Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **January 22, 2020**, *which reads as follows:*

"G.R. No. 221690 ***(WNS Global Services Philippines, Inc. v. Commissioner of Internal Revenue).*** – This is an Appeal by *Certiorari* seeking to reverse and set aside the April 28, 2015 Decision[1] and December 1, 2015 Resolution[2] of the Court of Tax Appeals *(CTA) En Banc* in CTA EB No. 1188. In the alternative, petitioner seeks to remand this case to the CTA Special First Division for presentation of additional evidence. The CTA *En Banc* affirmed the May 2, 2013 Decision[3] and June 2, 2014 Resolution[4] of the CTA Special First Division in CTA Case No. 8219 which denied WNS Global Services Philippines, Inc.'s petition for insufficiency of evidence.

Antecedents

The case stemmed from petitioner WNS Global Services Philippines, Inc.'s claim for refund in the amount of ₱6,589,937.24 allegedly representing unutilized input value added tax *(VAT)* attributable to zero-rated sales for fiscal year ending in March 31, 2009.

Petitioner is engaged in the business of outsourced services through the medium of telephone, email and email and web-based interaction, as

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[1] *Rollo,* pp. 46-69; penned by Associate Justice Juanito C. Castañeda, Jr., concurred in by Associate Justice Lovell R. Bautista, Associate Justice Esperanza R. Fabon-Victorino (with Separate Concurring Opinion), Associate Justice Cielito N. Mindaro-Grulla, Associate Justice Amelia R. Cotangco-Manalastas and Associate Justice Ma. Belen M. Ringpis-Liban; while Presiding Justice Roman G. Del Rosario (with Dissenting Opinion), Associate Justice ErlindaP. Uy and Associate Justice Caesar A. Casanova, dissented.

[2] Id. at 71-79;penned by Associate Justice Juanito C. Castañeda, Jr., and concurred in by Associate Justice Caesar A. Casanova, Associate Justice Esperanza R. Fabon-Victorino, Associate Justice Cielito N. Mindaro-Grulla, Associate Justice Amelia R. Cotangco-Manalastas and Associate Justice Ma. Belen M. Ringpis-Liban; while Presiding Justice Roman G. Del Rosario (with Dissenting Opinion), Associate Justice Lovell R. Bautista and Associate Erlinda P. Uy, dissented.

[3] Id. at 179-197;penned by Associate Justice Esperanza R. Fabon-Victorino, concurred in by Associate Justice Erlinda P. Uy.

[4] Id. at 322-323; penned by Associate Justice Esperanza R. Fabon-Victorino, concurred in by Associate Justice Erlinda P. Uy.

well as other information technology-enabled services, including outsourced back-office services, among others.[5]

It was established that petitioner is engaged in providing a range of information technology-enabled services from the Philippines to its foreign affiliates WNS Global Services (UK) Limited *(WNS UK)* and WNS North America, Inc. *(WNS North America)*.[6]

For the second to fourth quarter of the fiscal year that ended on March 31, 2009, petitioner generated sales amounting to ₱153,924,884.72 from rendering call center services to WNS UK and WNS North America. Such sales were paid in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas. Petitioner claims that such services qualify for VAT zero-rating pursuant to Section 108(B)(2) of the Tax Code, as amended.[7]

Within the same period, petitioner allegedly incurred and paid input VAT in the total amount of ₱6,589,937.24 which remains unutilized on account of its zero-rated sales.[8]

On September 3, 2010, petitioner filed an administrative claim for refund or issuance of tax credit certificate for the said unutilized input VAT.[9]

Respondent Commissioner of Internal Revenue *(CIR)* failed to act on the said application for refund, which prompted petitioner to file a case with the CTA on January 26, 2011.[10]

After trial, the CTA Special First Division rendered a Decision denying the petition for insufficiency of evidence. It ruled that petitioner failed to sufficiently establish that the recipients of the call center services, namely, WNS UK and WNS North America, are doing business outside the Philippines. The Securities and Exchange Commission *(SEC)* Certificates of Non-Registration presented by petitioner merely show that the records of the SEC do not indicate the registration of the two companies as corporations or as partnerships. In fine, the Certifications do not prove in any way that such corporations are non-resident companies doing business outside the Philippines.[11]

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[5] Id. at 179-180.
[6] Id. at 193.
[7] Id.
[8] Id. at 181.
[9] Id.
[10] Id.
[11] Id. at 195.

Petitioner filed a Motion for Reconsideration[12] and argued that it has presented sufficient evidence to grant the claim for refund. Aside from the SEC Certificates, its witness Gaudelia Villanueva *(Villanueva)* testified that WNS UK and WNS North America are non-resident corporations, and even identified contracts which indicate that WNS UK is incorporated in the United Kingdom, while WNS North America is a company incorporated in Delaware. It likewise prayed that it be allowed to present additional evidence, in the interest of substantial justice and equity, which would include WNS UK and WNS North America's Certificate of Incorporation, Certificate of Residence issued by the applicable tax authority, and the audited financial statements.[13]

In a Resolution[14] dated September 10, 2013, the CTA Special First Division partly granted the prayer of petitioner and allowed the presentation of additional evidence. In relation to this, petitioner attached the Judicial Affidavits of Anil Patil *(Patil)* and Michael William Garber *(Garber)* in its Compliance with Manifestation and Motion for Leave to Take Deposition by Written Interrogatories.[15] The motion was granted by the CTA Special First Division, and the affidavits were subsequently deemed as their respective direct testimonies taken through deposition.[16]

On March 12, 2014, petitioner was deemed to have rested the presentation of additional evidence for failure of respondent to file written cross interrogatories despite the opportunity granted. The case was also set for Commissioner's hearing for the marking of additional evidence on March 18, 2014, at 2:00 p.m. Moreover, petitioner was directed to file its Supplemental Formal Offer of Evidence within ten (10) days from March 18, 2014, and respondent was given ten (10) days from receipt to comment thereon.[17]

Petitioner, however, failed to appear at the scheduled Commissioner's hearing.

Thereafter, for failure of petitioner to appear at the Commissioner's hearing and file its Supplemental Formal Offer of Evidence, the CTA Special First Division denied its Motion for Reconsideration for lack of merit on June 2, 2014.[18]

This prompted petitioner to file a Petition for Review[19] before the CTA *En Banc* alleging that it has duly established that WNS UK and WNS

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[12] Id. at 198-205.
[13] Id.
[14] Id. at 213-215.
[15] Id. at 216-309.
[16] Id. at 311-317, CTA Special First Division Resolution dated January 6, 2014.
[17] Id. at 319- 320, CTA Special First Division Resolution dated March 12, 2014.
[18] Id. at 322-323.
[19] Id. at 324-347.

North America are non-resident companies doing business outside the Philippines, and that its non-appearance at the Commissioner's hearing and consequent failure to file a Supplemental Formal Offer of Evidence within the time given are excusable and should not be made as basis in holding that it was no longer interested in pursuing its Motion for Reconsideration. Petitioner again invoked substantial justice for the admission of additional evidence, arguing that if properly considered, such evidence would duly establish that the recipient of its services are doing business outside the Philippines. It further admitted that on June 16 and 23, 2014, it received the authenticated copies of the documents annexed to the Judicial Affidavits of Patil and Garber; thus, it belatedly filed a Manifestation and Motion to Admit Supplemental Offer of Evidence and/or Proffer of Evidence on June 25, 2014.

Nonetheless, the CTA *En Banc* denied the petition for lack of merit and affirmed the decision of the CTA Special First Division.

Petitioner's Motion for Reconsideration was likewise denied by the CTA *En Banc* for lack of merit.

ISSUES

The grounds[20] raised by petitioner boil down to two (2) principal issues, to wit:

I.

WHETHER PETITIONER HAS PRESENTED SUFFICIENT EVIDENCE TO PROVE ITS CLAIM FOR REFUND; and

II.

WHETHER IT WAS DEPRIVED OF DUE PROCESS WHEN THE CTA SPECIAL FIRST DIVISION DENIED ITS MOTION FOR RECONSIDERATION ON THE GROUND THAT IT APPEARS NO LONGER INTERESTED IN PURSUING THE SAME WHEN IT FAILED TO APPEAR DURING THE SCHEDULED COMMISSIONER'S HEARING AND FILE ITS SUPPLEMENTAL FORMAL OFFER OF EVIDENCE.

[20] Id. at 21.

The Court's Ruling

The petition has no merit.

Anent the first issue, it must be emphasized that the same is a factual matter. Suffice it to state that the issue on whether petitioner has proven with substantial evidence that it has complied with the requirements for supply of services to be VAT zero-rated under Section 108(B)(2) is one of fact. The determination of which is best left to the CTA, being a highly specialized body that reviews tax cases.

It bears stressing that under Rule 45 of the 1997 Rules of Civil Procedure, as amended, jurisdiction over cases brought to this Court is limited to reviewing and correcting errors of law committed by the appellate court[21] and does not extend to questions of fact.[22] We reiterate that the Supreme Court is not a trier of facts.[23] Thus, it is not our function to review factual issues and examine, evaluate or weigh the probative value the evidence presented by the parties.[24] We are not bound to analyze and weigh all over again the evidence already considered in the proceedings below, especially because in the CTA, they conduct trial *de novo*. The Court will not lightly set aside the factual determination of the CTA which, by the very nature of its function of being dedicated exclusively to the resolution of tax cases, has accordingly developed an expertise on the subject, unless there has been a showing that it committed abuse or improvident exercise of authority or has committed gross error in the process.[25]

Be that as it may, in this case, We find that petitioner failed to show that the CTA grossly committed error in the apprehension of the evidence presented. The CTA has reasonably weighed the probative value of the SEC Certificates of Non-Registration, the testimony of Villanueva, and the Agreements (service contracts) with WNS UK and WNS North America in relation with the requirement to prove that the recipient of the service is a person engaged in business conducted outside the Philippines or to a non-resident person not engaged in business who is outside the Philippines when the services were performed.

In *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*,[26] the Court clarified that an essential condition to qualify for zero-rating under Section 108(B)(2) is that

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[21] *Manotok Realty, Inc. v. CLT Realty Development Corporation*, 512 Phil. 679, 706 (2005).
[22] *Commissioner of Internal Revenue v. Apo Cement Corporation*, 805 Phil. 441, 463 (2017).
[23] *Republic of the Philippines v. Court of Tax Appeals*, 418 Phil. 758, 766 (2001).
[24] Supra note 21.
[25] See *Commissioner of Internal Revenue v. GJM Philippines Manufacturing, Inc.*, 781 Phil. 816, 825 (2016).
[26] 541 Phil. 119 (2007).

the service-recipient must be doing business outside the Philippines.[27] Likewise, following the pronouncement in *Burmeister*, the Court in *Accenture, Inc. v. Commissioner of Internal Revenue*[28] emphasized that a taxpayer claiming for a VAT refund or credit under Section 108(B) has the burden to prove not only that the recipient of the service is a foreign corporation, but also that the said corporation is doing business outside the Philippines.

The SEC Certificates[29] merely show that WNS UK and WNS North America are not registered companies in the Philippines. A scrutiny of the Agreements with WNS UK[30] and WNS North America,[31] which served as their service contracts, also does not indicate whether the said companies were doing business outside the Philippines. Although WNS North America's clients (Avon USA[32] and Sabre Inc.[33]) were mentioned in the Agreements, there was no indication that these clients or the businesses were located outside the Philippines. The only clear fact in these service contracts is that WNS UK and WNS North America were incorporated and had their place of registered office outside the Philippines. In short, the said documents only prove the fact that the clients of petitioner were foreign entities. The fact remains that these pieces of evidence do not prove such entities to be non-resident corporations doing business outside the Philippines, which is one of the requisites to be entitled to VAT zero-rating pursuant to the Tax Code. Petitioner fell short of proving that the recipients of its call services were foreign corporations doing business outside the Philippines.

As to the second issue, petitioner was not denied due process when the CTA Special First Division ruled against its Motion for Reconsideration.

Petitioner insists that their counsel was not timely notified of the scheduled Commissioner's hearing on March 18, 2014 at 2:00 p.m. due to the belated service of the Resolution dated March 12, 2014 which was received by the counsel's office only on March 18, 2014 at 1:17 p.m. It was physically impossible for its counsel to have complied with the directive or to timely proceed to the CTA, located in Quezon City, from the counsel's office at Makati City. It argues that the CTA Special First Division could have rescheduled the hearing *motu proprio* as it is easily discernible from the records, particularly on the return card, the time and date of service of the aforesaid Resolution; or the court *a quo* should have first declared petitioner to have waived its right to present evidence and/or that the Motion

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[27] *Sitel Philippines Corporation v. Commissioner of Internal Revenue*, 805 Phil. 464, 485 (2017).
[28] 690 Phil. 679 (2012).
[29] *Rollo*, pp. 206-207.
[30] Id. at 123-132.
[31] Id. at 133-163.
[32] Id. at 134.
[33] Id. at 144.

for Reconsideration deemed submitted for resolution without additional evidence. In countering the CTA Special First Division's position that the documentary evidence could not have been produced on the scheduled hearing even if it was timely notified, petitioner heavily relies on the dissent of Presiding Justice Roman Del Rosario *(PJ Del Rosario)* that "there is a whale of difference between a party litigant's right to present evidence and a party litigant's inability to present evidence on a specific day in court. While both involve the precept of due process, the latter instance revolves on the reasonableness of the non-availability of the intended evidence. The fact that petitioner's evidence was not available on the scheduled Commissioner's hearing on March 18, 2014 did not in any way cure the infirmity that attended the service of the Resolution dated March 12, 2014."[34]

We do not agree.

It has to be emphasized that petitioner had already rested its case, which is why the CTA Special First Division made a finding of insufficiency of evidence based on those presented and offered by petitioner itself. It is only for considerations of substantial justice that upon moving for a reconsideration, the CTA swept aside technicalities and gave petitioner a chance to present additional evidence. These documents should have been presented by petitioner during trial since it has the bounden duty to prove every aspect of its claim for refund. The CTA *En Banc* is therefore correct in saying that the "[r]eopening of the case for purposes of admitting additional evidence is not merely rooted in the interest of substantial justice but also rests on the sound discretion of the [c]ourt."[35]

While We agree with PJ Del Rosario that "there is a whale of difference between a party litigant's right to present evidence and a party litigant's inability to present evidence on a specific day in court,"[36] We, however, do not see any violation of due process in this case.

First and foremost, the CTA Special First Division was lenient enough to allow the reopening of the case to give petitioner an opportunity to fully prove its entitlement to a refund.

Second, it was petitioner who attached the supposed additional documents with its Compliance with Manifestation and Motion for Leave to Take Deposition by Written Interrogatories[37] which gives the court an impression that such documents were ready for Formal Offer of Evidence

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[34] Id. at 24-26, Petition for Review.
[35] Id. at 59, CTA *En Banc* Decision.
[36] Id. at 78, Dissenting Opinion, CTA *En Banc* Resolution dated December 1, 2015.
[37] Id. at 303-308.

once the motion was approved. Even then, petitioner had ample time to get authenticated copies of the said documents from the time they were presented by petitioner, when the aforesaid motion was filed sometime in October 2013, until the setting of Commissioner's hearing on March 18, 2014. The Concurring Opinion of Associate Justice Esperanza R. Fabon-Victorino put things in a clearer perspective when she stated that:

> It is not accurate to state that petitioner was not given ample opportunity to present further evidence to sufficiently establish that the recipient of the call center services, namely, WNS UK and WNS North America, are non-resident companies doing business outside the Philippines for the subject transactions to qualify for zero-rating under Section 108(B) of the Tax Code.
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> In fact, the Court in Division has been very lenient and generous to petitioner in terms of time and opportunity to prove its case.
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> In its Resolution dated September 10, 2013, the Court in Division allowed the reopening of the case for petitioner to adduce additional documents to prove that the recipients of its call center services are non-resident companies doing business outside the Philippines. This was albeit indications that the alleged additional evidence were neither newly discovered nor unavailable during the trial of the case.
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> The Court in Division bent further when petitioner, during the re-opening of the case, presented documents *sans* authentication by a competent witness in open court. To cure the defect, the Court in Division again granted petitioner another chance by allowing it to take depositions through written interrogatories of its witnesses Anil Patil and Michael Garber both of whom reside abroad.
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> Finally on March 12, 2014, the case was set for Commissioner's hearing for the marking of petitioner's additional evidence. However, petitioner failed to appear. Worse, petitioner failed to take any action to inform the Court of the reason for its counsel's non-appearance during the scheduled proceeding. Three (3) months thereafter, the Court denied petitioner's Motion for Reconsideration in the similarly assailed Resolution of June 2, 2014 concluding that petitioner had lost interest in pursuing the incident.
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> And now petitioner has the temerity to cry foul and faults the Court in Division for alleged belated service of notice of Commissioner's Hearing which allegedly prevented its counsel from attending the scheduled marking of exhibits.
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> But there are cracks in the curtain through which the truth reveals itself.
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> Petitioner admits in paragraph 21 of the instant Petition for Review that it received the originals/authenticated copies of the documents annexed to the Judicial Affidavits of Messrs. Patil and Garber only on June 16 & 23, 2014. The copies of these original documents were the

> additional evidence presented by petitioner during the reopening of the case, the originals of which were supposed to be marked during the Commissioner's hearing set on March 18, 2014.
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> In fine, even if the notice was received days ahead of the scheduled Commissioner's Hearing on March 18, 2014, it was impossible for petitioner to produce the originals of the additional documents for comparison before the Commissioner for it was made available only on June 16 & 23, 2014, or about three (3) months after the scheduled Commissioner's Hearing. Petitioner kept the Court in the dark about this fact and continued to keep mum for obvious reason.
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> What is revolting is petitioner's attempt to mislead the Court *En Banc* by claiming injustice through violation of due process because it was allegedly served notice on the same day the Commissioner's hearing was set even as it reiterates in its Memorandum dated November 21, 2014 that it received the originals of its additional documents only on June 16 & 23, 2014. This should not be allowed lest a repeat in utter disregard of the rules and disrespect to the Court, not only by petitioner but by other litigants, is in the offing.
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> Moreover, it was erroneous if not too presumptuous on the part of petitioner to consider that the Court would *motu proprio* issue a resetting of the scheduled proceeding absent any information about the alleged belated receipt of the notice. With the advent of the latest technology, the Court is just a sigh away.
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> While procedural rules may be relaxed in the interest of justice, it is well-settled that these are tools designed to facilitate the adjudication of cases. The relaxation of procedural rules in the interest of justice was never intended to be a license for erring litigants to violate the rules with impunity. Liberality in the interpretation and application of the rules can be invoked only in proper cases and under justifiable causes and circumstances. Such twin requirements are certainly warranted in the case at bar.[38] (citation omitted)

Then again, petitioner could have filed a motion or manifestation of its failure to attend the said Commissioner's hearing and/or the difficulty of securing authenticated copies of the needed documents. Petitioner had the duty to inform the trial court of its difficulty in securing the authenticated copies for presentation to the court and/or the impossibility of attending the Commissioner's hearing without it being their fault, and not the other way around. But petitioner kept silent in spite of every available relief it could have done to protect its interests.

The non-appearance at the Commissioner's hearing set on March 18, 2014 is just one of the indications of petitioner's laxity in handling its claim for refund. But more telling is petitioner's lack of action after the supposed belated service of the notice of Commissioner's hearing for almost three (3)

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[38] Id. at 66-68.

long months. Considering that this is already an extended process, through the leniency of the CTA Special First Division's grant of reopening of the case, petitioner's passive reaction on the loss of opportunity when it could not attend the scheduled Commissioner's hearing due to the belated service of notice is very unusual.

Again, We agree that "it was erroneous, if not too presumptuous on the part of petitioner, to consider that the Court would *motu proprio* issue a resetting of the scheduled proceeding absent any information about the alleged belated receipt of the notice. With the advent of the latest technology, the Court is just a sigh away."[39] Petitioner was, obviously, remiss in its duty and slept on the second opportunity afforded by the trial court.

As found by the CTA *En Banc*, petitioner has only itself to blame for its failure to present further evidence.[40] We do not see any substantive nor procedural right violated in this case. Petitioner was given its constitutionally guaranteed right to due process. The presentation of additional evidence after judgment has been rendered is not a constitutional right of the taxpayer but merely a privilege accorded by the trial court in the interest of substantial justice, especially when petitioner was given its constitutional due process during the trial proceedings, and more so, when the said additional evidence were not newly discovered.

We find that each piece of evidence presented in this case was carefully weighed and scrutinized by the CTA. It has been repeatedly ruled that "tax refunds or credits – just like tax exemptions – are strictly construed against taxpayers, the latter [having] the burden to prove strict compliance with the conditions for the grant of the tax refund or credit."[41] Thus, for failure of petitioner to prove its claim, We do not see any reason to reverse the decision of the CTA.

WHEREFORE, premises considered, the instant petition is **DENIED**. Accordingly, the April 28, 2015 Decision and the December 1, 2015 Resolution of the Court of Tax Appeals *En Banc* in CTA EB No. 1188 are **AFFIRMED**.

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[39] Id. at 68.
[40] Id. at 75, CTA *En Banc* Resolution dated December 1, 2015.
[41] *Applied Food Ingredients Company, Inc. v. Commissioner of Internal Revenue*, 720 Phil. 782, 789 (2013).

SO ORDERED."

Very truly yours,

MisaelDCBatt
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Division Clerk of Court
2/13/20

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