx xxx;
>
> (c) If the sale is subject to zero percent (0%) VAT, the term "zero-rated sale" shall be

> written or printed prominently on the invoice or receipt; xxx xxx xxx"

Hence, petitioner sales of services to its alleged non-resident clients failed to qualify for VAT zero-rating under Section 108(B)(2) of the 1997 NIRC, as amended.

Petitioner should be reminded that these are all factual findings of the Court in Division and in the absence of any evidence of grave abuse of discretion, this Court shall not disturb its findings as held in *Republic of the Philippines, represented by the Commissioner of Internal Revenue v. Team (Phils.) Energy Corporation (Formerly Mirant (Phils.) Energy Corporation)*,[19] to wit:

> "With regard to the second requirement, it is fundamental that the findings of fact by the CTA in Division are not to be disturbed without any showing of grave abuse of discretion considering that the members of the Division are in the best position to analyze the documents presented by the parties."

In the instant petition, petitioner failed to cite and adduce any evidence that the Court in Division committed any grave abuse of discretion in the Assailed Decision and Resolution.

The Court is not bound to accept the findings of the ICPA.

Petitioner also faulted the Court in Division for not adopting the findings and opinion of the ICPA which it alleged is an expert witness. Petitioner is totally mistaken for such reliance.

Section 3, Rule 13 of the RRCTA provides:

> "SEC. 3. *Findings of independent CPA.* - The submission by the independent CPA of pre-marked documentary exhibits shall be subject to verification and comparison with the original documents, the availability of which shall be the primary responsibility of the party possessing such documents and, secondarily, by the independent CPA. **The findings and conclusions of the independent CPA** may be challenged by the parties and

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[19] G.R. No. 188016, January 14, 2015.

> **shall not be conclusive upon the Court**, which may, in whole or in part, adopt such findings and conclusions subject to verification." (*Emphasis supplied*)

The Court found that the proposed Php82,887,514.85 tax refund recommended by the ICPA was based only on his validation of the supporting sales invoices and/or official receipts pertaining to petitioner's vatable purchases and their corresponding input taxes only. Records show that no official receipts and invoices pertaining to its zero-rated sales were obtained from petitioner and further subjected to validation. In fact, only the Philippine Economic Zone Authority (PEZA) Certificates and Certification of Non-Registration of Company of petitioner's customers were validated by the ICPA to determine whether petitioner's customers were subject to zero-rated sales.[20]

Notably, in *Milagros Ilao-Quianay and Sergio Ilao, as Joint Administrator of the Intestate Estate of Simplicio Ilao, and Ambrosia Ilao v. Rodolfo Mapile*,[21] the Supreme Court ruled that courts are not bound by the testimony of supposed expert witnesses, to wit:

> "Indeed, courts are not bound by expert testimonies. They may place whatever weight they choose upon such testimonies in accordance with the facts of the case. The relative weight and sufficiency of expert testimony is peculiarly within the province of the trial court to decide, considering the ability and character of the witness, his actions upon the witness stand, the weight and process of the reasoning by which he has supported his opinion, his possible bias in favor of the side for whom he testifies, and any other matters which serve to illuminate his statements. The opinion of an expert should be considered by the court in view of all the facts and circumstances of the case. The problem of the evaluation of expert testimony is left to the discretion of the trial court whose ruling thereupon is not reviewable in the absence of an abuse of that discretion."

As shown above, this Court is not bound by the report and opinion of the ICPA considering that his findings are further subjected to the verification and validation by the Court. And verily, such is supported by jurisprudence.

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[20] Exhibit "P-60".
[21] G.R. No. 154087, October 25, 2005.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the *Decision* dated July 27, 2020 and *Resolution* dated January 20, 2021 are hereby **AFFIRMED.**

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ON LEAVE
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice