REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

CHEVRON HOLDINGS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9021

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, , *and*
MANAHAN, *JJ.*

Promulgated:
JUN 2 9 2018 11:07 AM

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RESOLUTION

CASTAÑEDA, JR., *J*.:

For resolution are the following:

1. petitioner's **Motion for Partial Reconsideration (Re: Decision dated February 5, 2018)**, filed on February 20, 2018, without respondent's comment despite notice as per Records Verification dated April 4, 2018; and

2. respondent's **Motion for Partial Reconsideration Re: Decision dated February 5, 2018**, filed on February 21, 2018, with petitioner's **Comment (Re: Respondent's Motion for Partial Reconsideration dated February 21, 2018),** filed on April 2, 2018.

Both parties seek reconsideration of the Court's Decision (assailed Decision)[1] promulgated on February 5, 2018, the dispositive portion of which reads:

> "**WHEREFORE**, the present Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the amount of ₱20,250,968.78, representing petitioner's excess and unutilized input VAT attributable to zero-rated transactions for the four quarters of calendar year 2013.
>
> **SO ORDERED.**"[2]

Petitioner's Motion for Reconsideration

Petitioner moves for reconsideration of the assailed Decision insofar as it (i) disallowed a portion of petitioner's VAT zero-rated sales for failure to prove that its clients are non-resident foreign entities doing business abroad; (ii) disallowed a portion of petitioner's input VAT for not being supported by VAT invoices/official receipts; (iii) disallowed a portion of petitioner's input VAT for not being creditable for the four (4) quarters of CY 2013; and (iv) deducted the amount of petitioner's output VAT liability for the four (4) quarters of CY 2013 from the allowable input VAT on the ground of failure to submit VAT invoices/official receipts to prove its input VAT carry-over from the previous quarter.

According to petitioner, it is entitled to the refund of its unutilized input VAT for the four (4) quarters of CY 2013 based on the following grounds:

1. Petitioner's clients are non-resident foreign corporations doing business outside the Philippines;

2. Petitioner sufficiently proved the existence of its reports input VAT carry-over from previous year; and

[1] Docket, vol. VI, pp. 2308-2352.
[2] Docket, vol. VI, p. 2351.

3. Claims for refund of erroneously paid taxes, like any other ordinary civil case, necessitate only preponderance of evidence for its approbation.

Petitioner's Motion for Partial Reconsideration is bereft of merit.

In the assailed Decision, the Court did not consider the Service Agreements executed between petitioner and some of its foreign clients as evidence to prove that the latter are non-resident foreign entities doing business outside the country. Petitioner, however, submits that the fact that the Service Agreements show the addresses of petitioner's clients clearly proves that these entities are conducting business outside of the Philippines.

It must be noted that in the case of *Sitel Philippines Corporation (formerly Clientlogic Phils., Inc.) vs. Commissioner of Internal Revenue*[3], the Supreme Court held that that the **agreements with foreign clients are not sufficient to prove that such foreign clients are doing business outside the Philippines**, to wit:

> "In the same vein, Sitel fell short of proving that the recipients of its call services were foreign corporations doing business outside the Philippines. As correctly pointed out by the CTA Division, while Sitel s documentary evidence, which includes **Certifications issued by the Securities and Exchange Commission and Agreements between Sitel and its foreign clients**, may have established that Sitel rendered services to foreign corporations in 2004 and received payments therefor through inward remittances, said **documents failed to specifically prove that such foreign clients were doing business outside the Philippines or have a continuity of commercial dealings outside the Philippines**."

Thus, the Court correctly held that the "service agreements only indicate the names and addresses of petitioner's customers to whom it renders services but they do not establish that such customers are non-resident foreign corporations doing business outside the Philippines". *ge*

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[3] G.R. No. 201326, February 8, 2017.

Also, petitioner submits that the Court erred in dismissing the probative value of the Screenshots of the Subsidiary Governance Website. It contends that these documents are not self-serving evidence, since self-serving evidence pertains to statements made outside of the Court or extra-record evidence where the opposing party was not given a chance to cross-examine or challenge its content.

The Court does not agree. While these documents cannot be considered "self-serving evidence" in the strict legal definition, it does not mean that the Court erred in dismissing their probative value. The information contained therein were retrieved from the database set-up and maintained by petitioner's group of companies. The said documents can therefore be easily manipulated to favor petitioner in view of its affinity with the entities that maintain or keep the said database.

In fact petitioner admits that the website from which these documents were retrieved is for the exclusive use of the Chevron Group of Companies and access to it is limited to petitioner's employees and its affiliates, to wit:

> "Petitioner respectfully submits that the Subgovern Website is a secured website containing the archive database of electronic documents which is for the exclusive use of the Chevron Group of Companies of which the Petitioner is an affiliate. Access to the Subgovern Website is limited to employees of Petitioner and its affiliates for use as reference data and other local regulatory purposes."[4]

Moreover, petitioner wants the Court to take judicial notice of other cases decided by other divisions of this Court which have factually recognized that a number of its foreign clients are in fact doing business outside the country.

However, the Court cannot take judicial notice of decisions in the other divisions. It bears stressing that the Court in Division is not bound by decisions or findings by another Division. Decisions of the Court of Tax Appeals (CTA) do not constitute precedents, and do not bind other courts or the public; that is why decisions of the Court in ge

[4] Docket vol. VI, p. 2363.

Division are appealable to the CTA *En Banc*, and the decisions of the latter are appealable to the Supreme Court, which may affirm, reverse or modify its decisions as the facts and the law may warrant. Only decisions of the Supreme Court constitute binding precedents, forming part of the Philippine legal system.[5]

Furthermore, petitioner argues that it has sufficiently proved the existence of its reports input VAT carry-over from previous year. It manifests that submission of VAT invoices/receipts to prove the existence of reported input VAT carry-over from the previous year is not a requirement to prove entitlement to a claim for refund.

The Court cannot give credence to petitioner's manifestation. An applicant for a claim for tax refund or tax credit must not only prove entitlement to the claim but also compliance with all the documentary and evidentiary requirements.[6]

Pursuant to Section 110(A)(1) and (B) of the National Internal Revenue Code (NIRC) of 1997, as amended, any input VAT shall be creditable against the output VAT only if the same is evidenced by a VAT invoice or official receipt issued in accordance with Section 113 of the NIRC of 1997, as amended.

In claiming excess or unutilized input VAT from zero-rated transactions, it is the excess over the output VAT which should be refunded to the taxpayer or credited against other internal revenue taxes. Hence, it is important for the taxpayer to prove that it has enough prior year's excess input VAT credits to cover its output VAT liability for the current taxable year.

Considering that petitioner failed to present its VAT invoices or official receipts to prove the existence of its input VAT carried over from previous year in the amount of ₱141,688,758.557, said amount cannot be validly applied against its output VAT.

Although it is true that this Court is not strictly governed by technical rules of evidence, the invoicing and substantiation

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[5] *Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue*, G.R. No. 196907, March 13, 2013, citing *Commissioner of Internal Revenue vs. San Roque Power Corporation*, G.R. No. 187485, February 12, 2013.
[6] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015 citing *J.R.A. Philippines, Inc. v. CIR*, G.R. No. 171307, August 28, 2013.

requirements must, nevertheless, be followed because it is the only way to determine the veracity petitioner's claims.[7]

Lastly, there is no merit to petitioner's theory that claims for refund of erroneously paid taxes are in the nature of civil cases, therefore, only preponderance of evidence is required.

The ruling of the Supreme Court in the case of *Commissioner of Internal Revenue vs. Far East Bank & Trust Company,(Now Bank of the Philippine Islands)*[8] is instructive, to wit:

> "**Entitlement to a tax refund is for the taxpayer to prove and not for the government to disprove.**
>
> Moreover, **the fact that the petitioner failed to present any evidence or to refute the evidence presented by respondent does not *ipso facto* entitle the respondent to a tax refund. It is not the duty of the government to disprove a taxpayers claim for refund. Rather, the burden of establishing the factual basis of a claim for a refund rests on the taxpayer.**
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> And while the petitioner has the power to make an examination of the returns and to assess the correct amount of tax, his failure to exercise such powers does not create a presumption in favor of the correctness of the returns. The taxpayer must still present substantial evidence to prove his claim for refund. As we have said, there is no automatic grant of a tax refund.
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> Hence, for failing to prove its entitlement to a tax refund, respondents claim must be denied. Since tax refunds partake of the nature of tax exemptions, which are construed *strictissimi juris* against the taxpayer, evidence in support of a claim must likewise be *strictissimi* scrutinized and duly proven." (*Emphasis supplied*) *fr*

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[7] *Kepco Philippines Corporation vs. Commissioner of Internal Revenue*, G.R. No. 181858, November 24, 2010.
[8] G.R. No. 173854, March 15, 2010.

Moreover, substantial evidence has been construed to mean not necessarily preponderant proof as is required in ordinary civil action, but such kind of "relevant evidence as a reasonable man might accept as adequate in support of a conclusion."[9]

Considering the foregoing, the Court finds no merit in petitioner's Motion for Partial Reconsideration.

Respondent's Motion for Partial Reconsideration

Respondent moves for the partial reconsideration of the assailed Decision on the ground that the Court should only consider the documents submitted in the administrative level to determine whether petitioner is entitled to the claimed refund.

According to respondent, petitioner failed to submit the documents that would satisfy the mandatory requirement that the foreign clients are doing business outside the Philippines in the administrative level.

Petitioner argues that in a number of cases, this Court has ruled that, in a VAT refund case, the alleged non-submission of complete documents at the administrative level is not fatal to a claim for refund in the judicial level.

Respondent's Motion for Partial Reconsideration is likewise bereft of merit.

Where the taxpayer claims a refund before the CTA, the taxpayer is required to prove every minute aspect of the claim.[10] As a court of record[11] the CTA conducts a formal trial or trial *de novo* of the claim filed. Thus, pieces of evidence submitted in the administrative proceeding at the BIR have no evidentiary value unless presented and formally offered before the Court.

For the same reason, incomplete submission of supporting documents in the administrative level is, therefore, not fatal to a

[9] *Commissioner of Internal Revenue vs. Manila Machinery and Supply Company, et al.*, G.R. No. L-25653, February 28, 1985.
[10] *Kepco Philippines Corporation v. Commissioner of Internal Revenue,* G.R. No. 179356, December 14, 2009.
[11] Section 8, R.A. 1125, as amended.

claim for refund.[12] Judicial claims are decided based on what has been presented and formally offered by the parties during trial.

Thus, in claims for VAT refund, the non-submission of complete supporting documents in the administrative level is not fatal to the taxpayer's judicial claim.[13] The CTA is not barred from receiving, evaluating and appreciating evidence submitted before it. Once the claim for refund has been elevated to the Court, the admissibility, materiality, relevancy, probative value and weight of evidence presented therein become subject to the Rules of Court. The question of whether or not the evidence submitted by a party is sufficient to warrant the grant of a claim for refund lies within the sound discretion and judgment of the Court.[14]

In view of the foregoing, the Court finds no cogent reason to reverse or modify the assailed Decision promulgated on February 5, 2018.

WHEREFORE, premises considered, petitioner's **Motion for Partial Reconsideration (Re: Decision dated February 5, 2018)** and respondent's **Motion for Partial Reconsideration Re: Decision dated February 5, 2018** are both **DENIED** for lack of merit.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

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[12] *Commissioner of Internal Revenue v. Team Sual Corporation (formerly Mirant Sual Corporation)*, G.R. No. 205055, July 18, 2014; *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*, G.R. No. 207112, December 8, 2015.
[13] *Commissioner of Internal Revenue vs. San Roque Power Corporation*, CTA EB No. 657, April 4, 2012.
[14] *Commissioner of Internal Revenue vs. Phil. Gold Processing & Refining Corp.*, CTA EB No. 1536, January 17, 2018.