CTA Form No. 8

22-000273-0052

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10879

KPI ELEVATORS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF DECISION

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo St., Legazpi Village
Makati City

ATTY. ALBERT C. ARPON
ATTY. CARL FITRI A. HUSSIN
ATTY. MONICA M. SARMIENTO
Bureau of Internal Revenue- Revenue Region No.8A
36th Floor, Legal Division, Export Bank Plaza Building
Sen. Gil Puyat Ave. corner Chino Roces Avenue
Makati City

SALVADOR LLANILLO & BERNARDO
Units 1706-1711, 17th Floor, Tower One & Exchange Plaza
Ayala Triangle, Ayala Avenue
1226 Makati City

GREETINGS:

You are hereby notified by these presents that on **February 3, 2026,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **February 9, 2026.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

KPI ELEVATORS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. **10879**

Members:

BACORRO-VILLENA, *Acting Chairperson, and*
CUI-DAVID, *JJ.*

Promulgated:
FEB 03 2026; 4:30PM

x - x

DECISION

BACORRO-VILLENA, J.:

Before the Court is a Petition for Review[1] filed by petitioner KPI Elevators, Inc. (**petitioner/KPI**), pursuant to Section 3(a),[2] Rule 8, in relation to Section 3(a)(2),[3] Rule 4, of the Revised Rules of the Court of

[1] Filed on 08 June 2022, Division Docket, pp. 6-69, with annexes.

[2] **SEC. 3.** *Who may appeal; period to file petition.* —
(a) A party adversely affected by a decision, ruling or the **inaction** of the **Commissioner of Internal Revenue on** disputed assessments or **claims for refund of internal revenue taxes**, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes. (Emphasis and underscoring supplied)

[3] **SEC. 3.** *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:
...
(2) **Inaction by the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or

Tax Appeals[4] (**RRCTA**). It seeks a refund in the aggregate amount of ₱5,707,000.00, which allegedly represents erroneously paid final withholding taxes (**FWT**) for the period covering 01 January 2020 to 31 March 2020, or the first (1st) quarter of calendar year (**CY**) 2020.[5]

PARTIES TO THE CASE

Petitioner (also known as KONE Philippines) is a domestic corporation organized and existing under the laws of the Philippines, with principal office at 25th floor, BDO Equitable Tower, Paseo de Roxas, Makati City.[6] It is engaged, among others, in the business of manufacturing, buying, selling at wholesale, trading, installing, leasing (except financial leasing), servicing, repairing, maintaining, modernizing, and providing technical advice and assistance in connection with all kinds of machinery and equipment, including but not limited to elevators, escalators, dumbwaiters, conveyors, lifts, cranes, machines for vertical and horizontal transport, material, handling, equipment, motor, engines, generators, compressors, blowers, pumps, boilers, and other apparatus, electrical devices and machineries of every kind and description.[7]

Petitioner is registered with the Bureau of Internal Revenue (**BIR**) with Tax Identification Number (**TIN**) 004-714-864-000, as evidenced by a Certificate of Registration (**COR**) No. 9RC0000426318 issued by Revenue District Office (**RDO**) No. 50.[8]

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other applicable law provides a specific period for action: *Provided*, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; *Provided, further*, that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and *Provided, still further*, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code[.] (Emphasis and underscoring supplied)

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

5 See Prayer in the Petition for Review, supra at note 1, p. 15.

6 See Par. 1, A. Stipulation of Facts, Pre-Trial Order, Division Docket, p. 147.

7 See Primary Purpose in the Amended Articles of Incorporation of KPI Elevators, Inc., Exhibit "P-1", id., p. 253.

8 Exhibit "P-2", id., p. 263.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue (**respondent/CIR**) vested under the appropriate laws with the authority to carry out the functions and duties, including the power to decide disputed assessments, cancel and abate tax liabilities pursuant to the National Internal Revenue Code (**NIRC**) of 1997, as amended. He or she holds office at the Legal Division of Revenue Region 8A – Makati City located at the 36th floor, Export Bank Plaza Bldg., Sen. Gil Puyat Ave. cor. Chino Roces Ave., Makati City.[9]

FACTS OF THE CASE

The records bear that on 01 January 2009, petitioner and KONE Corporation executed a Franchise Fee Agreement[10] (**Agreement**) granting the former a non-exclusive license to use the KONE Technology, Know-How, Show-How, Trademarks and IT Systems for the conduct of its business in the Philippines.[11]

In consideration of the said Agreement, petitioner will pay KONE Corporation a franchise fee calculated under the arm's length principle, or a percentage of its estimated net sales for the year. Moreover, the franchise fee will be billed on a quarterly basis based on the forecasted net sales for the full year, exclusive of applicable taxes required under the law in petitioner's territory.[12] At year end, when the actual figures of net sales are available, the franchise fee will be adjusted accordingly through the issuance of an equalization invoice.[13]

On the other hand, if petitioner's net sales do not reach the forecasted amount, KONE Corporation shall compensate petitioner for utilizing the former's intellectual property rights in the latter's territory.[14]

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9 See Par. 3, A. Stipulation of Facts, Pre-Trial Order, id., p. 148.
10 Exhibit "P-13-1", USB.
11 See 4.1, Obligations of KONE, Franchise Fee Agreement, id., p. 5 thereof.
12 See 6.1, Payment, Franchise Fee Agreement, id., p. 6 thereof.
13 See Background Information in the Letter dated 17 May 2022, Division Docket, pp. 284-285.
14 See 6.1, Payment, Franchise Fee Agreement, USB, p. 6 thereof.

Here, the parties agreed for a 9.5% arm's length rate as basis for the franchise fee.[15] Subsequently, on the first (1st) quarter of CY 2020, KONE Corporation issued to petitioner the quarterly invoice dated 12 March 2020[16] which imposed the franchise fee of ₱22,828,000.00, based on the forecasted sales for the said year. Petitioner duly paid the said amount and the FWT of ₱5,707,000.00.[17] However, by the end of CY 2020, due to the effects of the COVID-19 pandemic, petitioner's net sales did not reach the forecasted amount. Its net sales also failed to cover the payment of the above franchise fee. Hence, KONE Corporation issued a credit invoice dated 22 January 2021[18] which reimbursed the franchise fee and paid a compensation payment to petitioner.

On 25 May 2022, due to the return of the franchise fee payment, petitioner filed the letter-application dated 17 May 2022.[19] The letter-application was filed along with the corresponding Application for Tax Credit/Refund (BIR Form No. 1914)[20] (collectively known as the **administrative claim**), with BIR's RDO No. 50. There, petitioner sought the recovery of the allegedly erroneously paid FWT in the amount of ₱5,707,000.00 for the 1st quarter of CY 2020.

PROCEEDINGS BEFORE THE COURT

Alleging respondent's inaction on its claim for refund or issuance of a tax credit certificate (**TCC**), on 08 June 2022, petitioner filed its Petition for Review,[21] praying that judgment be rendered declaring it to be entitled to a refund of, or issuance of a TCC for, the aggregate amount of ₱5,707,000.00. The case was docketed as CTA Case No. 10879 and was raffled to the Second Division.[22]

On 13 June 2022, the Second Division served Summons[23] on respondent and directed him or her to submit an Answer within

15 See Background Information in the Letter dated 17 May 2022, Division Docket, p. 285.
16 Exhibit "P-4-1", id., p. 278.
17 Exhibit "P-5", id., pp. 279-280; eFPS Payment Details, id., p. 281.
18 See Exhibit "P-6-1", Credit Invoice dated 22 January 2021, id., p. 283.
19 Exhibit "P-7", id., pp. 345-348.
20 BIR Records, p. 33.
21 Supra at note 1.
22 The Second Division is composed of Associate Justice Erlinda P. Uy (Ret.), as Chairperson, and Associate Justice Jean Marie A. Bacorro-Villena and Associate Justice Lanee S. Cui-David, as Members.
23 Division Docket, p. 70.

30 days from service. Respondent received the said Summons on 16 June 2022.[24]

After the Second Division granted an extension of time,[25] respondent filed his or her Answer.[26] There, respondent argued that petitioner's claim for the refund of the subject FWT is without factual basis. A supposed actual operating profit that fell below the arm's length level for CY 2020 does not necessarily entitle it to a claim for refund. According to respondent, petitioner also failed to submit its audited financial statement (**AFS**) for CY 2020 to prove the amount of its net sales and operating profit for the said year. Moreover, petitioner's miscalculation in the determination of the advance franchise fee does not translate to an illegal tax as the same is a valid payment of a tax liability.

In the same Answer, respondent also contended that the provisions of the subject Agreement[27] is only binding between petitioner and its parent company considering that it was not notarized or consularized. As a private document, it is not enforceable against third persons not privy to the contract and, in this case, the BIR. Respondent also stressed that petitioner is not the proper party to claim the refund as the income earner is its parent company, KONE Corporation.

Lastly, respondent averred that the Agreement appears to be a Technology Transfer Agreement (TTA) that is not in conformity with Sections 86[28] and 87[29] of Republic Act (**RA**) No. 8293,[30] also known as the Intellectual Property Code of the Philippines (**IPC**).

In the *interim*, respondent transmitted the BIR Records, consisting of one (1) folder.[31] Later, or on 14 September 2022, the

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[24] Id., 71.
[25] See Order dated 28 July 2022, id., p. 77.
[26] Filed on 15 August 2022, id., pp. 80-89.
[27] Supra at note 10.
[28] **Sec. 86.** *Jurisdiction to Settle Disputes on Royalties.*
[29] **Sec. 87**. *Prohibited Clauses.*
[30] AN ACT PRESCRIBING THE INTELLECTUAL PROPERTY CODE AND ESTABLISHING THE INTELLECTUAL PROPERTY OFFICE. PROVIDING FOR ITS POWERS AND FUNCTIONS. AND FOR OTHER PURPOSES.
[31] See Compliance filed on 22 August 2022, Division Docket, p. 78.

Second Division issued a Notice of Pre-Trial Conference,[32] setting the Pre-Trial Conference on 01 December 2022. Accordingly, on 24 November 2022, respondent filed his or her Pre-Trial Brief,[33] while petitioner filed its Pre-Trial Brief[34] on 28 November 2022.

At the scheduled Pre-Trial Conference on 01 December 2022, the Second Division granted the parties a forty-five (45)-day period to file their Joint Stipulation of Facts and Issues (**JSFI**).[35] On 13 January 2023, the parties filed their JSFI.[36]

On 16 January 2023, petitioner filed a "Motion to Commission an Independent Certified Public Accountant"[37] (**Motion for Commissioning an ICPA**), requesting the appointment of Madonna Mia S. Dayego (**Dayego**) of M.F. Padernal and Co., as the ICPA.

In the Resolution dated 25 January 2023,[38] the Second Division approved the parties' JSFI, declared the pre-trial terminated, and set the possible commissioning of petitioner's ICPA and the initial presentation of petitioner's evidence on 05 July 2023. Subsequently, on 15 February 2023, the Second Division issued a Pre-Trial Order,[39] again confirming its approval of the JSFI and formally declaring the pre-trial proceedings terminated.

Subsequently, in view of the reorganization of the three (3) Divisions of the Court effective 29 May 2023,[40] the present case was transferred to the First Division.[41]

On 29 November 2023, the Motion for Commissioning an ICPA proceeded. After Dayego's presentation to the witness stand, she was commissioned as the ICPA and was ordered to submit the ICPA Report

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32 Id., pp. 92-93.
33 Id., pp. 94-97.
34 Id., pp. 99-109.
35 See Order dated 01 December 2022, id., pp. 112-113.
36 Id., pp. 114-122.
37 Id., pp. 123-136, with annexes.
38 Id., p. 145.
39 Id., pp. 147-151.
40 See Notice dated 29 May 2023, id., p. 158.
41 The First Division is composed of Presiding Justice Roman G. Del Rosario (Ret.), as Chairperson, and Associate Justice Jean Marie A. Bacorro-Villena and Associate Justice Lanee S. Cui-David, as Members.

within 45 days from the said hearing date.[42] On the same hearing, petitioner presented its first witness, Joyce Anne Paynaga (**Paynaga**), the company's financial controller.

Paynaga's testimony[43] was offered to prove that: (1) petitioner executed an Agreement with its parent company, KONE Corporation; (2) based on the Agreement, KONE Corporation will issue an advance quarterly invoice for the franchise fee that petitioner is expected to pay; (3) the amount stated in the advance quarterly invoice is based on a full year forecast of petitioner's net sales; (4) at year end, once the actual amount of net sales is determined, KONE Corporation will issue an equalization invoice to adjust the correct amount of franchise fee that petitioner is actually liable to pay; (5) for CY 2020, KONE Corporation issued an advance quarterly invoice dated 12 March 2020[44] requesting for the payment of a franchise fee of ₱22,828,000.00 (based on the CY 2020 sales forecast); (6) upon payment thereof, petitioner also paid 25% FWT[45] (with the rate based on the tax treaty between Finland and the Philippines); (7) due to the COVID 19 pandemic, petitioner's operating profit fell below the arm's length level forecasted for the said year, thus the franchise fee paid for CY 2020 was reversed or credited back;[46] and (8) with the reversal of the payment of franchise fee, petitioner prays for the refund of the FWT paid thereon, thus it filed its administrative claim for refund on 25 May 2022.[47]

On cross-examination, Paynaga said that it was a certain Halong Robert[48] (**Robert**), KONE Corporation's then Country Manager, who executed the Agreement on the latter's behalf. Paynaga also confirmed that the Agreement was executed in Finland, but petitioner's copy is neither notarized nor authenticated. She also claimed that apart from the invoice, there is no proof of remittance of the franchise fee of ₱22,828,000.00 to KONE Corporation.[49]

Petitioner did not conduct any redirect examination.[50]

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[42] See Order dated 29 November 2023, Division Docket, pp. 174-175.
[43] See Exhibit "P-8", Sworn Statement of Ms. Joyce Anne Paynaga to Questions Propounded by Atty, Emmanuel Alejandro L Yrreverre, id., pp. 21-32.
[44] Supra at note 16.
[45] Supra at note 17.
[46] Supra at note 18.
[47] Supra at notes 19 and 20.
[48] TSN dated 29 November 2023, p. 28.
[49] Id., pp. 28-31.
[50] Id., p. 31.

On 23 January 2024, the First Division received ICPA Dayego's Report[51] dated 15 January 2024, along with a USB[52] containing related exhibits and annexes. The First Division noted this submission in a Minute Resolution dated 12 February 2024.[53]

On 07 March 2024, petitioner presented the testimony of its last witness, ICPA Dayego.[54] She attested to the following: (1) as ICPA, she examined petitioner's supporting documents and summarized her findings in her ICPA Report dated 15 January 2024; and (2) she recommended the refund or issuance of TCC of ₱5,707,000.00, representing allegedly erroneously paid FWT for the 1st quarter of CY 2020.[55]

During the cross-examination, ICPA Dayego explained that petitioner presented the advance quarterly invoice and Quarterly Remittance Return of Final Income Tax Withheld (or BIR Form No. 1601-FQ)[56] to prove the payment of the franchise fee to KONE Corporation. When asked whether the Agreement was notarized or authenticated before a consular office, ICPA Dayego answered that she did not note if the signed document she examined was notarized (or consularized).[57]

Petitioner did not conduct any redirect examination.[58]

On 22 March 2024, after completing the presentation of its testimonial evidence, petitioner filed its Formal Offer of Evidence[59] (**FOE**) consisting of Exhibits "**P-1**" to "**P-18**",[60] inclusive of sub-

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51 Exhibit "P-10", Division Docket, pp. 181-213.
52 Exhibit "P-11".
53 Division Docket, p. 215.
54 See Order dated 07 March 2024, id., pp. 235-236.
55 See Exhibit "P-9", Sworn Statement of Ms. Madonna Mia S. Dayego to questions propounded by Atty. Vivencio C. Fuentes, Jr., id., pp. 220-230.
56 Exhibit "P-5", supra at note 17.
57 TSN dated 07 March 2024, pp. 9-11.
58 Id., p. 11
59 Division Docket, pp. 237-251.
60

Exhibit	Description
"P-1"	Petitioner's Amended Articles of Incorporation (AOI) with covering Certificate of Filing of Amended AOI issued by the Securities and Exchange Commission (SEC) on July 29, 1998.
"P-2"	Petitioner's Bureau of Internal Revenue (BIR) Certificate of Registration with OCN 9RC0000426318 and Taxpayer Identification Number 004-714-864-000.

"P-3"	Franchise Fee Agreement executed between petitioner and KONE Corporation on January 1, 2009.
"P-4"	Screenshot of the entries in petitioner's SAP books of accounts showing the payment to KONE Corporation of franchise fees in the amount of Php22,828,000.00.
"P-4-1"	KONE Corporation's invoice for the franchise fee billed to petitioner for the first quarter of CY 2020.
"P-5"	Petitioner's Quarterly Remittance Return of Final Income Taxes Withheld (BIR Form No. 1601-FQ) for the first quarter of CY 2020, with covering Electronic Filing and Payment System (EFPS) Payment Details.
"P-6"	Screenshot of the entry in petitioner's SAP books of accounts which shows that the amount of Php59,970,000.00 was credited to the petitioner's account after the close of CY 2020.
"P-6-1"	KONE Corporation's Credit Invoice covering the amount of Php59,970,000.00 was credited to the petitioner's account after the close of CY 2020.
"P-7"	Petitioner's letter to the BIR dated May 17, 2022 requesting the refund of the erroneously paid FWT for the first quarter of CY 2020, with attached BIR Form No. 1914 (Application for Tax Credits/Refunds), signed as received by the BIR, Revenue District Office (RDO) No. 50 on May 25, 2022.
"P-8"	Sworn Statement of Ms. Joyce Anne Paynaga to Questions Propounded by Atty. Emmanuel Alejandro Yrreverr dated June 7, 2022.
"P-9"	Sworn Statement of Ms. Madonna Mia Dayego, the Court-commissioned ICPA, to Questions Propounded by Atty. Vicencio Fuentes, Jr. dated March 1, 2024.
"P-9-1"	Signature of Ms. Madonna Mia Dayego on page 10 of her Sworn Statement.
"P-10"	ICPA Report dated January 15, 2024.
"P-10-a"	Signature of Ms. Madonna Mia Dayego on page 18 of the ICPA Report dated January 15, 2024.
"P-11"	USB Flash Drive containing the ICPA Report dated January 15, 2024 and scanned copies of the exhibits that were identified and marked by the ICPA.
"P-12"	List of Petitioner's General Documents.
"P-12-1"	Petitioner's Amended AOI with covering Certificate of Filing of Amended AOI issued by the SEC on July 29, 1998.
"P-12-2"	Petitioner's BIR Certificate of Registration with OCN 9RC0000426318 and TIN 004-714-864-000.
"P-12-3"	Petitioner's Annual Income Tax Return (ITR) for CY 2020, which was filed with the BIR through eBIR Forms.
"P-12-4"	Petitioner's Audited Financial Statements for CY 2020.
"P-12-5"	Permit to Use Computerized Accounting System with Permit No. 048-CAS-122820009-000133 dated December 28, 2009.
"P-13"	Excerpt of Salient Provisions of Franchise Fee Agreement between petitioner and KONE Corporation.
"P-13-1"	Franchise Fee Agreement between petitioner and KONE Corporation.
"P-13-2"	KONE Group Comparable Search Report – pertains to latest benchmark study dated November 2020 performed by Ernst and Young Finland.
"P-14"	Summary of Comparison of Invoice and Quarterly Remittance Return of Final Income Taxes Withheld for CY 2020.
"P-14-1"	KONE Corporation's Franchise Invoice for the Franchise Fee billed to petitioner for the First Quarter of CY 2020.
"P-14-2"	Quarterly Remittance Return of Final Income Taxes Withheld (BIR Form No. 1601-FQ) for the first Quarter of CY 2020, with attached EFPS Payment Details.
"P-15"	Summary of Comparison of Franchise Fee per Invoice and Refund per Credit Invoice for CY 2020.
"P-15-1"	KONE Corporation Credit Invoice covering the amount of Refund of the Franchise Fee and Compensation Payment.
"P-15-2"	Franchise Fee Accrual for Closing 2020.
"P-16"	Summary of Franchise Fee Transactions Traced to SAP Journal Entries and General Ledger for CY 2020.
"P-16-1-1"	JE – Billing of Franchise Fee.
"P-16-1-2"	JE – Refund of Franchise Fee and Compensation Payment.

markings. On 26 March 2024, respondent filed his or her Comment[61] thereto.

In the Resolution dated 19 June 2024[62] (**FOE Resolution**), the First Division admitted petitioner's exhibits, *except* Exhibits "**P-1**", "**P-2**", "**P-3**" and "**P-7**"[63] for the latter's failure to present the originals for comparison.

Thereafter, on 20 June 2024, respondent manifested that he or she will no longer present any witness. Hence, the Court directed the parties to file their respective memoranda.[64]

"P-16-2"	*General Ledger – Other Exp. – Franchise Fee for CY 2020.
"P-17"	Summary of Payment and Refund of Franchise Fee.
"P-17-1"	Summary of Comparison of Franchise Fee Invoice and Quarterly Remittance Return of Final Income Taxes Withheld for CY 2019.
"P-17-1-1" to "P-17-1-3"	KONE Corporation's Invoices for the Franchise Fee billed to Petitioner for CY 2019.
"P-17-1-4" to "P-17-1-5"	Quarterly Remittance Return of Final Income Taxes Withheld (BIR Form No. 1601-FQ) for CY 2019, with attached EFPS Payment Details.
"P-17-2"	Summary of Franchise Fee Transactions Traced to SAP Journal Entries and General Ledger for CY 2020.
"P-17-2-1" to "P-17-2-2"	*SAP Journal Entries for CY 2019 Billing of Franchise Fees.
"P-17-2-3"	*General Ledger – Franchise Fee for CY 2019
"P-17-3"	Summary of Payment of Franchise Fees Traced to Petitioner's Bank Account Statement and SAP Journal Entry.
"P-17-3-1"	Petitioner's Bank Account Statement.
"P-17-3-2"	*SAP Journal Entry for Payment of Franchise Fees.
"P-18"	Petitioner-prepared Schedule of Computation of Taxable Income for CY Ended December 31, 2020.

61 See "Comment (To Petitioner's Formal of Evidence), Division Docket, pp. 290-294.
62 Id., pp. 300-302.
63

Exhibit	Description
"P-1"	Petitioner's Amended Articles of Incorporation (AOI) with covering Certificate of Filing of Amended AOI issued by the Securities and Exchange Commission (SEC) on July 29, 1998.
"P-2"	Petitioner's Bureau of Internal Revenue (BIR) Certificate of Registration with OCN 9RC0000426318 and Taxpayer Identification Number 004-714-864-000.
"P-3"	Franchise Fee Agreement executed between petitioner and KONE Corporation on January 1, 2009.
"P-7"	Petitioner's letter to the BIR dated May 17, 2022 requesting the refund of the erroneously paid FWT for the first quarter of CY 2020, with attached BIR Form No. 1914 (Application for Tax Credits/Refunds), signed as received by the BIR, Revenue District Office (RDO) No. 50 on May 25, 2022.

64 See Order dated 20 June 2024, Division Docket, pp. 308-309.

On 01 July 2024, petitioner filed an "Omnibus Motion for Reconsideration (Re: Resolution dated June 19, 2024) and for Leave for the Setting of Commissioner's Hearing"[65] (**Omnibus MR**) of the FOE Resolution[66], requesting the reconsideration of the denial of, or the admission of, Exhibit "**P-7**". Respondent filed his or her Comment[67] thereto on 03 July 2024.

In the Resolution 10 December 2024,[68] the First Division granted petitioner's Omnibus MR after it was compared and determined (during a Commissioner's Hearing) that Exhibit "**P-7**" is a faithful reproduction of the original document (found in the BIR Records). Moreover, the parties were again directed to file their respective memoranda.[69]

In compliance with the Court's directive, on 16 January 2025, petitioner filed its Memorandum,[70] while respondent filed his or her Memorandum[71] on 21 January 2025. In a Minute Resolution dated 03 February 2025, the First Division considered the instant case submitted for decision.[72]

ISSUE

As the parties so stipulated, the sole issue for this Court's resolution is —

> WHETHER PETITIONER KPI ELEVATORS, INC. IS ENTITLED TO A REFUND OR ISSUANCE OF A TAX CREDIT CERTIFICATE (TCC) IN THE AMOUNT OF ₱5,707,000.00, ALLEGEDLY REPRESENTING ERRONEOSULY PAID FINAL WITHHOLDING TAX (FWT) FOR THE FIRST (1ST) QUARTER OF CALENDAR YEAR (CY) 2020.[73]

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65 Id., pp. 311-317.
66 Supra at note 62.
67 See Comment/Opposition (To Petitioner's Omnibus Motion for Reconsideration [Re: Resolution dated June 19, 2024] and for Leave for the Setting of Commissioner's Hearing). Division Docket, pp. 319-321.
68 Id., pp. 356-357.
69 Id.
70 Id., pp. 358-383.
71 Id., pp. 385-393.
72 Id., p. 396.
73 B. Stipulation of Issue, Pre-Trial Order, supra at note 39, p. 148.

ARGUMENTS

In seeking a favorable resolution in the case at bar, petitioner asserts that it duly paid the franchise fee of ₱22,828,000.00 to KONE Corporation as evidenced by, among others, the advance quarterly invoice and BIR Form No. 1601-FQ.[74] Moreover, the same was credited back, together with a compensation payment (as indicated in the credit invoice dated 22 January 2021[75]) when petitioner's sales for CY 2020 fell below the forecasted sales. Petitioner further avers that ICPA Dayego later verified these facts after the documents were thoroughly examined. Thus, petitioner claims that it has successfully proven the above circumstances that will entitle it to refund the erroneously paid FWT.

Citing the case of *Aces Philippines Cellular Satellite Corporation v. The Commissioner of Internal Revenue,*[76] petitioner emphasizes that any foreign corporation, whether engaged in trade or business on the Philippines, is taxable only on income derived from sources within the Philippines. However, as KONE Corporation had refunded its supposed franchise fee income to petitioner in 2021, petitioner posits that the corresponding FWT paid thereon should also be refunded.

Moreover, petitioner counters that it had the legal standing to the file the claim for refund. It echoes the Supreme Court's ruling in *Commissioner of Internal Revenue v. Smart Communications, Inc.*[77] (**Smart Communications, Inc.**) that a withholding agent is considered a proper party to file a claim for refund of the withheld taxes of its foreign parent company. Further, petitioner argues that the Agreement is not a TTA. Even assuming that it comes within the purview of a TTA, the same may still be enforced through a judicial action by any of the parties to the contract.

As to the timeliness of the claim, petitioner contends that it timely filed a claim for refund or issuance of TCC pursuant to Sections 204(C)[78] and 229[79] of the NIRC of 1997, as amended.

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[74] Exhibit "P-5", supra at note 17.
[75] Exhibit "P-6-1", supra at note 18.
[76] G.R. No. 226680, 30 August 2022.
[77] G.R. Nos. 179045-46, 25 August 2010.
[78] **SEC. 204.** *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –

Respondent, on the other hand, recycles the arguments in the Answer: (1) that petitioner is not entitled to a refund of the FWT paid on the franchise fees as the same is a valid payment of the payee's income tax liability; (2) the Agreement was not notarized or authenticated in a consular office, hence, it is unenforceable to parties not privy to the contract, such as the BIR; (3) the Agreement is a TTA that is not compliant with the provisions of the IPC, thus making it again unenforceable; and (4) petitioner has no legal standing to file the claim for refund.

Moreover, respondent stresses that the Agreement, the purported basis of the advance payment of the franchise fee, was not admitted in evidence as reflected in the FOE Resolution of 19 June 2024.

RULING OF THE COURT

After a careful and thorough evaluation of the parties' respective evidence and the applicable laws, rules and regulations, the Court finds the instant petition bereft of merit.

Sections 204(C) and 229 of the NIRC of 1997, as amended, read:

...

(c) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however*, that a return filed showing an overpayment shall be considered as a written claim for credit or refund.

[79] SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

> ...
>
> SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may —
>
> ...
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty**: *Provided, however,* that a return filed showing an overpayment shall be considered as a written claim for credit or refund.
>
> ...
>
> SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national **internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected**, **or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected,** until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> **In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment**: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.[80]
>
> ...

The afore-quoted provisions are clear: within two (2) years from the date of payment of tax, the claimant must first file an administrative claim with respondent before filing its judicial claim with the Court. Both claims must be filed within the two (2)-year reglementary period. Succinctly, the timeliness of the filing of the claim is mandatory and jurisdictional, hence the Court cannot take

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80 Emphasis supplied and italics in the original text.

cognizance of a judicial claim for refund filed either prematurely or belatedly. As for the judicial claim, the law explicitly provides that it should be filed within two (2) years from payment of the tax "regardless of any supervening cause that may arise after payment."[81]

The foregoing provisions further allow the recovery of taxes erroneously or illegally collected. An "erroneous or illegal tax" is defined as one levied without statutory authority, or upon property not subject to taxation, or by some officer having no authority to levy the tax, or one which is some other similar aspect is illegal.[82] In other words, what can be refunded or credited is a tax that is erroneously, illegally, excessively or in any manner wrongfully collected. There must be a wrongful payment because what is paid, or part of it, is not legally due.[83] Thus, for the present claim for refund to prosper, petitioner must not only establish that it has timely filed its refund claim, but it must likewise prove that the subject FWT paid is erroneous, illegal, or wrongful.

PETITIONER TIMELY FILED ITS ADMINISTRATIVE AND JUDICIAL CLAIMS.

In this case, petitioner paid the FWT on the subject transaction amounting to ₱5,707,000.00 on 08 June 2020.[84] Counting two (2) years therefrom, petitioner had until 08 June 2022, to file its administrative and judicial claims for refund. Petitioner's administrative claim for refund was filed before the BIR RDO No. 50 on 25 May 2022,[85] and the judicial claim for refund filed before this Court on 08 June 2022.[86] Thus, both administrative and judicial claims fell within the two (2)-year prescriptive period.

Correspondingly, petitioner timely filed its administrative and judicial claims.

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[81] *Commissioner of Internal Revenue v. San Miguel Corporation,* G.R. Nos. 180740 and 180910, 11 November 2019.
[82] Black's Law Dictionary, 486 (5th ed.).
[83] *Commissioner of Internal Revenue v. San Roque Power Corporation,* G.R. Nos. 187485, 196113, & 197156, 12 February 2013.
[84] Exhibit "P-5", supra at note 17.
[85] Exhibit "P-7", supra at note 19; supra at note 20.
[86] Supra at note 1.

PETITIONER, AS A WITHHOLDING AGENT, HAS THE LEGAL STANDING TO FILE THE PRESENT CLAIM FOR REFUND.

Respondent contends that a FWT is a withholding tax prescribed on certain income payments, and the income tax withheld constitutes the full and final payment of the income tax due from the payee on the particular income subjected to FWT. Hence, respondent avers that it can readily be seen that the payee is the taxpayer, the person on whom the tax is imposed, while the payor, a separate entity, acts as the government's agent for the collection of the tax to ensure its payment.

Applying the foregoing, respondent then argues that if the amount of ₱5,707,000.00 represents erroneously paid FWT for the 1st quarter of CY 2020, petitioner's claim for refund or issuance of TCC must not prosper as petitioner did not file the claim on behalf of KONE Corporation (the income earner/payee). As a result, petitioner has no legal standing to claim the refund of the alleged erroneously withheld taxes. To grant the refund would be unjustly enriching petitioner at the government's expense.

Petitioner, on the other hand, asserts that this matter has already been settled by no less than the Supreme Court in *Smart Communications, Inc.,*[87] where it unequivocally ruled that if the taxpayer does not file a claim for refund, the withholding agent may file the claim.

The Court agrees with petitioner.

The question of whether a withholding agent may file a claim for refund is no longer novel. As the Supreme Court aptly elucidated in *Smart Communications, Inc.,*[88] –

> ...
>
> Pursuant to the foregoing, the person entitled to claim a tax refund is the taxpayer. However, in case the taxpayer does not file a claim for refund, the withholding agent may file the claim.

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87 Supra at note 77.
88 Id.; Citations omitted, italics in the original text, emphasis and underscoring supplied.

In *Commissioner of Internal Revenue v. Procter & Gamble Philippine Manufacturing Corporation*, a withholding agent was considered a proper party to file a claim for refund of the withheld taxes of its foreign parent company. Pertinent portions of the Decision read:

> The term "taxpayer" is defined in our NIRC as referring to "any person subject to tax imposed by the Title [on Tax on Income]." It thus becomes important to note that under Section 53(c) of the NIRC, the withholding agent who is "required to deduct and withhold any tax" is made "personally liable for such tax" and indeed is indemnified against any claims and demands which the stockholder might wish to make in questioning the amount of payments effected by the withholding agent in accordance with the provisions of the NIRC. The withholding agent, P&G-Phil., is directly and independently liable for the correct amount of the tax that should be withheld from the dividend remittances. The withholding agent is, moreover, subject to and liable for deficiency assessments, surcharges and penalties should the amount of the tax withheld be finally found to be less than the amount that should have been withheld under law.
>
> A "person liable for tax" has been held to be a "person subject to tax" and properly considered a "taxpayer." The terms "liable for tax" and "subject to tax" both connote legal obligation or duty to pay a tax. It is very difficult, indeed conceptually impossible, to consider a person who is statutorily made "liable for tax" as not "subject to tax." By any reasonable standard, such a person should be regarded as a party in interest, or as a person having sufficient legal interest, to bring a suit for refund of taxes he believes were illegally collected from him.
>
> In *Philippine Guaranty Company, Inc. v. Commissioner of Internal Revenue*, this Court pointed out that a withholding agent is in fact the agent both of the government and of the taxpayer, and that the withholding agent is not an ordinary government agent:
>
>> "The law sets no condition for the personal liability of the withholding agent to attach. The reason is to compel the withholding agent to withhold the tax under all circumstances. In effect, the responsibility for the collection of the tax as well as the payment thereof is concentrated upon the person over whom the Government has jurisdiction. Thus, the withholding agent is constituted the agent of both the Government and the taxpayer. With respect to the collection and/or withholding of the tax, he is the Government's agent. In regard to the filing of the necessary income tax return and the payment of the tax to the Government,

> he is the agent of the taxpayer. The withholding agent, therefore, is no ordinary government agent especially because under Section 53 (c) he is held personally liable for the tax he is duty bound to withhold; whereas the Commissioner and his deputies are not made liable by law."
>
> If, as pointed out in *Philippine Guaranty*, **the withholding agent is also an agent of the beneficial owner of the dividends with respect to the filing of the necessary income tax return and with respect to actual payment of the tax to the government, such authority may reasonably be held to include the authority to file a claim for refund and to bring an action for recovery of such claim.** This implied authority is especially warranted where, as in the instant case, the withholding agent is the wholly owned subsidiary of the parent-stockholder and therefore, at all times, under the effective control of such parent-stockholder. In the circumstances of this case, it seems particularly unreal to deny the implied authority of P&G-Phil. to claim a refund and to commence an action for such refund.
>
> ...
>
> We believe and so hold that, under the circumstances of this case, P&G-Phil. is properly regarded as a "taxpayer" within the meaning of Section 309, NIRC, and as impliedly authorized to file the claim for refund and the suit to recover such claim.

Petitioner, however, submits that this ruling applies only when the withholding agent and the taxpayer are related parties, *i.e.*, where the withholding agent is a wholly owned subsidiary of the taxpayer.

We do not agree.

Although such relation between the taxpayer and the withholding agent is a factor that increases the latter's legal interest to file a claim for refund, there is nothing in the decision to suggest that such relationship is required or that the lack of such relation deprives the withholding agent of the right to file a claim for refund. <u>Rather, what is clear in the decision is that a withholding agent has a legal right to file a claim for refund for two reasons. *First*, he is considered a "taxpayer" under the NIRC as he is personally liable for the withholding tax as well as for deficiency assessments, surcharges, and penalties, should the amount of the tax withheld be finally found to be less than the amount that should have been withheld under law. *Second*, as an agent of the taxpayer, his authority to file the necessary income tax return and to remit the tax withheld to the government impliedly includes the authority to file a claim for refund and to bring an action for recovery of such claim.</u>

> In this connection, it is however significant to add that while the withholding agent has the right to recover the taxes erroneously or illegally collected, he nevertheless has the obligation to remit the same to the principal taxpayer. As an agent of the taxpayer, it is his duty to return what he has recovered; otherwise, he would be unjustly enriching himself at the expense of the principal taxpayer from whom the taxes were withheld, and from whom he derives his legal right to file a claim for refund.[89]
>
> ...

Based on the foregoing jurisprudential pronouncement, a withholding agent has a legal right to file a claim for refund, subject to the qualification that the said right comes with the obligation to remit the same to the principal taxpayer. Thus, petitioner, as a withholding agent, has the personality to file the present claim for refund, as it involves taxes that it allegedly withheld from the income payment made to KONE Corporation, the principal taxpayer. However, should the refund be granted, petitioner must return or remit the same to the said principal taxpayer.

THE FRANCHISE FEE AGREEMENT (AGREEMENT), A PRIVATE DOCUMENT, WAS NOT PROPERLY AUTHENTICATED AND CANNOT BE GIVEN EVIDENTIARY WEIGHT.

Respondent also asserts that the Agreement that petitioner and KONE Corporation executed yields that it was not duly acknowledged before a notary public or authenticated before a consular official. Although it has the force of law between the contracting parties, the same will have no effect against third parties not privy to the said agreement, especially the BIR. According to respondent, the terms of the Agreement affect third parties not privy to the agreement, (*i.e.*, the BIR) only if it had been notarized or consularized. The BIR then is not bound to the agreement and to declare so will prejudice the government's right to collect a tax legally demandable under the law.

Respondent claims further that the Agreement *per se* does not enjoy the presumption of regularity due to the absence of the

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89 Citations omitted, italics and emphasis in the original text and underscoring supplied.

notarization or acknowledgment considering that notarization converts a private document into a public document.

The Court partly agrees with respondent.

As respondent correctly pointed out, the Agreement offered as Exhibit "**P-3**"[90] was denied admission for failure to present the original copy for comparison.[91] Nonetheless, ICPA Dayego also presented the said Agreement as Exhibit "**P-13-1**" (as contained in the USB) and listed as one (1) of her supporting documents for the ICPA Report dated 15 January 2024.[92]

As repeatedly stated, the Agreement[93] executed between petitioner and KONE Corporation is a private document as it was neither notarized nor consularized. Being a private document, it must first be authenticated before it could be admitted as evidence.

Sections 19 and 20 of Rule 132 of the Revised Rules on Evidence (**RRE**), as amended,[94] state –

> ...
> **B. AUTHENTICATION AND PROOF OF DOCUMENTS**
>
> **Section 19.** *Classes of documents.* - For the purpose of their presentation in evidence, documents are either public or private.
>
> Public documents are:
>
> (a) The written official acts, or records of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;
> (b) Documents acknowledged before a notary public except last wills and testaments;
> (c) Documents that are considered public documents under treaties and conventions which are in force between the Philippines and the country of source; and

[90] Supra at note 63.
[91] See Resolution dated 19 June 2024, supra at note 62.
[92] See Exhibit "P-10", supra at note 51, p. 197.
[93] Supra at note 10.
[94] A.M. No. 19-08-15-SC.

(d) Public records, kept in the Philippines, of private documents required by law to be entered therein.

All other writings are private.

Section 20. *Proof of private documents.* - Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved by any of the following means:

(a) By anyone who saw the document executed or written;
(b) By evidence of the genuineness of the signature or handwriting of the maker; or
(c) By other evidence showing its due execution and authenticity.

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

...

From the foregoing, documents are either public or private. Private documents are those that do not fall under any of the enumerations in Section 19, Rule 132 of the RRE, as amended. Section 20 of the same Rule, in turn, provides that before any private document is received in evidence, its due execution and authenticity must be proved either by anyone who saw the document executed or written, or by evidence of the genuineness of the signature or handwriting of the maker.[95]

The nature of documents as either public or private determines how the documents may be presented as evidence in court. Public documents, as enumerated under Section 19, Rule 132 of the RRE, as amended, are self-authenticating and require no further authentication in order to be presented as evidence in court.[96]

In contrast, a private document is any other writing, deed, or instrument executed by a private person without the intervention of a notary or other person legally authorized by which some disposition or agreement is proved or set forth. Lacking the official or sovereign

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[95] *Malayan Insurance Co., Inc. v. Philippine Nails and Wires Corporation*, G.R. No. 138084, 10 April 2002.

[96] *Asian Terminals, Inc. v. Philam Insurance Co., Inc. (now Chartis Philippines Insurance, Inc.), et seq.*, G.R. Nos. 181163, 181262 and 181319, 24 July 2013.

character of a public document, or the solemnities prescribed by law, a private document requires authentication in the manner allowed by law or the Rules of Court before its acceptance as evidence in court.[97]

The requirement of authentication of a private document is excused only in four instances, specifically: (a) when the document is an ancient one within the context of Section 21,[98] Rule 132 of the RRE, as amended; (b) when the adverse party does not specifically deny under oath the genuineness and authenticity of an actionable document; (c) when the genuineness and authenticity of the document have been admitted; or (d) when the document is not being offered as genuine.[99]

Indubitably, the Agreement is private in character; hence, it must be identified and authenticated in the manner provided under Section 20 of Rule 132 of the RRE, as amended. To reiterate, before a private document is admitted in evidence, it must be authenticated. The authentication may be done by the following, namely: (1) the person who executed it; (2) the person before whom its execution was acknowledged; (3) any person who was present and saw it executed; (4) the person who after its execution, saw it and recognized the signature, being familiar thereto or an expert; or (5) the person to whom the parties to the instrument had previously confessed execution thereof.[100]

Appurtenant to it, Section 53(b), Rule 130 of the RRE, as amended, provides that an opinion of an ordinary witness, for which proper basis is given, may be received in evidence regarding a handwriting (or signature as in the instant case) with which he or she has sufficient familiarity.

The case of *Ernesto L. Salas v. Sta. Mesa Market Corporation et al.*[101] (**Salas**) illustrates how authentication is done –

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97 *Roberto Otero v. Roger Tan*, G.R. No. 200134, 15 August 2012.

98 **Sec. 21**. *When evidence of authenticity of private document not necessary*. –Where a private document is more than thirty (30) years old, is produced from a custody in which it would naturally be found if genuine, and is unblemished by any alterations or circumstances of suspicion, no other evidence of its authenticity need be given.

99 *Anna Lerima Patula v. People of the Philippines*, G.R. No. 164457, 11 April 2012.

100 *Young Builders Corporation v. Benson Industries, Inc.*, G.R. No. 198998, 19 June 2019.

101 G.R. No. 157766, 12 July 2007; Citations omitted and emphasis supplied.

> ...
>
> During authentication in court, **a witness positively testifies that a document presented as evidence is genuine and has been duly executed or that the document is neither spurious nor counterfeit nor executed by mistake or under duress.** In this case, petitioner merely presented a memorandum attesting to the increase in the corporation's monthly market revenue, prepared by a member of his management team. **While there is no fixed criterion as to what constitutes competent evidence to establish the authenticity of a private document, the best proof available must be presented. The best proof available, in this instance, would have been the testimony of a representative of SMMC's external auditor who prepared the audited financial statements. Inasmuch as there was none, the audited financial statements were never authenticated.**
>
> ...

Here, petitioner's witness or Paynaga's telling attempt to authenticate the Agreement reveals –

> ...
>
> Q12: **What is the basis for the Company's payment of franchise fee to KONE Corporation?**
>
> A: The Company and KONE Corporation entered into a Franchise Fee Agreement (the 'Franchise Agreement') on January 1, 2009. Under the Franchise Agreement, KONE Corporation provides the Company the right to use KONE Corporation's know-how, brand name, and intellectual property rights by providing technical information and support in relation to the sale, installation, maintenance and repair of elevators, escalators, autowalks, and other similar equipment during the term of the agreement.
>
> Based on the terms of the Franchise Agreement, the Company is required to pay KONE Corporation, in respect of each year, a franchise fee, subject to certain qualifications provided in Clause 6 of the Franchise Agreement. In this connection, the franchise fee is calculated under the arm's length principle as a percentage of the Company's net sales, benchmarked by reference to analogous third-party arrangements. The arm's length rate of the franchise fee charge in 2020 was 9.5%.
>
> Clause 6.1(i) of the Franchise Agreement provides that the franchise fee in respect of any year shall not exceed such amount as would reduce the Company's operating profit for

that year to an amount below the arm's length level for the year. Hence, the Company will not be required to pay any franchise fee if its operating profit for the year will fall below the arm's length level.

Further, Clause 6.1(ii) of the Franchise Agreement provides that the Company will receive a transfer pricing compensation from KONE Corporation should the Company's operating profit fall below the arm's length level during the year. This is to compensate the Company for its efforts and functions on developing the business in the Philippines by utilizing the intellectual property rights and know-how owned by KONE Corporation and for the future earning potential of KONE Corporation.

Q13: **Ms. Paynaga, you mentioned the Franchise Agreement between the Company and KONE Corporation. If shown a copy of this Franchise Agreement, will you be able to identify it?**

A: Yes.

Q14: **I am showing you a document captioned as "Franchise Fee Agreement" dated January 1, 2009 and pre-marked as Exhibit "P-3." What is the relation of this document to the Franchise Agreement you mentioned earlier, if any?**

A: This is the Franchise Agreement between the Company and KONE Corporation that I was referring to earlier.

Q15: **I invite your attention to the signature appearing on the right side of page 9 of this Franchise Agreement. Can you identify whose signature this is?**

A: Yes, this is the signature of Hannu Myrberg, the former Country Manager of the Company.

Q16: **How did you become familiar with Hannu Myrberg's signature?**

A: I became familiar with Hannu Myrberg's signature because I have seen numerous corporate records and financial reports of the Company bearing his signature.[102]

...

[102] See Q&A Nos. 12 to 16, Exhibit "P-8", supra at note 43, pp. 23-25. Emphasis in the original text and underscoring supplied.

While Ms. Paynaga identified and authenticated the signature of Hannu Myrberg (**Myrberg**), petitioner's then Country Manager, she failed to authenticate the signature of the other signatory representing KONE Corporation.

A careful perusal of page 9 of the Agreement, or the signature page thereof, shows that there are two (2) signatures appearing thereon; Myrberg's, petitioner's Country Manager, and the other shows a signature on the space provided for KONE Corporation. However, the name and position of the said signatory were not indicated therein. As the records bear, it was only during Paynaga's cross-examination that she has declared "Robert", KONE Corporation's former Country Manager, who executed the Agreement for the latter's behalf. Yet, even with this declaration, Paynaga never referred to Robert's signature on the said agreement.[103]

Furthermore, petitioner did not present Robert as its witness although he is supposedly the person who executed the Agreement on KONE Corporation's behalf. Petitioner also failed to present other witnesses to authenticate Robert's signature. Following *Salas,*[104] the Court could only then conclude that petitioner failed to meet the authentication requirements in the RRE. Consequently, the Agreement loses probative value.[105]

In any event, it must be emphasized that it would have been different had the Agreement been notarized, as notarization of a private document converts it into a public document, making it admissible in court without further proof of its authenticity.[106] It is a well-settled rule that a duly notarized document enjoys the *prima facie* presumption of authenticity and due execution, as well as the full faith and credence attached to a public instrument.[107]

In view of above circumstances, it becomes unnecessary to address the other arguments raised by the parties.

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103 Supra at note 48.
104 Supra at note 101.
105 See *Herminio T. Disini v. Republic of the Philippines*, G.R. No. 205172, 15 June 2021.
106 *Douglas G. Zaballero v. Atty. Mario J. Montalvan*, A.C. No. 4370, 25 May 2004.
107 *Socorro P. Cabilao v. Ma. Lorna Q. Tampan, et al.*, G.R. No. 209702, 23 March 2022.

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106 *Douglas G. Zaballero v. Atty. Mario J. Montalvan*, A.C. No. 4370, 25 May 2004.
107 *Socorro P. Cabilao v. Ma. Lorna Q. Tampan, et al.*, G.R. No. 209702, 23 March 2022.

WHEREFORE, in light of the foregoing considerations, the Petition for Review filed by petitioner KPI Elevators, Inc. on 08 June 2022, is **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice

ATTESTATION

I attest 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's Division.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Special 1st Division Acting Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Special 1st Division Acting Chairperson's Attestation, 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's Division.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice