21-000482-0055

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10699

DEUTSCHE KNOWLEDGE SERVICES PTE., LTD,
Petitioner,

- versus -

NOTICE OF RESOLUTION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legaspi Village
Makati City

ATTY. AYESHA HANIA B. GUILING-MATANOG
A TTY. CLARISSA J. VITUDES-BABARAN
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

SALVADOR LLANILLO & MIJARES
Units 1706-1711, 17th Floor, Tower One & Exchange Plaza
Ayala Triangle, Ayala Avenue
1226 Makati City

GREETINGS:

You are hereby notified by these presents that on **April 2, 2025,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **April 3, 2025.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

DEUTSCHE KNOWLEDGE SERVICES PTE., LTD., Petitioner,	CTA Case No. **10699**
	Members:
- versus -	**DEL ROSARIO,** *P.J., Chairperson,* **BACORRO-VILLENA,** *and* **CUI-DAVID,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: APR 02 2025 10:30 AM

x - x

RESOLUTION

***BACORRO-VILLENA, J.*:**

For the Court's resolution is petitioner Deutsche Knowledge Services Pte., Ltd.'s (**petitioner**'s) "Omnibus Motion I. For Reconsideration of the Decision dated August 22, 2024; and II. Urgent Motion to Reopen Case through Submission of Supplemental of Evidence"[1] (**Omnibus Motion**) filed on 13 September 2024, with "Opposition (Re: Motion for Reconsideration of the Decision dated 22 August 2024)"[2] (**Opposition**) filed by respondent Commissioner of Internal Revenue (**respondent/CIR**) on 14 October 2024.

The Omnibus Motion prays for the reconsideration of the Decision promulgated on 22 August 2024, which denied petitioner's claim for value-added tax (**VAT**) attributable from its alleged zero-rated sales made in the second (2[nd]) quarter of calendar year (**CY**) 2019. This dispositive part states –

[1] Division Docket, Volume IV, pp. 1723-1742.
[2] Id., pp. 2126-2132.

...

WHEREFORE, premises considered, the instant Petition for Review filed on 09 December 2021 by petitioner Deutsche Knowledge Services Pte., Ltd. is hereby **DENIED** for lack of merit.

SO ORDERED.

...

In the Omnibus Motion, petitioner insists that respondent has already determined that the former was engaged in zero-rated sales to different nonresident foreign corporations (**NRFCs**), thus partially granting its claim for refund in the administrative level. The denied portion thereof pertains to zero-rated sales supported with invalid official receipts (**ORs**).

To bolster its claim, petitioner forwards the Bureau of Internal Revenue's (**BIR**'s) memorandum reports which indicated that petitioner's export sales were made in accordance with Section 108(B)(2)[3] of the National Internal Revenue Code (**NIRC**) of 1997, as amended.

Petitioner also alleges that in the disallowances that the BIR had determined, there is no showing that it failed to prove that it rendered services to NRFCs not doing business in the Philippines. Likewise, nowhere in item No. 2.3 of the Revised Checklist of Mandatory Requirements on Claims for VAT Credit/Refund[4] (**Revised Checklist**) is it shown that it was required to submit the authenticated business registrations to substantiate the claim of NRFC status.

Petitioner also asserts that this Court should have proceeded only with the issues or matters that the parties appealed. It should only take cognizance of the grounds for disallowances which were raised in the prior Petition for Review.

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[3] **SEC. 108**. *Value-added Tax on Sale of Services and Use or Lease of Properties*. –

...

(B) *Transactions Subject to Zero Percent (0%) Rate* - ...

...

(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)[.]

[4] Exhibit "P-4-1", Division Docket, Volume III, p. 1026.

Moreover, petitioner posits that contrary to the case of *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.*[5], where respondent therein directly attacks the taxpayers-claimants' allegation that it rendered services to NRFCs; herein, respondent CIR did not interpose such defenses. Thus, the Court need not tackle the said undisputed issue.

Lastly, invoking the higher interest of justice, petitioner prays for the reopening of the case for it to present its supplemental evidence particularly: (1) the certified true copy (**CTC**) of the business registration documents of petitioner's clients (attached as Exhibits "**P-23-1**" to "**P-23-16**")[6]; and, (2) the service agreements between petitioner and its clients (attached as Exhibits "**P-43-1**" to "**P-43-21**")[7] to support its claim for VAT refund. According to petitioner, it previously submitted the originals of the said documents to the BIR VAT Credit Audit Division (**VCAD**) during the processing of its refund claim in the administrative level. However, it was only recently that respondent had furnished it with the CTCs of the said documents to it.

Lastly, quoting the Concurring and Dissenting Opinion of Presiding Justice Roman G. Del Rosario in *Chevron Holdings, Inc. v. Commissioner of Internal Revenue*[8] (**Chevron**), petitioner maintains that a simple examination of the said documents would reveal that it has a significant impact in the Court's disposition on the VAT refund claim especially as to the amount. Hence, its substantive right to the refund claim should prevail over technical procedures.

Respondent, on the other hand, opposes the reopening of the case. He or she stresses that petitioner was already given the ample opportunity to present and prove its claim before the Court. Thus, any lapses it committed should not be cured on the precept of a new trial as it will set a bad precedent for future cases, as ruled in *Toledo Power Company v. Commissioner of Internal Revenue*.[9]

Insisting that tax refunds partake the nature of tax exemptions and are construed *stricitissimi juris* against the claimant, petitioner's

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5 G.R. No. 234445, 15 July 2020.
6 Division Docket, Volume IV, pp. 1763-1985.
7 Id., pp. 1986-2122.
8 CTA EB Nos. 1508 & 1509, 21 March 2018.
9 CTA EB No. 1359, 25 May 2017.

failure to substantiate its refund claim should best result in the denial of petitioner's Omnibus Motion.

We resolve.

After an examination of the parties' arguments, We are constrained to deny petitioner's Omnibus Motion for lack of merit.

The Revised Checklist allegedly did not require the presentation of the authenticated business registrations and service agreements. Nevertheless, petitioner admitted to having submitted the originals of the said documents with the BIR VCAD (when respondent requested them) for the processing of its claim for VAT refund. The relevant part of the Omnibus Motion states –

> ...
>
> 36. Certified true copies of the subject documents were only recently made available to Petitioner by Respondent. **Petitioner previously surrendered all the originals of these documents to Respondent through the VAT Credit Audit Division (VCAD) as the time when Respondent had required these in evaluating Petitioner's various administrative claims for refund.**[10]
>
> ...

A perusal of the attachments also reveals that it was Amelita A. Escobar, the Chief of the BIR VCAD, who verified that the documents were CTCs of the originals filed before her office. Evidently, the availability of the said documents is beyond question and the only issue left for the Court to resolve is whether petitioner's prayer to reopen the trial to accept evidence should be granted.

In *Luzon Hydro Corporation v. Commissioner of Internal Revenue*[11], the Supreme Court enumerated the requisites for the grant of a motion for new trial on the ground of newly discovered evidence in this wise:

> ...
>
> ... In order that newly discovered evidence may be a ground for allowing a new trial, it must be fairly shown that: (a) the evidence is discovered after the trial; (b) such evidence could not have been

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10 Emphasis supplied.
11 G.R. No. 188260, 13 November 2013; Citation omitted.

> discovered and produced at the trial even with the exercise of reasonable diligence; (c) such evidence is material, not merely cumulative, corroborative, or impeaching; and (d) such evidence is of such weight that it would probably change the judgment if admitted.
>
> ...

Newly discovered evidence refers to that which already exists prior to or during a trial, but the existence is not known to the offering litigant; or, though known, could not have been secured and presented during the trial despite reasonable diligence. What is essential for a particular piece of evidence to be properly regarded as "newly discovered" is that the offering party *exercised reasonable diligence in seeking to locate the evidence before or during the trial, but nonetheless failed to secure it*. Thus, a party who knows of the existence of specific pieces of evidence cannot offer them as "newly discovered" without any explanation for not presenting them earlier.[12]

Here, petitioner's only allegation for the non-submission of the relevant documents, *i.e.*, that respondent only recently provided the CTCs (of the business registrations and service agreements), does not even satisfy the first and second requisites for allowing the new trial.

Firstly, as earlier stated, the subject evidence is one that may not be considered as discovered after the trial considering that it was petitioner itself that submitted them to the BIR VCAD during the administrative claim (or prior to the filing of its judicial appeal). *Secondly*, petitioner failed to show that these could not have been produced during the trial even with the exercise of reasonable diligence to secure them. Moreover, assuming it did, it could have easily informed the Court of the same during the proceedings. Petitioner could have also requested additional time to obtain them before resting its case. In both instances, petitioner, however, utterly failed to do so.

With the foregoing disquisition, the Court cannot consider the subject documents to be newly discovered evidence. Rather, they are "forgotten evidence" that intended to be presented only after receiving an unfavorable decision.

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[12] *Office of the Ombudsman, Represented by Hon. Simeon V. Marcelo v. Carmencita D. Coronel*, G.R. No. 164460, 27 June 2006.

Succinctly, the 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.[13]

It is also noteworthy to emphasize that in the Petition for Review and the Formal Offer of Evidence (**FOE**), petitioner alleged and proffered various ORs and invoices to prove that it rendered valid zero-rated sales to different entities. The relevant allegations and the offer of evidence state –

> ...
> Petition for Review[14]
> ...
> 45. The ORs and invoices, taken together, will show all the relevant details (i.e. date of transaction, amount, name of client, nature of services rendered) **to establish that the sales rendered to a particular entity are valid zero-rated sales**.
> ...
>
> 47. Consistent with <u>Euro-Phil</u>, Petitioner maintains that it is VAT registered, and the **ORs it issued covers sale of services rendered to foreign entities doing business outside of the Philippines**, 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
> ...
>
> Formal Offer of Evidence[15]
> ...

Exhibit	Document	Purpose
P-22-1 (up to P-22-18-1)	OR No. 8687 issued by Petitioner (up to Invoice No. 270000655)	To prove: 1. That Petitioner **sold services to non-resident clients**; ... 3. That **sales are valid zero-rated sales**[.] ...

...

[13] *Office of the Ombudsman, Represented by Hon. Simeon V. Marcelo v. Carmencita D. Coronel*, supra.

[14] See paragraphs 45 and 47, Petition for Review, Division Docket, Volume I, p. 30; Emphasis supplied and underscoring in the original text.

[15] Id., Volume III, pp. 984-994.

From the above, it can be observed that when petitioner filed its judicial appeal, it also intended to prove and establish that it rendered valid-zero sales to NRFCs. However, in doing so, petitioner only opted to submit as evidence the ORs and invoices to prove the said allegation without presenting the relevant registration documents that were already submitted before the VCAD. This fact merely bolsters Our finding that the CTCs of the business registrations documents and service agreements (which were only attached in this Omnibus Motion) are indeed forgotten evidence.

In addition, respondent's VAT Refund Notice dated 30 September 2021[16] is bereft of any discussion on whether petitioner's clients are not doing business in the Philippines. As aptly pointed out in the assailed Decision –

> ...
>
> We are not unaware that petitioner had relied on respondent's findings that the export sales (for the subject period of claim) were duly verified. However, We are not convinced that respondent's verification procedures had satisfied all three (3) conditions under Section 108(B)(2) of the NIRC of 1997, as amended, to prove the VAT zero-rating of the export sales.
>
> *First*, a perusal of the BIR Memorandum dated 25 August 2021 indicates that the basis for respondent's verification of the export sales was Deutsche Bank's Certification of Inward Remittances which only confirms the existence of the *second condition*, *i.e.*, that the transaction is paid for in acceptable foreign currency duly accounted for in accordance with BSP rules and regulations[.]
>
> ...
>
> *Second*, although it appears that respondent also relied on the submission of the SEC Certifications of Non-Registration based on the BIR VCAD Remarks made on the Schedule of Zero-Rated Sales of Services for the period of 01 April 2019 to 30 June 2019, even so, it only proves that the affiliates or clients are foreign corporations. Thus, there is no evidence that supports petitioner's claim that the NRFCs are not engaged in trade or business in the Philippines.[17]
>
> ...

Thus, when petitioner appealed the denied portion of its refund claim, We were constrained to make Our own determination as to

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16 Exhibit "P-5", Division Docket, Volume III, p. 1028.
17 Citations omitted and italics in the original text.

whether the denied input VAT is indeed attributable to zero-rated sales arising from the 2nd quarter of CY 2019. The said determination also includes whether petitioner's clients are not doing business in the Philippines. However, considering that petitioner had failed to present the relevant articles of incorporation/certificates of incorporation during the proceedings and before it rested its case, We were compelled to deny outright its judicial appeal (for the disallowed portion of the VAT refund) for failure of substantiation.

Lastly, petitioner cannot easily invoke the liberal application of technical rules in its favor. Although courts are granted the prerogative to relax compliance with procedural rules of even the most mandatory character in order to fulfill its duty of reconciling both the need to put an end to litigation speedily and the parties' right to an opportunity to be heard, the relaxation of rules must be justified by reasons, such as: (a) matters of life, liberty, honor or property; (b) the existence of special or compelling circumstances; (c) the merits of the case; **(d) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules**; (e) a lack of any showing that the review sought is merely frivolous and dilatory; and (f) the fact that the other party will not be unjustly prejudiced thereby.[18] However, in this case, petitioner is deemed negligent in failing to present as evidence the registration documents during trial. Thus, We cannot allow its plea for relaxation of technical rules.

With the risk of being repetitive, tax refund partakes of the nature of tax exemptions, which are construed *strictissimi juris* against the taxpayer. Likewise, evidence in support of such claim must likewise be *strictissimi* scrutinized and duly proven. Entitlement thereof is for the taxpayer to prove and not for the government to disprove.[19]

WHEREFORE, premises considered, petitioner Deutsche Knowledge Services Pte., Ltd.'s "Omnibus Motion I. For Reconsideration of the Decision dated August 22, 2024; and II. Urgent Motion to Reopen Case through Submission of Supplemental of Evidence" filed on 13 September 2024 is hereby **DENIED** for lack of merit.

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18 *Sioland Development Corporation, as represented by CEO Elizabeth Sio v. Fair Distribution Center Corporation, represented by Esteban L. Alba, Jr.*, G.R. No. 199539, 09 August 2023.

19 *Commissioner of Internal Revenue v. Far East Bank & Trust Company (Now Bank of the Philippine Islands)*, G.R. No. 173854, 15 March 2010.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

LANEE S. CUI-DAVID
Associate Justice