REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus –

DEUTSCHE KNOWLEDGE SERVICES PTE. LTD.,
Respondent.

CTA *EB* NO. 1262
(CTA Case No. 8342)

x---x

DEUTSCHE KNOWLEDGE SERVICES PTE. LTD.,
Petitioner,

-versus –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA *EB* NO. 1263
(CTA Case No. 8342)

Present:

Del Rosario, P.J.
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, and
Manahan, JJ.

Promulgated:

JAN 30 2017 2:18 p.m.

x---x

RESOLUTION

For resolution are the following:

1. Commissioner of Internal Revenue's ("CIR") Motion for Partial Reconsideration (Re: Decision dated 15 July 2016) (hereinafter, "Motion for Partial Reconsideration") filed on August 9, 2016, with

Deutsche Knowledge Services Pte. Ltd.'s ("Deutsche") Comment (To: CIR's Partial Motion for Reconsideration) (the "Comment") filed on October 3, 2016; and

2. Deutsche's Motion for Reconsideration (Re: Decision dated July 15, 2016) (hereinafter, "Motion for Reconsideration"), filed by registered mail on August 9, 2016, and received by the Court *En Banc* on August 22, 2016, with the CIR's Comment/Opposition (re: Motion for Reconsideration) (hereinafter, "Comment/Opposition") filed by registered mail on October 17, 2016, and received by the Court *En Banc* on October 20, 2016.

On July 15, 2016, the Court *En Banc* promulgated a Decision (the "Assailed Decision") denying the Petitions for Review filed by the CIR and Deutsche. The dispositive portion of the Assailed Decision reads as follows:

> **WHEREFORE**, premises considered, the Petitions for Review filed by the Commissioner of Internal Revenue and Deutsche Knowledge Services Pte., Ltd., are hereby **DENIED**, for lack of merit.
>
> **SO ORDERED.**

<u>CIR's Motion for Partial Reconsideration</u>

In its Motion for Partial Reconsideration, the CIR alleges that Deutsche is not entitled to the refund amounting to Php14,974,586.89 representing alleged unutilized input value-added tax ("VAT") attributable to its zero-rated sales for the 3rd quarter of calendar year ("CY") 2009. The CIR maintains that Deutsche failed to prove that it has complied with the submission of all supporting and relevant documents provided under *Revenue Memorandum Order ("RMO") No. 53-98* and other existing rules and regulations on its administrative claim.

The CIR argues that the mere filing of an administrative claim for refund or issuance of tax credit certificate ("TCC") without submitting the complete documents in support of the application is not conclusive to sustain its contention that it has a right to claim a refund; that the burden of proof is on the taxpayer who claims the exemption; and that tax refunds are regarded as tax exemptions, therefore, it should be construed *strictissimi juris* against the person or entity claiming the exemption.

In its Comment, Deutsche alleged that it has sufficiently proven its compliance with the requisites for a valid claim for refund of its excess and unutilized input VAT for the 3rd quarter of CY 2009; that *RMO No. 53-98* was intended as a guide for revenue officers in requesting from taxpayers the documents to be submitted during a tax audit; and that there is no need for strict compliance with the documentary requirements stated in *RMO No. 53-98*.

Petitioner alleged that once a claim for input VAT refund is elevated to the CTA, the issue with respect to the submission of complete documents at the administrative level becomes immaterial *vis-a-vis* the proceedings before the court; that the question of whether or not the evidence submitted by a party is sufficient to warrant the grant of its claim for input VAT refund lies within the sound discretion and judgment of the CTA; and that the alleged failure to submit complete documents at the administrative level did not bar the CTA from acquiring jurisdiction over its judicial claim for input VAT refund.

Deutsche's Motion for Reconsideration

In its Motion for Reconsideration, Deutsche claimed that the Court *En Banc* erred in finding that it failed to prove that its sales for the 3rd quarter of calendar year ("CY") 2009 were zero-rated and made to non-resident foreign corporations doing business outside the Philippines; and that the *1997 National Internal Revenue Code, as amended ("1997 NIRC")* and applicable jurisprudence did not require specific documents to prove the fact that a non-resident foreign corporation is doing business outside the Philippines. Deutsche insists that by submitting the Company Profile Fact Sheets of its clients, intragroup service agreements executed with each of its non-resident clients, its List of Shareholdings in 2008, and various certifications from different government agencies in the country of origin, it has sufficiently proven that its clients are non-resident foreign corporations doing business outside the Philippines.

Deutsche also claims that the Court *En Banc* erred in finding that it failed to meet the substantiation requirements under the *1997 NIRC* and *Revenue Regulations ("RR") No. 16-2005* for the 3rd quarter of CY 2009; that non-compliance with the invoicing requirement attracts applicable penalties but should not result in outright denial of the claim for refund; and that the Court *En Banc* erred in disallowing its input VAT on purchases of goods and services supported by invoices or official receipts outside the period of claim considering that the same is allowed under *RMC No. 42-03.*

Deutsche submits that the Court *En Banc* erred in affirming the denial of its Motion to Re-open Trial as it is contrary to the furtherance of the greater interest of justice and the application of procedural rules; that there will be no prejudice, financial or otherwise, to the CIR, by allowing it to present additional evidence; that the reopening of trial would have allowed it to comply with the very strict documentary requirements imposed by the Court *a quo.*

In his Comment, the CIR reiterated its position that Deutsche failed to prove and present documents in support of its administrative application for tax refund. The CIR also argues that Deutsche failed to prove that its sales for the 3rd quarter of CY 2009 were zero rated and made to non-resident foreign corporations doing business outside the Philippines.

The CIR contends that the Court *En Banc* correctly affirmed the decision of the Court *a quo* in denying the Motion to Re-open New Trial; that it was never deprived of its right to present evidence; that Deutsche tried to disregard and violate the rules and prevailing jurisprudence by introducing new evidence for the first time after judgment had been rendered; and that the documents the Deutsche is trying to present in its Motion are considered forgotten evidence.

The Court *En Banc* will now resolve.

Anent the CIR's Motion for Partial Reconsideration, after a careful review of the grounds raised therein and the corresponding Comments thereto, the Court *En Banc* finds no new matters or arguments which were not considered in the Assailed Decision. Consequently, the Court *En Banc* finds the CIR's Motion for Partial Reconsideration devoid of merit.

To emphasize, the submission of documents enumerated under *RMO No. 53-98* is not a requirement for a grant of tax refund.

Moreover, the instant appeal involves the CIR's inaction, the Court *En Banc* notes that this was the reason why Deutsche was allowed to present in evidence additional documents not submitted in the administrative level and such evidence was correctly considered by the Court in Division in arriving at the assailed Decision dated September 23, 2014 and Amended Decision dated December 19, 2014.

Anent Deutsche's Motion for Reconsideration, the Court *En Banc* finds that Deutsche failed to raise any new or substantial matter, or any compelling reason to justify the reversal or modification of the Court *En Banc*'s findings in the Assailed Decision. Consequently, the Court *En Banc* finds Deutsche's Motion for Reconsideration devoid of merit.

Anent Deutsche's claim that the Court *En Banc* erred in affirming the denial of its Motion to Re-open Trial as it is contrary to the furtherance of the greater interest of justice and the application of procedural rules, the Court *En Banc* does not agree.

Records reveal that Deutsche filed a Motion for Leave to Submit Supplemental Evidence[1] by registered mail on September 17, 2013, which was granted by the Court in Division in its Resolution[2] dated November 18, 2013. Thereafter, Deutsche was allowed to present its supplemental evidence[3].

The circumstances availing in this case reveal that Deutsche filed a motion to re-open trial for the submission of additional documentary evidence only after the Court in Division has promulgated its Decision dated September 23, 2014. The Court *En Banc* notes that the pieces of evidence it seeks to submit are not newly discovered evidence, i.e. AMInet Company Profile Fact Sheets and the electronically-maintained copies of the Articles of Incorporation and business registration documents of its clients and withholding VAT returns (BIR Form No. 1600).[4] These pieces of evidence are available during the trial but Deutsche failed to submit them to the Court in Division. The Court *En Banc* consider this as a last attempt to seek a favorable decision in its favor. Besides, as held by the Court in

[1] Records, Vol. 3, pp. 1228-1259.
[2] *Id.*, pp. 1278-1279.
[3] *Id.*, *Minutes of Hearing, November 27, 2013*, p. 1300.
[4] *Id.*, Motion for Partial Reconsideration (Re: Decision dated September 23, 2014, with Motion to Re-open Trial), p. 1412.

Division, Deutsche did not provide any justification for the delay in presenting the evidence.

To reiterate, Deutsche failed to discharge the burden to prove its claim. Tax refunds, being in the nature of tax exemptions, are construed in *strictissimi juris* against the taxpayer and liberally in favor of the government. It is the claimant's burden to prove the factual basis of a claim for refund or tax credit, hence, compliance with all the VAT invoicing requirements provided by tax laws and regulations is mandatory.[5]

WHEREFORE, premises considered, the Motion for Partial Reconsideration and Motion for Reconsideration, filed by the CIR and Deutsche, respectively, are hereby **DENIED,** for lack of merit.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

[5] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 183531, March 25, 2015.

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Took no part
CATHERINE T. MANAHAN
Associate Justice