REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

****

DEUTSCHE KNOWLEDGE SERVICES PTE. LTD.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1917
(CTA Case No. 9079)

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COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

DEUTSCHE KNOWLEDGE SERVICES PTE. LTD.,
Respondent.

CTA EB NO. 1919
(CTA Case No. 9079)

Present:

DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, and
MODESTO-SAN PEDRO, JJ.

Promulgated:

FEB 05 2020 1:38 p.m.

x - x

DECISION

UY, J.:

Before the Court *En Banc* are two (2) consolidated *Petitions for Review*, CTA EB No. 1917 and CTA EB 1919, both filed before the Court *En Banc* on September 13, 2018 and September 5, 2018, respectively, assailing the Decision dated January 9, 2018[1] and Resolution dated August 8, 2018[2], rendered by the Second Division of this Court (Court in Division) in CTA Case No. 9079 entitled "*Deutsche Knowledge Services, Pte. Ltd., Petitioner, vs. Commissioner of Internal Revenue, Respondent*", the dispositive portions of which respectively read:

Decision dated January 9, 2018:

> "**WHEREFORE**, premises considered, the Petition for Review is **PARTIALLY GRANTED**. Accordingly, let a tax refund or a Tax Credit Certificate be issued in favor of petitioner in the reduced amount of **₱5,225,189.50**, representing its unutilized and excess input VAT attributable to zero-rated sales for the second quarter of CY 2013.
>
> **SO ORDERED.**"

Resolution dated August 8, 2018:

> "**WHEREFORE**, premises considered, **Motion for Partial reconsideration (Re: Decision dated January 9, 2018) (With Motion to Re-Open Trial)** and respondent's **Motion for Partial Reconsideration (Re: Decision promulgated 9 January 2018)**, are **DENIED** for lack of merit.
> **SO ORDERED.**"

CTA EB No. 1917

CTA EB No. 1917 is the *Petition for Review* filed on September 13, 2018[3] by Deutsche Knowledge Service Pte. Ltd. (or "Deutsche Knowledge"), as petitioner, against the Commissioner of Internal Revenue (CIR), as respondent, wherein Deutsche Knowledge prays that the above-stated Decision and Resolution be reversed; that the Court issue a Decision granting its claim for refund of unutilized input

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[1] Penned by Associate Justice Caesar A. Casanova and concurred by Associate Justice Juanito C. Castañeda, Jr., and Associate Justice Catherine T. Manahan, EB Docket (CTA EB No. 1917), pp. 44 to 76; and EB Docket (CTA EB No. 1919), pp. 22 to 54.
[2] *Id.*, EB Docket (CTA EB No. 1917), pp. 77 to 93; EB Docket (CTA EB No. 1919), pp. 55 to 71.
[3] EB Docket (CTA EB No. 1917), pp. 6 to 36.

VAT in the amount of ₱23,816,670.55 representing its excess and unutilized input VAT on purchases of goods and services attributable to zero-rated sales for the 2nd quarter of calendar year 2013 (CY 2013); and/or issue an order reopening trial to allow Deutsche Knowledge to present supplemental evidence.

CTA EB No. 1919

CTA EB No. 1919 is the *Petition for Review* filed on September 5, 2018[4] by the CIR, as petitioner, against Deutsche Knowledge, as respondent, wherein the CIR prays the assailed Decision and Resolution be reconsidered and set aside and that a new one be rendered denying the entire claim for refund.

THE FACTS

Deutsche Knowledge is the Philippine branch of a multinational company organized and existing under and by virtue of the laws of Singapore, with registered office address at One Raffles Quay, #17-10 South Tower, Singapore 048583. It 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.

Deutsche Knowledge is licensed to do business as a regional operating headquarters (ROHQ) in the Philippines by the Securities and Exchange Commission (SEC) 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 personnel management; logistic services; research and development services and product development; technical support and maintenance; data processing and communication and business development.

On the other hand, the CIR is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters

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[4] EB Docket (CTA EB No. 1919), pp. 7 to 20.

arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at 5th Floor, BIR Building, Diliman, Quezon City.

On February 27, 2015, Deutsche Knowledge filed with the BIR-Large Taxpayers Regular Audit Division 3, an application for tax credit/refund of its excess and unutilized input VAT for the second quarter of CY 2013 in the amount of ₱23,816,670.55.

There being no action taken by the CIR on its administrative claim for refund or issuance of TCC, Deutsche Knowledge filed a *Petition for Review* before the Court in Division on June 30, 2015.

On July 16, 2015, the CIR filed his *Answer* where he raised, among others, Special and Affirmative Defenses. According to the CIR, the claim for refund is subject to administrative routinary investigation/ examination by the Bureau; that the amount of ₱23,816,670.55 allegedly representing excess and unutilized input VAT on purchases of goods and services attributable to zero-rated sales for the 2nd quarter of CY 2013 was not properly documented. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit; and that Deutsche Knowledge must show that it has complied with the provisions of Section 229 of the NIRC of 1997 on the prescriptive period for claiming tax refund/credit; that there is no record of Deutsche Knowledge ever submitting complete documents to substantiate its administrative claim for refund.

After the Pre-Trial Conference held on October 29, 2015, the parties filed their *Joint Stipulation of Facts and Issues* on December 17, 2015, which was approved by the Court in Division in its Pre-Trial Order dated January 21, 2016.

During trial in CTA Case No. 9079, Deutsche Knowledge presented as its witnesses, Rachel Concepcion and Independent Certified Public Accountant (ICPA) Katherine O. Constantino.

On April 28, 2016, Deutsche Knowledge filed its *Formal Offer of Evidence*, offering Exhibits "P-1" to "P-753", inclusive of submarkings, as its documentary evidence. The CIR filed his *Comment (Re: Petitioner's Formal Offer of Evidence),* on May 2, 2016.

In the Resolution dated June 1, 2016, the Court in Division admitted some of Deutsche Knowledge's evidence but denied the others for not being found in the records and for failure to present the originals for comparison.

For his part, the CIR did not present evidence in CTA Case No. 9079 on the ground that there is no report of investigation submitted by the Revenue Officer. Thus, the parties were granted a period of thirty (30) days to file their respective memoranda.

On July 26, 2016, the CIR filed his Memorandum, while Deutsche Knowledge filed its *Omnibus Motion (1) For leave of Court to submit evidence; (2) To admit evidence; and (3) To defer submission of Petitioner's Memorandum* on July 29, 2016, stating that the denied ICPA exhibits were formally offered but were not physically submitted to the Court; and that some exhibits are admissible as electronic evidence. The CIR failed to file its comment thereto. In the Resolution dated August 16, 2016, the Court in Division granted Deutsche Knowledge's *Motion* to defer submission of its memorandum.

In the Resolution dated October 20, 2016[5] the Court in Division granted Deutsche Knowledge's *Motion* for leave to submit evidence; and partially granted its *Motion* to admit evidence, admitting some exhibits but denying other exhibits for failure to present and compare with the originals and for not being found in the records.

On December 29, 2016, Deutsche Knowledge filed its *Memorandum* through registered mail and the same was received by the Court in Division on January 11, 2017. Thereafter, CTA Case No. 9079 was submitted for decision in the Resolution dated January 17, 2017.

In the assailed Decision dated January 9, 2018,[6] Deutsche Knowledge's Petition for Review was partially granted. The Court in Division ordered the CIR to issue a tax refund or a Tax Credit Certificate in favor of Deutsche Knowledge in the reduced amount of ₱5,225,189.50, representing its unutilized and excess input VAT attributable to zero-rated sales for the second quarter of CY 2013.

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[5] Division Docket – Vol. IV (CTA Case No. 9079), pp. 1580 to 1584.
[6] EB Docket (CTA EB No. 1917), pp. 44 to 77; EB Docket (CTA EB No. 1919), pp. 22 to 54; and Division Docket – Vol. IV (CTA Case No. 9079), pp. 1625 to 1657.

On January 25, 2018, Deutsche Knowledge filed a *Motion for Partial Reconsideration (Re: Decision dated January 9, 2018) (With Motion to Re-Open Trial)*,[7] while the CIR filed a *Motion for Partial Reconsideration (Re: Decision promulgated 9 January 2018)*.[8] Deutsche Knowledge filed its *Comment (To Respondent's Motion for Partial Reconsideration dated January 25, 2018)* on March 7, 2018.

In the assailed Resolution dated August 8, 2018[9], the Court in Division denied both Deutsche Knowledge's *Motion for Partial Reconsideration* with *Motion To Re-Open Trial* and the CIR's *Motion for Partial Reconsideration*, for lack of merit.

Thus, on August 29, 2018, Deutsche Knowledge filed before the Court *En Banc* a *Motion for Extension of Time to File Petition for Review*,[10] praying for an extension of fifteen days from August 29, 2018, or until September 13, 2018 to file its Petition for Review.

The Court *En Banc* granted Deutsche Knowledge a final and non-extendible period of fifteen (15) days from August 29, 2018, or until September 15, 2018, within which to file its *Petition for Review*.[11]

Likewise, on August 30, 2018, the CIR filed a *Motion for Extension of Time to File Petition for Review*,[12] praying for an extension of fifteen (15) days from August 31, 2018, or until September 15, 2018 to file his *Petition for Review*. The Court *En Banc* also granted the CIR a final and non-extendible period of fifteen (15) days from August 31, 2018 or until September 15, 2018, within which to file his *Petition for Review*.[13]

On September 5, 2018, the CIR filed his *Petition for Review* before the Court *En Banc*, docketed as CTA EB No. 1919[14], while Deutsche Knowledge filed its *Petition for Review* before the Court *En Banc*, docketed as CTA EB No. 1917 on September 13, 2018.[15]

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[7] Division Docket – Vol. IV (CTA Case No. 9079), pp. 1668 to 1689.
[8] Division Docket – Vol. IV (CTA Case No. 9079), pp. 1658 to 1664.
[9] EB Docket (CTA EB No. 1917), pp. 77 to 93; EB Docket (CTA EB No. 1919), pp. 55 to 71; and Division Docket – Vol. IV (CTA Case No. 9079), pp. 1740 to 1756.
[10] EB Docket (CTA EB No. 1917), pp. 1 to 4.
[11] Minute Resolution dated August 31, 2018, EB Docket (CTA EB No. 1917), p. 5.
[12] EB Docket (CTA EB No. 1919), pp. 1 to 4.
[13] Minute Resolution dated September 3, 2018, EB Docket (CTA EB No. 1919), p. 6.
[14] EB Docket (CTA EB No. 1919), pp. 7 to 20.
[15] EB Docket (CTA EB No. 1917), pp. 6 to 36.

Considering that CTA EB No. 1917 and CTA EB No. 1919 are appeals from the Decision dated January 9, 2018 and Resolution dated August 8, 2018, rendered by the Court in Division in CTA Case No. 9079, both cases consolidated on September 17, 2018.[16]

In the Resolution dated October 11, 2018,[17] the Court *En Banc* ordered the respondents in both cases to file their respective *Comments*. On October 24, 2018, the CIR filed his *Comment (Re: Petition for Review)*,[18] while Deutsche Knowledge filed its *Comment* on November 15, 2018 *(Re: Petition for Review dated September 3, 2018)*.[19]

In the Resolution dated December 14, 2018,[20] the Court *En Banc* ordered both parties to file their respective *Memoranda*.

On January 8, 2019, the CIR filed his *Manifestation*,[21] stating that he is adopting the arguments raised in the *Petition for Review* filed on September 5, 2018 in CTA EB No. 1919 and the arguments raised in his *Comment* filed on October 24, 2018 in CTA EB No. 1917 as his Memorandum. The said *Manifestation* was noted by the Court in the Resolution dated January 11, 2019.[22]

On February 4, 2019, Deutsche Knowledge filed its *Memorandum*.[23] Thereafter, the instant consolidated cases were submitted for decision in the Resolution dated February 20, 2019.[24] Hence, this Decision.

ASSIGNMENTS OF ERRORS

In **<u>CTA EB No. 1917</u>**, Deutsche Knowledge raises the following error supposedly committed by the Court in Division, *to wit:*

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[16] Minute Resolution dated September 17, 2018, EB Docket (CTA EB No. 1917), pp. 95 to 96.
[17] EB Docket (CTA EB No. 1917), pp. 97 to 98.
[18] EB Docket (CTA EB No. 1917), pp. 99 to 103.
[19] EB Docket (CTA EB No. 1917), pp. 105 to 118.
[20] EB Docket (CTA EB No. 1917), pp. 120 to 121.
[21] EB Docket (CTA EB No. 1917), pp. 122 to 125.
[22] Minute Resolution dated January 11, 2019, EB Docket (CTA EB No. 1917), p. 126.
[23] EB Docket (CTA EB No. 1917), pp. 127 to 158.
[24] EB Docket (CTA EB No. 1917), pp. 160 to 161.

> "[Deutsche Knowledge] respectfully submits that the CTA-Division gravely erred in partially denying [Deutsche Knowledge's] claim for refund or issuance of TCC for the 2nd quarter of CY 2013 xxx."[25]

In **CTA EB No. 1919**, the CIR raises the following errors supposedly committed by the Court in Division, *to wit*:

> "ASSIGNMENT OF ERROR
>
> I
>
> THE SECOND DIVISON OF THE HONORABLE COURT ERRED IN RULING THAT [DEUTSCHE KNOWLEDGE'S] INPUT TAX IN THE AMOUNT OF ₱5,225,189.50 IS ENTIRELY ATTRIBUTABLE TO THE ZERO-RATED SALES.
>
> II
>
> THE SECOND DIVISION OF THE HONORABLE COURT ERRED IN RULING THAT THE CLAIMED INPUT VAT SUBJECT OF THE INSTANT CASE REMAINED UNUTILIZED."[26]

Deutsche Knowledge's arguments:

Deutsche Knowledge argues that the Court in Division erred in partially denying its claim for refund or issuance of TCC for the 2nd quarter of CY 2013. Allegedly, it has proven, by preponderance of evidence, that all of its zero-rated sales for the 2nd quarter of CY 2013 were made to non-resident foreign corporations doing business outside the Philippines.

Moreover, it is Deutsche Knowledge's position that the disallowed excess and unutilized input VAT are duly substantiated and must be allowed for refund; and that it has sufficient excess input VAT carried over from previous quarters to sufficiently cover its output VAT liability for the 2nd quarter of CY 2013.

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[25] *Petition for Review*, EB Docket (CTA EB No. 1917), p. 11.
[26] *Petition for Review*, EB Docket (CTA EB No. 1919), p. 10.

Finally, Deutsche Knowledge contends that the higher interest of substantial justice dictates that the Court in Division should have allowed the reopening of trial for the admission of additional documents that would have enabled it to comply with the Court in Division's strict documentary requirements, which are neither mandated nor sanctioned by the law and regulations.

CIR's arguments:

The CIR argues that the Court in Division erred in ruling that Deutsche Knowledge's input tax in the amount of ₱5,225,189.50 is attributable to the zero-rated sales because, allegedly, no attributability was established between the input tax on purchases vis-à-vis the zero-rated sales and that the Court in Division merely assumed the same.

The CIR maintains that since the instant case involves claim for refund, Deutsche Knowledge must establish its claim by the quantum of evidence and not by assumption. The CIR likewise submits that tax refund is in the nature of a tax exemption which must be construed *strictissimi juris* against the taxpayer.

Allegedly, the Court in Division erred in ruling that the claimed input VAT remained unutilized. According to the CIR, in order to ensure that the subject VAT claimed for refund was not utilized in the succeeding taxable quarters, Deutsche Knowledge must prove that the same were no longer included in the succeeding taxable quarters of 2015. Allegedly, Deutsche Knowledge failed to overcome the burden 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 taxable year 2016.

THE COURT *EN BANC*'S RULING

Deutsche Knowledge's *Petition for Review* in CTA EB No. 1917 is partially meritorious, while the CIR's *Petition for Review* in CTA EB No. 1919 lacks merit.

EB No. 1917

Deutsche Knowledge failed to prove that all its sales to its clients are zero-rated sales.

Deutsche Knowledge maintains that it has sufficiently proven that all of its clients are non-resident foreign entities doing business outside the Philippines. Allegedly, its unutilized input VAT for the 2^{nd} quarter of CY 2013 are all attributable to zero-rated sales and are proper subjects of a claim for input VAT refund under the Tax Code.

We disagree.

Section 108 of the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act (RA) No. 9337, enumerates the transactions subject to zero-rated sales, as follows:

> "**SEC. 108.** ***Value-Added Tax on Sale of Services and Use or Lease of Properties.*** —
>
> xxx xxx 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 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);" (Emphases and underscoring supplied)

It is clear from the foregoing that in order that a sale of service transaction may be subject to 0% VAT rate, it is required that the service was "*rendered to a person engaged in business outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed*".

Relative thereto, the Supreme Court, in the case of *Accenture, Inc. vs. Commissioner of Internal Revenue,*[27] ruled 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". We quote :

> "**The evidence presented by Accenture may have established that its clients are foreign. This fact does not automatically mean, however, that these clients were doing business outside the Philippines**. After all, the Tax Code itself has provisions for a foreign corporation engaged in business within the Philippines and vice versa, to wit:
>
> SEC. 22. *Definitions.* — When used in this Title:
>
> xxx xxx xxx
>
> (H) The term *'resident foreign corporation'* applies to a foreign corporation engaged in trade or business within the Philippines.
>
> (I) **The term *'nonresident foreign corporation'* applies to a foreign corporation not engaged in trade or business within the Philippines**. (Emphasis in the original)
>
> **Consequently, to come within the purview of Section 108(B)(2), it is not enough that the recipient of the service be proven to be a foreign corporation;**

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[27] G.R. No. 190102, July 11, 2012.

> **rather, it must be specifically proven to be a nonresident foreign corporation.**" (Emphasis supplied)

Further, in *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*[28], the Supreme Court emphasized that the service-recipient must **not** be doing business in the Philippines. Otherwise, the transaction will be subject to the VAT at the then rate of 10%, and not at the 0% VAT rate. Thus:

> "In this case, the payer-recipient of respondent's services is the Consortium which is a joint-venture doing business in the Philippines. While the Consortium's principal members are non-resident foreign corporations, **the Consortium itself is doing business in the Philippines**. This is shown clearly in BIR Ruling No. 023-95 which states that the contract between the Consortium and NAPOCOR is for a 15-year term, thus:
>
> > This refers to your letter dated January 14, 1994 requesting for a clarification of the tax implications of a contract between a consortium composed of Burmeister & Wain Scandinavian Contractor A/S ('BWSC'), Mitsui Engineering & Shipbuilding, Ltd. (MES), and Mitsui & Co., Ltd. ('MITSUI'), all referred to hereinafter as the 'Consortium,' and the National Power Corporation ('NAPOCOR') for the operation and maintenance of two 100-Megawatt power barges ('Power Barges') acquired by NAPOCOR for a 15-year term. (Emphasis supplied)
>
> Considering this length of time, the Consortium's operation and maintenance of NAPOCOR's power barges cannot be classified as a single or isolated transaction. The Consortium does not fall under Section 102(b)(2) which requires that the recipient of the services must be a person doing business outside the Philippines. **Therefore, respondent's services to the Consortium, not being supplied to a person doing business outside the Philippines, cannot legally qualify for 0% VAT.**" (Underscoring supplied)

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[28] G.R. No. 153205, January 22, 2007.

Evidently, to qualify for the 0% VAT, the recipient of the service must be doing business outside the Philippines.

Applying the foregoing pronouncements to the instant case, We find that Deutsche Knowledge failed to prove that all of its clients are non-resident foreign entities doing business outside the Philippines.

We agree with the Court in Division's ruling 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.*

In this case, Deutsche Knowledge failed to submit these two documents on the following entities to which it rendered its services:

Name of Client/Affiliate	SEC Certification of Non-Registration	Certificate of Registration/ Incorporation/ Association
Bankers International Corporation	P-5	None
DB Consorzio S. Cons. A.R.L.	P-5.1	None
DB Energy Trading LLC	P-5.2	None
DB Investment Partners Inc.	P-5.3	None
DB Services New Jersey, Inc.	P-5.4	None
Deutsche Asset Management (Korea) Company Limited	P-5.6	None
Deutsche Bank (Suisse) SA	P-5.8	None
Deutsche Bank Aktiengensellschaft	None	P-7.7 / P-7.9
Deutsche Bank Aktiengensellschaft, Filiale Amsterdam	P-5.11	None
Deutsche Bank Aktiengensellschaft, Filiale Bangkok	P-5.12	None
Deutsche Bank Aktiengensellschaft, Filiale Dubai (DIFC)	P-5.13	None
Deutsche Bank Aktiengensellschaft, Filiale Ho-Chi-Minh-City	P-5.14	None
Deutsche Bank Aktiengensellschaft, Filiale Karachi	P-5.16	None
Deutsche Bank Aktiengensellschaft, Filiale Labuan	P-5.17	None
Deutsche Bank Aktiengensellschaft, Filiale Paris	P-5.20	None
Deutsche Bank Aktiengensellschaft, Filiale Prag	P-5.21	None
Deutsche Bank Aktiengensellschaft, Filiale Riad	P-5.22	None
Deutsche Bank Aktiengensellschaft, Filiale Tokyo	P-5.25	None
Deutsche Bank Aktiengensellschaft, Filiale Wien	P-5.26	None
Deutsche Bank Aktiengensellschaft, Filiale Zurich	P-5.27	None
Deutsche Bank Aktiengensellschaft, Islandsbank	P-5.28	None
Deutsche Bank AS	P-5.9	None
Deutsche Bank Luxembourg S.A.	P-5.29	None
Deutsche Bank National Trust Company	P-5.30	None
Deutsche Bank Netherland N.V.	P-5.31	None
Deutsche Bank PBC Spolka Akcyjna	P-5.32	None
Deutsche Bank Polska Spolka Akcyjna	P-5.33	None

Deutsche Bank Privat-UND Geschaftskunden Aktiengesellschaft	P-5.34	None
Deutsche Bank Securities Inc	P-5.35	None
Deutsche Bank Societa per Azioni	P-5.36	None
Deutsche Bank Trust Company Americas	P-5.37	None
Deutsche Bank, Sociedad Anonima Espanola	P-5.38	None
Deutsche Group Services Pty Limited	P-5.39	None
Deutsche Investment Management Americas, Inc.	P-5.40	None
Deutsche Securities Korea Co.	P-5.42	None
Deutsche Trust Company Limited Japan	P-5.43	None
Deutsche Trustees Malaysia Berhad	P-5.44	None
DWS Holding & Service GMBH	P-5.45	None
DWS Investment S.A.	P-5.46	None
OOO Deutsche Bank	P-5.47	None
PT. Deutsche Securities Indonesia	P-5.48	None
RREEF Management GMBH	P-5.49	None
RREEF Management LLC	P-5.50	None

In view thereof, We sustain the Court in Division's ruling that the sales of Deutsche Knowledge's to the foregoing entities do not qualify for zero-rating.

With respect to Deutsche Knowledge's allegation that the IntraGroup Service Agreements[29], foreign business registration documents and Company Profile Fact Sheet retrieved from Deutsche Knowledge's AMINET database[30] should be deemed sufficient to prove that its foreign clients are doing business outside the Philippines, the Court *En Banc* finds the same without merit in light of the ruling of the Supreme Court in the case of *Sitel Philippines Corporation (formerly Clientlogic Phils., Inc.) vs. Commissioner of Internal Revenue*[31].

In said case, the Supreme Court ruled that service agreement with foreign entities does not prove that such entities are doing business outside the Philippines, to wit:

> "In the same vein, Sitel fell short of proving that the recipients of its call services were foreign corporations doing business outside the Philippines. As correctly pointed out by the CTA Division, while Sitel's documentary evidence, which includes Certifications issued by the

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[29] Exhibits "P-6" to "P-6.37"
[30] Exhibits "P-9" to "P-9.49"
[31] G.R. No. 201326, February 8, 2017.

> Securities and Exchange Commission and **Agreements between Sitel and its foreign clients**, may have established that Sitel rendered services to foreign corporations in 2004 and received payments therefor through inward remittances, **said documents failed to specifically prove that such foreign clients were doing business outside the Philippines or have a continuity of commercial dealings outside the Philippines**." (Emphasis and underscoring supplied)

It is clear from the foregoing that service agreements with foreign entities is not sufficient to establish that the entities are doing business outside the Philippines.

Accordingly, We find no cogent reason to deviate from the Court in Division's ruling that the subject IntraGroup Service Agreements do not establish that such service recipients are non-resident foreign corporations doing business outside the Philippines because the said agreements only show the names and addresses of Deutsche Knowledge's customers to whom it rendered services. Specifically, these IntraGroup Service Agreements do not, in any way, establish that the service-recipients are engaged in business outside the Philippines; nor do they show that the same service-recipients are not engaged in business in the Philippines.

Likewise, the Court cannot give credence or probative value to the foreign business registration documents and Company Profile Fact Sheet print-outs retrieved from the AMINET database, which is a database maintained by Deutsche Knowledge's Head Office in Germany. We agree with the Court in Division that these print-outs are self-serving, and lack credibility, which can be easily manipulated to favor Deutsche Knowledge in view of its affinity with the entity that maintains or keeps the said database.

Deutsche Knowledge, however, insists that the documents retrieved from the AMINET database should be considered by the Court on the basis of the presumption of good faith; that the said database has probative value as it is prepared *ante litem motam* pursuant to the case of *Golden Iloilo Delta Sales Corp. vs Pre-Stress International Corporation, et al.*[32] (hereinafter referred to as "Golden(Iloilo) case"); and that there are allegedly enough safeguards

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[32] G.R. No. 176768, January 12, 2009.

to show the integrity of the information in which these electronic documents are recorded and stored.

We are not convinced.

Considering that cases filed before the Court are litigated *de novo*, party litigants should prove every minute aspect of their cases[33], and thus cannot be based on mere presumption of good faith as claimed by Deutsche Knowledge. The power of taxation is a high prerogative of sovereignty and its relinquishment is never presumed.[34] Further, bare allegations as regards the alleged integrity of the AMINET database, unsubstantiated by adequate evidence, are not equivalent to proof.

As to Deutsche Knowledge's reliance in the Golden (Iloilo) case, it must be noted that the factual antecedents therein are not on all fours with the present case. The said jurisprudence is not a tax refund case and thus cannot be applied in the instant case. It bears emphasis that actions for tax refund, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven.[35]

In view thereof, We therefore sustain the Court in Division's findings that Deutsche Knowledge failed to sufficiently prove that all its clients are doing business outside the Philippines.

Deutsche Knowledge failed to establish that Deutsche Bank Aktiengesellschaft (DB AG) and DB Aktiengesellschaft Inlandsbank (DB AG Inlandsbank) are one and the same entity and that they are nonresident foreign corporation doing business outside the Philippines.

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[33] *Rafael Arsenio S. Dizon vs. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008.
[34] *Floro Cement Corporation vs. Hon. Benjamin K Gorospe, et al.*, GR No. L-46787, August 12, 1991.
[35] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008.

Deutsche Knowledge claims that the Court in Division erred in treating DB AG and DB AG Inlandsbank as two separate and distinct entities. According to Deutsche Knowledge, DB AG and DB AG Inlandsbank are one and the same entity, and as such, the SEC Certificate of Non-Registration for DB AG Inlandsbank and the Certificate of Registration/Incorporation/Association for DB AG are sufficient compliance with the required proof that the entity is a nonresident foreign corporation doing business outside the Philippines.

In proving that the said entities are one and the same, Deutsche Knowledge argues that the term, "Inlandsbank", which is indicated in the name of one of the entities is merely a descriptive word which, in German, means "domestic bank", based on an online English-German Dictionary.

We are not persuaded.

The Court reiterates that mere allegation, unsubstantiated by evidence, is not equivalent to proof. The Court cannot give credence to the alleged translation as the same was not offered or presented in trial. Under Section 33, Rule 132 of the Revised Rules of Evidence it states that:

> "Section 33. *Documentary evidence in an unofficial language*.- Documents written in an unofficial language ***shall not be admitted*** as evidence, ***unless accompanied with a translation into English or Filipino***. To avoid interruption of proceedings, parties or their attorneys are directed to have such translation prepared before trial." (Emphasis and underscoring supplied)

Based on the foregoing, documents written in an unofficial language shall not be admitted in evidence, unless accompanied with a translation into English or Filipino. Applying the forgoing by analogy in this case, Deutsche Knowledge neither presented nor offered as evidence the alleged translation in English.

More importantly, the determination of whether DB AG and DB AG Inlandsbank refers to the same entity, involves the examination of legal documents with respect to their incorporation, composition and ownership, among others, and cannot simply be based on mere translation of terms shown in their business name. Clearly, the record of the case is bereft of any indication that DB AG and DB AG Inlandsbank are one and the same.

We likewise find untenable Deutsche Knowledge's assertion that it has sufficiently proven that DB AG Inlandsbank or DB AG is a nonresident foreign corporation based on the decisions made by this Court and its divisions in the following cases:

a. CIR vs Deutsche Knowledge Services Pte. Ltd., CTA EB Nos. 1297 & 1302, May 18, 2017, involving sales for the 3rd and 4th quarters of CY 2008;

b. Deutsche Knowledge Services Pte. Ltd. vs CIR, CTA Case No. 8243, January 4, 2016, July 10, 2015, involving sales for the 1st quarter of CY 2009;

c. Deutsche Knowledge Services Pte. Ltd. vs CIR, CTA Case No. 8300, July 10, 2015, involving sales for the 2nd quarter of CY 2009; and

d. Deutsche Knowledge Services Pte. Ltd. vs CIR, CTA Case No. 7808, December 16, 2014, involving sales for the 2nd to 4th quarter of CY 2006.

In *Commissioner of Internal Revenue vs. San Roque Power Corporation*,[36] the Supreme Court said, in no uncertain terms, that CTA decisions do not constitute as binding precedents, to wit:

> "xxx Suffice it to state that **CTA decisions do not constitute precedents, and do not bind this Court or the public.** That is why CTA decisions are appealable to this Court, which may affirm, reverse or modify the CTA decisions as the facts and the law may warrant. Only decisions of this Court constitute binding precedents, forming part of the Philippine legal system (Emphasis supplied)."

Clearly, it is erroneous for Deutsche Knowledge to insist that this Court take judicial notice of the findings made in other CTA cases. Moreover, each case must be decided on its own merits and

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[36] G.R. Nos. 187485, 196113, and 197156, February 12, 2013.

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based on the strength of evidence presented therein. The Court cannot give probative and evidentiary value on items which have not been presented before the Court.

In view of the foregoing, the Court sustains Court in Division findings that DB AG Inlandsbank and DB AG are two separate and distinct entities and that it was not sufficiently established that they are nonresident foreign corporations doing business outside the Philippines.

In sum, We find no cogent reason to deviate from the Court in Division's findings that out of the ₱1,105,734,437.79[37] declared zero-rated sales per VAT Return for the 2nd quarter of 2013, only the amount of **₱522,720,069.53** qualifies for VAT zero-rating under the aforementioned Section 108(B)(2) of the NIRC of 1997, as amended.

Failure to comply with invoicing requirements results to the disallowance of the claim for refund/credit.

In the assailed Decision, the Court in Division disallowed the following input VAT for the 2nd quarter of 2013:

Basis for Disallowance	Total Amount Disallowed
Purchases not properly substantiated by VAT invoices or official receipts as found by the Independent Certified Public Accountant	₱1,657,361.74
Purchases of goods supported by VAT invoices with Authority to Print (ATPs) dated between January 1, 2011 to January 17, 2013 not stamped "*valid until October 31, 2013 only*" in violation of Revenue Memorandum Circular (RMC) No. 52-2013	176,792.48
Purchases of services supported by VAT ORs with ATPs dated between January 1, 2011 to January 17, 2013 not stamped "*valid until October 31, 2013 only*" in violation of RMC No. 52-2013	6,169,488.66
Purchases of services supported by VAT ORs without the TIN of Deutsche Knowledge	3,543,461.48
Purchase of service supported by VAT OR but with alteration on the year of the date	98,258.05
Purchases of services supported by VAT ORs but with notation "*not to be used for claim/not valid as source of input tax*"	16,834.02

[37] Box 17, Exhibit"P-3".

Purchases of services supported by VAT ORs but without the BIR Authority to Print	69,117.10
Purchases of capital goods not exceeding ₱1M supported by VAT invoices with ATPs dated between January 1, 2011 to January 17, 2013 not stamped *"valid until October 31. 2013 only"* in violation of RMC No. 52-2013	100,994.86
Total	**₱ 11,832,308.39**

Deutsche Knowledge argues that its input VAT is properly substantiated and should be considered in the computation of its refundable excess input tax.

Allegedly, the Court in Division's disallowance is erroneous on the following grounds: (i) the input VAT claimed from these supporting documents may be readily computed, despite the absence of the separate indication of input VAT; (ii) these supporting documents were issued by its clients over which it has no participation and control; and (iii) non-compliance with the invoicing requirements attracts the applicable administrative penalties, not the disallowance of the claim.

The Court finds the foregoing arguments without merit.

To reiterate, claims for tax refund, as in the instant case, are in the nature of a claim for exemption, hence, must be construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. The taxpayer claiming the tax credit or refund has the burden of proving that he is entitled to the refund or credit, in this case input VAT, 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.[38] In other words, an applicant for a claim for tax refund or tax credit must not only prove entitlement to the claim but also compliance with all the documentary and evidentiary requirements.[39]

As a refund claimant for input VAT, Deutsche Knowledge must show that the VAT invoices or official receipts issued to it by its suppliers, as the case may be, complied with Section 113 (B) (2) (a)

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[38] *Microsoft Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 180173, April 6, 2011.
[39] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015, citing *J.R.A. Philippines, Inc. v. CIR*, G.R. No. 171307, August 28, 2013.

of the NIRC of 1997, as amended by RA No. 9337, as implemented by Sections 4.113-1 (B) of Revenue Regulations (RR) No. 16-2005, to wit:

> "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:
>
> 1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);
>
> (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;**
>
> xxx xxx xxx.
>
> (c) If the sale is subject to zero percent (0%) value-added tax, the term 'zero-rated sale' shall be written or printed prominently on the invoice or receipt;"
>
> (3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and" *(Emphasis Supplied)*
>
> "SECTION 4.113-1. *Invoicing Requirements.* —
>
> (A) A VAT-registered person shall issue: —
>
> xxx xxx xxx

> (B) ***Information contained in VAT invoice or VAT official receipt.*** — The following information shall be indicated in VAT invoice or VAT official receipt:
>
> (1) A statement that the seller is a VAT-registered person, followed by his TIN;
>
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; Provided, That:
>
> > (a) The amount of tax shall be shown as a separate item in the invoice or receipt;
> >
> > xxx xxx xxx
> >
> > (c) If the sale is subject to zero percent (0%) VAT, the term 'zero-rated sale' shall be written or printed prominently on the invoice or receipt;" *(Emphasis supplied)*

Based on the foregoing, the VAT invoice or VAT official receipt, as the case may be, must state, inter alia, the amount of the tax as a separate item therein. Strict adherence to this requirement must be shown. This is so because compliance with all the VAT invoicing requirements provided by tax laws and regulations is mandatory.[40] Hence, if it is shown that the said VAT invoice or VAT official receipt does not indicate the said requirement, it must not be included as part of the taxpayer-claimant's refundable amount.

Correspondingly, We find no merit in Deutsche Knowledge's allegation that the input VAT claimed from the supporting documents, (i.e., the VAT invoices and official receipts [ORs]) may be readily computed from the information in the ORs and Invoices, because to the mind of the Court *En Banc,* the indication of the input VAT in the VAT invoice or VAT official receipt, as the case may be, is a legal requirement.

On the argument of Deutsche Knowledge that the subject VAT invoices or official receipts were issued without its participation and control, We find the same untenable.

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[40] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, Supra.

While it may be true that the said VAT invoices or official receipts were issued without its participation and control, Deutsche Knowledge, to whom the burden of proof rests in claiming tax refunds, must have been watchful and vigilantly ensured that the issued pertinent VAT invoice or official receipt by its suppliers of goods and services, as the case may be, contained all the information required by law and revenue regulations. It must be emphasized that the taxpayer is charged with the heavy burden of proving that he has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund. [41]

There is likewise no merit in Deutsche Knowledge's assertion that non-compliance with the invoicing requirements attracts applicable administrative penalties, and not the disallowance of the claim.

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-rated sales.[42] In RMC No. 42-03,[43] the BIR clarified that the taxpayer's failure to comply with invoicing requirements will result in the disallowance of its claim for refund, to wit:

> "Q-13: Should penalty be imposed on TCC application for failure of claimant to comply with certain invoicing requirements, (e.g., sales invoices must bear the TIN of the seller)?
>
> **A-13: Failure by the supplier to comply with the invoicing requirements on the documents supporting the sale of goods and services will result to the disallowance of the claim for input tax by the purchaser-claimant.**

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[41] *Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc.*, G.R. No. 163835, July 7, 2010.

[42] *Microsoft Philippines, Inc. vs Commissioner of Internal Revenue*, G.R. No. 180173, April 6, 2011.

[43] Clarifying Certain Issues Raised Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS) by Direct Exporters.

> **If the claim for refund/TCC is based on the existence of zero-rated sales by the taxpayer but it fails to comply with the invoicing requirements in the issuance of sales invoices (e.g., failure to indicate the TIN), its claim for tax credit/refund of VAT on its purchases shall be denied considering that the invoice it is issuing to its customers does not depict its being a VAT-registered taxpayer whose sales are classified as zero-rated sales**. . . . (Emphasis supplied)

Clearly from the foregoing that failure to comply with invoicing requirements will result to the disallowance of the claim for tax refund/credit.

Accordingly, We find no cogent reason to deviate from the Court in Division's disallowance of the claim for refund or credit for failure of Deutsche Knowledge to meet the invoicing requirements.

Out-of-period claims should be disallowed for tax credit or refund.

In the assailed Decision, the Court in Division disallowed the claimed input VAT on the ground that these purchases of services are supported by invoices or ORs dated outside the period of claim. Deutsche Knowledge, however, insists that these out-of-period claims are specifically allowed under RMC No. 42-03.

We sustain the ruling of the Court in Division.

It is true that RMCs (such as RMC No. 42-03), as administrative issuances, have the force and effect of law, and benefit from the same presumption of validity and constitutionality enjoyed by statutes.[44] However, it must be remembered that BIR circulars and rulings cannot prevail over the clear and plain language of the Tax Code.[45]

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[44] *Chevron Phils., Inc. vs. Bases Conversion and Development Authority*, et al., G.R. No. 173863, September 15, 2010.

[45] *Security Bank Corporation (formerly Security Bank and Trust Company) vs. The Commissioner of Internal Revenue*, G.R. No. 130838, August 22, 2006.

Pertinently, Section 110 (2) of the NIRC of 1997, as amended by RA No. 9337, lays down the rules as to when the input VAT is creditable against the output VAT, *to wit*:

> "SEC. 110. *Tax Credits.* —
>
> xxx xxx xxx
>
> (2) The input tax on domestic purchases 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 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 f**ee." (Emphases and underscoring supplied)

It is explicitly stated from the foregoing, that as to the purchaser of goods or properties, the input VAT is creditable against the output VAT, **upon consummation of the sale**; as to the importer, **upon payment of the VAT**; and as to the purchaser of services, lease or use of properties, the input VAT therefor is creditable **upon payment of the compensation, rental, royalty or fee**. With the use of the word "upon," it can be plainly discerned that the creditability of the pertinent input VAT against the output VAT occurs when the act mentioned therein happens, and not at any other time.

When the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application. As the statute is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This is what is known as the plain-meaning rule or verba legis. It is expressed in the maxim, *index animi sermo*, or speech is the index of intention. Furthermore, there is the maxim *verba legis non est recedendum*, or from the words of a statute there should be no departure.[46]

Thus, even when RMC No. 42-03 allows out-of-period claims of input VAT, the same cannot be adhered to, because it contravenes the clear and categorical requirement under Section 110 (2) of the NIRC of 1997, as amended.

RMC No. 52-2013 cannot be applied retroactively in this case

In the assailed Decision, the Court in Division disallowed the input tax with respect to purchases supported by VAT ORs with ATPs dated January 1, 2011 to January 17, 2013, not stamped "*valid until October 31, 2013 only*", in violation of RMC No. 52-2013 dated August 13, 2013[47]. Relative thereto, the following items were disallowed by the Court in Division:

Disallowed Purchases	**Total Amount Disallowed**
Purchases of goods supported by VAT invoices with Authority to Print (ATPs) dated between January 1, 2011 to January 17, 2013 not stamped "*valid until October 31, 2013 only*" in violation of Revenue Memorandum Circular (RMC) No. 52-2013	176,792.48
Purchases of services supported by VAT ORs with ATPs dated between January 1, 2011 to January 17, 2013 not stamped "*valid until October 31, 2013 only*" in violation of RMC No. 52-2013	6,169,488.66
Purchases of capital goods not exceeding ₱1M supported by VAT invoices with ATPs dated between January 1, 2011 to January 17, 2013 not stamped "*valid until October 31. 2013 only*" in violation of RMC No. 52-2013S	100,994.86
Total	**₱ 6,447,276.00**

Deutsche Knowledge claims that there is nothing in the Tax Code which requires that the words "*valid until October 31, 2013*" be stamped on the ORs and invoices, and that the failure to stamp the same shall result to the invalidation of the input VAT claim. It further argues that under RR No. 18-2012, it is explicitly provided that all unused/unissued receipts and invoices printed prior to the RR's

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[46] *Cynthia S. Bolos vs. Danilo T. Bolos*, G.R. No. 186400, October 20, 2010.
[47] Clarifying the Validity of Unused/Unissued Principal and Supplementary Receipts/Invoices Printed Prior to January 18, 2013 and Other Matters

effectivity is valid until June 30, 2013. Finally, it points out that RMC No. 52-2013 was inexistent during the period subject of the claim since the said RMC was issued only on August 13, 2013 and that the case involves claim for tax refund/credit for the 2nd quarter of 2013. Accordingly, it claims that Deutsche Knowledge and its suppliers could not have complied with a non-existing requirement.

We find the foregoing arguments impressed with merit.

The requirement of stamping the term "*"valid until October 31, 2013"*" on the face of the invoices and receipts was only introduced in RMC No. 52-2013 which was issued on August 13, 2013. Considering that the instant case involves the claim for refund or credit of unutilized input VAT for the taxable period April to June 2013, or the 2nd quarter of CY 2013, it is evident that the requirement under RMC No. 52-13 was inexistent during the subject period of claim, and therefore could not have been complied with by Deutsche Knowledge.

The said circular cannot be applied retroactively so as to prejudice Deutsche Knowledge, given the well-entrenched principle that statutes, including administrative rules and regulations, operate prospectively only, unless the legislative intent to the contrary is manifest by express terms or by necessary implication.[48]

Moreover, it bears noting that in the aforementioned Section 113 of the Tax Code and Sections 4.113-1 (B) of RR) No. 16-2005, which specify the mandatory information that must be contained in the VAT invoices and ORs, there is **no** requirement that the phrase *"valid until October 31, 2013"* must be stamped or imprinted on the face of the invoices or ORs to be able to claim deduction and input tax refund/credit.

As discussed above, while administrative issuance such as RMC No. 52-2013, have the force and effect of law, and benefit from the same presumption of validity and constitutionality enjoyed by statutes, it cannot prevail over the clear and plain language of the Tax Code.

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[48] *BPI Leasing Corporation, vs. The Honorable Court of Appeals*, et al., G.R. No. 127624. November 18, 2003.

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In view thereof, We find that the Court in Division erred in disallowing the input VAT for failure to stamped the term "*"valid until October 31, 2013"* on the face of the invoices and receipts.

Accordingly, We partly modify the findings of the Court in Division as regards the amount of disallowed input VAT from ₱11,832,308.39 to **₱5,385,032.39,** broken down as follows:

Basis for Disallowance	**Total Amount Disallowed**
Purchases not properly substantiated by VAT invoices or official receipts as found by the Independent Certified Public Accountant	₱ 1,657,361.74
Purchases of services supported by VAT ORs without the TIN of Deutsche Knowledge	3,543,461.48
Purchase of service supported by VAT OR but with alteration on the year of the date	98,258.05
Purchases of services supported by VAT ORs but with notation *"not to be used for claim/not valid as source of input tax "*	16,834.02
Purchases of services supported by VAT ORs but without the BIR Authority to Print	69,117.10
Total	**₱ 5,385,032.39**

Input VAT from the previous quarter must be duly proven.

Deutsche Knowledge argues that the Court in Division erred in applying its unutilized input VAT against its output VAT liability for the 2nd quarter of CY 2013. It claims that it has sufficient excess input VAT carried over from previous quarters to sufficiently cover the said output VAT liability.

We find the foregoing contentions untenable.

Under Section 110 of the NIRC of 1997, as amended, input tax shall be creditable against the output tax only if the same is **"evidenced by a VAT invoice or official receipt"**. In this case, Deutsche Knowledge failed to present any VAT invoices or receipts to prove the existence of its claimed prior year's input VAT.

As pointed out earlier, a party-litigant should prove **every minute aspect** of their cases and that the applicant for a claim for tax refund or tax credit must not only prove entitlement to the claim but also compliance with all the documentary and evidentiary requirements.

Accordingly, in view of the failure of Deutsche Knowledge to substantiate its claim that it has sufficient excess input tax carried over from previous quarters, the same cannot be applied against its output VAT liability for the 2nd quarter of CY 2013.

The reopening of trial for the admission of new evidence is not proper.

Deutsche Knowledge argues that the higher interest of substantial justice dictates that the Court in Division should have allowed the reopening of trial for the admission of the additional documents. Allegedly, this would have enabled Deutsche Knowledge to comply with the strict documentary requirements imposed by the Court in Division for proving the existence of non-resident foreign clients doing business outside the Philippines.

The Court finds Deutsche Knowledge's arguments untenable.

Section 5 of Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended, enumerates the grounds for the filing of a motion for new trial, *to wit*:

> "SEC. 5. *Grounds of motion for new trial.* — A motion for new trial may be based on one or more of the following causes materially affecting the substantial rights of the movant:
>
> (a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which the rights of such aggrieved party has probably been impaired in his rights; or
>
> (b) Newly discovered evidence, which the party could not, with reasonable diligence, have discovered and produced at the trial and, which, if presented, would probably alter the result."

Based from the foregoing, a motion for new trial is allowed on the grounds of fraud, accident, mistake or excusable negligence or if there is newly discovered evidence which the party could not, with reasonable diligence, have discovered and produced at the trial and, which, if presented, would probably alter the result.

In this case, the Court in Division ruled that there is no valid justification for the reopening of the case for purposes of admitting additional documents. Particularly, the Court in Division held that the SEC Certification of Non-Registration, which is sought to be admitted by Deutsche Knowledge, is not newly discovered evidence but merely "forgotten evidence".

We find no cogent reason to deviate from the foregoing ruling of the Court in Division.

As held in the case of *Office of the Ombudsman, Represented by Hon. Simeon V. Marcelo vs. Carmencita D. Coronel*: [49]

> "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."

Based on the foregoing, the presentation of forgotten evidence is disallowed, as it results in a piecemeal presentation of evidence, which is not in accordance with orderly justice and serves only to delay the proceedings. Litigation must end and terminate sometime and somewhere, and it is essential to an effective administration of justice that once a judgment has become final the issue or cause involved therein should be laid to rest. [50]

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[49] G.R. No. 164460, June 27, 2006.
[50] *Rolando Juani, as Administrator for the Estate of the Deceased Bienvenido Juani vs. Robert G. Alarcon*, G.R. No. 166849, September 05, 2006.

In this case, Deutsche Knowledge failed to prove that the additional documents sought to be presented are newly discovered evidence as a valid ground for the reopening of the case or new trial. To be considered a newly discovered evidence under the Rules of Court, the following requisites must be present: (a) the evidence was discovered after trial; (b) such evidence could not have been discovered and produced at the trial with reasonable diligence; and (c) it is material, not merely cumulative, corroborative or impeaching, and is of such weight that, if admitted, will probably change the judgment.[51]

The foregoing requirements were not complied with in this case. The SEC Certification of Non-Registration was not discovered after trial but is readily available and could have been produced at the trial with reasonable diligence. Evidently, the said document does not constitute as newly discovered evidence, but merely a forgotten evidence, which Deutsche Knowledge intends to present only after obtaining an unfavorable decision.

In view thereof, We sustain the Court in Division's denial of Deutsche Knowledge's *Motion to Re-Open Trial.*

EB No. 1919

The subject input tax shall be allocated proportionately on basis of the volume of sales.

It is the CIR's position that to be creditable, the input tax must come from the purchases of goods that form part of the finished product of the taxpayer or it must be directly used in the chain of production. The CIR further argues that the input tax must be attributable, that is, *"the connection between the purchases and the finished product is concrete and not imaginary or remote".* According to the CIR, there is nothing in the assailed Decision of the Court in Division showing the "direct attributability" of the purchases or input tax to the finished product whose sale is zero-rated.

We disagree.

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[51] *Commissioner of Internal Revenue vs. A. Soriano Corporation, et al.*, G.R. No. 113703, January 31, 1997. MS

Section 110 of the NIRC of 1997, as amended, provides, in part, as follows:

> "SEC. 110. *Tax Credits.* —
>
> (A) *Creditable Input Tax.* —
>
> **(1)** Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions **shall be creditable against the output tax:**
>
> **(a) Purchase or importation of goods:**
>
> **(i) For sale; or**
>
> **(ii)For conversion into or intended to form part of a finished product for sale including packaging materials; or**
>
> **(iii) For use as supplies in the course of business; or**
>
> **(iv) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code.**
>
> **(b) Purchase of services on which a value-added tax has actually been paid.**
>
> xxx xxx xxx
>
> **The term 'input tax' means the <u>value-added tax due from or paid by a VAT-registered person in the course of his trade or business on importation of goods or local purchase of goods or services, including lease or use of property, from a VAT-registered person</u>.** It shall also include the transitional input tax determined in accordance with Section 111 of this Code." *(Emphases and underscoring supplied)*

Based on the foregoing, an input VAT evidenced by a VAT invoice or official receipt is creditable against the output VAT not only on the purchase or importation of goods *"(f)or conversion into or* ✓6 *intended to form part of a finished product for sale including packaging materials,"* but also those purchase/importation of goods for sale, for use as supplies in the course of business, and for use in trade or business for which deduction for depreciation or amortization is allowed under the NIRC. Likewise, input tax on purchase of services on which tax has actually been paid shall be creditable against output tax.

It is a rule in statutory construction that every part of the statute must be interpreted with reference to the context, *i.e.,* that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment. Because the law must not be read in truncated parts, its provisions must be read in relation to the whole law. The statute's clauses and phrases must not, consequently, be taken as detached and isolated expressions, but the whole and every part thereof must be considered in fixing the meaning of any of its parts in order to produce a harmonious whole. Consistent with the fundamentals of statutory construction, all the words in the statute must be taken into consideration in order to ascertain its meaning. [52]

The CIR's insistence that *"to be creditable, the input tax must come from purchases of goods that form part of the finished product of the taxpayer or it must be directly used in the chain of production"* is not entirely consistent with the above-quoted Section 110. This is so because the said provision, as clearly stated, did not limit itself to purchases or importation of goods which are to be converted into or intended to form part of a finished product for sale, or to be used in the chain of production; but also includes, inter alia, purchases or importation of goods for use as supplies in the course of business, or for use in trade or business for which deduction for depreciation or amortization is allowed; as well as purchase of services for which VAT has been actually paid.

Accordingly, provided that the subject input tax is evidenced by a VAT invoice or official receipt issued in accordance with Section 113 of the NIRC of 1997, as amended, the same may be creditable against the output VAT.

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[52] *Philippine International Trading Corporation vs. Commission on Audit*, G.R. No. 183517, June 22, 2010.

We likewise do not find merit in the CIR's allegation that for an input tax to be attributable to zero-rated sales, it must be shown that *"the connection between the purchases and finished product is 'concrete' and not 'imaginary' or 'remote'"*.

Section 112 of the NIRC of 1997, as amended, allows the allocation of creditable input taxes which cannot be directly or entirely attributable to zero-rated sales, *to wit*:

> "Sec. 112. *Refunds or Tax Credits of Input Tax.* —
>
> (A) *Zero-Rated or Effectively Zero-Rated Sales.* — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid **attributable to such sales**, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That **where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales**: Provided, finally, That for a person making sales that are zero-rated under Section 108 (B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales." *(Emphasis supplied).*

Based from the foregoing, creditable input taxes which cannot be directly or entirely attributable to any sale transaction (i.e., zero-rated or effectively zero-rated sale and taxable or exempt sale of goods of properties or services), shall be allocated proportionally on the basis of the volume of sales. Evidently, contrary to the CIR's allegation, the attribution of the input VAT to the zero-rated sales need not always be direct.

Moreover, the word "attribute", the adjective form of which is "attributable", is defined as "to explain as to cause or origin", or simply, to "ascribe".[53] Thus, when Section 112(A) of the NIRC of 1997, as amended, states that the input VAT must be attributable to the zero-rated or effectively zero-rated sales, it simply means that the input VAT must be regarded as being caused by such sales. Accordingly, We sustain the Court in Division's ruling that is it not required that the claimed input tax be directly attributable to zero-rated sales in order to be creditable.

Claimed input VAT remained unutilized

Although the claimed input VAT for the 2nd quarter of 2013 was carried over by Deutsche Knowledge in its succeeding Quarterly VAT Returns,[54] the same remained unutilized until it was deducted as "VAT Refund/TCC claimed"[55] in its Amended Quarterly VAT Return for the first quarter of CY 2015, preventing the carry-over or application of the claimed input VAT in the next taxable quarters.

Accordingly, the subject claim no longer formed part of the excess input VAT of ₱155,729,598.48[56] as of the 1st quarter of 2015. Such being the case, the claimed input VAT could not have been carried over or utilized in the succeeding 2nd quarter of 2015.

Re-computation of the refundable amount of input VAT.

In sum, the Court *En Banc* finds that Deutsche Knowledge is entitled to the amount of **₱8,202,880.25**, representing its unutilized input VAT attributable to its valid zero-rated sales for the 2nd quarter of 2013, determined as follows:

Total Input VAT on Current Purchases per Quarterly VAT Return	₱ 24,020,395.21
Less: Disallowances	5,385,032.39
Valid Input VAT	**₱ 18,635,362.82**
Less: Output VAT	1,134,996.82
Valid Excess Input VAT	**₱ 17,500,366.00**

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[53] The Merriam-Webster Dictionary© 2005, p. 31.
[54] Exhibits "P-3.1", "P-3.3", "P-3.4", "P-3.7", "P-3.9", "P-3.11", "P-3.15".
[55] Exhibit "P-3.15".
[56] Exhibit "P-3.15".

Valid Zero-Rated Sales/Receipts	₱ 522,720,069.53
Divided by Total Sales/Receipts[57] per Quarterly VAT Return [58]	1,115,192,744.62
Multiply by Valid Excess Input VAT	17,500,366.00
Excess Input VAT attributable to the Valid Zero-Rated Sales/Receipts	**₱ 8,202,880.25**

WHEREFORE, in light of the foregoing considerations, the *Petition for Review* in CTA EB No. 1917 filed by Deutsche Knowledge is **PARTIALLY GRANTED**. The assailed Decision dated January 9, 2018, and the Resolution dated August 8, 2018, are hereby **MODIFIED**.

Accordingly, the Commissioner of Internal Revenue is **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of Deutsche Knowledge in the amount of **₱8,202,880.25**, representing its unutilized excess input VAT for the 2nd quarter of 2013 attributable to its zero-rated sales.

On the other hand, the *Petition for Review* in CTA EB No. 1919 filed by the CIR is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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[57] This is pursuant to Section 112 (A) of the NIRC of 1997, as amended by RA No. 9337, which provides as follows:

SEC. 112. *Refunds or Tax Credits of Input Tax.* —

(A) Zero-Rated or Effectively Zero-Rated Sales. — x x x where the taxpayer is engaged in zero-rated or effectively zero-rated sales and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, **it shall be allocated proportionately on the basis of the volume of sales:** x x x." *(Emphasis supplied)*

[58] Box 19A, Exhibit "P-3".

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

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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 cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice