REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

DEUTSCHE KNOWLEDGE SERVICES, PTE. LTD.,
Petitioner,

- versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8342

Members:

Castañeda, Jr., *Chairperson*
Casanova, and
Cotangco-Manalastas, *JJ.*

Promulgated:

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AMENDED DECISION

COTANGCO-MANALASTAS, *J.:*

For resolution are the following:

1. Respondent's *Motion for Partial Reconsideration (Re: Decision dated 23 September 2014)* filed through registered mail on October 9, 2014 and received by this Court on October 15, 2014 with petitioner's *Comment (To Respondent's Motion for Partial Reconsideration dated October 9, 2014)* filed on November 3, 2014; and

2. Petitioner's *Motion for Partial Reconsideration (Re: Decision dated September 23, 2014) (With Motion to Re-open Trial)* filed through registered mail on October 9, 2014 and received by this Court on October 16, 2014 without respondent's comment despite notice.

The parties move for the reconsideration of the Decision of this Court dated September 23, 2014, which partially granted the petition, as follows:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in the amount of **₱12,633,590.90** in favor of petitioner, representing unutilized input VAT attributable to its zero-rated sales for the third quarter of 2009.
>
> **SO ORDERED**."

In her motion, respondent argues that petitioner is not entitled to a refund or tax credit in the amount of ₱12,633,590.90 representing alleged unutilized input VAT attributable to its-zero-rated sales for the third quarter of 2009. Petitioner failed to prove and present the following: (a) registration requirements of a value-added taxpayer; (b) invoicing and accounting requirements for VAT-registered persons as well as filing and payment of VAT; (c) proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund pursuant to Revenue Memorandum Order (RMO) No. 53-98; (d) that unutilized input VAT was attributable to zero-rated sales and not applied against any output tax and not carried over to succeeding taxable quarter/s; (e) that petitioner's administrative and judicial claims for tax credit or refund were filed within the periods provided in Section 112 (A) and (C) of the Tax Code; (f) that petitioner's domestic purchases of goods and services were made in the course of trade or business, properly supported by VAT invoices and/or official receipts and other documents, such as subsidiary purchase journal; and (g) requirements as enumerated under Section 4.104-5 of Revenue Regulations (RR) No. 7-95 (Re: Substantiation of Claims for Input Tax Credits).

Respondent further argues that petitioner should have proven that it has strictly complied with the submission of all supporting and relevant documents provided under RMO No. 53-98 and other existing rules and regulations on its administrative claim to warrant the grant of the application for refund. The mere filing of an administrative claim for refund or issuance of tax credit certificate without submitting the complete documents in support of the application thereof is not conclusive to sustain petitioner's contention that it has the right to claim a refund.

In its comment, petitioner counter-argues that it was able to prove that it complied with the requisites for a valid claim for input VAT refund as found by the Court in its Decision. Petitioner also contends that strict compliance with the documentary requirements stated in RMO No. 53-98 is not the standard for compliance with the requirements for administrative claims for input VAT refund. The purpose of RMO No. 53-98 is to resolve the confusion arising from the differing documents requested from taxpayers. Verily, RMO No. 53-98 is intended as a guide for revenue officers in requesting from taxpayers the documents to be submitted during a tax audit. Nowhere is it stated in RMO No. 53-98 that non-submission of documentary requirements thereunder is tantamount to non-compliance with the administrative requirements for claiming a refund of excess and unutilized input VAT. In the case of *Commissioner of Internal Revenue (CIR) vs. Mirant Navotas Corporation (Formerly Southern Energy Navotas, Inc.)*[1], this Court, sitting *en banc*, categorically ruled that submission of complete documents pursuant to RMO No. 53-98 is not required before filing a judicial claim for refund. Moreover, in *CIR vs. Team Energy Corporation*[2], this Court, sitting *en banc*, clarified that the non-submission of supporting documents at the administrative level is not fatal to the judicial claim for refund.

Anent its motion, petitioner asserts that it presented preponderant evidence to prove that all of its zero-rated sales for the 3rd quarter of CY 2009 were made to non-resident corporations doing business outside the Philippines.

Petitioner points out that using the criteria set forth in the assailed Decision that "to 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/ Registration", then the Court erred in not favorably finding that the following clients are also non-resident corporations doing business outside the Philippines since petitioner presented both documents:

[1] CTA EB Case No. 650, December 20, 2011.
[2] CTA EB Case No. 652, October 4, 2011.

a. Deutsche Bank Aktiengesellschaft, Filiale Zurich
b. Deutsche Bank Aktiengesellschaft, Filiale Wien
c. Deutsche Bank Aktiengesellschaft, Filiale Bangkok
d. Deutsche Bank Aktiengesellschaft, Filiale Mumbai
e. Deutsche Asset Management (Asia) Limited
f. Deutsche Bank Aktiengesellschaft, Filiale Tokyo
g. Deutsche Bank Luxembourg S.A.
h. Deutsche Securities Inc.
i. DWS Holding & Service GMBH
j. Deutsche Asia Pacific Holdings Pte Ltd
k. Global Markets Centre Private Limited
l. DB Consorzio S. Cons. a r. l.

Petitioner submits that the sales of services to these clients for the 3rd quarter of CY 2009 which amounted to €1,359,206.67 or ₱92,834,083.56 should have also been considered by the Court as qualified for VAT zero-rating. This would have resulted to a finding that petitioner had valid zero-rated sales worth ₱719,551,633.10. This in turn would have resulted to a favorable finding that 73.64% of petitioner's excess input VAT, net of disallowances, assuming the disallowance is proper, is attributable to petitioner's zero-rated sales of services. Finally, this would have resulted to the partial grant of refund in the reduced amount of ₱14,504,972.73 instead of only ₱12,633,590.90.

Petitioner further submits that being civil in nature, the quantum of evidence required to sustain petitioner's claim for input VAT refund is a mere preponderance of evidence. The documents presented by petitioner, taken collectively, prove that petitioner's non-resident foreign clients are indeed doing business outside of the Philippines.

Nevertheless, should the Court still find the evidence presented by petitioner insufficient to establish the fact that its clients are indeed non-resident corporations doing business outside the Philippines, in the broader interest of justice, petitioner requests for leave to submit original print-outs of the AMInet Company Profile Fact Sheets and the electronically maintained copies of the Articles of Incorporation and business registration documents of the following clients of petitioner that were not considered by the Court as doing business outside the Philippines:

a. DB Services New Jersey, Inc.
b. Licorne Gestion
c. Deutsche Bank, Sociedad Anonima Española
d. Deutsche Bank (Malaysia) Berhad

e. Deutsche Bank Aktiengesellschaft, Filiale Paris
f. Deutsche Group Services Pty Limited
g. Deutsche Bank Aktiengesellschaft, Filiale Prag
h. Deutsche Bank Aktiengesellschaft, Filiale Zurich
i. Deutsche Bank Aktiengesellschaft, Filiale Wien
j. Deutsche Bank Aktiengesellschaft, Filiale Bangkok
k. Deutsche Bank Aktiengesellschaft, Filiale Mumbai
l. Deutsche Asset Management (Asia) Limited
m. Deutsche Bank Aktiengesellschaft, Filiale Tokyo
n. Deutsche Bank Luxembourg S.A.
o. Deutsche Securities Inc.
p. DWS Holding & Service GmbH
q. Deutsche Asia Pacific Holdings Pte Ltd
r. Global Markets Centre Private Limited
s. DB Consorzio S. Cons. a.r.l.
t. Deutsche Bank Aktiengesellschaft, Reprasentanz Kiew
u. DWS Finanz-Service GmbH, Paris Branch

The AMInet Company Profile Fact Sheets are original computer-generated reports that summarize the relevant details regarding the business profile of petitioner's foreign clients, including their names, registered addresses, and the respective countries of operation. The AMInet database system is a secured website containing the archive database of electronic documents which is for the exclusive use of the Deutsche Bank group of companies of which petitioner is part.

Inasmuch as these documents are generated, produced and printed directly from the AMInet database and accurately reflect the electronic data appearing in the AMInet database, it is respectfully submitted that the company profile fact sheets are admissible electronic evidence.

Petitioner also contends that the Court's disallowance of petitioner's claimed input VAT for the 3rd quarter of CY 2009 for failure to meet substantiation requirements under the Tax Code and RR No. 16-05 is untenable since the amounts of input VAT claimed by petitioner are readily obtainable from the documentary evidence disregarded by the Court.

For purchases of services supported by official receipts (ORs) dated outside the period of claim in the amount of ₱3,548,316.03, petitioner submits that such disallowance is untenable considering that out-of-period claims is specifically allowed by Revenue Memorandum Circular (RMC) No. 42-03.

The Court, sitting *en banc*, has already recognized the validity of out-of-period claims as provided under RMC No. 42-03.[3]

The Court also disallowed petitioner's claimed input VAT in the amount of ₱7,358,594.38 which were covered by OR wherein the amount of input VAT was not separately indicated. Petitioner prays for the reconsideration of the disallowance on the following grounds: (i) the input VAT claimed from these OR's may be readily computed; and (ii) these OR's were issued by petitioner's clients over which petitioner have no participation and control whatsoever. Petitioner should not be penalized for its clients' error in not separately indicating the amount of VAT in the OR's which they issue to petitioner.

Anent the input VAT on purchases of services supported by documents other than VAT OR in the amount of ₱3,427,271.99 disallowed by the Court, petitioner argues that these purchases were made by petitioner from non-resident foreign corporations. Hence, the input VAT due on these purchases can be proved by documents other than a VAT OR. The amounts of input VAT due on petitioner's purchases from its non-resident foreign suppliers of service can be proved by BIR Form No. 1600 filed with respondent, copies of which were attached as Annexes 1-3 to petitioner's motion for partial reconsideration. In the interest of substantial justice, petitioner requests for leave to formally offer in evidence the attached withholding VAT returns.

Finally, in the interest of substantial justice and in order to aid this Court in judiciously evaluating the merits of the case, petitioner reiterates its request for leave of Court to reopen the trial to allow the submission of additional documentary evidence citing the case of *Alegre vs. Reyes, et al.*[4] Petitioner prays for leave to be allowed to submit and offer in evidence the following: (a) AMInet Company Profile Fact Sheets and the electronically-maintained copies of the Articles of Incorporation and business registration documents of petitioner's clients which were not considered by the Court as doing business outside the Philippines; and (b) withholding VAT returns (BIR Form No. 1600) evidencing the input VAT claimed on purchases of services from non-resident foreign corporation.

[3] *CIR vs. CE Cebu Geothermal Power Company, Inc.*, CTA EB Case No. 435, May 5, 2009.
[4] G.R. No. L-56923, May 9, 1988.

Respondent's Motion for Partial Reconsideration

We shall first discuss the merit of respondent's Motion for Partial Reconsideration.

Respondent mainly contends that petitioner failed to prove that it submitted all the documents enumerated in RMO No. 53-98, hence, its claim for refund should be denied. This argument deserves scant consideration.

In a number of cases[5], this Court has consistently ruled that the alleged non-submission of complete documents at the administrative level is not fatal to a claim for refund in the judicial level. In the case of *Commissioner of Internal Revenue vs. Philippine Airlines, Inc.*,[6] the Court *En Banc* ruled that:

> "It has been settled in several CTA *en banc* cases that judicial claims should not be denied on the sole ground that the taxpayer allegedly failed to submit before the BIR the complete documents in support of its administrative claim for refund. In the case of *Philippine Bank of Communications vs. Commissioner of Internal Revenue* We passed upon the issue on the non-submission of supporting documents in the administrative level as NOT fatal to a claim for refund. The pertinent portion of the Decision provides:
>
>> 'Non-submission of supporting documents in the administrative level is not fatal to a claim for refund. Judicial claims are litigated *de novo* and decided based on what has been presented and formally offered by the parties during the trial. In the case of *CIR vs. Manila Mining Corporation*, it was explained that 'Under Section 8 of RA 1125, the CTA is described as a court of record. As cases filed before it are litigated *de novo*, party litigants should prove every minute aspect of their cases.' Finally, pieces of evidence submitted in the administrative proceeding have no evidentiary value unless presented and formally offered before the Court.'
>
> This Court is not barred from receiving, evaluating and appreciating evidence formally offered before it. Once the claim for refund has been elevated to the Court, the

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[5] *Commissioner of Internal Revenue vs. San Roque Power Corporation*, CTA EB Case No. 657, April 4, 2012; *Commissioner of Internal Revenue vs. Panay Power Company*, CTA EB Case No. 683, November 29, 2011; *Commissioner of Internal Revenue vs. Toledo Power Company*, CTA EB Case No. 589, Resolution dated January 12, 2011; and *Commissioner of Internal Revenue vs. CE Luzon Geothermal Power Company, Inc.*, CTA EB Case No. 474, September 1, 2009.

[6] CTA EB Case No. 775, Resolution dated November 13, 2012.

admissibility, materiality, relevancy, probative value and weight of evidence presented therein become subject to the Rules of Court. The question of whether or not the evidence submitted by a party is sufficient to warrant the granting of a claim for refund lies within the sound discretion and judgment of the Court..." *(Emphasis supplied and citations omitted)*

Hence, this Court finds no merit in respondent's Motion for Partial Reconsideration.

Petitioner's Motion for Partial Reconsideration

Having addressed respondent's motion, *We* shall now proceed to discuss petitioner's Motion for Partial Reconsideration.

A. Zero-Rated Sales

Petitioner submits that the following clients should have likewise been considered as non-resident foreign corporations doing business outside the Philippines considering that both the SEC Certificate of Non-registration of Corporation/ Partnership and Certificate/Articles of Foreign Incorporation/ Association/ Registration" were presented:

Company Name	Location	SEC Certificate of Non-Registration (Exhibit No.)	Certificate/ Article of Foreign Incorporation/ Association/ Registration (Exhibit No.)
Deutsche Bank Aktiengesellschaft, Filiale Zurich	Zurich, Zwitzerland	M-34	M-76
Deutsche Bank Aktiengesellschaft, Filiale Wien	Frankfurt, Germany	M-33	M-61
Deutsche Bank Aktiengesellschaft, Filiale Bangkok	Bangkok, Thailand	M-22	M-63
Deutsche Bank Aktiengesellschaft, Filiale Mumbai	India	M-27	M-64
Deutsche Asset Management (Asia) Limited	Singapore	M-16	M-67
Deutsche Bank Aktiengesellschaft, Filiale Tokyo	Tokyo, Japan	M-53	M-4
Deutsche Bank Luxembourg S.A.	Luxembourg	M-35	M-68
Deutsche Securities Inc.	Tokyo, Japan	M-40	M-78
DWS Holding & Service GMBH	Frankfurt, Germany	M-41	M-72
Deutsche Asia Pacific Holdings Pte Ltd	Singapore	M-15	M-3
Global Markets Centre Private Limited	Mumbai, India	M-42	M-84
DB Consorzio S. Cons. a r. l.	Milan, Italy	M-11	M-85

Petitioner also submits that the sales of services to these clients for the 3rd quarter of CY 2009 which amounted to ₱92,834,083.56, as determined below, should have also been considered by the Court as qualified for VAT zero-rating:

Client	OR Number	OR Exhibit No.	Amount in Euro	Peso Equivalent
DB AG Zürich	511	Z-188	€ 9,528.00	₱ 666,761.82
DB AG Vienna	525	Z-407	924.99	64,698.33
DB AG Bangkok	530	Z-411	26,869.16	1,879,360.71
DB AG Mumbai	534	Z-227	11,536.00	809,956.40
Deutsche Asset Management Asia Limited	535	Z-415	125,000.10	7,993,110.14
DB AG Tokyo	526	Z-377	18,933.37	1,324,292.68
Deutsche Bank Luxembourg S.A.	524	Z-427	10,175.01	716,399.97
Deutsche Securities Inc.	498	Z-347	15,974.42	1,090,751.13
Deutsche Securities Inc.	503	Z-255	891,750.00	60,939,073.90
Deutsche Securities Inc.	527	Z-381	187,002.52	13,079,872.56
DWS Hold & Service	541	Z-431	18,500.04	1,280,664.16
Deutsche Asia Pacific Holdings Pte Ltd.	523	Z-399	27,750.06	1,953,820.40
Global MarketsmCentre Private Limited	506	Z-310	1,388.00	96,125.80
DB Consorzio S. Cons. A r. l.	469	Z-318	13,875.00	939,195.56
TOTAL			**€1,359,206.67**	**₱ 92,834,083.56**

After a scrutiny of the foregoing documentary evidence, the Court finds that the aforementioned clients may be considered as non-resident foreign corporations doing business outside the Philippines, except for Deutsche Bank Aktiengesellschaft, Filiale Tokyo since the Certification (Exhibit "M-4") presented pertains to "Deutsche Securities Inc." and not for "Deutsche Bank Aktiengesellschaft, Filiale Tokyo."

However, except for the sales to DB Consorzio S. Cons. A.r.l. with Exhibit No. "Z-318" in the amount of €13,875.00 and with peso equivalent of ₱939,195.56, petitioner failed to present the corresponding official receipts in support of the alleged zero-rated sales of €1,345,331.67 with peso equivalent of ₱91,894,888.00. An examination of the supporting documents marked as Exhibits "Z-188", "Z-407", "Z-411", "Z-227", "Z-415", "Z-377", "Z-427", "Z-347", "Z-255", "Z-381", "Z-431", "Z-399", and "Z-310" reveals that the same pertain to Provisional Receipts.

Pursuant to Section 113(A)(2) of the NIRC of 1997, as implemented by Section 4.113-1(A)(2) of Revenue Regulations No. 16-2005, to establish zero-rated sales of services, the corresponding duly registered official receipts must be presented. The pertinent provisions provide as follows:

> "**SEC. 113.** ***Invoicing and Accounting Requirements for VAT-Registered Persons.*** —

"(A) *Invoicing Requirements.* — A VAT-registered person shall issue:

xxx xxx xxx

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

"SEC. 4.113-1. *Invoicing Requirements.* —

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

xxx xxx xxx

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

Conversely, non-compliance with the invoicing requirements, *i.e.,* issuance of duly registered official receipts for the sale of services, will not give rise to effective zero-rating of the transactions of a taxpayer. Thus, petitioner's sales supported by provisional receipts in the amount of ₱91,894,888.00 cannot qualify for VAT zero-rating. Consequently, petitioner's claimed input VAT allegedly attributable thereto cannot be granted.

In sum, petitioner's adjusted valid zero-rated sales amounts to ₱627,656,744.68, computed as follows:

Valid zero-rated sales per Decision dated Sept 23, 2014	€ 9,267,335.54	₱ 626,717,549.12
Valid zero-rated sales per this Motion	13,875.00	939,195.56
Adjusted valid zero-rated sales	**€9,281,210.54**	**₱ 627,656,744.68**

B. Input VAT

1) Out-of-period claims

Petitioner submits that the disallowance of the out-of-period claims is untenable considering that RMC No. 42-03 specifically allows the same. This Court cannot consider the same.

Petitioner should declare the input VAT in the corresponding taxable quarters when the purchases of goods were consummated or when the purchases of services were paid, as the case maybe, pursuant to Section 110(A)(2) of the National Internal Revenue Code (NIRC) of 1997, as amended, which provides:

> SEC. 110. *Tax Credits.* —
>
> (A) *Creditable input Tax.* —
>
> xxx xxx xxx
>
> (2) The input tax on **domestic purchase** or importation **of goods** or properties by a VAT-registered person **shall be creditable**:
>
> (a) To the purchaser **upon consummation of sale** and on importation of goods or properties; and
>
> (b) To the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs.
>
> *Provided,* That the input tax on goods purchased or imported in a calendar month for use in trade or business for which deduction for depreciation is allowed under this Code, shall be spread evenly over the month of acquisition and the fifty-nine (59) succeeding months if the aggregate acquisition cost for such goods, excluding the VAT component thereof, exceeds One million pesos (P1,000,000): *Provided, however,* That if the estimated useful life of the capital good is less than five (5) years, as used for depreciation purposes, then the input VAT shall be spread over such a shorter period: *Provided, finally,* That in the case of **purchase of services**, lease or use of properties, the input tax shall be **creditable** to the purchaser, lessee or licensee **upon payment** of the compensation, rental, royalty or fee." (*Emphasis supplied*)

In *Lepanto Consolidated Mining Co. vs. CIR*[7], the Court held that:

> "The alleged unutilized input VAT of P5,820,863.87 should be denied since the supporting invoices and official receipts thereof bore dates which were earlier than the period of petitioner's claim. Section 110(A)(2) of the 1997 Tax Code provides:
>
> 'Sec. 110. *Tax Credits.* —

[7] CTA Case Nos. 6368 and 6480, December 15, 2004.

A. *Creditable Input Tax.* —

2. The input tax on domestic *purchases of goods* or properties shall be creditable:

(a) To the purchaser *upon consummation* of sale and on importation of goods or properties; and

However, in the case of *purchases of services*, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee *upon payment* of the compensation, rental, royalty or fee.'

It is clear from the above-quoted provisions of law that for purchases of goods, the corresponding input value added taxes of which is creditable to the purchaser upon consummation of sale, that is, upon the issuance of the corresponding invoice. On the other hand, for purchases of services, the corresponding input value added taxes of which is creditable to the purchaser upon payment of compensation, rental, royalty or fee, that is, upon the date of official receipt. Section 110(A) is explicit. It states 'upon consummation', in the case of domestic purchases of goods, and 'upon payment', in the case of purchases of services. It does not provide any qualification, such as 'upon delivery of invoice or official receipt' which is the main thesis of petitioner's contention.

In a resolution of the case entitled Telecommunications *Technologies Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6168, promulgated on July 28, 2004*, this Court elucidated that 'the input VAT on domestic purchases of goods or properties shall be allowed as tax credit to the purchaser upon consummation of sale, which means upon issuance by the seller of the VAT sales invoice evidencing the sale of goods/properties. On the other hand, the input VAT on purchases of services shall be available as tax credit to the purchaser only upon payment of the compensation or fee i.e., upon issuance by the seller of the VAT official receipt evidencing receipt of the payment for services performed or yet to be performed.'

Thus, it is indubitable on the part of the petitioner to declare the input value added taxes on domestic purchases of goods and services at the end of the corresponding taxable quarter where purchases of goods were consummated, as evidenced by VAT invoice and for payment of services, as evidenced by VAT official receipt.

> Therefore, the amount of input VAT of P5,820,863.87 which is supported by VAT invoices and official receipts dated earlier than the period of petitioner's claims can no longer be claimed for refund pursuant to Section 110(A) in relation with Section 112(A) of the 1997 National Internal Revenue Code."

Applying the above ruling, petitioner's claimed input VAT on purchases of goods/services supported by invoices/OR dated outside the period of claim cannot be considered since the input taxes should have been declared in the corresponding taxable quarter when the purchases of goods were consummated or when purchases of services were paid pursuant to Section 110(A)(2) in relation to Section 112(A) of the NIRC of 1997, as amended.

2) <u>Input VAT Not Separately Indicated</u>

Petitioner also insists that it should not be penalized for its client's error in not separately indicating the amount of VAT in the OR's. However, the law is clear. Section 113 (B)(2)(a) of the NIRC of 1997, as amended, provides:

> "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*)

Hence, input taxes covered with invoices or ORs wherein the amount of input VAT was not separately indicated were properly disallowed for being in violation of Section 113(B)(2)(a) of the NIRC of 1997, as amended.

3) Input VAT on Purchases of Services Supported by Documents Other Than VAT OR

Petitioner likewise questions the disallowance of input VAT on purchases of services supported by documents other than VAT OR in the amount of ₱3,427,271.99. Petitioner argues that these purchases were made by petitioner from non-resident foreign corporations. Hence, the input VAT due on these purchases can be proven by documents other than a VAT OR.

After verification of the supporting documents, this Court finds that out of the input VAT of ₱3,427,271.99, the amount of ₱2,828,195.82 pertains to services rendered by non-residents and properly supported by BIR Form No. 1600, as determined below:

Registered Name of Supplier	BIR Form 1600 Exhibit No.	Input VAT Amount
AJA Enterprises Pte Ltd	Z-1457	₱ 286,244.07
COMMTECH ASIA (Singapore) Pte	Z-1457	276,109.63
COMMTECH ASIA (Singapore) Pte	Z-1457	199,920.80
COMMTECH ASIA (Singapore) Pte	Z-1459	157,636.30
HDAP SINGAPORE PTE LTD	Z-1459	69,484.51
AJA Enterprises Pte Ltd	Z-1461	980,693.61
AJA Enterprises Pte Ltd	Z-1461	858,106.90
TOTAL		**₱ 2,828,195.82**

In addition, the amount of ₱786,933.75, which was previously disallowed, shall now be considered for refund or tax credit certificate since the same also pertains to services rendered by non-residents and properly supported by BIR Form No. 1600, broken down as follows:

Registered Name of Supplier	BIR Form 1600 Exhibit No.	Input VAT Amount
*SMB ELECTRIC PTE LTD	Z-1377/Z-1461	₱ 462,886.00
**ESCO Audio Visual Pte.Ltd.	Z-806/Z-1459	98,587.28
**FIRST ADVANTAGE AUSTRALIA	Z-856/Z-1459	107,560.22
**FIRST ADVANTAGE AUSTRALIA	Z-857/Z-1459	4,634.92
**FIRST ADVANTAGE AUSTRALIA	Z-858/Z-1459	78,104.71
**FIRST ADVANTAGE AUSTRALIA	Z-859/Z-1459	5,006.33
**FIRST ADVANTAGE AUSTRALIA	Z-860/Z-1459	30,154.29
TOTAL		**₱ 786,933.75**

*Note: *Previously classified under "supported by invoice dated outside the period of claim and wherein the amount of input VAT was not separately indicated".*
*** Previously classified under "supported by invoice wherein the amount of input VAT was not separately indicated".*

Thus, the total amount of ₱3,615,129.57 pertaining to input VAT on services rendered by non-residents with supporting BIR Form No. 1600 shall be added to the previous findings of this Court amounting to ₱19,698,218.69. Accordingly, petitioner is entitled to a refund or issuance of a tax credit certificate in the total amount of ₱14,974,586.89, representing its excess or unutilized input tax attributable to zero-rated sales for the 3rd quarter of 2009, computed as follows:

Substantiated Zero-Rated Sales (as adjusted)	627,656,744.68
Divided by Total Reported Zero-Rated Sales	977,174,220.78
Multiply by Substantiated Input VAT (as adjusted)	23,313,348.26
Refundable Input VAT attributable to substantiated zero-rated sales	**₱ 14,974,586.89**

C. Motion to Re-open Trial

Lastly, petitioner requests for leave of Court to re-open the trial to allow the submission of additional documentary evidence. After careful consideration of petitioner's arguments, *We* find no merit in its Motion to Re-open Trial.

At the outset, *We* note that petitioner has already offered in evidence BIR No. 1600 for the third quarter of 2009 (Exhibits "Z-1457" to "Z-1462"), and were admitted in evidence, hence, there is no need to present the same again.

In this case, judgment has already been rendered; hence, a motion to re-open trial is not the appropriate remedy.

A motion to reopen may properly be presented only after either or both parties have formally offered, and closed their evidence, but *before judgment*. The reopening of a case for the reception of additional evidence after a case has been submitted for decision but *before judgment is actually rendered* is, it has been said, controlled by no other rule than that of the paramount interests of justice, resting entirely in the sound judicial discretion of a Trial Court; and its concession, or denial, by said Court in the exercise of that discretion will not be reviewed on appeal unless a clear abuse thereof is shown.[8] It is in criminal cases where the rules allow re-opening even after promulgation but before finality of judgment[9].

[8] *Alegre vs. Reyes*, G.R. No. L-56923, May 9, 1988.
[9] Revised Rules of Criminal Procedure, Rule 119, Sec. 24.

Pursuant to Section 1 of Rule 15 of the Revised Rules of the Court of Tax Appeals, any aggrieved party may seek a reconsideration or new trial of any decision of the Court.

In this case, petitioner filed a motion for reconsideration seeking to present additional evidence which it failed to present during the hearing.

Under Rule 37 of the Revised Rules of Court, an aggrieved party may file a motion for reconsideration on the ground, among others, that "x x x, the evidence is insufficient to justify the decision or final order, or that the decision or final order is contrary to law."[10] It requires the motion to point out specifically the findings or conclusions of the judgment or final order which are not supported by the evidence or which are contrary to law, making express reference to the testimonial or documentary evidence or to the provisions of law alleged to be contrary to such findings or conclusions.[11] Hence, it is implicitly clear from Rule 37 that a motion for reconsideration cannot be used as a vehicle to introduce new evidence.[12]

Even if *We* were to consider petitioner's motion as a motion for new trial based on newly discovered evidence, the same cannot be granted.

We find that the additional documentary evidence constitute forgotten evidence which petitioner intends to present only after obtaining an unfavorable decision of the Court. Failure to present evidence already existing at the time of trial does not warrant the grant of a new trial because such evidence is not newly discovered but is in the nature of forgotten evidence which is not excusable.

Forgotten evidence refers to evidence already in existence or available before or during a trial; known to and obtainable by the party offering it; and could have been presented and offered in a seasonable manner, were it not for the sheer oversight or forgetfulness of the party or the counsel. Presentation of forgotten evidence is disallowed, because it results in a piecemeal presentation of evidence, a procedure that is not in accord with orderly justice and serves only to

[10] Section 1, Rule 37 of the Revised Rules of Court.
[11] Section 2, Rule 37 of the Revised Rules of Court.
[12] *Cansino vs. Court of Appeals*, G.R. No. 125799, August 21, 2003.

delay the proceedings. A contrary ruling may open the floodgates to an endless review of decisions, whether through a motion for reconsideration or for a new trial, in the guise of newly discovered evidence.[13]

Moreover, there is no justification for the delay in presenting said evidence. Petitioner did not explain the belated presentation of the additional documentary evidence but merely reasoned that the motion to re-open is "in the interest of substantial justice, and in order to aid the Court in judiciously evaluating the merits of this case."

As a final note, well-settled in this jurisdiction is the fact that actions for tax refund, as in this case, are in the nature of a claim for exemption and the law is construed in *strictissimi juris* against the taxpayer. The pieces of evidence presented entitling a taxpayer to an exemption are also *strictissimi* scrutinized and must be duly proven.[14]

WHEREFORE, premises considered, respondent's *Motion for Partial Reconsideration* is hereby **DENIED** for lack of merit while petitioner's *Motion for Partial Reconsideration (With Motion to Re-open Trial)* is hereby **PARTIALLY GRANTED**. The September 23, 2014 Decision of this Court is hereby **MODIFIED**. Accordingly, respondent is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in the amount of **₱14,974,586.89** in favor of petitioner, representing unutilized input VAT attributable to its zero-rated sales for the third quarter of 2009.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

[13] *Office of the Ombudsman vs. Coronel*, G.R. No. 164460, June 27, 2006.
[14] *Kepco Philippines Corporation vs. Commissioner of Internal Revenue,* G.R. No. 179961, January 31, 2011.

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

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

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice