REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

MANULIFE DATA SERVICES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA *EB* NO. 2066
(CTA Case No. 8878)

x- x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

MANULIFE DATA SERVICES, INC.,
Respondent.

CTA *EB* NO. 2068
(CTA Case No. 8878)

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
JUL 15 2020 4:17 p.m.

x- x

DECISION

MANAHAN, J.:

Before the Court *En Banc* are appeals filed by Manulife Data Services, Inc. (Manulife) and the Commissioner of Internal Revenue (CIR) of the Court in Division's Decision dated November 14, 2018, which partially granted Manulife's claim for refund/issuance of tax credit in the reduced amount of Php8,460,225.24 representing excess input VAT attributable to zero-rated sales/receipts for the four quarters of calendar year 2012.

The Facts

The facts, as found by the Court in Division, are as follows:

Petitioner Manulife Data Services, Inc. is a multinational company organized and existing under the laws of Barbados, duly registered with and licensed by the Securities and Exchange Commission (SEC) to operate as a Regional Operating Headquarter (ROHQ) under SEC Registration No. FS200603505. It is also a VAT-registered entity, as evidenced by its Certificate of Registration No. OCN 3RC0000421626. Petitioner's registered address is at Manulife Building, UP North Science and Technology Park, Commonwealth Avenue, Diliman, Quezon City.

Petitioner, as ROHQ, is engaged in the business of providing services to its affiliates and related parties in the Asia-Pacific Region and other foreign markets, such as general administration and planning, business planning and coordination, sourcing/procurement of raw materials and components, marketing control and sales promotion, training and personnel management, research and development services and product development, technical support and maintenance, data processing and communication, and business development, among others.

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner [Manulife] entered into several service agreements with its foreign affiliates. In the course of its operations, petitioner purportedly incurred and paid input VAT arising from its domestic purchases of goods and services. By the end of CY 2012, petitioner claims that it has accumulated significant amounts of input VAT.

> On March 28, 2014, petitioner filed its administrative claim and an Application for Tax Credits/Refunds (BIR Form No. 1914) with the BIR Revenue District Office No. 38, requesting the refund of its purported unutilized input VAT for the four quarters of calendar year 2012. However, respondent failed to act on the claim for refund, prompting petitioner to file the instant Petition for Review before this Court on August 22, 2014.[1]

After trial, the Court in Division rendered the assailed Decision, which granted only Php8,460,225.24 out of the total Php40,511,831.78 claimed, as follows:

> **WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **EIGHT MILLION FOUR HUNDRED SIXTY THOUSAND TWO HUNDRED TWENTY-FIVE PESOS AND TWENTY-FOUR CENTAVOS (P8,460,225.24)**, representing its excess input VAT attributable to its zero-rated sales/receipts for the four quarters of CY 2012.
>
> **SO ORDERED.**[2]

The Court in Division likewise denied the parties' respective motions for reconsideration, *to wit*:

> **WHEREFORE**, premises considered, respondent's **Motion for Partial Reconsideration** and petitioner's **Motion for Reconsideration (Re: Decision dated 14 November 2018)** are **DENIED** for lack of merit.
>
> **SO ORDERED.**[3]

On May 17, 2019, Manulife filed its *Motion for Extension of Time (Re: Filing of Petition for Review)*, which was granted, giving Manulife until June 1, 2019, within which to file its Petition for

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[1] *Rollo*, Division Decision dated November 14, 2018, pp. 31-32.
[2] *Rollo*, Division Decision dated November 14, 2018, p. 62.
[3] *Rollo*, Division Resolution dated April 22, 2019, p.75.

Review. On May 30, 2019, Manulife filed its Petition for Review, docketed as CTA EB No. 2066.

On the other hand, the CIR filed his *Motion for Extension of Time to File Petition for Review* on May 21, 2019, which was granted, giving the CIR until June 6, 2019, within which to file his Petition for Review. On June 4, 2019, the CIR filed his Petition for Review docketed as CTA EB No. 2068.

On June 6, 2019, the Court *En Banc* resolved to consolidate CTA EB No. 2068 with CTA EB No. 2066, both being appeals from the Decision dated November 14, 2018 and Resolution dated April 22, 2019 in CTA Case No. 8878.[4]

After notice,[5] Manulife filed its *Comment/Opposition (Re: Petition for Review dated 28 May 2019)*[6] on July 18, 2019, while the CIR failed to file his comment per Records Verification[7] dated August 27, 2019.

On September 18, 2019, the case was deemed submitted for decision.[8]

Issues

Manulife submits that the Honorable Court in Division committed reversible error when it only partially granted its claim for refund in the amount of Php8,460,225.24.

On the other hand, the CIR submits the following grounds:

> With all due respect, [Manulife] did not submit complete documents in support of its administrative claim for refund/tax credit pursuant to Section 112(C) of the NIRC of 1997, as amended; and
>
> With all due respect, [Manulife] is not entitled to the refund/tax credit of alleged excess and unutilized

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[4] *Rollo*, p. 79.
[5] *Rollo*, Resolution dated June 28, 2019, pp. 81-82.
[6] *Rollo*, pp. 83-93.
[7] *Rollo*, p. 94.
[8] *Rollo*, pp. 96-97.

> input VAT for the period covering 1st to 4th quarters of calendar year 2012 in the amount of P8,460,225.24.

Manulife's arguments

Manulife states that the Court in Division found only four (4) clients that would be considered in computing the refundable amount, however, the Court in Division also noted that Manulife presented SEC Certificates of Non-Registration of Corporation/Partnership for eight (8) other clients. Manulife argues that while it was not able to present foreign certificates of incorporation for these eight (8) clients, it was able to show through the service agreements and testimony of its witnesses that the alleged zero-rated clients were duly registered and existing under the laws of the foreign jurisdiction where they do business. Thus, Manulife argues that the sales made to these eight (8) clients be included in computing for the correct amount of input VAT refund.

Manulife also argues that the Court-commissioned Independent Certified Public Accountant (ICPA) testified that he arrived at his results by employing the accepted methodology and his judgment. By recommending the acceptance of those parts of the claim, the ICPA believed in the veracity of those parts, regardless of any imperfections as might be discerned in the evidence for them. Manulife states that the noticeable difference between the ICPA's recommended amount (Php29,775,036.85) and that allowed by the Court in Division (Php8,460,225.24) necessitates a second look at the evidence on record.

CIR's arguments

The CIR argues that Manulife did not submit complete documents in support of its administrative claim for refund/tax credit pursuant to Section 112(C) of the National Internal Revenue Code (NIRC) of 1997, as amended, as such, the application for tax credit or refund should be denied.

The CIR also states that Manulife has the burden of proving its entitlement to a tax refund, and, that claims for refund are construed *strictissimi juris* against the taxpayer and liberally in favor of the government.

Ruling of the Court

The petitions are without merit.

The petitions for review were timely filed.

The Court in Division issued the Resolution denying the parties' respective motions for reconsideration/partial reconsideration on April 22, 2019. Manulife and the CIR received the Resolution on May 2, 2019 and May 7, 2019, respectively.

Manulife and the CIR had fifteen (15) days from the date of receipt of resolution, or until May 17, 2019 for Manulife and May 22, 2019 for the CIR, within which to file their respective petitions for review before the Court *En Banc*, pursuant to Rule 4, Section 2(a)(1),[9] in relation to Rule 8, Section 3(b)[10] of the Revised Rules of the Court of Tax Appeals (RRCTA).

On May 17, 2019, Manulife filed its *Motion for Extension of Time (Re: Filing of Petition of Review)* which was granted, giving Manulife until June 1, 2019 within which to file its petition. On the other hand, the CIR filed his *Motion for Extension of Time to File Petition for Review* on May 21, 2019, which was likewise granted, giving him until June 6, 2019 within which to file his petition.

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[9] Rule 4 Jurisdiction of the Court
Sec. 2. *Cases within the jurisdiction of the Court en banc.* – The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:
(1) Cases arising from administrative agencies – Bureau of Internal Revenue, xxx

[10] Rule 8 Procedure in Civil Cases
Sec. 3. *Who may appeal; period to file petition.*
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.

On May 30, 2019, Manulife filed its Petition for Review docketed as CTA EB No. 2066, while the CIR filed his Petition for Review, docketed as CTA EB No. 2068, on June 4, 2019.

Considering the foregoing, both parties timely filed their petitions for review.

There is no compelling reason to reverse or modify the Court in Division's findings.

The arguments raised by both the CIR and Manulife are mere reiterations of their arguments raised, extensively discussed, and resolved in the Court in Division.

Anent the CIR's arguments, the Court *En Banc* reiterates that the CTA "is not limited by the evidence presented in the administrative claim in the Bureau of Internal Revenue. The claimant may present new and additional evidence to the Court of Tax Appeals to support its case for tax refund."[11]

Manulife argues that it presented different documents to prove that its clients were non-resident foreign entities not doing business in the Philippines. We disagree. Two core documents have always been required to prove the fact of being a non-resident foreign entity not doing business in the Philippines, *to wit*:

> This Court has consistently held that in order to be considered a 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** Proof of Incorporation/Association/Business Registration in a foreign country and that there is no other indication that would disqualify said entity in being classified as a non-resident foreign corporation.[12]

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[11] *Philippine Airlines, Inc. v. Commissioner of Internal Revenue*, G.R. Nos. 206079-80 and 206309, January 17, 2018.
[12] *Rollo*, Decision dated November 14, 2018, p. 43.

As to Manulife's argument that the ICPA's findings should be given more weight, We reiterate the Court in Division's discussion, as follows:

> We are not bound by the findings of the ICPA. The report submitted by the ICPA is but a tool or guide to aid the Court in the resolution of the case. The determination of the merit or the probative value of such report is still within the province of the Court. In addition, the Court is free to adapt or disregard, completely or partially, the findings of the ICPA. It can even make its own audit and evaluation of the documents pertinent to the case presented during the trial in order to intelligently resolve the conflict before it. xxx[13]

Finally, the Court in Division made its findings of disallowances with references to the specific exhibits as well as the reasons for the disallowance. Manulife did not provide controverting proof or arguments in order for the Court in Division to reconsider its findings. Thus, the Court *En Banc* finds no reason to modify nor reverse the Court in Division's findings.

WHEREFORE, the Petition for Review filed by Manulife Data Services, Inc., docketed as CTA EB No. 2066, and the Petition for Review filed by the Commissioner of Internal Revenue, docketed as CTA EB No. 2068, are **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

[13] *Rollo*, Resolution dated April 22, 2019, p. 74.

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

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen S
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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 cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice