REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

DEUTSCHE KNOWLEDGE SERVICES, PTE. LTD., Petitioner,	**CTA Case No. 7921**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson, and* **BACORRO-VILLENA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JAN 14 2021 4:17 PM

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RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution are the following:

1. Petitioner Deutsche Knowledge Services, Pte. Ltd.'s (**petitioner's**) "Motion for Reconsideration (Re: Decision dated July 23, 2020)" (**MR**) filed on 20 August 2020, without respondent Commissioner of Internal Revenue's (**respondent's**) comment; and,

2. Respondent's "Motion for Reconsideration" filed *via* registered mail on 24 August 2020 and received by the Court on 02 September 2020, with petitioner's "Comment (Re: Motion for Reconsideration dated August 24, 2020)".

Both seek the modification of the Decision promulgated on 23 July 2020 (**assailed Decision**), the dispositive portion of which reads:

> ...
>
> **WHEREFORE**, premises considered, the instant Petition for Review filed by Deutsche Knowledge Services, Pte. Ltd. is **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is **ORDERED TO REFUND or ISSUE A TAX CREDIT CERTIFICATE** to petitioner in the amount of **NINE HUNDRED NINETY THOUSAND SEVEN HUNDRED THIRTY PESOS AND FIFTY-SIX CENTAVOS** (₱990,730.56), representing its excess and unutilized input VAT attributable to zero-rated sales for the first quarter of CY 2007.
>
> **SO ORDERED.**
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> ...

In its MR, petitioner argues that one of the recipients of its services, Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office (**DBA-APHO**), actually functions as an operating headquarters for Deutsche Bank AG's subsidiaries and branch offices in the Asia Pacific Region. Petitioner thus imputes error on the part of the Court in not giving any credence to the foreign business registration printouts retrieved from AMINET database for being self-serving.

Petitioner further contends that the IntraGroup Service Agreements (**IGSA**) with petitioner's foreign clients and the foreign business registration documents retrieved from AMINET database establishes the locations and addresses of petitioner's clients. Hence, taking the same together with the Securities and Exchange Commission (**SEC**) negative certifications, the foregoing would show that petitioner's clients are branches, subsidiaries or segments of Deutsche Bank Group of Companies which have business domiciles and activities outside of the Philippines.

Lastly, petitioner maintains that its input tax in the total amount of ₱12,549,446.30 for the first (1^{st}) quarter of calendar year (**CY**) 2007 is properly substantiated and attributable to its zero-rated sales.

On the other hand, respondent avers that the Court erred in giving credence to the testimony of Maricel Tio-Balagtas (**Tio-Balagtas**) in relation to the service agreement and returns identified in her affidavit (which she admitted she was not a party to).

Respondent adds that this Court likewise erred in finding that petitioner's recipient of services are foreign companies doing business outside the Philippines.

Respondent also faults the Court for recognizing the validity of the sales invoices with erasures with alleged counter-signature/s and in declaring that petitioner generated valid zero-rated sales in the total amount of ₱86,602,634.90.

Finally, respondent claims that petitioner should be liable for output tax for the sales that did not qualify as zero-rated.

In its Comment to respondent's MR, petitioner argues that the testimony of the custodian of records kept in the regular course of business is excepted from the rule on hearsay evidence. As to the sales invoices with erasures and countersignatures, the same are supported by notarized documents referring to such corrections. Finally, petitioner maintains that it was able to prove that its recipient of services are foreign companies doing business outside the Philippines and thus it is entitled to the refund of the amount claimed.

After going over the respective allegations of the parties, We resolve to deny both MRs for lack of merit.

PETITIONER'S MOTION FOR RECONSIDERATION

In a plethora of cases involving the same parties[1], this Court consistently ruled that it cannot give credence or probative value to the foreign business registration documents and Company Profile Fact Sheet print-outs retrieved from the AMINET database, a database

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[1] *Deutsche Knowledge Services Pte., Ltd. v. Commissioner of Internal Revenue*, CTA Case No. 9154, Resolution dated 14 February 2020; *Deutsche Knowledge Services Pte., Ltd. v. Commissioner of Internal Revenue*, CTA EB Nos. 1917 and 1919, 05 February 2020; *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte., Ltd.*, CTA EB Nos. 1815 and 1816, 03 January 2020; *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte., Ltd.*, CTA EB Nos. 1742 and 1748, 04 November 2019; *Deutsche Knowledge Services Pte., Ltd. v. Commissioner of Internal Revenue*, CTA Case Nos. 8720, 8736, 8754 and 8767, 14 October 2019; *Deutsche Knowledge Services Pte., Ltd. v. Commissioner of Internal Revenue*, CTA Case No. 9496, 12 February 2019; *Deutsche Knowledge Services Pte., Ltd. v. Commissioner of Internal Revenue*, CTA EB Nos. 1374 and 1383, 15 December 2017; and, *Deutsche Knowledge Services Pte., Ltd. v. Commissioner of Internal Revenue*, CTA Case Nos. 8623, 8656, 8661 and 8685, 04 August 2017.

maintained by petitioner's Head Office in Germany, as these print-outs are self-serving and lack credibility; they, too, can be easily manipulated to favor petitioner in view of its affinity with the entity that maintains or keeps the said database.

As the Court previously noted, since DBA-APHO is alleged to be similarly registered in Singapore, like Deutsche Bank Aktiengesellschaft, Filiale Singapur and Deutsche Asia Pacific Holdings Pte. Ltd., the Court could not see why it failed to produce similar registration documents for the former when it was able to do so for the latter. Since petitioner failed to present such required registration documents, DBA-APHO could not be considered as doing business outside the Philippines.

Anent its argument that it was able to substantiate the full amount of its claim, petitioner simply failed to invalidate the Court's finding that some of its input tax from its purchases of goods (other than capital goods) and purchases of services failed to comply with substantiation requirements under Sections 110(A)[2] and 113(A) and (B),[3]

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2 SEC. 110. *Tax Credits.* -
(A) *Creditable Input Tax.* -
(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:
(a) Purchase or importation of goods:
(i) For sale; or
(ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or
(iii) For use as supplies in the course of business; or
(iv) For use as materials supplied in the sale of service; or
(v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code.
(b) Purchase of services on which a value-added tax has been actually paid.
...

3 SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* -
(A) *Invoicing Requirements.* - A VAT-registered person shall issue:
(1) A VAT invoice for every sale, barter or exchange of goods or properties; and
(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.

(B) *Information Contained in the VAT Invoice or VAT Official Receipt.* - The following information shall be indicated in the VAT invoice or VAT official receipt:
(1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);
(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax. *Provided, That:*
(a) The amount of the tax shall be known as a separate item in the invoice or receipt;
(b) If the sale is exempt from value-added tax, the term "VAT-exempt sale" shall be written or printed prominently on the invoice or receipt;
(c) If the sale is subject to zero percent (0%) value-added tax, the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt.

237[4] and 238[5] of the National Internal Revenue Code (NIRC) of 1997, as amended, in relation to Sections 4.110-2[6], 4.110-8(a)[7], and 4.113-1[8] of Revenue Regulations (RR) No. 16-05, as amended.

(d) If the sale involved goods, properties or services some of which are subject to and some of which are VAT zero-rated or Vat exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be known on the invoice or receipt: *Provided*, That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

(3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and

(4) In the case of sales in the amount of One thousand pesos (P1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and Taxpayer Identification Number (TIN) of the purchaser, customer or client.

...

4 SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.* - All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: Provided, however, That in the case of sales, receipts or transfers in the amount of One hundred pesos (P100.00) or more, or regardless of the amount, where the sale or transfer is made by a person liable to value-added tax to another person also liable to value-added tax; or where the receipt is issued to cover payment made as rentals, commissions, compensations or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer or client: *Provided, further*, That where the purchaser is a VAT-registered person, in addition to the information herein required, the invoice or receipt shall further show the Taxpayer Identification Number (TIN) of the purchaser.

The original of each receipt or invoice shall be issued to the purchaser, customer or client at the time the transaction is effected, who, if engaged in business or in the exercise of profession, shall keep and preserve the same in his place of business for a period of three (3) years from the close of the taxable year in which such invoice or receipt was issued, while the duplicate shall be kept and preserved by the issuer, also in his place of business, for a like period.

The Commissioner may, in meritorious cases, exempt any person subject to internal revenue tax from compliance with the provisions of this Section.

5 SEC. 238. *Printing of Receipts or Sales or Commercial Invoices.* - All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same.

No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner.

All persons who print receipt or sales or commercial invoices shall maintain a logbook/register of taxpayers who availed of their printing services. The logbook/register shall contain the following information:

(1) Names, Taxpayer Identification Numbers of the persons or entities for whom the receipts or sales or commercial invoices were printed; and,

(2) Number of booklets, number of sets per booklet, number of copies per set and the serial numbers of the receipts or invoices in each booklet.

6 SEC. 4.110-2. *Persons Who Can Avail of the Input Tax Credit.* - The input tax credit on importation of goods or local purchases of goods, properties or services by a VAT-registered person shall be creditable:

(a) To the importer upon payment of VAT prior to the release of goods from customs custody;

(b) To the purchaser of the domestic goods or properties upon consummation of the sale; or

As regards, petitioner's insistence that the court-commissioned Independent Certified Public Accountant (**ICPA**) found that petitioner properly substantiated input tax attributable to its zero-rated sales in the amount of at least ₱2,815,534.70, this Court has time and again ruled that:

(c) To the purchaser of services or the lessee or licensee upon payment of the compensation, rental, royalty or fee.

7 **SEC. 4.110-8.** *Substantiation of Input Tax Credits.* -

(a) Input taxes for the importation of goods or the domestic purchase of goods, properties or services is made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT, must be substantiated and supported by the following documents, and must be reported in the information returns required to be submitted to the Bureau:

(1) For the importation of goods - import entry or other equivalent document showing actual payment of VAT on the imported goods.

(2) For the domestic purchase of goods and properties – invoice showing the information required under Secs. 113 and 237 of the Tax Code.

(3) For the purchase of real property – public instrument i.e., deed of absolute sale, deed of conditional sale, contract/agreement to sell, etc., together with VAT invoice issued by the seller.

(4) For the purchase of services – official receipt showing the information required under Secs. 113 and 237 of the Tax Code.

A cash register machine tape issued to a registered buyer shall constitute valid proof of substantiation of tax credit only if it shows the information required under Secs. 113 and 237 of the Tax Code.

8 **SEC. 4.113-1.** *Invoicing Requirements.* -

(A) A VAT-registered person shall issue: -

(1) A VAT invoice for every sale, barter or exchange of goods or properties; and

(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.

Only VAT-registered persons are required to print their TIN followed by the word "VAT" in their invoice or official receipts. Said documents shall be considered as a "VAT Invoice" or VAT official receipt. All purchases covered by invoices/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.

VAT invoice /official receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.

(B) Information contained in VAT invoice or VAT official receipt. – The following information shall be indicated in VAT invoice or VAT official receipt:

(1) A statement that the seller is a VAT-registered person, followed by his TIN;

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; *Provided*, That:

> (a) The amount of tax shall be shown as a separate item in the invoice or receipt;
>
> (b) If the sale is exempt from VAT, the term "VAT-exempt sale" shall be written or printed prominently on the invoice or receipt;
>
> (c) If the sale is subject to zero percent (0%) VAT, the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt;
>
> (d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the VAT on each portion of the sale shall be shown on the invoice or receipt. The seller has the option to issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

(3) In the case of sales in the amount of one thousand pesos (P1,000.00) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and TIN of the purchaser, customer or client, shall be indicated in addition to the information required in (1) and (2) of this Section.

...

The Court is not bound by the findings of the ICPA. Moreover, the ICPA Report is but a tool or guide to aid the Court in the resolution of the case. The determination of the merits or probative value of such report belongs to the Court. **Thus, Next Mobile cannot insist that the ICPA's findings are sufficient to support its claims. It is essential for Next Mobile to present documents to support its allegations in the Petition for Review because the Court cannot solely rely on the ICPA report.**

The ICPA is commissioned merely to assist the Court in the determination of the merit of taxpayer's protest. **The Court may (or may not) adopt totally or partially the ICPA's report depending on its own appreciation of the documents upon which the ICPA report is based. In other words, the Court will still examine and verify the documents audited or examined by the ICPA. The Court, in its sound discretion, may render judgment without considering the ICPA report. The ICPA report is only persuasive in nature and not conclusive upon the Court.** Section 3, Rule 13 of the Revised Rules of the CTA (RRCTA), relevantly provides, thus:

> SEC. 3. Findings of independent CPA. — <u>The submission by the independent CPA of pre-marked documentary exhibits shall be subject to verification and comparison with the original documents</u>, the availability of which shall be the primary responsibility of the party possessing such documents and, secondarily, by the independent CPA. **The findings and conclusions of the independent CPA** may be challenged by the parties and **shall not be conclusive upon the Court, which may, in whole or in part, adopt such findings and conclusions subject to verification.**[9]

...

Accordingly, the Court finds no merit in petitioner's arguments as to warrant the grant of its MR.

RESPONDENT'S MOTION FOR RECONSIDERATION

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[9] *Commissioner of Internal Revenue v. Next Mobile, Inc. (Formerly Nextel Communications Phils., Inc.)*, CTA EB Nos. 1864 & 1865, 28 February 2020; Emphasis supplied and underscoring in the original text.

Respondent insists that since Tio-Balagtas admitted that she is not a party to the preparation of the tax returns and service agreements, her claim in its authenticity should not be given weight.

We do not agree.

As Tio-Balagtas testified, she is the custodian of petitioner's corporate and financial documents, including its tax returns and financial statements[10]. As such, she has personal knowledge as to the existence of the said documents in the records of petitioner. Moreover, as previously ruled in the assailed Decision, proceedings in this Court shall not be governed strictly by technical rules of evidence.[11]

In any case, respondent did not timely interpose his objection as to the supposed lack of personal knowledge on the part of Tio-Balagtas when she was presented as witness and the offer of her testimony was made.

Objection to oral evidence must be raised at the earliest possible time, that is after the objectionable question is asked or after the answer is given if the objectionable issue becomes apparent only after the answer was given. In case of documentary evidence, offer is made after all the witnesses of the party making the offer have testified, specifying the purpose for which the evidence is being offered. It is only at this time, and not at any other, that objection to the documentary evidence may be made.[12]

As to respondent's claim that the Court should not have relaxed the technical rules of evidence by giving weight to the Certificates of Non-Registration of some of the recipients of petitioner's services, particularly, Deutsche Bank Aktiengesellschaft, Deutsche Bank Aktiengesellschaft Filiale Singapur and Deutsche Bank Aktiengesellschaft Hong Kong Branch, given the discrepancies in its names, suffice it to state that petitioner has sufficiently explained the

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10 Question and Answer No. 4, *Sworn Statement of Maricel Tio-Balagtas to the Questions Propounded by Atty. Ian Jerrick B. Inandan*, Exhibit "P-19", Division Docket, Volume III, pp. 704-705.

11 *Filinvest Development Corporation v. Commissioner of Internal Revenue and Court of Tax Appeals*, G.R. No. 146941, 09 August 2007.

12 *Ma. Melissa Villanueva Magsino v. Rolando N. Magsino*, G.R. No. 205333, 18 February 2019.

reason for such disparities, which respondent failed to disprove as it chose not to present any evidence at all.

Respondent finally argues that the amount disqualified from Value-Added Tax (**VAT**) zero-rating should be treated as subject to 12% VAT and such output tax should form part of the output tax liability of petitioner against which the input tax attributable to valid zero-rated sales should be applied.

We also do not agree.

As ruled by the Supreme Court in *Commissioner of Internal Revenue v. Euro-Philippines Airline Services, Inc.*[13], failure to comply with invoicing requirements as mandated by law does not deem the transaction subject to 12% VAT.

Moreover, in *Commissioner of Internal Revenue v. Toledo Power Company*[14], the Supreme Court categorically ruled that since a claim for tax refund or credit under Section 112 of the NIRC of 1997, as amended, is not a claim for refund under Section 229, the correctness of VAT returns is not an issue and thus there is no need for the court to determine whether the taxpayer is liable for deficiency VAT, to wit:

> ...
>
> But while TPC's sales of electricity to CEBECO, ACMDC, and AFC are not zero-rated, we cannot hold it liable for deficiency VAT by imposing 10% VAT on said sales of electricity as what the CIR wants us to do.
>
> As a rule, taxes cannot be subject to compensation because the government and the taxpayer are not creditors and debtors of each other. However, we are aware that in several cases, we have allowed the determination of a taxpayer's liability in a refund case, thereby allowing the offsetting of taxes.
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> In *Commissioner of Internal Revenue v. Court of Tax Appeals*, we allowed offsetting of taxes in a tax refund case because there was an existing deficiency income and business tax assessment against the taxpayer. We said that "[t]o award such refund despite the existence of that deficiency assessment is an absurdity and a polarity in conceptual effects" and that "to grant the refund without

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13 G.R. No. 222436, 23 July 2018.

14 G.R. Nos. 196415 and 196451, 02 December 2015; Citations omitted and emphasis supplied.

determination of the proper assessment and the tax due would inevitably result in multiplicity of proceedings or suits."

Similarly, in *South African Airways v. Commissioner of Internal Revenue*, we permitted offsetting of taxes because the correctness of the return filed by the taxpayer was put in issue.

In the recent case of *SMI-ED Philippines Technology, Inc. v. Commissioner of Internal Revenue*, we also allowed offsetting because there was a need for the court to determine if a taxpayer claiming refund of erroneously paid taxes is more properly liable for taxes other than that paid. We explained that the determination of the proper category of tax that should have been paid is not an assessment but is an incidental issue that must be resolved in order to determine whether there should be a refund. However, we clarified that while offsetting may be allowed, the BIR can no longer assess the taxpayer for deficiency taxes in excess of the amount claimed for refund if prescription has already set in.

But in all these cases, we 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 TPC s 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.

...

With the foregoing disquisition, the Court similarly finds no merit in respondent's MR.

WHEREFORE, premises considered, respondent Deutsche Knowledge Services, Pte. Ltd.'s Motion for Reconsideration (Re: Decision dated July 23, 2020)", filed on 20 August 2020, and petitioner Commissioner of Internal Revenue's Motion for Reconsideration, filed *via* registered mail on 24 August 2020 and received by the Court on 02 September 2020, are both **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

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