REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SPECIAL SECOND DIVISION

DEUTSCHE KNOWLEDGE SERVICES PTE. LTD., Petitioner,	**CTA CASE NO. 8165**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **CASANOVA,** *and* **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** APR 10 2015 4:00 pm

x- x

RESOLUTION

CASTAÑEDA, JR., J.:

This resolves respondent's "Motion for Reconsideration" of the Amended Decision dated August 8, 2013, filed on August 28, 2013, with petitioner's Comment filed on September 16, 2013, and; petitioner's "Motion for Partial Reconsideration (Re: Amended Decision dated August 8, 2013)" filed through registered mail on August 28, 2013 and received by this Court on September 4, 2013, without respondent's Comment.

We also note respondent's "Manifestation and Motion" filed on January 27, 2015 which manifests that her Supplemental Memorandum was timely filed and prays for the reconsideration of the January 8, 2015 Resolution. The motion, however, has now become moot and academic because, on January 20, 2015, this Court already recalled and set aside the January 8, 2015 Resolution and admitted the "Supplemental Memorandum for the Respondent".

As a background, petitioner filed its Petition for Review on September 30, 2010, which seeks to review by appeal the inaction of the respondent over petitioner's administrative claim for tax refund or issuance of tax credit certificate (TCC) in the amount of P73,624,249.76, representing unutilized input value-added tax (VAT) incurred from its purchases of goods and services attributable to its zero-rated sales for the period covering third (3^{rd}) and fourth (4^{th}) quarters of calendar year 2008. After trial on the merits, on January 8, 2013, this Court dismissed the petition on the ground that it was prematurely filed.[1]

Dissatisfied, petitioner filed its Motion for Reconsideration and Supplemental Motion for Reconsideration, which this Court partially granted. The dispositive portion of the assailed Amended Decision states:

> "**WHEREFORE**, premises considered, petitioner's **Motion for Reconsideration and Supplemental Motion for Reconsideration (With Motion for Leave)** are **PARTIALLY GRANTED**. The Decision dated January 8, 2013, dismissing the instant Petition for Review on the ground that it was prematurely filed, is **RECALLED** and **SET ASIDE** and the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is **ORDERED** to **REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** to petitioner in the reduced amount of **P7,291,883.12**, representing unutilized input VAT attributable to zero-rated sales for the period covering third (3rd) and fourth (4^{th}) quarters of calendar year 2008.
>
> **SO ORDERED."**

Now, both parties seek reconsideration of the Amended Decision[2] dated August 8, 2013.

Respondent prays that the Amended Decision dated August 8, 2013 be reconsidered and set aside and another Decision be issued

---

[1] Decision penned by Associate Justice Caesar A. Casanova and concurred in by Acting Presiding Justice Juanito C. Castañeda, Jr. and Associate Justice Cielito N. Mindaro-Grulla; Docket (Vol. II), pp. 847- 861.
[2] Docket (Vol. II), pp. 921-943.

dismissing petitioner's petition for palpable lack of merit and/or lack of jurisdiction.

On the other hand, in petitioner's "Motion for Partial Reconsideration (Re: Amended Decision dated August 8, 2013)", petitioner prays that this Court reconsider its Amended Decision insofar as it reduced the total amount of refundable input VAT due to petitioner and issue a resolution affirming petitioner's entitlement to its claim for refund of unutilized input VAT on its zero-rated sales amounting to P73,624,249.76. It also prays to admit petitioner's supplemental evidence and set a Commissioner's Hearing for the marking of the evidence.

On November 12, 2013, respective motion for reconsideration of the parties were held in abeyance[3] pending the presentation and formal offer of petitioner's supplemental evidence, after the Court granted petitioner's Motion for Leave to Present Supplemental Evidence.

On November 25, 2013, petitioner's witness, Ms. Rachel Concepcion, petitioner's Legal Entity Controller, was called to the witness stand and testified on direct examination by way of her Supplemental Sworn Statement filed on November 20, 2013.

On December 10, 2013, petitioner filed a Motion for Clarification [Re: Amended Decision dated August 8, 2013 and Resolution dated November 12, 2013].

On March 18, 2014, this Court granted petitioner's Motion for Clarification, without respondent's Comment. The clarification is deemed included as part of the Amended Decision dated August 8, 2013.[4] Pertinent portions of the Resolution dated March 18, 2014, provides:

> "Xxx xxx xxx
>
> Out of the reported input VAT of P73,624,249.76, only the amount of P12,890,726.98 was found by the Court to have been properly substantiated by VAT invoices or official receipts. The remaining amount of P60,733,522.78 was disallowed by

---

[3] Resolution, November 12, 2013, Docket (Vol. III), pp. 1425-1426.
[4] Resolution, March 18, 2014, Docket (Vol. III), pp. 1445-1536.

the Court for failure to meet the substantiation requirements under Section 110(A) and 113(A) and (B) of the National Internal Revenue Code (NIRC) of 1997, as amended, in relation to Sections 4.110-1, 4.110-8 and 4.113-1 of Revenue Regulations (RR) No. 16-05, as amended. Below is the detailed breakdown of the input VAT claim of P60,733,522.78 and the reasons for the disallowance:

Xxx xxx xxx."

On March 19, 2014, petitioner received the resolution granting the motion for clarification. Subsequently, on March 20, 2014 and May 20, 2014, petitioner filed Motions to Reset Hearing, which the Court granted. On June 23, 2014 hearing, petitioner's counsel manifested that petitioner will not present additional evidence in this case, and upon motion of petitioner's counsel, the Court granted petitioner 20 days to file Supplemental Formal Offer of Evidence (FOE) or until July 13, 2014. Respondent was given 15 days from receipt of the petitioner's Supplemental Formal Offer of Evidence (FOE) to file her Comment.

On August 28, 2014, this Court acting on petitioner's Supplemental FOE, without respondent's Comment, admitted Exhibits "P-6", "P-10", "P-11", "P-12", P-13", "P-14", "P-18", "P-20" and "P-20-1", subject to the Court's final evaluation and/or appreciation of their purposes, materiality, relevancy, and probative value to the issues involves in this case.[5] The rest of the exhibits were denied. However, after petitioner's Motion for Reconsideration, this Court, on October 23, 2014, admitted pages 1 to 18 of Exhibit "P-1", pages 1 to 13 of Exhibit "P-2", pages 1 to 12 of Exhibit "P-3", pages 1 to 12 of Exhibit "P-4", pages 1 to 12 of Exhibit "P-5", pages 1 to 13 of Exhibit "P-7, pages 1 to 10 of Exhibit "P-8", pages 1 to 14 of Exhibit "P-9", page 1 of Exhibit "P-15", pages 1 to 2 of Exhibit "P-16", pages 1 to 2 of Exhibit "P-17", and pages 1 to 2 of Exhibit "P-19".[6] Portions of said exhibits corresponding to attached printouts of scanned copies were still denied admission for petitioner's failure to present the originals as mandated under the Best Evidence Rule. The parties were granted (30) thirty days from notice within which to file their respective memorandum.[7]

---

[5] Docket (Vol. III), pp. 1562-1571.
[6] *Id.*, pp. 1587-1589.
[7] Docket (Vol. III), p. 1589.

Both parties filed their respective "Supplemental Memorandum" in support of their motions. These motions were submitted for resolution on January 20, 2015.

Hence, this resolution.

Respondent's "Motion for Reconsideration"

Respondent's motion is based on the following grounds:

I. This Hon. Court cannot apply in this case the principle of equitable estoppel against the respondent CIR since the subject BIR Ruling No. DA-489-03 was issued not by the Commissioner of Internal Revenue (CIR), but by then Deputy Commissioner Jose Mario C. Buñag of the Legal & Inspection Group of BIR, in violation to the express and categorical provisions under Section[s] 4 and 7 of the NIRC of 1997 in relation to Section 112(D) of the same Code; The issuance of the subject BIR Ruling No. DA-489-03 cannot give rise to a vested right in favor of petitioner since there is no vested right to speak of respecting a wrong construction of the law made by Deputy Commissioner Jose Mario C. Buñag of the Legal & Inspection Group of BIR, and such wrong interpretation does not place the Government in estoppel to correct or overrule the same;

II. This Honorable Court cannot apply in this case the exception enunciated by the Supreme Court in the consolidated cases of CIR vs. San Roque Power Corp., G.R. Nos. 187485, 196113 and 197156, February 12, 2013 inasmuch as petitioner never relied nor aver/in its Petition for Review filed before this Hon. CTA in Division that they have relied on BIR Ruling No. DA-489-03 which misled them in prematurely filing its judicial claim before this Court;

III. Petitioner cannot raise for the first time on appeal its belated argument that it relied on BIR Ruling No. DA-489-03 since it was neither averred in its petition nor raised during trial proper of this case before the CTA in Division;

IV. The Petition for Review filed by herein Petitioner before the lapse of the 120-day period accorded to the CIR to decide on its claim for input VAT refund are not within the ambit of the jurisdiction of this Hon. Court of Tax Appeals;

V. Settled is the rule that courts are not bound to take notice of the limits of their authority and they may, by their own motion, even though the question is not raised by the pleadings, or not even suggested by counsel, recognize the want of jurisdiction and act accordingly by staying pleadings, dismissing the action, or otherwise noticing the defect, at any stage of the proceedings;

VI. Petitioner's supporting invoices and official receipts for its purchases of goods and services subject of its claimed input VAT refund in the amount of Php7,291,833.12 did not comply with the mandatory Invoicing Requirements under Section 110(A), 113(A) and 237 of the 1997 Tax Code, in relation to Sections 4.110-1, 4.110-8 and 4.113-1 of Revenue Regulations No. 16-05 and Revenue Memorandum Circular No. 42-2003;

VII. Petitioner's claim for refund is strictly construed against it for the same partakes the nature of tax exemption.

Petitioner, in its Comment, submits that all the points raised in respondent's motion deserve scant consideration from this Court, based on the following grounds:

1. BIR Ruling No. DA-489-03 was issued pursuant to a validly delegated authority;

2. Petitioner need not specifically invoke Respondent's rulings because courts can take judicial notice of such issuance. In any event, Petitioner invoked BIR Ruling No. DA-489-03 in its pleading, and thus, it can claim the benefit conferred by this administrative issuance;

3. Petitioner's documents supporting its unutilized input VAT complies with the applicable requirements of the law.

After a careful perusal of the grounds stated in respondent's motion as well as the Comment of petitioner and the records of the case, this Court finds the motion bereft of merit.

We reiterate that in the consolidated cases of *Commissioner of Internal Revenue vs. San Roque Power Corporation/ Taganito Mining Corporation vs. Commissioner of Internal Revenue/ Philex Mining Corporation vs. Commissioner of Internal Revenue* (*San Roque case*),[8] the Supreme Court ruled that "BIR Ruling No. DA-489-03 is a general interpretative rule. Thus, all taxpayers can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in *Aichi* on 6 October 2010, where this Court held that the 120+30 day periods are mandatory and jurisdictional."

It is undisputed fact that petitioner filed its administrative and judicial claims for refund on September 7, 2010 and September 30, 2010, respectively.

The administrative claim for refund falls within the effectivity period of BIR Ruling No. DA-489-03 (10 December 2003 to 5 October 2010), as an exception. Hence, there is no more need for petitioner to wait for the 120-day period to expire before it can file its appropriate judicial claim before the CTA.[9]

We emphasize that there is no need to specifically invoke the said ruling in order to be entitled to the benefits thereof because it is a general interpretative ruling, thus, all taxpayers can rely on BIR Ruling No. DA 489-03 from its issuance on December 10, 2003, up to its reversal on October 6, 2010.[10] It is noteworthy to mention that in this case, contrary to the allegation of respondent, petitioner actually invoked BIR Ruling No. DA-489-03 in its pleading.[11]

Based on the foregoing discussions, petitioner's judicial claim filed on September 30, 2010 shall be considered as timely filed. Hence, CTA has jurisdiction. *fr*

---

[8] G.R. Nos. 187485, 196113, and 197156, February 12, 2013, 690 SCRA 336.

[9] *Miramar Fish Company, Inc. v. Commissioner of Internal Revenue*, G.R. No. 185432, June 4, 2014, 724 SCRA 611.

[10] *Total (Philippines) Corporation v. Commissioner of Internal Revenue*, CTA EB Case No. 838 (CTA Case No. 7855), Resolution, Dec. 18, 2013.

[11] Docket (Vol. II), p. 833; Memorandum dated October 30, 2012, p. 17, citing BIR Ruling No. DA-489-03.

As to substantiation requirements, this Court still finds that out of the input VAT claimed which complied with the mandatory invoicing requirements pursuant to "Sections 113(A)(2), (B)(1), (2)(c) and (3) of the NIRC of 1997, as amended, as implemented by Sections 4.113-1(A)(2), B(1) and (2)(c) of Revenue Regulations (RR) No. 16-05", only the amount of P7,291,833.12 is refundable, computed as follows:[12]

Substantiated Input VAT	P	12,890,726.98
Less: Unamortized portion of input VAT from purchase of capital goods exceeding P1M		560,604.03
Valid Input VAT	P	12,330,122.95
Less: Output VAT		1,526,084.56
Valid Excess Input VAT	P	**10,804,038.39**
Valid Zero-Rated Sales/Receipts	P	973,743,933.65
Divided by Total Reported Zero-Rated Sales/Receipts	÷	1,442,750,339.13
Multiplied by Valid Excess Input VAT	x	10,804,038.39
Excess Input VAT attributable to the Valid Zero-Rated Sales/Receipts	P	**7,291,883.12**

<u>Petitioner's Partial Motion for Reconsideration</u>

Petitioner's motion is based on the following grounds:

A. Petitioner's unutilized input VAT in the amount of Php73,624,249.76 is duly substantiated and accordingly must be refunded; and

B. Petitioner proved that its sales to non-resident foreign clients are zero-rated; hence, all input VAT attributable to its zero-rated sales may be the proper subject of a claim for refund.

Anent the substantiation requirements, petitioner alleges that its input VAT in the amount of P73,624,249.76 is properly substantiated.

We do not agree.

This was already discussed in the assailed Amended Decision and clarified in the March 18, 2014 Resolution that only the amount of P12,890,726.98 was found by the Court to have been properly

---

[12] Docket (Vol. II), p. 932; Assailed Amended Decision, p. 12.

substantiated by VAT invoices or official receipts out of the reported input VAT claim of P73,624,249.76. The amount of P60,733,522.78 was disallowed by the Court for failure to meet the substantiation requirements under Section 110(A) and 113(A) and (B) of the National Internal Revenue Code (NIRC) of 1997, as amended, in relation to Sections 4.110-1, 4.110-8 and 4.113-1 of Revenue Regulations (RR) No. 16-05, as amended.

The reasons for disallowance of the input VAT claim for failure to meet the substantiation requirements and the amount involved, as detailed in the 92-page Resolution dated March 18, 2014, are summarized in the table below:

Per ICPA Findings (Exhibit "L")		
	Per ICPA Total	**Should be Total**
Annex A.1 - Purchases of goods with no supporting invoices		
3rd Quarter	P 190,749.25	P 190,749.25
4th Quarter	108,627.04	108,627.04
Annex A.2 - Purchases of services with no supporting official receipts (ORs)		
3rd Quarter	3,497,210.75	5,074,949.07
4th Quarter	13,291,877.28	13,291,877.28
Annex A.3 - Summary of purchases with invalid supporting documents		
3rd Quarter	52,896.47	185,632.78
4th Quarter	259,973.43	254,077.62
Annex A.4 - Purchases of goods/services that are beyond the cut-off period	64,012.74	64,012.74
Annex A.5 - Input VAT Attributable to Vatable Sales	643,303.12	643,303.12
Annex A.6 - Input VAT Attributable to Sales/Receipts discrepancy	40,692.66	40,692.66
Exhibit No. J2488 - Input VAT used against output VAT Liability as of December 31, 2008	1,526,084.56	1,526,084.56
Total Disallowances per ICPA	**P19,675,427.30**	**P21,380,006.12**
Per This Court's Findings		
Purchase of goods/services supported by invoices/ORs which are dated outside the period of claim		
3rd Quarter	P 90,218.76	
4th Quarter	46,553.79	P 136,772.55
Purchase of goods/services supported by invoices/ORs but the VAT was not separately indicated		
3rd Quarter	P13,144,146.18	
4th Quarter	21,507,824.72	34,651,970.90
Purchase of goods/services without supporting documents		
3rd Quarter	P 78,669.15	
4th Quarter	4,486,104.06	4,564,773.21
Total Per This Court's Findings		**P39,353,516.66**
Total Disallowances		**P60,733,522.78**

Petitioner submits that out-of-period claims (P136,772.55) is allowed by Revenue Memorandum Circular No. 42-03. Assuming arguendo that it is allowed, still the claim for out-of period claims must be denied for failure of petitioner to prove that these amounts were not claimed in any period other than the period covered by the claim, in this case 3rd and 4th quarters of taxable year 2008.

As regards the input VAT not separately indicated (P34,651,970.90), petitioner submits that the purpose of the substantiation requirement will still be served despite the absence of the required separate indication of the input VAT because the amount of input tax due may still be computed readily from the information in the ORs and invoices of petitioner's supplier. Petitioner submits that petitioner should not be penalized for its clients' error in not separately indicating the amount of VAT in the invoices and ORs which they issue to petitioner.

The contention lacks merit.

Section 113(B)(2)(a) of the NIRC of 1997, as amended, states:

"SEC. 113. Invoicing and Accounting Requirements for VAT-registered Persons. —

xxx xxx xxx

(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:

xxx xxx xxx

(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 shown as a separate item in the invoice or receipt;" *(Emphasis supplied)*

It is elementary that the word "shall" underscores the mandatory character of the rule. It is a word of command, one which always has or must be given a compulsory meaning, and is generally imperative or mandatory.[13]

The word "shall' is categorically stated in the law, thus, it is mandatory for the amount of the tax to be shown as a separate item in the invoice or receipt. Thus, in this case, disallowance of the amount of input VAT not separately indicated (P34,651,970.90) is proper.

In the Supplemental FOE, petitioner presented additional proof that the following were non-resident foreign corporation doing business outside the Philippines, as follows:

COMPANY NAME	LOCATION	Exhibit
Deutsche Bank, Sociedad Anónima Española	Spain	"P-1"
Deutsche Aktiengesellschaft, Filiale Wien	Austria	"P-2"
Deutsche Bank Aktiengesellschaft, Filiale Bangkok	Bangkok	"P-3"
Deutsche Bank Aktiengesellschaft, Filiale Mumbai	Mumbai	"P-4"
Deutsche Bank Aktiengesellschaft, Filiale Seoul	Korea	"P-5"
Deutsche Asset Management (Asia) Limited	Singapore-AMBAC	"P-6"
Deutsche Bank Aktiengesellschaft, Filiale London	London	"P-7"
Deutsche Bank Aktiengesellschaft, Filiale Prag	Czech Republic	"P-8"
Deutsche Bank Luxembourg S.A.	Luxembourg	"P-9"
Deutsche Bank (China) Co., Ltd., Beijing Branch	China	"P-10"
Deutsche Bank (China) Co., Ltd., Guangzhou Branch	China	"P-11"
Deutsche Bank (China) Co., Ltd., Shanghai Branch	China	"P-12"
DWS Holding & Service GmbH	Frankfurt	"P-13"
Deutsche Bank Real Estate (Japan) Y.K.	Japan	"P-14"
PT Deutsche Securities Indonesia	Indonesia	"P-15"
Deutsche Bank PBC Spolka Akcyjna	Poland	"P-16"
Deutsche Bank Trust Company Americas	New York	"P-17"
DB Finance Inc.	Japan	"P-18"
DB Trust Company Limited Japan	Japan	"P-19"

After a careful perusal of the petitioner's Supplemental FOE, this Court noted that the admitted portions of Exhibits "P-1" to "P-19" pertain to the Company Profile Fact Sheet, which provides the "Legal Information and Status" (Name, Date of Incorporation, Country), among others, and retrieved from the AMInet. Petitioner's witness Ms. Concepcion testified that, **"AMINET is the Data Maintenance Platform for legal entities and other reportable**

[13] *SM Land, Inc. v. Bases Conversion and Development Authority et al.*, G.R. No. 203655, August 13, 2014 citing Regalado v. Go, G.R. No. 167988, February 6, 2007, 514 SCRA 616.

vehicles within the Deutsche Bank Group (the 'DB Group'). The application is a web-based extension of the Central Legal Entity Database (AMI) in Petitioner's Head Office in Germany. **The Company Profile data** and other specific reports forms (corporate documents, directors information, K3 report etc.) **are collected and maintained via this database** and as such, provides the DB Group such **reference data** to support local regulatory and internal reporting worldwide as well as creates a flexible repository to store supporting Legal Entity data/information. Consistent with the DB Group's strict document integrity policy, the AMINET functions as a monitoring mechanism by which the DB Group can ensure that the activities conducted by and the registration documents of each affiliate comply with the requirements of the government agencies concerned."[14]

Admissibility refers to the question of whether certain pieces of evidence are to be considered at all, while probative value refers to the question of whether the admitted evidence proves an issue.[15] Thus, a particular item of evidence may be admissible, but its evidentiary weight depends on judicial evaluation within the guidelines provided by the rules of evidence.[16]

Although this Court admitted portions of Exhibits "P-1" to "P-19", however, these exhibits have "weak probative value, as it was prepared solely and exclusively by petitioner."[17] The Court cannot give conclusive weight to petitioner's evidence because the details were unverified by independent documents,[18] which makes it merely self-serving evidence.

Moreover, Section 1 (d) of Rule 7 on Rules on Electronic Evidence, as one of the factors in assessing the evidentiary weight of electronic documents, states that "(d) The familiarity of the witness or the person who made the entry with the communication and information system;" Although petitioner's witness is familiar with the AMINET, she is not the person who made the entry with the system nor witnessed the one who made the entry with respect to the data of the alleged non-resident foreign corporations doing business

---

[14] Docket (Vol. III), p. 1601; Petitioner's Supplemental Memorandum, p.9, citing "Sworn Statement of Ms. Rachel M. Concepcion dated November 20, 2013 (Exhibit "P-20"); Transcript of Stenographic Notes (TSN) for the hearing dated November 25, 2013."

[15] *Heirs of Sabanpan et al. v. Comorposa et al.*, G.R. No. 152807, August 12, 2003 citing *PNOC Shipping and Transport Corporation v. Court of Appeals*, 358 Phil 38, October 8, 1998.

[16] *Id.*

[17] *Equitable –PCI Bank (formerly known as Equitable Banking Corporation) v. Commissioner of Internal Revenue*, CA-G.R. SP No. 60786, July 31, 2001.

[18] *Id.*

outside the Philippines. Thus, we cannot give weight to those electronic documents.

We reiterate that "[T]o be considered as non-resident foreign corporation doing business outside the Philippines, each entity must be supported, **at the very least**, by both SEC certificate of non-registration of corporation/partnership **and certificate/articles of foreign incorporation/association.**"[19]

In this case, this Court gave petitioner the opportunity to present additional proof, however, petitioner still failed to present the certificate/articles of foreign incorporation/association of the entities enumerated in the previous table. In effect, this Court is not convinced that these entities are non-resident foreign corporations doing business outside the Philippines.

Based on the foregoing discussions, We, therefore, find no valid or cogent reason to deviate from our findings and conclusions reached in our Amended Decision dated August 8, 2013.

WHEREFORE, premises considered, the motions are hereby **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

(Inhibited)
CAESAR A. CASANOVA
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

[19] Docket (Vol. II), p. 937; Assailed Amended Decision, p. 17.