

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL
REVENUE,

Petitioner,

- versus -

AIG SHARED SERVICES
CORPORATION (PHILIPPINES)
[Formerly: CHARTIS
TECHNOLOGY AND
OPERATIONS MANAGEMENT
CORPORATION],

Respondent.

CTA EB No. 2545
(CTA Case No. 9351)

Present:

DEL ROSARIO, PJ,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID, and
FERRER-FLORES, JJ.

Promulgated:

MAR 27 2023

x-

-x

DECISION

REYES-FAJARDO, J.:

This is a Petition for Review¹ filed by the Commissioner of Internal Revenue (CIR) on December 17, 2021, praying for the partial reversal and setting aside of the Decision² of the Third Division of this Court (Court in Division) promulgated on December 2, 2020 and Resolution³ of the Court in Division promulgated on July 2, 2021. The

¹ *Petition for Review, Rollo* (CTA EB No. 2545), pp. 6-13.

² Penned by Associate Justice Ma. Belen M. Ringpis-Liban with Associate Justice Erlinda P. Uy and Associate Justice Maria Rowena Modesto-San Pedro, concurring; *Rollo* (CTA EB No. 2545), pp. 17-58.

³ Penned by Associate Justice Ma. Belen M. Ringpis-Liban with Associate Justice Erlinda P. Uy and Associate Justice Maria Rowena Modesto-San Pedro, concurring; *Rollo* (CTA EB No. 2545), pp. 60-71.

respective dispositive portions of the assailed Decision and Resolution read as follows:

Assailed Decision

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **₱33,998.77**, representing the latter's unutilized excess input VAT attributable to its zero-rated sales/receipts for the short period of December 2013.

SO ORDERED.

Assailed Resolution

WHEREFORE, in light of the foregoing considerations, petitioner's Motion for Partial Reconsideration (Re: Decision dated 02 December 2020) and respondent's Motion for Partial Reconsideration are both **DENIED** for lack of merit.

SO ORDERED.

FACTS

Petitioner CIR is vested with the power to decide tax cases, including claims for refund and/or tax credits, under the National Internal Revenue Code of 1997, as amended (NIRC, as amended).⁴

Respondent is a foreign corporation registered with the Securities and Exchange Commission (SEC) under Amended SEC License No. FM00000152 to operate as a Regional Operating Headquarters (ROHQ) in the Philippines.⁵

⁴ *Joint Stipulation of Facts and Issue [JSFI]*, Rollo (CTA Case No. 9351), Vol. I, p. 364.

⁵ *JSFI*, Rollo (CTA Case No. 9351), Vol. I, p. 363.

As found by the Court in Division,⁶ the facts follow:

On December 18, 2015, [respondent] filed its administrative application for refund/tax credit of its excess and unutilized input VAT for the Short Period December 1 to 31, 2013.

[Respondent] then filed the instant *Petition for Review* on May 16, 2016.

On October 6, 2016, [petitioner] filed his *Answer*, interposing the following special and affirmative defenses, to wit:

...

[Petitioner] transmitted the *BIR Records* of this case on January 25, 2017.

The Court initially set this case for Pre-Trial Conference on February 14, 2017, but was reset to, and held on, May 9, 2017. [Petitioner's] *Pre-Trial Brief* was filed on February 5, 2017, while [Respondent's] *Pre-Trial Brief* was submitted on February 9, 2017.

The parties submitted their *Joint Stipulation of Facts and Issue* on May 24, 2017. In the Pre-Trial Order on June 7, 2017, the Court deemed the termination of the Pre-Trial Conference.

Thereafter, trial proceeded.

During trial, [respondent] presented testimonial and documentary evidence. As part of its testimonial evidence, [respondent] offered the testimonies of the following individuals, namely: (1) Glaiza A. Baroro, [respondent's] Accountant III; (2) Atty. Geronimo Randy Recinto, [respondent's] General Counsel; (3) Edward L. Roguel, the Court-commissioned Independent Certified Public Accountant (ICPA).

The *Report* of the ICPA was submitted to the Court on August 24, 2017.

On April 23, 2018, [respondent] filed its *Formal Offer of Evidence*. [Petitioner], however, failed to file his comment thereon. In the Resolution dated November 5, 2018, the Court admitted [respondent's] Exhibits, but denied admission to the following:

1. Exhibits "P-71", "P-72", "P-73", "P-74", "P-80", "P-86", "P-90", "P-95", "P-108", "P-113", and "P-117", for failure to present the originals for comparison;

⁶ *AIG Shared Services Corporation (Philippines) [Formerly: Chartis Technology Operations Management Corporation (Philippines)] v. Commissioner of Internal Revenue (AIG v. CIR)*, CTA Case No. 9351, December 2, 2020, pp. 2-6.

on

2. Exhibits "P-75-a", "P-77-a", and "P-89", for failure to present the originals for comparison and for failure of the exhibits formally offered and identified to correspond with the documents actually marked;
3. Exhibits "P-3", "P-43-a", "P-75-d", "P-76-e", "P-78-a", "P-78-b", "P-78-c", "P-78-d", "P-84-c", "P-88-b", "P-106-c", "P-106-d", "P-106-e", "P-110", "P-111-a", "P-114-a", and "P-118", for failure of the exhibits formally offered and identified to correspond with the documents actually marked.

As a consequence, [respondent] filed on November 19, 2018 a *Motion [(a) For Reconsideration of the Resolution dated 05 November 2018; (b) To Recall Witnesses]*, praying that the Court (a) allow [respondent] to recall its witnesses, Atty. Recinto and Ms. Baroro, to explain and clarify and/or supplement their testimony, and to submit their respective Supplemental Sworn Statements at least five (5) days before the hearing date; and (b) allow [respondent] to file an Amended / Supplemental Formal Offer of Evidence. [Petitioner] failed to file his comment on [respondent's] *Motion*. In the Resolution dated February 6, 2019, the Court granted [respondent's] *Motion*; ordered [respondent] to submit the respective Supplemental Sworn Statements of the recalled witnesses, Atty. Recinto and Ms. Baroro, at least five days before the hearing date; and suspended the initial presentation evidence for [petitioner] until further notice.

[Respondent] then recalled to the witness stand Ms. Baroro and Atty. Recinto.

Thereafter, [respondent] filed its *Supplement Formal Offer of Evidence* on June 6, 2019. [Petitioner] filed his *Comment / Opposition (Petitioner's Supplemental Formal Offer of Evidence)* on June 17, 2019. In the Resolution dated August 7, 2019, the Court admitted Exhibits "P-3", "P-43-a", "P-75-d", "P-76-e", "P-78-a", "P-78-b", "P-78-c", "P-78-d", "P-84-c", "P-88-b", "P-106-c", "P-106-d", "P-106-e", "P-110", "P-111-a", "P-114-a", "P-118", "P-119-b-1", "P-120-d", and "P-120-d-1", but *still* denied the admission of Exhibits "P-71", "P-72", "P-73", "P-74", "P-75", "P-75-a", "P-76", "P-77-a", "P-80", "P-86", "P-89", "P-90", "P-108", "P-113", and "P-117", for failure to present the originals for comparison, considering that the requisites for the admission of secondary evidence were not complied with.

On August 23, 2019, [respondent] filed a *Motion for Reconsideration (Re: Resolution dated 07 August 2019)*. A *Comment / Opposition (To Petitioner's Motion for Reconsideration)* was then filed by [petitioner] on August 27, 2019. In the Resolution dated October 4, 2019, the Court denied the said *Motion for Reconsideration* for lack of merit.

For his part, [petitioner] likewise presented documentary and testimonial evidence. His lone witness is Ms. Cecille V. Uy, a Revenue Officer of the BIR.

[Petitioner] filed his *Formal Offer of Evidence* on September 6, 2019. [Respondent] then filed its *Comment (Re: Formal Offer of Evidence for the Respondent dated 06 September 2019)* on September 23, 2019.

Subsequently, the Court, in the Resolution dated October 24, 2019, admitted [petitioner's] Exhibits, and gave the parties a period of thirty (30) days from receipt thereof, within which to file their memoranda.

On November 29, 2019, [respondent] filed its *Memorandum*, while [petitioner] failed to file his memorandum.

The case was submitted for decision on December 26, 2019.

On December 2, 2020, the Court in Division rendered the assailed Decision.⁷

On January 5, 2021, respondent filed a *Motion for Partial Reconsideration (Re: Decision dated 02 December 2020)* with the Court in Division.⁸

On January 12, 2021, petitioner filed a *Motion for Partial Reconsideration* with the Court in Division.⁹

On February 3, 2021, petitioner filed a *Comment / Opposition [On Petitioner's Motion for Partial Reconsideration (Re: Decision dated 02 December 2020) dated 4 January 2021]*.¹⁰

On February 10, 2021, respondent filed a *Comment / Opposition (Re: Respondent's Motion for Partial Reconsideration dated 12 January 2021)*.¹¹

⁷ *AIG v. CIR*, CTA Case No. 9351, December 2, 2020; *Rollo* (CTA Case No. 9351), Vol. V, pp. 3148-3198.

⁸ *Motion for Partial Reconsideration (Re: Decision dated 02 December 2020)*, *Rollo* (CTA Case No. 9351), Vol. V, pp. 3190-3201.

⁹ *Motion for Partial Reconsideration*, *Rollo* (CTA Case No. 9351), Vol. V, pp. 3209-3215.

¹⁰ *Comment / Opposition [On Petitioner's "Motion for Partial Reconsideration (Re: Decision dated 02 December 2020)" dated 4 January 2021]*, Vol. V, pp. 3240-3245.

¹¹ *Comment / Opposition (Re: Respondent's Motion for Partial Reconsideration dated 12 January 2021)*, *Rollo* (CTA Case No. 9351), Vol. V, pp. 3224-3235.

On July 2, 2021, the Court in Division rendered the assailed Resolution.¹²

On December 2, 2021, petitioner filed a *Motion for Extension of Time to File Petition for Review* with the Court *En Banc*,¹³ which was granted in a Minute Resolution on December 9, 2021.¹⁴

On December 17, 2021, petitioner filed the instant *Petition for Review* with the Court *En Banc*.¹⁵

On March 14, 2022, respondent filed a *Comment / Opposition (Re: Petition for Review dated 17 December 2021)*.¹⁶

On March 28, 2022, the Court *En Banc* issued a Resolution submitting the case for decision.¹⁷

ISSUE

Whether the Court in Division erred in denying petitioner's Motion for Partial Reconsideration.

Petitioner's Arguments

Petitioner submits that any probative weight given to the testimonies of respondent's witnesses should have been limited only to those facts which are of personal knowledge. As such, the Court in Division should not have admitted the documentary evidence pertaining to their testimonies.

Petitioner also asserts that the difference between respondent's alleged total sales and the amount considered by the Court in Division to be qualified as valid zero-rated sales should have been subjected to twelve percent (12%) value-added tax (VAT).

¹² Resolution dated July, 2, 2021, *Rollo* (CTA Case No. 9351), Vol. V, pp. 3248-3259.

¹³ *Motion for Extension of Time to File Petition for Review*, *Rollo* (CTA EB Case No. 2545), pp. 1-3.

¹⁴ *Minute Resolution dated December 9, 2021*, *Rollo* (CTA EB Case No. 2545), p. 5.

¹⁵ *Petition for Review*, *Rollo* (CTA EB Case No. 2545), pp. 6-13.

¹⁶ *Comment / Opposition (Re: Petition for Review dated 17 December 2021)*, *Rollo* (CTA EB Case No. 2545), pp. 79-87.

¹⁷ Resolution dated March 28, 2022, *Rollo* (CTA EB No. 2545), pp. 90-91.

Respondent's Arguments

Respondent counters that petitioner may not object to the competence of respondent's witnesses at this late stage of the proceedings and that the Court in Division already disposed of the issue in the assailed Resolution.

Anent petitioner's stance that the Court in Division should have subjected to twelve percent (12%) VAT the difference between respondent's alleged total sales and the amount considered by the Court in Division to be qualified as valid zero-rated sales, respondent claims that the Court in Division has likewise put the issue to rest in the assailed Resolution.

RULING

The Petition for Review is denied.

At the outset, the Court *En Banc* finds no new and compelling averments raised by petitioner in its Petition for Review, the same being a rehash of its previous arguments and were sufficiently acted upon in the assailed Amended Decision and Resolution. In any event, petitioner's arguments shall be discussed to bolster the ruling of the Court in Division.

Respondent's witnesses were able to sufficiently identify and authenticate the documents alleged by petitioner to be hearsay evidence.

Petitioner argues that the testimony of Mr. Edward L. Roguel, the Court-commissioned Independent Certified Public Accountant (ICPA) and Atty. Geronimo Randy Recinto, respondent's general counsel, should not have been given credit by the Court in Division for being hearsay evidence.

The Court disagrees.

As succinctly explained by the Court in Division in its Resolution dated July 2, 2021, the duty of the ICPA is to examine and verify the

21

receipts and other documents of a refund claimant to be presented in Court in accordance with Section 2, Rule 13¹⁸ of the Revised Rules of the Court of Tax Appeals.¹⁹ As such, personal knowledge on the transactions, official receipts, sales invoices, and other documents is not required.²⁰ Moreover, the Court in Division has already conducted a thorough examination of the documents presented by respondent and scrutinized the contents thereof. Accordingly, the Court in Division made specific factual findings which became the basis of the ruling to partially grant the claim of respondent.

Even assuming that the testimony of the ICPA be excluded in evidence, commercial documents such as official receipts and sales invoices are recognized as pieces of evidence of commercial transactions and are therefore given probative value without need of identification by the person/s who prepared the said documents as provided in *Seaoil Petroleum Corporation v. Autocorp Group and Paul Y. Rodriguez*,²¹ to wit:

...

A sales invoice is a commercial document. Commercial documents or papers are those used by merchants or businessmen to

¹⁸ SEC. 2. *Duties of independent CPA.* – The independent CPA shall perform audit functions in accordance with the generally accepted accounting principles, rules and regulations, which shall include:

- (a) Examination and verification of receipts, invoices, vouchers and other long accounts;
- (b) Reproduction of, and comparison of such reproduction with, and certification that the same are faithful copies of original documents, and pre-marking of documentary exhibits consisting of voluminous documents;
- (c) Preparation of schedules or summaries containing a chronological listing of the numbers, dates and amounts covered by receipts or invoices or other relevant documents and the amount(s) of taxes paid;
- (d) Making findings as to compliance with substantiation requirements under pertinent tax laws, regulations and jurisprudence;
- (e) Submission of a formal report with certification of authenticity and veracity of findings and conclusions in the performance of the audit;
- (f) Testifying on such formal report; and
- (g) Performing such other functions as the Court may direct.

¹⁹ A.M. No. 05-11-07-CTA.

²⁰ *AIG v. CIR*, CTA Case No. 9351, July 2, 2021, p. 8.

²¹ G.R. No. 164326, October 17, 2008.

promote or facilitate trade or credit transactions. Business forms, *e.g.*, order slip, delivery charge invoice and the like, are commonly recognized in ordinary commercial transactions as valid between the parties and, at the very least, they serve as an acknowledgment that a business transaction has in fact transpired. **These documents are not mere scraps of paper bereft of probative value, but vital pieces of evidence of commercial transactions. They are written memorials of the details of the consummation of contracts.**

Petitioner argues that Atty. Geronimo Randy Recinto is not competent to prove the due execution of respondent's exhibits in relation to the Master Service Agreements and the Certificates of Non-Registration because he was neither the person who executed the said records nor the person before whom the execution was acknowledged, nor the person who was present to see and recognize the signature. Petitioner thus asserts that the testimony of Atty. Geronimo Randy Recinto is hearsay evidence.

Anent the Master Service Agreements, Atty. Recinto testified²² that, in relation to his duties and responsibilities as General Counsel, he is the custodian of all the legal and corporate documents relating to respondent's registration and operations as well as its agreements with its affiliates.²³ As correctly found by the Court in Division, Atty. Geronimo Randy Recinto authenticated the Master Service Agreements in accordance with Section 20, Rule 132 of the Revised Rules of Evidence,²⁴ to wit:

SEC. 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.

²² *Sworn Statement of Atty. Geronimo Randy Recinto in lieu of Direct Testimony, Rollo (CTA Case No. 9351), Vol. I, pp. 298-336.*
²³ *Id.* at pp. 299-300.
²⁴ A.M. No. 19-08-15-SC.

Section 22, Rule 132 of the Revised Rules of Evidence provide that a handwriting of a person may be proved by a witness who believes it to be the handwriting of such person who has seen the person write, or has seen writing purporting to be that of such person upon which the witness has acted or been charged and has thus acquired knowledge of the handwriting of such person.

In this case, Atty. Geronimo Randy Recinto authenticated the signatures in the service agreements in his testimony, as follows:

163. Q. Atty. Recinto, in the *Master Agreements* marked as Exhibits P-77, P-77-a, P-84, P-88, P-89, P-90, P-92, P-93, P-94, P-96, P-98, P-99, P-104, P-106, P-107, P-108, P-109, P-111, P-112, P-115, and P-116; the *Work Order* marked as Exhibit 90-a; the *Statements of Work* marked as Exhibits P-74, P-77-a, P-80, P-78, P-113, and P-114; the *Deed of Assignment* marked as Exhibit P-73; and the *Contract of Transfer* marked as Exhibit P-83, there are signatures above the printed names JON-PAUL JONES. Do you recognize those signatures?

A. Yes. Those are signatures of Mr. Jon-Paul Jones, the former Chief Executive of the Company.

164. Q. How do you know that those are his signatures?

A. I used to work under him so I became familiar with his signature. On several occasions I saw him sign documents with that signature.

165. Q. In the *Master Agreements* marked as Exhibits P-75, P-75-a, P-91, and P-118; and the *Statements of Work* marked as Exhibits P-71, P-76, and P-85, there are signatures above the printed name PETER ROBERTSON, do you recognize those signatures?

A. Yes. Those are signatures of Mr. Peter Robertson, the former President of the Company.

166. Q. How do you know this?

A. I also used to work under him, so I became familiar with his signature.

167. Q. In the *Master Agreement* marked as Exhibits P-82, P-91, P-101, P-71, P-72, P-80, P-90, P-92, P-93, P-94, P-95, P-104, P-106, P-111, and P-112; *Work Order* marked as Exhibit P-90-a; the *Statements of Work* marked as Exhibits P-74, P-76, P-78, P-86; *Deed of*

Assignment marked as Exhibit P-73, and the *Contract of Transfer* marked as Exhibit P-83, there are signatures above the printed name PRADEEP BHANOTHA, do you recognize those signatures?

A. Yes. Those are signatures of Mr. Pradeep Bhanatha, the present Chief Executive Officer of the Company.

168. Q. How do you know that those are his signatures?

A. I presently work under him so I became familiar with his signature. On several occasions I have also seen him sign documents with that signature.²⁵

The Court *En Banc* finds that Atty. Geronimo Randy Recinto has properly identified and authenticated the Master Service Agreements considering that he is familiar with the signatories of said documents.

On the other hand, the Certificates of Non-Registration issued by the Philippine SEC require no further authentication. It is settled that a public document is self-authenticating and requires no further authentication in order to be presented as evidence in court.²⁶

Based on the foregoing, it is clear that respondent's witnesses were able to sufficiently identify and authenticate the documents alleged by petitioner to be hearsay evidence.

There is no need to determine deficiency VAT liability.

Petitioner finally asserts that the amount disqualified from VAT zero-rating by the Court in Division should be treated as subject to twelve percent (12%) VAT and such output tax should form part of the output tax liability of respondent.

The Court *En Banc* does not agree.

As discussed by the Court in Division in its Resolution and now reiterated for emphasis, in *Commissioner of Internal Revenue v. Toledo*

²⁵ Sworn Statement of Atty. Geronimo Randy Recinto in lieu of Direct Testimony, Rollo (CTA Case No. 9351), Vol. I, pp. 333-334.

²⁶ *Republic of the Philippines v. Fe Roa Gimenez and Ignacio B. Gimenez*, G.R. No. 174673, January 11, 2016, citing *Patula v. People of the Philippines*, G.R. No. 164457, April 11, 2012.

al

Power Company,²⁷ the Supreme Court categorically ruled that since a claim for refund or tax credit under Section 112 of the NIRC, as amended, is not a claim for refund under Section 229, the correctness of the VAT return is not an issue and thus there is no need for the Court to determine whether the taxpayer is liable for deficiency VAT, thus:

[W]e allowed offsetting of taxes only because the determination of the taxpayer's liability is intertwined with the resolution of the claim for tax refund of erroneously or illegally collected taxes under Section 229 of the NIRC. A situation that is not present in the instant case.

In this case, TPC filed a claim for tax refund or credit under Section 112 of the NIRC, where the issue to be resolved is whether TPC is entitled to a refund or credit of its unutilized input VAT for the taxable year 2002. And since it is not a claim for refund under Section 229 of the NIRC, the correctness of TPCs' VAT returns is not an issue. Thus, there is no need for the court to determine whether TPC is liable for deficiency VAT.

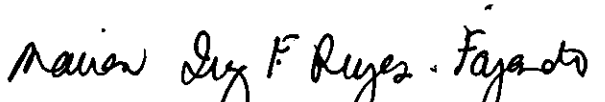
Besides, it would be unfair to allow the CIR to use a claim for refund under Section 112 of the NIRC as a means to assess a taxpayer for any deficiency VAT, especially if the period to assess had already prescribed. As we have said, the courts have no assessment powers, and therefore, cannot issue assessments against taxpayers. The courts can only review the assessments issued by the CIR, who under the law is vested with the powers to assess and collect taxes and the duty to issue tax assessments within the prescribed period.

Considering the foregoing, the Court *En Banc* similarly finds no merit in petitioner's assertion that the amount disqualified from VAT zero-rating should be treated as subject to twelve percent (12%) VAT.


WHEREFORE, in light of the foregoing considerations, the Petition for Review is **DENIED** for lack of merit. Accordingly, the assailed Decision dated December 2, 2020 and Resolution dated July 2, 2021, both rendered by the Third Division of this Court in CTA Case No. 9351 are **AFFIRMED**.

SO ORDERED.

²⁷ G.R. Nos. 196415 & 196451, December 2, 2015.

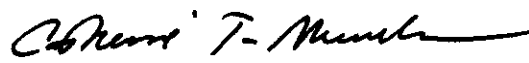

MARIAN IVY F. REYES-FAJARDO
Associate Justice

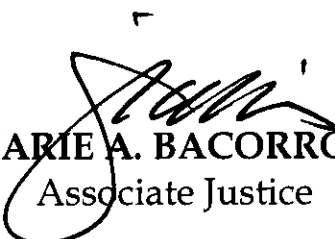
WE CONCUR:



ROMAN G. DEL ROSARIO
Presiding Justice



ERLINDA P. UY
Associate Justice

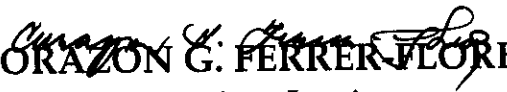

MA. BELEN M. RINGPIS-LIBAN
Associate Justice


CATHERINE T. MANAHAN
Associate Justice


JEAN MARIE A. BACORRO-VILLENA
Associate Justice


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice


LANEE S. CUI-DAVID
Associate Justice


CORAZON G. FERRER FLORES
Associate Justice

CERTIFICATION

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


ROMAN G. DEL ROSARIO
Presiding Justice