REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

AMADEUS MARKETING PHILIPPINES, INC., Petitioner,	CTA CASE NO. 8578
	Members:
-versus-	BAUTISTA, *Chairperson*; FABON-VICTORINO, and RINGPIS LIBAN, JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: SEP 26 2016

x- -x

RESOLUTION

***Fabon-Victorino, J.*:**

In the Decision[1] dated June 21, 2016, the Court denied for lack of merit petitioner's claim for refund of the amount of Twenty-Three Million Three Hundred Fifty-Five Thousand Eight Hundred Forty-One Pesos and 61/100 (₱23,355,841.61), allegedly representing unutilized input value-added tax (VAT) for the 2nd, 3rd, and 4th quarters of taxable year 2010.

Unconvinced, petitioner now seeks reconsideration of the adverse decision or in the alternative, grant it a new trial[2], for the presentation of new evidence that will allegedly show that Amadeus IT Group S.A. and Amadeus Global Travel Distribution S.A., are one and the same entity and that the dealings of Amadeus IT Group S.A. cannot constitute as 'doing business' in the Philippines.

---

[1] Docket, vol. 4, pp. 1789-1806.
[2] *Ibid.*, pp. 1807-1861.

Petitioner explains that it was unable to present such evidence due to mistake and excusable negligence since such issue surfaced only after the promulgation of the assailed Decision.

Despite the opportunity granted, respondent failed to file any comment/opposition to petitioner's motion.

THE COURT'S RULING

Petitioner insists that it is entitled to the refund of unutilized input VAT attributable to its zero-rated sales of services made, pursuant to Section 108(B)(2) of the NIRC of 1997, as amended, given that the recipient of its services, i.e. Amadeus IT Group S.A., is not 'doing business' in the Philippines but merely collects royalty payments from it.

The Court does not agree.

While it is true that petitioner was able to present the Authenticated Certification/Articles of Association of Amadeus IT Group, S.A.[3] and its Certificate of Non-Registration[4] issued by the Philippines' Securities and Exchange Commission (SEC), the said documents *per se* do not constitute sufficient proof that petitioner's client Amadeus IT Group S.A. is a non-resident foreign corporation doing business outside the Philippines. The said documents at most established that Amadeus IT Group S.A. is a non-resident foreign corporation organized and existing under the laws of Spain but not the fact that it is doing business outside the Philippines.

To come within the purview of Section 108(B)(2) of the NIRC, as amended, it is not enough that the recipient of the service rendered be proved to be a non-resident foreign corporation, but it must also be proved that it is not engaged in trade or doing business in the Philippines.

---

[3] Exhibit "J".
[4] Exhibit "I".

There is no specific criterion on what constitutes "doing" or "engaging in" or "transacting" business. However, the Supreme Court in the case of Commissioner of Internal Revenue v. British Overseas Airways Corporation and the Court of Tax Appeals[5] ruled:

> ". . . . There is no specific criterion as to what constitutes 'doing' or 'engaging in' or 'transacting' business. Each case must be judged in the light of its peculiar environmental circumstances. The term implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of some of the functions normally incident to, and in progressive prosecution of commercial gain or for the purpose and object of the business organization. "In order that a foreign corporation may be regarded as doing business within a State, there must be continuity of conduct and intention to establish a continuous business, such as the appointment of a local agent, and not one of a temporary character."

Moreover, documents adduced by petitioner itself also indicate that Amadeus IT Group, S.A. the recipient of petitioner's services, was actually doing business in the Philippines during the pertinent period. Shown in petitioner's Quarterly VAT Returns that it had input VAT on services rendered by non-residents for the 2nd, 3rd, and 4th quarters of 2010 in the total amount of P13,294,558.34. Per petitioner's Schedule of Purchases of Goods and Services and Corresponding Input Taxes for the Period April 1, 2010 to December 31, 2010, such input taxes pertain to petitioner's purchases of services from Amadeus IT Group, S.A., backed-up as they were by corresponding BIR Form No. 1600, but only in the amount of P11,758,947.65. Clearly, the non-resident foreign corporation that rendered services to petitioner in the Philippines and whose sales of services were subjected to VAT, was also Amadeus IT Group, S.A., to whom petitioner claims to have made its zero-rated sales.

---

[5] G.R.No. L-65773-74, April 30, 1987.

Under Section 22 (I) the NIRC of 1997, as amended, the term 'nonresident foreign corporation' applies to a non-resident foreign corporation not engaged in trade or business within the Philippines.

Thus, petitioner failed to satisfy the second requisite for entitlement to refund, namely, that the recipient of its services must be a non-resident foreign corporation not engaged in trade or business in the Philippines, hence, not entitled to the refund of its unutilized input VAT in the amount of ₱23,355,841.61, allegedly representing unutilized input VAT for the 2nd, 3rd, and 4th quarters of taxable year 2010.

Anent petitioner's alternative prayer for new trial, petitioner proposed to present documents that would allegedly overcome the Court's finding that it failed to establish that the recipient of its services, Amadeus IT Group S.A., was not doing business in the Philippines during the period subject of the instant case and that Amadeus IT Group S.A. is the same entity as Amadeus Global Travel Distribution S.A., and that the dealings of the said entity with petitioner cannot constitute as 'doing business' in the Philippines. Finally, that it was not able to present such evidence due to mistake and excusable negligence considering that such issue only arose after the issuance of the assailed Decision.

Sections 1 and 2 of Rule 37 of the Rules of Court provide:

> "Section 1. Grounds of and period for filing motion for new trial or reconsideration. -Within the period for taking an appeal, the aggrieved party may move the trial court to set aside the judgment or final order and grant a new trial for one or more of the following causes materially affecting the substantial rights of said party:
>
> (a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and

by reason of which such aggrieved party has probably been impaired in his rights; or

(b) Newly discovered evidence, which he could not, with reasonable diligence, have discovered and produced at the trial, and which if presented would probably alter the result.

xxx xxx xxx"

From the foregoing, it is clear that a party who moves for a new trial on the ground of fraud, accident, mistake or excusable negligence, must show that ordinary prudence could not have guarded against it and because of such fraud, accident, mistake or excusable negligence, the party has been impaired of his rights. Further, the "negligence" must be excusable and generally imputable to the party and must be one which ordinary diligence and prudence could not have guarded against.[6]

In the instant case, petitioner had in its custody the certifications from the *Registro Mercantil* long before the case was resolved. In other words, there was sufficient opportunity for petitioner to present such document during its presentation of its evidence in chief. Therefore, it cannot claim mistake or excusable negligence to justify its belated presentation to the Court.

In addition, the opening of the case for further reception of additional evidence is solely anchored on the ground of paramount interests of justice that rests entirely in the sound discretion of the Court.

In the case of Rene Cabarles v. Hon. Judge Bonifacio Sanz Maceda and People of the Philippines[7], it was held:

"Generally, after the parties have produced their respective direct proofs, they are allowed to offer rebutting evidence only.

---

[6] Insular Life Savings and Trust Company v. Runes, Jr., G.R. No. 152530, August 12, 2004, 436 SCRA 317, 324-325.
[7] G.R. No. 161330, February 20, 2007.

> However, the court, for good reasons, in the furtherance of justice, may allow new evidence upon their original case, and its ruling will not be disturbed in the appellate court where no abuse of discretion appears. A motion to reopen may thus properly be presented only after either or both parties had formally offered and closed their evidence, but before judgment is rendered, and even after promulgation but before finality of judgment and the only controlling guideline governing a motion to reopen is the paramount interest of justice. This remedy of reopening a case was meant to prevent a miscarriage of justice.
>
> xxx xxx xxx
>
> Although the matter of reopening a case for reception of further evidence is largely a matter of discretion on the part of the trial court judge, this judicial action must not, however, be done whimsically, capriciously and/or unreasonably. In this particular case, the prosecution was given ample opportunity to present all its witnesses but it failed to do so. The failure of the prosecution to take full advantage of the opportunities given does not change the fact that it was accorded such opportunities."

As aforestated, the Court's findings are sufficiently supported by the evidence on record. The presentation of additional evidence will not change or alter the said findings.

Lastly, let it be emphasized that litigation should come to an end at one time and if re-opening of a case will be allowed everytime a party sees an evidence which it may have overlooked, then, the pursuit of justice before the courts will be put to naught. Let it be a constant reminder that a litigation is not a "trial and error" proceeding. To allow a party to submit such evidence which could have been offered with the exercise of due diligence goes against the orderly administration of justice.

WHEREFORE, the Motion for Reconsideration/New Trial filed by petitioner Amadeus Marketing Philippines, Inc. on July 12, 2016, is hereby **DENIED**, for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice