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. 1290** (CTA Case No. 7808) Present: **DEL ROSARIO,** *P.J.,* **CASTAÑEDA,** **BAUTISTA,** **UY,** **CASANOVA,** **FABON-VICTORINO,** **MINDARO-GRULLA,** **RINGPIS-LIBAN,** *and* **MANAHAN,** *JJ.* Promulgated: JAN 24 2017 1:41 p.m.

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RESOLUTION

BAUTISTA, J:

For resolution is the Motion for Reconsideration (Re: Decision dated August 17, 2016)[1] ("Motion for Reconsideration") filed by petitioner on September 16, 2016; without respondent's comment, despite notice.

This relates to the Petition for Review seeking to reverse the Decision[2] ("Assailed Decision") of the Special Second Division of the Court of Tax Appeals ("Court in Division") dated December 16, 2014,

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[1] *Rollo, CTA EB No. 1290, Motion for Reconsideration (Re: Decision dated August 17, 2016),* pp. 156-174.

[2] *Records, CTA Case No. 7808, Vol. 2, Assailed Decision,* pp. 591-606; penned by Associate Justice Caesar A Casanova with Associate Justice Juanito C. Castaneda, Jr. and Associate Justice Cielito N. Mindaro-Grulla concurring.

as well as its Resolution[3] ("Assailed Resolution") dated March 26, 2015; which effectively denied petitioner's judicial claim for refund or issuance of a tax credit certificate ("TCC") of its alleged unutilized input value-added tax ("VAT") on purchases of goods and services attributable to zero-rated sales during the second, third and fourth quarters of taxable year ("TY") 2006 in the total amount of Php22,084,718.84.

On August 16, 2016, the Court *En Banc* promulgated a Decision[4], the dispositive portion thereof reads as follows:

> **WHEREFORE,** premises considered, the Petition for Review filed by petitioner is hereby **DENIED**. The Court *En Banc* hereby **AFFIRMS *IN TOTO*** the Decision of the Special Second Division dated December 16, 2014, as well as its Resolution dated March 26, 2015.
>
> **SO ORDERED.**[5]

In its Decision, the Court *En Banc* found that petitioner failed to present substantial evidence to prove that its zero-rated sales were made to non-resident foreign corporations doing business outside the Philippines. It explained that while the SEC Certificates of Non-Registration state that the named entities therein are not registered corporations/partnerships in the Philippines, it cannot be concluded that such entities are doing business outside the Philippines. It also found that the Intra-Group Service Agreements submitted by petitioner only show the names and addresses of its customers to whom it rendered services, but failed to establish that such customers are non-resident foreign corporations doing business outside the Philippines. Hence, the Court *En Banc* upheld the Court in Division's finding that without proof of incorporation, association or registration in a foreign country, the Court cannot sufficiently determine if petitioner's clients are existing, operating and registered in a foreign country, in satisfaction of the requisites of a valid zero-rated sale of services.

As to the issue of whether petitioner's zero-rated sales were made in acceptable foreign currency, the Court *En Banc* referred to

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[3] *Records, CTA Case No. 7808, Vol. 2, Assailed Resolution,* pp. 655-662.
[4] *Rollo, Decision,* pp. 131-155, with Presiding Justice Roman G. del Rosario's Concurring and Dissenting Opinion.
[5] Emphases retained.

the Assailed Decision ruling that while petitioner was able to show that there were inward remittances *per* Fund Transfer Credit Advices, it failed to explain the discrepancies between its "Schedule of Receipts/Collections from Zero-Rated Sales," the amounts in the column "Collection Amount *per* Bank Advice," and the amount receipted under the column "OR Amount (Php)." This led to the Court in Division's declaration that petitioner failed to present sufficient proof that the inward remittances actually pertains to its zero-rated sales. The Court *En Banc* then emphasized that tax refunds are in the nature of tax exemptions, hence, the claimant has the burden of proof to establish the factual basis of his/her/its claim; and affirmed the Court in Division's ruling.

Lastly, in relation to the denial of petitioner's Motion to Re-Open Trial, the Court in Division has provided the reason that judgment has already been rendered through the Assailed Decision, making the said Motion inappropriate. The Court *En Banc* affirmed the same, and discussed that petitioner failed to establish that it exercised reasonable diligence in obtaining the additional evidence. It declared the additional evidence as forgotten evidence, and stated that presentation of forgotten evidence is disallowed for it results in a piecemeal presentation of evidence. More so in this case wherein the presentation of the additional documentary evidence has no justification.

In petitioner's Motion for Reconsideration, it submits that the Decision deserves to be reconsidered on the ground that its sales for the second to fourth quarters of TY 2006 were made to non-resident foreign corporations doing business in the Philippines; that it has undoubtedly demonstrated that the remittances of foreign currency correspond to its zero-rated sales; and that the Court *En Banc* erred in affirming the Court in Division's denial of its Motion to Re-Open Trial.

On October 3, 2016, the Court *En Banc* ordered respondent to file his comment within ten (10) days from receipt thereof. Records reveal that the Office of the Solicitor General and the Bureau of Internal Revenue ("BIR") received the same on October 18, 2016 and October 19, 2016, respectively. Therefore, respondent had until November 3[6], 2016 to file his comment.

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[6] Using as basis the date of receipt of October 19, 2016, the tenth (10th) day fell on a Saturday. The next days fell on a Sunday, and three (3) consecutive holidays.

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On December 2, 2016, the Judicial Records Division issued a Records Verification Report[7] stating that respondent failed to file his comment to petitioner's Motion for Reconsideration.

The Court *En Banc* finds no merit in petitioner's Motion for Reconsideration.

A perusal of the contents of petitioner's Motion for Reconsideration show that the grounds raised therein are the same ones found in its Memorandum. Reproduced hereunder are petitioner's arguments, as appearing and summarized in the August 16, 2016 Decision:

> ***The Arguments of Petitioner***
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> According to petitioner, the Court in Division erred twice in the Assailed Decision dated December 16, 2014, to wit: *(1)* when it ruled that the evidence submitted by petitioner, particularly the SEC Certifications of Non-Registration of Company, Intragroup Service Agreements, and Deutsche Bank List of Shareholdings in 2008, were insufficient to satisfy the third requisite of *Section 108(B)(2) of the 1997 NIRC* and as ruled by the Supreme Court in the case entitled *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.* and *(2)* when it ruled that petitioner failed to prove that payments for its services were made in acceptable foreign currency and accounted for in accordance with the rules of the BSP due to the latter's failure to present any evidence to explain the discrepancies in its Schedule of Receipts/Collections from Zero-Rated Sales, Collection Amount *per* Bank Advice and Official Receipt ("OR") Amount.
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> Concerning the first instance, petitioner alleges that a claim for input VAT refund, being civil in nature, requires a quantum of evidence of mere preponderance of evidence. Thus, the evidence presented by petitioner, *i.e.*, SEC Certifications of Non-Registration of Company, Intragroup Service Agreements, and Deutsche Bank List of Shareholdings in 2008, coupled with respondent's failure to present any evidence to contradict petitioner's documentary evidence, collectively prove with preponderance of evidence that

[7] *Rollo*, p. 178.

> petitioner's non-resident foreign clients are indeed doing business outside of the Philippines.
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> With respect to the Assailed Resolution dated May 26, 2015, petitioner alleges that the Court in Division erred when it ruled to deny petitioner's motion to re-open trial on the ground that the additional evidence which petitioner intends to present constitute forgotten evidence which is not the proper subject of a motion to reopen trial.
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> In view of the foregoing, it is petitioner's position that the Court *En Banc (1)* order the reversal of the December 16, 2014 Assailed Decision and the March 26, 2015 Assailed Resolution; and *(2)* remand the case to the Court in Division for the reception of petitioner's supplemental evidence for the purpose of complying with the additional documentary evidence.[8]

Based on the foregoing, the Court *En Banc* has sufficiently addressed the issues raised by petitioner; and that petitioner did not raise any new argument that would merit reconsideration of the said Decision, being mere reiterations of its allegations in the Memorandum.

WHEREFORE, there is no overwhelming justification to disturb the Court *En Banc*'s Decision. Accordingly, petitioner's Motion for Reconsideration (Re: Decision dated August 17, 2016) is hereby **DENIED** for lack of merit.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

(I maintain my Concurring and Dissenting Opinion dated August 16, 2016)
ROMAN G. DEL ROSARIO
Presiding Justice

[8] Emphases retained.

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

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(Took No Part)
CATHERINE T. MANAHAN
Associate Justice