REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

DEUTSCHE KNOWLEDGE SERVICES PTE. LTD.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8861

Members:

DEL ROSARIO, *P.J., Chairperson,*
UY, and
MINDARO-GRULLA, *JJ.*

Promulgated:

NOV 03 2017 ; 3:00 pm

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RESOLUTION

MINDARO-GRULLA, *J.:*

For resolution are the following:

1. respondent's **Motion for Partial Reconsideration (Re: Decision promulgated 10 July 2017)**, filed on July 28, 2017, without petitioner's comment despite notice per Records Verification dated August 31, 2017; and

2. petitioner's **Motion for Partial Reconsideration (Re: Decision dated July 10, 2017)**, filed on July 28, 2017, with respondent's **Opposition (Re: Motion for Partial Reconsideration)**, filed on August 30, 2017.

The parties move for the reconsideration of the Court's Decision dated July 10, 2017, which partially granted the petition, as follows:

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> **WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED.** Accordingly, respondent is **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** to petitioner in the reduced amount of **₱14,917,841.65**, representing petitioner's unutilized input taxes for the 1st quarter of CY 2013 attributable to its zero-rated sales.
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> **SO ORDERED.**

In his motion, respondent argues that the Court erred in ruling that (1) petitioner's input tax in the amount of ₱14,917,841.65 is attributable to its zero-rated sales; and (2) the claimed input value-added tax (VAT) subject of the instant case remained unutilized.

Respondent avers that the phrase "directly attributable" means arising from a particular source or cause. Thus, respondent claims that the ruling of the Court that the remaining input VAT can be attributable to the entire zero-rated sales is erroneous. Moreover, respondent claims that the information contained in petitioner's VAT return for taxable year 2013 should not be given weight as the same were mere results of self-declarations of petitioner and still subject to audit investigation. Hence, respondent argues that petitioner failed to prove that the subject input VAT being claimed remained unutilized or have not been applied against any output tax for the current and the succeeding quarters of the following year 2014.

On the other hand, in its motion, petitioner contends that the Court erred in partially denying a substantial amount of petitioner's claim for input VAT refund for the 1st quarter of calendar year (CY) 2013 on the basis of the following: (1) petitioner presented preponderant evidence to prove that all of its zero-rated sales for the 1st quarter of CY 2013 were made to non-resident foreign corporations doing business outside the Philippines; (2) petitioner's disallowed unutilized input VAT in the amount of ₱4,460,754.98 is duly substantiated and accordingly, must be refunded; and (3) petitioner has sufficient excess input VAT carried over from previous quarters to sufficiently cover its output VAT liability for the 1st quarter of CY 2013.

Petitioner avers that the IntraGroup Service Agreements, Company Profile Fact Sheets (CPFS), and foreign business registration documents retrieved from petitioner's AMInet database all prove the locations and addresses of petitioner's clients. Petitioner argues that the business registration documents and CPFS it presented, taken together, should be given the same probative value as the Articles of Incorporation/Association required by this Court. Absent contrary proof presented by respondent, petitioner submits that these documents should be deemed sufficient to prove that its foreign clients are doing business outside the Philippines. Petitioner submits that the CPFS and the foreign business registration documents are electronic evidence. Petitioner claims that the integrity and reliability of the foreign business registration documents were duly established through the testimony of its witness. Hence, petitioner argues that the Court erred in ruling that the CPFS and business registration documents are self-serving and can be easily manipulated.

Petitioner also prays for reconsideration of the following disallowances: (1) out-of-period claim – petitioner avers that Revenue Memorandum Circular (RMC) No. 42-03 specifically allows out-of-period claims provided certain requirements are met, which petitioner sufficiently complied with; (2) input VAT not separately indicated – petitioner argues (a) that respondent's own regulations provide that the selling price stated in an official receipt (OR) shall be deemed to be VAT inclusive if the VAT is not billed separately, (b) that the input VAT may be readily computed, (c) that the ORs and invoices are VAT ORs and invoices, (d) that these ORs and invoices were issued by petitioner's suppliers over which petitioner had no participation or control whatsoever, and (e) non-compliance with the invoicing requirements attracts the applicable administrative penalties, not the disallowance of the claim.

Petitioner maintains that pursuant to Section 110(B) of the National Internal Revenue Code (NIRC) of 1997, as amended, and as implemented by Section 4.110-7(b) of Revenue Regulations (RR) No. 16-05, it is clear that a taxpayer may apply the amount of its available unutilized input VAT carried over from the previous quarter to its output VAT liability for the current taxable quarter. Hence, petitioner claims that it has excess input VAT carried over from the quarters previous to the 1st quarter of 2013 in the amount of ₱249,651,814.19, which is indicated in Line 20E of petitioner's quarterly VAT return for the 1st quarter of 2013. Petitioner asserts that this is more than sufficient to cover petitioner's output tax liability of ₱673,702.54.

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In the course of preparing its motion, petitioner allegedly noted that some SEC Certificates of Non-Registrations were not submitted during the course of the proceedings. In view thereof, petitioner prays for the reopening of the trial and for leave to present supplemental evidence.

In his opposition, respondent contends that petitioner failed to prove that all its clients are non-resident foreign corporations doing business outside the Philippines as ruled in the assailed Decision. Moreover, respondent agrees with the Court's finding that petitioner's unutilized input VAT in the amount of ₱4,460,754.98 failed to meet the substantiation requirements.

After a careful evaluation of the parties' arguments, this Court finds no compelling reason to reverse or modify the assailed Decision.

It bears stressing that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund.[1] Tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund.[2]

Anent petitioner's argument that the IntraGroup Service Agreements, CPFS, and foreign business registration documents retrieved from petitioner's AMInet database, taken together, should be given the same probative value as the Articles of Incorporation/Association, the Court is not persuaded.

In addressing the same issue, the Court *En Banc*, in the case of *Commissioner of Internal Revenue vs. Deutsche Knowledge Services Pte. Ltd.*[3], held that:

> As pointed out by the Court in Division, to be considered as non-resident foreign corporation doing business outside the Philippines, each entity must be supported, at the very least, by **both** <u>SEC certificate of non-registration of corporation/partnership</u>, which will show that the recipient of the service has no registered

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[1] *Citibank, N.A. vs. Court of Appeals, et al.,* G.R. No. 107434, October 10, 1997.

[2] *Commissioner of Internal Revenue vs. S.C. Johnson & Son, Inc., et al.,* G.R. No. 127105, June 25, 1999.

[3] CTA EB Case Nos. 1297 & 1302, May 18, 2017.

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> business in the Philippines and certificate/articles of foreign incorporation/association, which will prove that the recipient is indeed foreign.
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> The additional pieces of evidence presented, *i.e.,* the Company Profile Fact Sheets which were retrieved from Deutsche's AMInet database merely provided some information for purposes of their respective transactions such as name, date of incorporation, Country of the entity and its status. As testified to by Deutsche's witness Concepcion, *"AMInet is the Data Maintenance Platform for legal entities and other reportable vehicles within the Deutsche Bank Group (the "DB Group"). The application is a web-based extension of the Central Legal Entity Database (AMI) in Deutsche's Head Office in Germany."* In other words, it came from its own compilation of information for its own use, reference and monitoring. By themselves, the said compilation would not be sufficient to satisfy the third requisite — that the recipient of such services is doing business outside the Philippines — to qualify for VAT zero-rating under Section 108 (B) (2) of the NIRC of 1997, as amended.

Hence, the Court cannot give credence to the purported foreign business registration print-outs retrieved from the AMInet database which is a database set up by Deutsche Bank Global (the Head Office located in Germany). As held in the assailed Decision, the said documents are not sufficient to establish the fact that the service recipients are non-resident foreign corporations doing business outside the Philippines, as they may be considered self-serving and can be easily manipulated to favor petitioner in view of its affinity with the entity that maintains or keeps the said database.

Moreover, the Court finds that the disallowance of the input VAT in the total amount of ₱4,460,754.98 for failure to meet the substantiation requirements prescribed under the VAT law and regulations is in order.

Even if RMC No. 42-03 allows out-of-period claims of input VAT, the same cannot be adhered to, as it contravenes Section 110(A)(2) of the NIRC of 1997, as amended, to wit:

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SEC. 110. *Tax Credits.* —

(A) *Creditable Input Tax.* —

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(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.

xxx 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.

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 — 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.[4]

As for invoices or ORs wherein the input taxes were not separately indicated, the Court finds the disallowance to be in order considering that Section 113(B)(2)(a) of the NIRC of 1997, as amended, requires the amount of input tax be shown separately, to wit:

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[4] *Commissioner of Internal Revenue vs. Deutsche Knowledge Services Pte. Ltd.*, CTA EB Case Nos. 1297 & 1302, May 18, 2017.

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

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(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:

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(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*)

In *Microsoft Philippines, Inc. vs. Commissioner of Internal Revenue*[5], the Supreme Court held that the taxpayer claiming a VAT input tax credit or refund has the burden of proving that he is entitled to the refund or credit by submitting evidence that he has complied with the requirements laid down in the tax code and the BIR's revenue regulations under which such privilege of credit or refund is accorded. The invoicing requirements for a VAT-registered taxpayer as provided in the NIRC and revenue regulations are clear. A VAT-registered taxpayer is required to comply with all the VAT invoicing requirements to be able to file for a claim for input taxes on domestic purchases for goods or services attributable to zero-related sales.

As to petitioner's argument that it has sufficient excess input VAT carried over from previous quarters to sufficiently cover its output VAT liability for the 1st quarter of CY 2013, suffice it to say that petitioner failed to present and offer in evidence any VAT invoice or official receipt to support the alleged input tax carried over from previous quarter in the amount of ₱249,651,814.19 which it seeks to be credited or charged against its output VAT liability for the 1st quarter of CY 2013. Moreover, the Court noted that the "Input Tax

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

Carried Over from Previous Period"[6] in petitioner's Quarterly VAT Return for the 1st quarter of CY 2013 reflects the amount of "0.00". The amount of ₱249,651,814.19 actually pertains to the entry for "Others"[7] under "Allowable Input Tax". Hence, the Court correctly applied the input VAT for the 1st quarter of CY 2013 against the reported output VAT liability of ₱673,702.54 for the same quarter instead of its unsupported input VAT carried over from previous quarters.

Anent petitioner's motion to reopen trial, the Court finds no compelling or persuasive reason to grant the same.

In this case, judgment has already been rendered; hence, a motion to reopen 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]

Pursuant to Section 1, Rule 15 of the Revised Rules of the Court of Tax Appeals, petitioner's remedy is either to seek a reconsideration or new trial of the decision of the Court.

Although Section 8 of RA No. 1125, as amended, creating the Court of Tax Appeals, expressly provides that proceedings before this Court shall not be governed strictly by technical rules of evidence and there are instances where the Court allows the reopening of trial even though judgment has already been rendered, still, the Court finds that petitioner has not demonstrated any cogent reason for the Court to apply the technical rules liberally.

Even if petitioner's Motion for Reopening of Trial is to be considered as a motion for new trial, the same cannot be granted

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6 Exhibit "P-3", Line 20A, Docket, vol. II, p. 1671.
7 Exhibit "P-3", Line 20E, Docket, vol. II, p. 1671.
8 *Alegre vs. Reyes*, G.R. No. L-56923, May 9, 1988.

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since additional evidence is sought to be presented. The additional evidence is neither newly discovered evidence nor omitted due to fraud, accident, mistake or excusable negligence.

To our mind, the additional evidence petitioner seeks to present is forgotten evidence. 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 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.[9]

WHEREFORE, premises considered, respondent's **Motion for Partial Reconsideration (Re: Decision promulgated 10 July 2017)** and petitioner's **Motion for Partial Reconsideration (Re: Decision dated July 10, 2017)** are **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

(I maintain my Concurring and Dissenting Opinion.)
ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

[9] *Office of the Ombudsman vs. Coronel*, G.R. No. 164460, June 27, 2006.