REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner, -versus- DEUTSCHE KNOWLEDGE SERVICES, PTE., LTD., Respondent.	CTA EB No. 1297 (CTA Case No. 8165)
x - - - - - - - - - - - - - - - - x DEUTSCHE KNOWLEDGE SERVICES, PTE., LTD., Petitioner, -versus- COMMISSIONER OF INTERNAL REVENUE, Respondent.	CTA EB No. 1302 (CTA Case No. 8165) Present: DEL ROSARIO, *PJ*; CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ*. Promulgated: APR 10 2018 3:35 p.m.

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RESOLUTION

Fabon-Victorino, J.:

On May 18, 2017, the Court rendered a Decision, disposing the case in the following fashion:

> **WHEREFORE**, the *Petitions for Review* filed on April 28, 2015 and May 15, 2015 by the Commissioner of Internal Revenue and Deutsche Knowledge Services Pte. Ltd., respectively, are hereby **DENIED**, for lack of merit. Accordingly, the assailed Amended Decision and Resolution dated August 8, 2013 and April 10, 2015, respectively, are **AFFIRMED**.
>
> **SO ORDERED.**[1]

Both unconvinced, Deutsche Knowledge Services, Pte. Ltd. (DKPL) and the Commissioner of Internal Revenue (CIR) filed their Motions for Reconsideration on June 20, 2017.

DKPL's Motion for Reconsideration:

DKPL asserts that the Court erroneously declared a portion of its sales disqualified for VAT zero-rating since it failed to prove that all its clients were foreign entities doing business outside the Philippines. It points out that the Securities and Exchange Commission (SEC) Certificates of Non-Registration coupled with its IGSA[2] with various clients, as well as business registration documents found in the Deutsche AMInet database show that its customers are non-resident foreign corporations. On account thereof, its sales of services are 100% zero-rated per Section 108(B)(2) of the NIRC, as amended.

DKPL also asserts that the Court erred in disallowing out-of-period claims amounting to ₱136,772.55 for it is explicitly allowed under Revenue Memorandum Circular (RMC) No. 42-03.

DKPL should not also be held accountable for its supplier's failure to strictly observe the invoicing requirements set forth in Sections 110 and 113 of the NIRC, as amended. The responsibility of indicating the amount of VAT as a separate item in a VAT invoice or official receipts (O.Rs) lies with the supplier of goods or services and not with DKPL. Further, the amount of input tax may be readily computed from the information contained on the said

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[1] *Rollo,* p. 411.
[2] IntraGroup Service Agreements.

documents. On this accord, its unsubstantiated input VAT to the extent of ₱34,651,970.90 must be allowed.

DKPL ascribes error on the Court when it deducted its unutilized input VAT for the 3rd and 4th quarters of CY 2008 from its output VAT liability of ₱1,526,084.56. For DKPL, its VAT Returns for the 3rd and 4th quarters of CY 2008 and for the four (4) quarters of CYs 2009 and 2010 indicate that it has sufficient input taxes to compensate for its output tax liability. In other words, it was able to demonstrate that the aggregate amount of ₱73,624,249.76, pertaining to its input VAT claim for the 3rd and 4th quarters of CY 2008 should be refunded to it.

No comment/opposition was interposed by the CIR despite notice.[3]

CIR's Motion for Reconsideration:

According to the CIR, the judicial claim for refund filed by DKPL should have been dismissed outright. Allegedly, it was erroneous for the Court to apply the exception to the 120+30 mandatory and jurisdictional periods on the strength of BIR Ruling No. DA-489-03 enunciated by the Supreme Court in the consolidated cases of *Commissioner of Internal Revenue vs. San Roque Power Corporation (San Roque)*.[4] For the exception to apply, says he, the taxpayer affected must invoke the said BIR Ruling in its petition for review which DKPL was unable to do. He believes that the 120+30 mandatory and jurisdictional periods under Section 112 of the NIRC, as amended, should have been applied instead. DKPL violated this 120+30 days mandatory and jurisdictional periods since it opted not to wait the 120-day period to lapse before invoking court action. Allegedly DKPL filed its administrative and judicial claims on September 7 and September 23, 2010, respectively. A *fortiori,* the Court is bereft of any competence to hear the present case, hence, should be dismissed.

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[3] Records verification report dated December 7, 2017.
[4] G.R. Nos. 187485, 196113 and 197156, February 12, 2013.

Even assuming that the Court has jurisdiction over DKPL's refund claim, it is not entitled to the refund prayed for it failed to present documentary evidence to justify refund, such as VAT purchase invoices and official receipts compliant with the requirements mandated under Sections 110 and 113 of the NIRC, as amended, and as implemented by RR No. 16-2005. As such, they cannot be deemed as a valid source of input tax. Thus, the entire claim for refund for input VAT must be denied.

In refutation, DKPL retorts that the exception to the 120+30 days mandatory and jurisdictional periods enunciated by the Supreme Court in *San Roque*[5] squarely applies in the present controversy. Since its administrative claim for refund was filed September 7, 2010, or during the effectivity of BIR Ruling No. DA-489-03,[6] DKPL need not wait for the 120-day period to lapse before filing its judicial claim. Hence, DKPL's timely filing on September 23, 2010 clothed the Court with authority to hear the same.

For DKPL, it passed the benchmark of substantiation under Sections 110 and 113 of the NIRC, as amended, claiming that both the Court in Division and *En Banc* found that it incurred valid input VAT to the extent of ₱12,890,726.98. Therefore, the Court committed no error insofar as to the finding that it is entitled to excess and utilized input tax attributable to zero-rated sales amounting to ₱7,291,883.12.

THE RULING OF THE COURT

DKPL's Motion for Reconsideration:

Are DKPL's sales of services 100% zero-rated?

The Court answers in the negative.

To qualify for zero-rating under Section 108(B)(2) of the NIRC, as amended, the **services must be rendered to**

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[5] See Note 5, *infra*.
[6] The covered period of BIR Ruling No. DA-489-03 is from December 10, 2003 to October 6, 2010.

foreign entities not conducting business in the Philippines.[7] This in turn may be proved by presenting their SEC Certificate of Non-Registration <u>and</u> Certificate of Foreign Registration/Incorporation/Association, no less.

In this case, only eight (8)[8] of DKPL's client-corporations were complemented by both a SEC Certificate of Non-Registration <u>and</u> Certificate of Foreign Registration/Incorporation/Association.[9] Hence, only the said eight (8) entities could be considered for VAT zero-rating per Section 108(B)(2) of the NIRC, as amended.

Equally unavailing is DKPL's posture that its input VAT in the amount of ₱73,624,249.76 is fully substantiated.

As for DKPL's out-of-period claims, the Court ruled in pages 18 to 19 of the challenged Decision that it cannot seek refuge under the mantle of RMC No. 42-03, since it is antithetical to the mandate of Section 110(A) of the NIRC, as amended. Elementary is the rule that administrative issuances must not override, supplant or modify the law, but must remain consistent with the law they intend to carry out. Only Congress can repeal or amend the law.[10]

Anent DKPL's unsubstantiated input taxes, the disquisition of the High Court in *Microsoft Philippines, Inc. vs. Commissioner of Internal Revenue*[11] is instructive. A VAT-registered taxpayer is strictly required to present VAT ORs or invoices which are in harmony with **all** the substantiation requirements set forth under the NIRC, as amended, and its implementing regulations. No valid input taxes can be demanded for non-compliant VAT ORs and/or invoices.

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[7] See *Accenture, Inc. vs. Commissioner of Internal Revenue,* 690 Phil. 676 (2012).

[8] Deutsche Bank Aktiengesellschaft, Inlandsbank, Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office, Deutsche Bank Aktiengesellschaft, Filiale Singapur, Deutsche Bank Aktiengesellschaft, Filiale Hongkong, Deutsche Bank Aktiengesellschaft, Filiale Jakarta, Deutsche Bank Aktiengesellschaft, Filiale New York, Deutsche Securities Inc. and Deutsche Group Services Pty Limited.

[9] Pages 13 to 17 of the challenged Decision.

[10] *Department of Agrarian Reform, Quezon City vs. Carriedo,* G.R. No. 176549, January 20, 2016.

[11] G.R. No. 180173, April 6, 2011.

In pages 18 to 20 of the challenged Decision, the Court ruled that a part of the VAT invoices and/or ORs presented by DKPL do not contain the amount of VAT as a separate item in said documents. In fact, DKPL did not deny this. As such, it transgresses substantiation requirements encapsulated under Sections 110 and 113 of the NIRC, as amended, as well as settled jurisprudence. Clearly, DKPL's input VAT to the extent of ₱34,651,970.90 must be disallowed.

Finally, DKPL's bare assertion that its output VAT liability for the 3rd and 4th quarters of CY 2008, i.e. ₱1,526,084.56 was already subjected to off-set against its existing input taxes without any VAT invoice/OR to support it is far from sufficient proof for the Court to rule in its favor. Mere allegations are not evidence and are not equivalent to proof.[12] For that reason, a subtraction of the foregoing sum to DKPL's valid input VAT of ₱12,330,122.98 is in order.

CIR's Motion for Reconsideration:

The arguments advanced by the CIR in his motion for reconsideration are mere repetitions of the points he raised in his petition for review in CTA EB No. 1297, all of which were addressed and found wanting by the Court in the Decision of May 18, 2017. For the CIR's failure to raise any substantial arguments that would warrant a departure, much less, a modification of the Decision dated May 18, 2017, his motion for reconsideration must be denied.

WHEREFORE, the Motions for Reconsideration filed by both Deutsche Knowledge Services, Pte. Ltd. and the Commissioner of Internal Revenue on June 20, 2017 are **DENIED**. The Decision dated May 18, 2017 is **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[12] See *Real vs. Bello,* G.R. No. 146224, January 26, 2007.

We Concur:

(With Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

REPUBLIC OF THE PHILIPPINES
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Petitioner,

- versus -

DEUTSCHE KNOWLEDGE SERVICES, PTE. LTD.,
Respondent.

CTA EB No. 1297
(CTA Case No. 8165)

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DEUTSCHE KNOWLEDGE SERVICES, PTE. LTD.,
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COMMISSIONER OF INTERNAL REVENUE,
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CTA EB No. 1302
(CTA Case No. 8165)

Present:
Del Rosario, P.J.,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, and
Manahan, JJ.

Promulgated:

APR 10 2018 3:35 p.m.

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CONCURRING OPINION

DEL ROSARIO, P.J.:

For lack of merit, I concur in the denial of the Motions for Reconsideration.

In cases[1] previously decided by the Court involving the same parties, albeit concerning different taxable periods, **I took the position that the Intra-Group Service Agreements between Deutsche Knowledge Services Pte, Ltd. (*Deutsche*) and its foreign clients are sufficient to establish that the entities mentioned therein are doing business outside the Philippines** as they specify the nature of services that Deutsche renders in support of its clients' business process.

I reiterated this position in my Concurring and Dissenting Opinion dated May 18, 2017 appended to the assailed Decision.

The Supreme Court, however, eventually declared in *Sitel Philippines Corporation (formerly Clientlogic Phils., Inc.) vs. Commissioner of Internal Revenue,*[2] that such Service Agreements are inadequate, *viz.:*

> "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 <u>Agreements between Sitel and its foreign clients</u>**, 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**." (Emphases supplied)

It is by virtue of this pronouncement in *Sitel* that I am constrained to modify my earlier position and instead submit that the Intra-Group Service Agreements between Deutsche and its foreign clients are not sufficient to prove that Deutsche's foreign clients are doing business outside the Philippines.

All told, I VOTE to concur with the *ponencia*.

ROMAN G. DEL ROSARIO
Presiding Justice

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[1] *Commissioner of Internal Revenue vs. Deutsche Knowledge Services Pte. Ltd./ Deutsche Knowledge Services Pte. Ltd. vs. Commissioner of Internal Revenue*, CTA EB Nos.1244 & 1345, March 30, 2017; and *Deutsche Knowledge Services Pte Ltd. vs. Commissioner of Internal Revenue,* CTA EB No. 1290, August 16, 2016.
[2] G.R. No. 201326, February 8, 2017.