REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

DEUTSCHE KNOWLEDGE SERVICES PTE., LTD., *Petitioner,*	**CTA *EB* NO. 2249** (CTA Case No. 9154)
	Present:
-versus-	**DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO,** *and* **CUI-DAVID,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated:
	DEC 14 2021 3:45 p.m.

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D E C I S I O N

MANAHAN, J.:

Before the Court *En Banc* is a *Petition for Review* [1] appealing the Decision of the Court of Tax Appeals (CTA) Third (3rd) Division which denied petitioner's claim for refund/ issuance of tax credit certificate for the 3rd quarter of 2013 due to petitioner's failure to prove that it was engaged in zero-rated or effectively zero-rated sales.

The Facts

The CTA 3rd Division recited the antecedents, as follows:

> Petitioner Deutsche Knowledge Services, Pte., Ltd. Is a Philippine branch of a multinational company organized and existing under and by virtue of the laws of Singapore, with registered address at One Raffles Quay, #17-10 South Tower, Singapore 048583.

[1] *Rollo*, pp. 6-27.

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> It is licensed to do business as a regional operating headquarters in the Philippines by the Securities and Exchange Commission on April 25, 2005, pursuant to the Omnibus Investment Code of 1987, as amended by Republic Act (RA) No. 8756, and its implementing rules and regulations, to engage in general administration and planning, business planning and coordination; sourcing/ procurement of raw materials and components; corporate finance advisory services, marketing control and sales promotion; training and personal management; logistic services, research and development services and product development; technical support and maintenance; data processing and communication and business development.
>
> Petitioner was registered with the Bureau of Internal Revenue (BIR) on June 16, 2005 as a VAT-registered taxpayer with Taxpayer Identification No. (TIN) 238-763-115-000.
>
> On the other hand, respondent is the duly appointed Commissioner of Internal Revenue, empowered to perform the duties of his office, including among other, the duty to act upon and approve claims for refund or tax credit as provided by law.
>
> On October 18, 2013, petitioner filed its Quarterly VAT Return for the 3rd quarter of CY 2013 with the BIR, through the electronic filing and payment system.
>
> Thereafter, on June 1, 2015, petitioner filed with the BIR-Large Taxpayers Regular Audit Division III (LTRAD) an *Application for Tax Credits/Refunds* (BIR Form No. 1914) of its excess and unutilized input VAT for the 3rd quarter of CY 2013 in the amount of P28,938,050.29.[2]

Due to alleged inaction, petitioner filed its Petition for Review with the CTA. After trial, the CTA 3rd Division rendered its Decision, which denied the claim for refund, as follows:

> **WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for failure of petitioner to show its sales of services for the 3rd quarter of 2013 qualify for VAT zero-rating.
>
> **SO ORDERED.**[3]

Petitioner's *Motion for Reconsideration* was likewise denied in the CTA 3rd Division's Resolution dated February 14, 2020.

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[2] Decision dated October 4, 2019, pp. 1-2.
[3] Decision dated October 4, 2019, p. 17.

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Thus, petitioner filed the present *Petition for Review* with the Court *En Banc* on June 30, 2020. Respondent filed his *Comment*[4] on August 27, 2020, and the case was submitted for decision on September 16, 2020.[5]

Issues

Petitioner assigns the following errors to the 3rd Division:

1. The CTA-Division erred in holding, in general, that petitioner failed to establish that it is engaged in zero-rated or effectively zero-rated sales because it failed to prove the matters outlined below.

2. The CTA-Division erred in holding that petitioner failed to prove that its services fall within the scope of "services other than processing, manufacturing, or repacking of goods" under Section 108(B)(2) of the NIRC of 1997, as amended.

3. The CTA-Division erred in holding that petitioner failed to prove that its services were performed in the Philippines.

4. The CTA-Division erred in holding that petitioner failed to prove that all of its sales for the 3rd quarter of CY 2013 were made to non-resident foreign corporations doing business outside the Philippines.

5. The CTA-Division erred in holding that tax refunds in relation to VAT are in the nature of exemptions.[6]

Petitioner's arguments

Petitioner argues that the CTA 3rd Division erred in relying solely on the Intra-Group Services Agreement (IGSA) to determine the nature of the services it rendered; that as a regional operating headquarters (ROHQ), it can only render services specifically allowed by law, which excludes the category of services classified as processing, manufacturing or repacking of goods; that respondent has already admitted petitioner's status as an ROHQ and that the CTA 2nd Division has already held that the "purpose clause" stated in a company's Articles of Incorporation is sufficient to ascertain

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[4] *Rollo*, pp. 68-74.
[5] *Rollo*, pp. 77-78.
[6] *Rollo*, pp. 10-11.

the nature of its business. Petitioner further argues that as an ROHQ, it is engaged in services that are performed only in the Philippines; that the IGSA's failure to indicate where the services were actually performed does not necessarily follow that such services were rendered outside the Philippines.

Petitioner also argues that all of its suppliers are registered and operating in the Philippines; that the ICPA did not make any findings that petitioner's services do not qualify for VAT zero-rating on the ground that the same were not performed in the Philippines.

Petitioner also reiterates that its sales were made to non-resident corporations doing business outside the Philippines, and that credence should be given to the business foreign registration documents retrieved from the AMINET database.

Petitioner further argues that Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office (DBA-APHO) actually functions as an operating headquarters.

Respondent's counter-arguments

Respondent states that the CTA 3rd Division did not err in ruling that petitioner failed to prove that the entities to whom it rendered its services are NRFCs doing business outside the Philippines. Respondent maintains that the claimant has the burden of proof to establish the factual basis of its claim for tax credit or refund. Partaking of the nature of tax exemptions, claims for refunds are strictly construed against the claimant and cannot be allowed unless granted in the most explicit and categorical language.

Ruling of the Court

The Petition for Review lacks merit.

The Petition for Review was timely filed.

Records show that petitioner received the assailed Resolution dated February 14, 2020 on February 20, 2020.

Pursuant to Section 3(b),[7] Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), petitioner had fifteen (15) days from February 20, 2020, or until March 6, 2020, within which to file its Petition for Review before the Court *en banc.*

On March 6, 2020, petitioner filed its *Motion for Extension of Time to File Petition for Review*, praying for an additional fifteen (15) days from March 6, 2020, or until March 21, 2020 (Saturday) to file its Petition for Review.

On March 10, 2020, petitioner's *Motion for Extension* was granted. However, the Minute Resolution was furnished to petitioner only on June 16, 2020.

In the meantime, due to the rising COVID-19 cases, several areas were placed under Modified Enhanced Community Quarantine (MECQ), including the CTA. Considering that petitioner's final due date to file its Petition for Review was on March 21, 2020, during the MECQ, petitioner had thirty (30) days from June 1, 2020, or until July 1, 2020, within which to file its Petition for Review, pursuant to Supreme Court Administrative Circular No. 39-2020.

Thus, the instant Petition for Review was timely filed on June 30, 2020.

There is no compelling reason to reverse or modify the CTA 3rd Division's findings.

A perusal of petitioner's arguments show that these are the same arguments raised before the CTA 3rd Division which were already resolved in the assailed Decision dated October 4, 2019 and Resolution dated February 14, 2020.

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[7] Sec. 3. *Who may appeal; period to file petition.* – xx

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(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

Petitioner appeals the 3rd Division's findings that: (1) petitioner failed to prove that all entities to whom it rendered its services are non-resident foreign corporations doing business outside the Philippines; (2) petitioner failed to prove that all of its services rendered were other than processing, manufacturing, or repacking of goods; and, (3) petitioner failed to prove that its services were performed in the Philippines.

In order to determine whether petitioner is engaged in zero-rated or effectively zero-rated sales, reference must be made to Section 108(B)(1) and (2) of the National Internal Revenue Code (NIRC) of 1997, as amended, which provides:

> SEC. 108. *Value-added Tax on Sale of Services and Use of Lease of Properties.* –
>
> xxx
>
> (B) *Transactions Subject to Zero Percent (0%) Rate.* – The following services **performed in the Philippines** by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (1) Processing, manufacturing or repacking of goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
>
> (2) **Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).** *(Emphasis supplied)*

It has been oft-quoted that it is not enough that the recipient of the service be shown to be a foreign corporation, it must likewise be established that the said recipient is a "nonresident foreign corporation",[8] and that such recipient must also be not doing business in the Philippines.[9]

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[8] *Accenture, Inc. v. Commissioner of Internal Revenue*, G.R. No. 190102, July 11, 2012.
[9] *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, (G.R. No. 153205, January 22, 2007.

To be considered as a non-resident foreign corporation doing business outside the Philippines, each service-recipient must be supported, at the very least, by both a certificate of non-registration of corporation/partnership issued by the Philippine Securities and Exchange Commission (SEC) and certificate/articles of foreign incorporation/association. As a corollary, notwithstanding the presentation of the said documents, there must be no indication that any of the recipients of petitioner's services is doing business in the Philippines, consistent with the ruling in the *Burmeister* case.

In *Commissioner of Internal Revenue v. Deutsche Knowledge Services, Pte. Ltd.*,[10] the Supreme Court ruled:

> For purposes of zero-rating under Section 108(B)(2) of the Tax Code, the claimant must establish the two components of a client's NRFC status, viz.: (1) that their client was established under the laws of a country not the Philippines or, simply, is not a domestic corporation; and (2) that it is not engaged in trade or business in the Philippines. **To be sure, there must be sufficient proof of *both* of these components: showing not only that the clients are foreign corporations, but also are not doing business in the Philippines.**
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> xxx
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> To recall, the CTA found that the SEC Certification of Non-Registration of Company and Authenticated Articles of Association and/or Certificates of Registration/Good Standing/Incorporation sufficiently established the NRFC status of 11 of DKS' affiliates-clients.
>
> The Court upholds these findings.
>
> In any case, after a judicious review of the records, the Court still do not find any reason to deviate from the court *a quo*'s findings. **To the Court's mind, the SEC Certifications of Non-Registration show that their affiliates are foreign corporations. On the other hand, the articles of association/certificates of incorporation stating that these affiliates are registered to operate in their respective home countries, outside the Philippines are *prima facie* evidence that their clients are not engaged in trade or business in the Philippines.**
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> Proof of the above-mentioned second component sets the present case apart from *Accenture, Inc. v. Commissioner of Internal Revenue* and *Sitel Philippines Corp. v. Commissioner of Internal Revenue*. In these cases, the

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[10] G.R. No. 234445, July 15, 2020.

> claimants similarly presented SEC Certifications and client service agreements. However, the Court consistently ruled that documents of this nature only establish the *first* component (i.e., that the affiliate is foreign). The absence of any other competent evidence (e.g., articles of association/ certificates of incorporation) proving the *second* component (i.e., that the affiliate is not doing business here in the Philippines) shall be fatal to a claim for credit or refund of excess input VAT attributable to zero-rated sales. (*Citations omitted, emphasis supplied and italics in the original text*)

Based on the foregoing, the Court finds no reason to reverse the CTA 3rd Division's factual findings as to which of petitioner's alleged service-recipients complied with the two (2) basic documents.[11]

Further, the Court cannot give credence nor probative value to the business registration documents retrieved from the AMINET database. The AMINET database is a database set up by Deutsche Bank Group, the print-outs from which are self-serving, lack credibility, and which can be easily manipulated to favor petitioner in view of its affinity with the entity that maintains or keeps the database.[12] The alleged good faith in the preparation and maintenance of the integrity of the database, and that the same were prepared *ante litem motam* are not sufficient considering that cases filed before the Court are litigated *de novo.* Party litigants should prove every minute aspect of their cases, and thus cannot be based on mere presumption of good faith as claimed by petitioner.[13] Bare allegations as regards the alleged integrity of the AMINET database, unsubstantiated by adequate evidence, are not equivalent to proof.[14]

We also do not find that the CTA 3rd Division erroneously refused to treat DBA-APHO as an NRFC doing business outside the Philippines. We quote in agreement the CTA 3rd Division's disposition on the matter, to wit:

> With regard to *Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office,* petitioner presented in evidence, Exhibit "P-7.2", purporting to be an *"Authenticated Company Registration of Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office*", with an attached Certification that it *"is a*

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[11] *Rollo,* Decision dated October 4, 2019, pp. 48-49.
[12] *Deutsche Knowledge Services, Pte., Ltd. v. Commissioner of Internal Revenue,* CTA EB Nos. 1917 and 1919, February 5, 2020.
[13] *Id.*
[14] *Id.*

> *segment of Deutsche Bank AG and is not a separate entity."* In other words, *Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office* is merely a part or section of, and has no personality distinct from, *Deutsche Bank AG.* Such being the case, We cannot treat *Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office* as a non-resident foreign corporation doing business outside the Philippines. This is simply because certain SEC negative certifications state that *Deutsche Bank AG* is a registered entity in the Philippines with SEC Registration No. F-1228. Thus, *Deutsche Bank AG* is considered as a resident foreign corporation or foreign corporation engaged in trade or business in the Philippines. Correspondingly, since *Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office* is "a segment" of *Deutsche Bank AG,* the latter's status as a resident foreign corporation, applies with equal force to the former.[15] (*Citations omitted, italics in the original text)*

As to whether the services are the qualified services performed in the Philippines, the Court finds that the testimony of its witness Ms. Rachel Concepcion, albeit unrebutted, did not sufficiently establish that the services rendered are under the category of services other than processing, manufacturing or repacking of goods, and that said services are performed in the Philippines.

Witness Concepcion stated the nature of petitioner's business, as follows:

> Q4: As the Legal Entity Controller, can you state the nature of Petitioner's business?
>
> A: Yes. Petitioner, which is a multinational company organized and existing under and by virtue of the laws of Singapore, is licensed to do business as a regional operating headquarters (ROHQ) in the Philippines to engage in general administration and planning; business planning and coordination; sourcing/procurement of raw materials and components; corporate finance advisory services; marketing control and sales promotion; training and personnel management; logistic services, research and development services and product development; technical support and maintenance; data processing and communication and business development.
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> Specifically, Petitioner acts as a shared services center, which handles regional, as well as global, accounting

[15] *Rollo*, Decision dated October 4, 2019, p. 49.

and related controlling processes, such as accounting production work in the global general ledger in SAP, developing and operating inter-company clearing house, accounting and head office reporting for non-regulated entities and product control.

Q5: What is your proof in saying so?

A: We have Petitioner's Certificate of Registration and License issued by the Securities and Exchange Commission (SEC) on April 25, 2005.[16]

While the same clearly shows that petitioner is authorized to engage in services that are "other than processing, manufacturing, or repacking of goods," there is no indication that these are the services rendered to its client-recipients.

As discussed in the assailed Decision, only the services rendered to DB International Asia Limited were ascertained to fall under the requirement "that the service rendered is other than processing, manufacturing or repacking of goods". The pertinent portion is quoted below:

> In petitioner's *IntraGroup Service Agreement* with *DB International Asia Limited,* it was stated that the meaning of "Services" to be provided by petitioner are specified in Schedule 1 of the said *Agreement,* which reads as follows:
>
> SCHEDULE 1a – DETAILED FUNCTIONAL AND BUSINESS SCOPE
>
> 1) Services referred to in the Service Agreement refer to functional support in the following areas (see Appendix A for further detail):

Function	Process
<u>Head Office reporting</u>: Deliver financial statements	Financial Statements analysis and review • Prepare financial and management accounting reports • Reconcile key inter-company differences • Deliver monthly and quarterly reporting
<u>Transparency reports</u>: Generate data integrity and validation and control transparency reports	• Deliver report on data feed receipt, data consistency, unmapped items, and errors • Deliver report on

[16] Division Docket, Vol. I, Exhibit "P-11", pp. 105-106.

	consistency of outputs
Country specific regulatory and local tax compliance reporting	• Deliver daily, weekly, monthly, quarterly, and semestral financial reporting packages, statistical returns, monthly tax schedule

> Clearly, the foregoing services fall under the category of services other than processing, manufacturing or repacking of goods, pursuant to Section 108(B)(2), in relation to Section 108(B)(1), both of the NIRC of 1997, as amended.
>
> Unlike in the case of *DB International Asia Limited*, however, the following service recipients, who are non-resident foreign corporations, were not covered by any *IntraGroup Service Agreement*, to wit:
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> xxx
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> Thus, there is no way for this Court to determine with certainty which type of services were rendered by petitioner to the foregoing entities.
>
> As for the remaining service recipients, who are likewise identified as non-resident foreign corporations, while they may have been respectively covered by an *IntraGroup Service Agreement*, petitioner failed to present the attaching respective Service Schedule thereto. Such being the case, this Court cannot likewise determine whether the services performed by petitioner to the said service-recipients fall under the category of services other than processing, manufacturing or repacking of goods.[17]

While the SEC CRL states that activities that petitioner intends to engage in, the same does not specify which services are rendered to its clients at any given period. It must be pointed out that the *IntraGroup Service Agreement* between petitioner and its non-resident foreign client binds and governs the types of transactions and services between the said parties within the period of said *Agreement* and the period covered by the claim for refund. Thus, We agree with the Division's findings that only the services to DB International Asia Limited were proven as falling under the category of services other than processing, manufacturing or repacking of goods.

Petitioner, likewise, argues that its services were performed in the Philippines, as shown by its various registrations in the Philippines, as well as the invoices and

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[17] *Rollo*, Decision dated October 4, 2019, pp. 50-52.

receipts showing the goods and services it paid for, in the course of rendering services to its own clients. Its witness, Ms. Concepcion, testified, as follows:

> Q23: How did petitioner incur the input VAT credits which are the subject of the present claim for refund?
>
> A: **Petitioner purchased goods and services in the course of rendering services in the Philippines** as a shared services center to clients engaged in business conducted in the Philippines. These clients are all part of the Deutsche Bank Aktiengesellschaft Group (DB Group)
>
> xxx
>
> Q31: What is the relevance of Exhibits "P-6" to "P-6.53"?
>
> A: **These documents show that Petitioner, with office address in the Philippines, rendered services within the Philippines to foreign clients operating outside the Philippines.** In turn, the Petitioner's foreign clients paid Petitioner for the services rendered in the Philippines.[18] (*Emphasis supplied*)

The Court finds the abovequoted testimonies insufficient. There is no basis for this Court to determine that the services for each of petitioner's clients were performed in the Philippines.

In the recent case of *Pilipinas Kyohritsu, Inc. v. Commissioner of Internal Revenue*,[19] the CTA 2nd Division explained that the *Engineering Service Agreement* made by and between petitioner and SWS-Japan, which was offered in evidence and admitted by the Court, was able to show that petitioner has rendered services to SWS-Japan for the input and maintenance of designing data of automotive wiring harnesses. Unfortunately, the agreement does not state whether the services were exclusively performed in the Philippines, or part of the services were performed in the place where SWS-Japan was located.

Further, in *Maxima Machineries, Inc. v. Commissioner of Internal Revenue*,[20] the Court held that since no proof of any contract or service agreement was adduced by petitioner, the Court was "unable to verify whether any service other than

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[18] Division Docket, Vol. I, Exhibit "P-11", pp. 109-117.
[19] CTA Case No. 9757, July 6, 2021.
[20] CTA EB No. 2282, June 29, 2021.

'processing, manufacturing or repacking of goods' was rendered by petitioner in the Philippines..."

Considering the foregoing, the Court *En Banc* finds no error in the CTA 3rd Division's reliance on the IGSAs to determine that the nature of the services rendered, and that said services were performed in the Philippines. As found by the CTA 3rd Division, the IGSAs do not have any indication that the services were performed in the Philippines.

All told, the Court finds no reason to reverse or modify the findings of the Court in Division in CTA Case No. 9154.

WHEREFORE, the Petition for Review is **DENIED** for lack of merit. The Decision and Resolution dated October 4, 2019 and February 14, 2020, respectively, are **AFFIRMED**.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(with Concurring and Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(with due respect, please see
Concurring and Dissenting Opinion)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
(I join the Concurring and Dissenting Opinion
of Justice Bacorro-Villena)
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

DEUTSCHE KNOWLEDGE SERVICE PTE. LTD., *Petitioner,*	**CTA EB NO. 2249** (CTA Case No. 9154)
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-versus-	**DEL ROSARIO**, P.J., **CASTAÑEDA, JR.**, **UY**, **RINGPIS-LIBAN**, **MANAHAN**, **BACORRO-VILLENA**, **MODESTO-SAN PEDRO**, **REYES-FAJARDO**, and **CUI-DAVID**, JJ.
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: DEC 14 2021 3:45 p.m.

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CONCURRING AND DISSENTING OPINION

DEL ROSARIO, P.J.:

While I agree with the *ponencia*'s affirmation of the Court *a quo*'s findings as to which of petitioner's alleged affiliates complied with the required documentary requirements to establish their status as non-resident foreign corporation not engaged in business in the Philippines, I take exception to the *ponencia*'s conclusion that "[a]s to whether the services performed in the Philippines, the Court finds that the testimony of its witness Ms. Rachel Concepcion, albeit unrebutted, did not sufficiently establish that the services rendered are under the category of services other than processing, manufacturing or repacking of goods, and that said services are performed in the Philippines."

In the case at bar, petitioner was able to prove that its services fall within the scope of services other than processing, manufacturing, or repacking of goods; and, that aforesaid services were rendered in the Philippines.

The unrebutted testimony of petitioner's witness, Ms. Rachel Concepcion, anent the nature of the actual services rendered by petitioner to its affiliates as well as the rendition of said services in the Philippines, must be given full weight and credence.

Her testimony that the services rendered by petitioner were other than processing, manufacturing, or repacking of goods is corroborated by petitioner's Certificate of Registration and License dated April 25, 2005, issued by the Securities and Exchange Commission, which enumerates the qualifying services that it may render as a Regional Operating Headquarters (ROHQ) in the Philippines. **Truth to tell, respondent admitted petitioner's status as an ROHQ which necessarily includes the nature of services that petitioner performs.**

Moreover, Ms. Concepcion's testimony that the services were rendered in the Philippines is supported by the fact that **petitioner purchased goods and services in the Philippines for purposes of performing its services in the Philippines.**

Tax refund case is civil in nature,[1] and only a preponderance of evidence is needed to grant a claim for tax refund based on excess payment.[2] Nothing in the Rules of Court requires that documentary evidence is indispensable in civil cases. All that is required is the satisfaction of the quantum of evidence, that is, preponderance of evidence.[3]

Jurisprudence has it that an unrebutted testimony is enough evidence,[4] and sufficient to establish a basis for the court's award.[5] The declarations of the Supreme Court regarding the weight of testimonial evidence are quoted below:

> "He contends, in the first place, that the lower court erred in not finding that the applicant has failed to establish satisfactorily that he had previously filed his declaration of intention to become a citizen

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[1] *Philippine Phosphate Fertilizer Corporation vs. Commissioner of Internal Revenue*, G.R. No. 141973, June 28, 2005.
[2] *Southern Philippines Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 179632, October 19, 2011.
[3] *People of the Philippines vs. Jorie Wahiman y Rayos*, G.R. No. 200942, June 16, 2015.
[4] *Bienvenido Yap vs. The Solicitor General*, G.R. No. L-1602, September 9, 1948.
[5] *People of the Philippines vs. Elroswell Manzano y Brebonera @ Boy Ulo*, G.R. No. 138303, November 26, 2001.

of the Philippines and that he is not exempted from the prerequisite of filing said declaration.

Applicant alleged under oath in his petition that he had filed his declaration of intention to become a Filipino citizen with the Office of the Solicitor General in 1941, although all the records have been lost by reason of the war. This allegation is not disputed in any answer or objection and is supported by the **unrebutted testimony of the applicant, who was duly cross-examined in the trial court. <u>This is enough evidence</u>. Appellant's contention that applicant's testimony should be supported by documentary proof is not well taken. There is nothing in the law in support of such requirement."**[6]

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"We agree with the Solicitor General that it was proper to award compensation to the heirs of the victim for loss of earning capacity, pursuant to Article 2206 of the Civil Code. **Although the prosecution did not present documentary evidence to support this claim, testimonial evidence is sufficient** to establish a basis for which the court can make a fair and reasonable estimate of damages for loss of earning capacity. **The unrebutted testimony** of Angelita Kasilag **is sufficient basis for the award.** At the time of his death, Ernesto, thirty-three years old, was earning an average of P150.00 a day buying and selling bottles and junk materials. If not for his untimely death, he would have earned more for his family."[7] *(Boldfacing and underscoring supplied)*

Absent any contrary evidence of the respondent, who opted not to present any evidence during trial, I see no reason not to give weight and credence on the unrebutted testimony of petitioner's witness.

While tax refund, being in the nature of tax exemption, is construed strictly against the taxpayer, **this principle should not be interpreted to alter the quantum of evidence necessary in civil cases**, that is - - from preponderance of evidence to proof beyond reasonable doubt.

In fine, I submit that the totality of petitioner's evidence establishes by preponderance of evidence that the services rendered by petitioner to its affiliates fall within the scope of services other than processing, manufacturing, or repacking of goods; and, that aforesaid services were rendered by petitioner in the Philippines.

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[6] *Supra* note 4.
[7] *Supra* note 5.

All told, I vote to partially grant petitioner's Petition for Review. Accordingly, petitioner's refund claim must be recomputed.

ROMAN G. DEL ROSARIO
Presiding Justice

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COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: DEC 14 2021 3:45 p.m.

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CONCURRING AND DISSENTING OPINION

BACORRO-VILLENA, J.:

I concur with the majority's affirmation of the Third Division's findings as to which of petitioner's service recipients complied with the two (2) required documents of Securities and Exchange Commission (**SEC**) Certifications of Non-Registration and articles of association/certificates of incorporation. I also agree with the finding that Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office (**DBA-APHO**) cannot be considered as non-resident foreign corporation (**NRFC**) given that it is only "a segment" of Deutsche Bank AG; as such, the latter's status as a resident foreign corporation, applies to the former.

The point of my dissent, however, lies on the majority's holding that the testimony of petitioner's witness, Rachel Concepcion (**Concepcion**), while unrebutted, did not sufficiently establish that the services petitioner rendered are under the category of services other than processing, manufacturing or repacking of goods, and that said services were performed in the Philippines.

A closer perusal of the records would show that Concepcion testified that petitioner acts as a shared services center, to wit:

> ...
>
> Q4: As the Legal Entity Controller, can you state the nature of Petitioner's business?
>
> A: Yes. Petitioner, which is a multinational company organized and existing under and by virtue of the laws of Singapore, is licensed to do business as a regional operating headquarters (ROHQ) in the Philippines to engage in general administration and planning; business planning and coordination; sourcing/procurement of raw materials and components; corporate finance advisory services; marketing control and sales promotion; training and personnel management; logistic services, research and development services and product development; technical support and maintenance; data processing and communication and business development.
>
> **Specifically, Petitioner acts as a shared services center, which handles regional, as well as global, accounting and related controlling processes, such as accounting production work in the global general ledger in SAP, developing and operating inter-company clearing house, accounting and head office reporting for non-regulated entities and product control.**
>
> Q5: What is your proof in saying so?
>
> A: We have Petitioner's Certificate of Registration and License issued by the Securities and Exchange Commission (SEC) on April 25, 2005.[1]
>
> ...

Considering the unrebutted testimony of its witness who stated that petitioner acts as a shared services center handling "regional, as well as global, **accounting and related controlling processes**, such as accounting production work in the global general ledger in SAP, developing and operating inter-company clearing house, accounting and head office reporting for non-regulated entities and product control" (which activities are evidently not in the same nature as processing, manufacturing, or repacking of goods), it is my view that probative weight should be accorded to such declaration.

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[1] Exhibit "P-11", Division Docket, Volume I, pp. 105-106; Emphasis supplied.

This declaration of Concepcion is corroborated by petitioner's Certificate of Registration and License (**CRL**) issued by the SEC and is consistent with the pertinent laws relative to ROHQs (like petitioner).

Specifically, Article 59, Chapter II, Book III of Executive Order (**EO**) No. 226, otherwise known as The Omnibus Investments Code of 1987, as amended by Republic Act (**RA**) No. 8756[2] reads:

> ...
> (1) The regional operating headquarters may engage in any of the following qualifying services:
>
> - General administration and planning;
> - Business planning and coordination;
> - Sourcing/procurement of raw materials and components;
> - Corporate finance advisory services;
> - Marketing control and sales promotion;
> - Training and personnel management;
> - Logistics services;
> - Research and development services, and product development;
> - Technical support and maintenance;
> - Data processing and communication; and
> - Business development.
>
> ...

A reading of the SEC-issued CRL would show that petitioner applied for and was eventually granted a license as an ROHQ. As such, it may rightfully render similar qualifying services that an ROHQ may engage in.

Thus, with petitioner's CRL corroborated by the testimony of Concepcion as to the nature of the services it rendered, and *without* any controverting evidence from respondent, I find that it sufficiently establishes the fact that it only rendered services other than processing, manufacturing, or repacking of goods.

Relatedly, under Section 3(q) and (ff), Rule 131 of the Rules on Evidence, disputable presumptions exist in petitioner's favor which should stand when no contrary evidence is presented. The pertinent provision reads:

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[2] AN ACT PROVIDING FOR THE TERMS, CONDITIONS AND LICENSING REQUIREMENTS OF REGIONAL OR AREA HEADQUARTERS, REGIONAL OPERATING HEADQUARTERS, AND REGIONAL WAREHOUSES OF MULTINATIONAL COMPANIES, AMENDING FOR THE PURPOSE CERTAIN PROVISIONS OF EXECUTIVE ORDER NO. 226, OTHERWISE KNOWN AS THE OMNIBUS INVESTMENTS CODE OF 1987.

> ...
>
> **Sec. 3.** *Disputable presumptions.* — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:
>
> ...
>
> (q) That the ordinary course of business has been followed;
>
> ...
>
> (ff) That the law has been obeyed;
>
> ...

Furthermore, in previous cases[3] decided by this Court involving the same parties, claims and issues, albeit pertaining to different taxable periods, this Court deemed as sufficient petitioner's reference to its CRL. The Court took note of the aforementioned qualifying services when it ruled that petitioner satisfied the requisite that its services must be other than "processing, manufacturing or repacking of goods". The same is true even with respect to other cases involving the other parties.[4]

In fact, as pointed out by petitioner, in another case[5] with the same issue, the Second Division ruled that in ascertaining the nature of business and the type of service/s being performed by a certain corporation, this Court may rely on the purpose clause stated in the Articles of Incorporation (**AOI**) considering that the other party presented no controverting evidence to prove otherwise, *viz*:

> ...
>
> Accordingly, **in ascertaining the nature of business and the type of service/s being performed by a certain corporation, this Court may rely on the purpose clause stated in the Articles of Incorporation since the same confers, as well as limits, the powers that a corporation may exercise.** Evidently, it is through the purpose clause that prospective investors shall know the kind of business the corporation deals with; the management shall know the limits of their actions; and third party can know whether his/her dealings with the corporation are within its corporate functions and powers.

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3 CTA Case No. 8443, 07 July 2014; CTA Case No. 8342, 23 September 2014; CTA Case No. 8300, 10 July 2015; CTA Case No. 8861, 10 July 2017; CTA Case Nos. 8623, 8656, 8661 and 8685, 04 August 2017; CTA Case No. 9079, 09 January 2018; and CTA Case No. 9496, 12 February 2019.

4 *Amadeus Marketing Philippines, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 9441, 30 April 2019 and *BW Shipping Philippines, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 9448, 28 September 2019.

5 *Deutsche Knowledge Services Pte., Ltd. v. Commissioner of Internal Revenue*, CTA Case Nos. 8720, 8736, 8754 & 8767, 14 February 2020; Emphasis supplied. It is noted that petitioner cited the Decision dated 14 October 2019 but the pertinent discussion appears in the Resolution dated 14 February 2020.

> With regard to respondent's claim that no evidence was presented by petitioner which would establish the type of services it performs and the place where it had rendered the said services, the same had already [been] clarified by petitioner's Legal Entity Controller, Ms. Maricel Tio-Balagtas, who has testified on the said matters and was even cross-examined by respondent's counsel, to wit:
>
> ...
>
> Hence, **considering that respondent presented no controverting evidence to prove otherwise, the said Articles of Incorporation, Inter-Group Service Agreements, and testimony of Ms. Tio-Balagtas have sufficiently proven petitioner's compliance with the first requisite.**
>
> ...

With respect to the issue of whether its services were performed in the Philippines, Concepcion also testified that petitioner purchases goods and services in the course of rendering services in the Philippines, to wit:

> ...
>
> Q23: How did Petitioner incur the input VAT credits which are the subject of the present claim for refund?
>
> A: Petitioner purchased goods and services **in the course of rendering services in the Philippines as a shared services center** to clients engaged in business conducted in the Philippines. These clients are all part of the Deutsche Bank Aktiengesellschaft Group (DB Group).[6]
>
> ...

From the foregoing, it is evident that petitioner did not merely rely on the provisions of the law relative to ROHQs in advancing its argument that its services are rendered in the Philippines. <u>On the contrary, Concepcion's declaration is an unrebutted evidence of petitioner that its services were actually rendered in the Philippines.</u>

<u>Concepcion's testimony is further corroborated by the fact that petitioner purchased goods and services[7] from Philippine-based suppliers to be utilized as well here in the Philippines (in the course of rendering services to its clients)</u>.

The foregoing, supported by the nature of an ROHQ as a "foreign business entity which is **allowed to derive income in the Philippines** by performing qualifying services to its affiliates, subsidiaries or branches in the

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6 Exhibit "P-11", Supra at note 1, p. 109; Emphasis supplied.

7 Exhibits "P-236", "P-237", "P-410" to "P-414", "P-341", "P-600", "P-599", "P-434", "P-435", "P-515" to P-531", "P-569", "P-572", "P-305", "P-307", "P-606" to "P-637", "P-662", "P-311" to "P-327", "P-428", "P-418" and "P-419", CD.

Philippines, in the Asia-Pacific Region and in other foreign markets"[8], I agree with petitioner that it should be sufficient to hold that it indeed rendered its services in the Philippines.

From the disquisition above, it is my opinion that petitioner was able to prove, by preponderance of evidence and without controverting evidence from respondent, that its services fall within the scope of services other than "processing, manufacturing, or repacking of goods" and that the same were performed in the Philippines.

Lastly, I am not unaware that cases before this Court are litigated *de novo*. As such, the claimant of a tax refund should prove every minute aspect of its case.[9] However, the same remains to be civil in nature[10] and only a preponderance of evidence is needed to grant the same.[11]

In sum, I vote to partially grant the instant Petition for Review and remand the case to the Third Division for the determination of the refundable amount due to petitioner.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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[8] Section (2)3, Book III, EO 226, as amended by RA 8756.

[9] See *Commissioner of Internal Revenue v. Univation Motor Philippines, Inc. (formerly Nissan Motor Philippines, Inc.)*, G.R. No. 231581, 10 April 2019.

[10] See *Philippine Phosphate Fertilizer Corporation v. Commissioner of Internal Revenue*, G.R. No. 141973, 28 June 2005.

[11] See *Southern Philippines Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 179632, 19 October 2011.