REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB NO. 1742
(CTA Case No. 8861)

- versus -

DEUTSCHE KNOWLEDGE SERVICES, PTE. LTD.,
Respondent.

CTA EB NO. 1748
(CTA Case No. 8861)

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DEUTSCHE KNOWLEDGE SERVICES, PTE. LTD.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Present:

Del Rosario, P.J,
Castañeda, Jr.,
Uy,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban,
Manahan,
Bacorro-Villena, and
Modesto-San Pedro, JJ.

Promulgated:

NOV 04 2019 10:30am

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D E C I S I O N

CASTAÑEDA, JR., J.:

In these consolidated Petitions for Review, petitioner Commissioner of Internal Revenue (CIR) seeks for the reconsideration and setting aside of the CTA First (1^{st}) Division's assailed Decision[1] dated July 10, 2017 and the Resolution[2] dated November 3, 2017. On the other hand, petitioner Deutsche Knowledge Services Pte. Ltd. (Deutsche) seeks for the partial reversal and setting aside of the assailed Decision and Resolution, by granting its claim for refund or issuance of a tax credit certificate (TCC) in the amount of ₱20,881,608.09, representing its excess and unutilized input Value-Added Tax (VAT) attributable to zero-rated sales for the first (1^{st}) quarter of 2013.

For easy reference, the pertinent dispositive portion of the assailed Decision reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** to petitioner in the reduced amount of **₱14,917,841.65**, representing petitioner's unutilized input taxes for the 1^{st} quarter of CY 2013 attributable to its zero-rated sales.
>
> **SO ORDERED.**"[3]

On the other hand, the dispositive portion of the assailed Resolution reads:

> "**WHEREFORE**, premises considered, respondent's **Motion for Partial Reconsideration (Re: Decision promulgated 10 July 2017)** and petitioner's **Motion for Partial Reconsideration (Re: Decision Dated July 10, 2017)** are **DENIED** for lack of merit.
>
> **SO ORDERED.**"[4]

THE FACTS

The following are the pertinent facts as found by the CTA First (1^{st}) Division:

> "Petitioner Deutsche Knowledge Services Pte., Ltd. is the Philippine branch of a multinational company organized and existing

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[1] Penned by Associate Justice Cielito N. Mindaro-Grulla, with Associate Justice Erlinda P. Uy concurring while Presiding Justice Roman G. Del Rosario concurring and dissenting, Court *En Banc* Docket, pp. 20-61.
[2] Court *En Banc* Docket, pp. 67-75.
[3] See Note 1, pp. 60-61.
[4] See Note 2, p. 75.

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 taxpayer with Taxpayer Identification No. (TIN) 238-763-115-000.

Petitioner is licensed to do business as a regional operating headquarters (ROHQ) in the Philippines by the Securities and Exchange Commission (SEC), pursuant to the Omnibus Investments Code of 1987, as amended by Republic Act 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, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue empowered to perform the duties of his office, including, among others, the duty to act upon and approve claims for refund or tax credit as provided by law. He holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

On April 18, 2013, petitioner filed with the BIR, through eFiling and Payment System (eFPS), its Quarterly VAT Return for the 1st quarter of CY 2013.

On March 13, 2014, petitioner filed with the BIR-Large Taxpayers Regular Audit Division 3 (LTRAD 3) an Application for Tax Credits/Refund (BIR Form No. 1914) of its excess and unutilized input VAT for the 1st quarter of CY 2013 in the total amount of ₱20,881,608.09.

To date, respondent had not acted with finality on petitioner's administrative claim for refund of unutilized input VAT for the 1st quarter of CY 2013. Hence, this instant Petition for Review was filed on August 8, 2014.

In his Answer filed on September 9, 2014, respondent interposed the following Special and Affirmative Defenses: Jz xxx xxx xxx

A Notice of Pre-Trial Conference was issued by the Court on September 15, 2014, setting the case for pre-trial conference on November 6, 2014. Accordingly, Respondent's Pre-Trial Brief was filed on September 25, 2014; while petitioner's Pre-Trial Brief was filed on October 31, 2014.

Pre-trial conference ensued. The parties submitted their Joint Stipulation of Facts and Issues on December 9, 2014. Thereafter, on January 29, 2015, the Court issued a Pre-Trial Order adopting the parties' joint stipulations and the pre-trial was deemed terminated.

Meanwhile, upon petitioner's motion, this Court commissioned Ms. Katherine O. Constantino as the Independent Certified Public Accountant (CPA) for the case.

During trial, petitioner presented (1) Ms. Rachel Concepcion, petitioner's Legal Entity Controller; and (2) Ms. Katherine O. Constantino, the Independent CPA, as its witnesses.

Petitioner filed its Formal Offer of Evidence on May 14, 2015.

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On the other hand, respondent manifested that he will no longer present evidence.

The case was submitted for decision on August 4, 2016, considering respondent's Memorandum filed on September 28, 2015 and petitioner's Memorandum filed on May 30, 2016."[5]

On July 10, 2017 and November 3, 2017, the CTA First (1st) Division rendered the assailed Decision and Resolution, respectively.

On November 24, 2017, petitioner CIR filed his Petition for Review.[6] On the other hand, on December 6, 2017, petitioner Deutsche filed its Petition for Review.[7] ℊ

[5] See Note 1, pp. 21-38.
[6] Court *En Banc* Docket, pp. 6-15.
[7] Court *En Banc* Docket, pp. 79-107.

On May 24, 2018 and October 1, 2018, petitioner Deutsche filed its respective Memoranda,[8] while on August 9, 2018, petitioner CIR filed his Manifestation[9] stating that he adopts the arguments raised in his Petition for Review as his Memorandum. Consequently, on November 15, 2018, the Court *En Banc* issued a Resolution submitting the instant consolidated cases for decision. Hence, this Decision.

THE ISSUES

In his Petition for Review, petitioner CIR raises the following Assignment of Errors:

> "I
>
> THE FIRST DIVISION OF THE HONORABLE COURT ERRED IN RULING THAT RESPONDENT'S INPUT TAX IN THE AMOUNT OF P14,917,841.65 IS ATTRIBUTABLE TO ITS ZERO-RATED SALES.
>
> II
>
> THE FIRST DIVISION OF THE HONORABLE COURT ERRED IN RULING THAT THE CLAIMED INPUT VAT SUBJECT OF THE INSTANT CASE REMAINED UNUTILIZED."[10]

On the other hand, in its Petition for Review, petitioner Deutsche raises the following Assignment of Errors and Summary of Arguments in Support of the Petition for Review:

> "11. Petitioner respectfully submits that the CTA-Division erred in partially denying Petitioner's claim for refund or issuance of TCC for the 1st quarter of CY 2013. This Court must revisit the Decision and the Resolution based on the following grounds:
>
> 11.1 Petitioner presented preponderant evidence to prove that all of its zero-rated sales for the 1st quarter of CY 2013 were made to non-resident foreign corporations doing business outside the Philippines; ge

[8] Court *En Banc* Docket, pp. 211-226 and pp. 243-274.
[9] Court *En Banc* Docket, pp. 238-240.
[10] Petition for Review, Assignment of Errors, Court *En Banc* Docket, pp. 8-9.

> 11.2 Petitioner's disallowed input VAT in the amount of Php4,460,754.98 is duly substantiated and accordingly, must be refunded; and
>
> 11.3 Petitioner has sufficient excess input VAT carried over from previous quarters to sufficiently cover its output VAT liability for the 1st quarter of CY 2013.
>
> 12. Petitioner respectfully submits that the CTA-Division erred in not granting Petitioner's Motion to re-open trial, on the ground that the interest of justice will be served by allowing the Petitioner to submit additional evidence."[11]

To encapsulate, the Court *En Banc* is confronted with the sole issue of whether the parties presented meritorious arguments to warrant the full or partial reversal of the assailed Decision and Resolution, respectively.

THE RULING

The Court *En Banc* finds both Petitions for Review unmeritorious.

In his Petition for Review, the CIR argues that the Court in Division did not determine whether Deutsche's input taxes were directly attributable to its zero-rated sales. Further, the CIR argues that Deutsche failed to prove that its input VAT was not applied against any output tax for the current or succeeding quarters of the following taxable year.

A perusal of the assailed Decision reveals that the same meticulously discussed in detail the pertinent requisites in determining Deutsche's entitlement to its claim. Thus, there is no merit to the CIR's claim that the Court in Division did not determine whether Deutsche's input taxes were directly attributable to its zero-rated sales.

In this regard, Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, provides:

> "**Section 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**

[11] Petition for Review, Assignment of Errors and Summary of Arguments in Support of the Petition for Review, Court *En Banc* Docket, pp. 83-84.

> **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 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:** *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 on the foregoing provision, when a taxpayer is engaged in transactions subject to VAT (0% or 12%) and transactions not subject to VAT ("mixed transactions"), the taxpayer is allowed to claim input tax that is directly attributable to VAT (0% or 12%), and the proportionate share on the basis of the volume of sales if the input tax cannot be directly and entirely attributable to VAT or not subject to VAT transactions.

Hence, if the taxpayer is not engaged in mixed transactions, there is no need for the apportionment of input tax. Consequently, if the taxpayer is engaged solely in zero-rated sales all input taxes are attributable thereto.

The computation of the excess input VAT attributable to valid zero-rated sales in the assailed Decision[12] is shown below:

Valid Input VAT	₱16,327,251.73
Less: Output Tax Due	673,702.54
Total	**₱15,653,549.19**
Divide by Total Zero-Rated Sales declared per return	1,413,943,646.13
Multiply by Valid Zero-Rated Sales	1,347,489,133.11
Excess Input VAT Attributable to Valid Zero-Rated Sales	**₱14,917,841.65**

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[12] Court in Division Docket, Vol. V, p. 3980.

As computed above, the substantiated/valid input VAT amounting to ₱16,327,251.73 was applied against the output tax due (12% of Vatable Sales) amounting to ₱673,702.54,[13] resulting to excess input VAT which is allocable to zero-rated sales available for refund.

Moreover, to determine the eligible portion of the excess input VAT for refund or issuance of TCC, the Court in Division allocated proportionately the excess input VAT between the total zero-rated sales declared per return and the valid zero-rated sales.

In the instant case, Deutsche is engaged in both zero-rated sales and vatable sales. The allocation of substantiated input tax between zero-rated sales and vatable sales is shown below:

Period Covered	Valid Zero-rated Sales	Vatable Sales	Total Sales	Substantiated Input Tax	Input Tax attributable to Zero-rated Sales	Input Tax attributable to Vatable Sales	Output Tax
	A	B	C = (A+B)	D	E= (A/C)*D	F=(B/C)*D	
1st Quarter - 2013	₱1,347,489,133.11	₱5,614,187.83	₱1,353,103,320.94	₱16,327,251.73	₱16,259,508.01	₱67,743.72	₱673,702.54

As shown in the table above, the input tax allocated to vatable sales of ₱67,743.72 (column F) is not enough to cover its output VAT liability amounting to ₱673,702.54.[14] Hence, the input tax allocated to zero-rated sales amounting to ₱16,259,508.01 (column E) shall be applied against the remaining output VAT liability of ₱605,958.82[15], to wit:

	1st Quarter of CY 2013
Output VAT	₱673,702.54
Less: Valid Input Tax allocated to Vatable sales	67,743.72
Remaining Output VAT	₱605,958.82
Less: Valid Input Tax allocated to Zero-rated sales	16,259,508.01
Excess Input VAT	**₱15,653,549.19**
Divide by Total Zero-Rated Sales declared per return	1,413,943,646.13
Multiply by Valid Zero-Rated Sales	1,347,489,133.11
Excess Input VAT Attributable to Valid Zero-Rated Sales	**₱14,917,841.65**

The apportionment of substantiated input tax between zero-rated sales and vatable sales, as shown above, will yield the same result as in the simplified computation of the excess input VAT attributable to valid zero-rated sales in the assailed Decision.[16]

[13] Line 15B, Exhibit P-3, Court in Division Docket, Vol. II, pp. 1671-1674.
[14] Line 15B, Exhibit P-3, Court in Division Docket, Vol. II, pp. 1671-1674.
[15] ₱673,702.54 less ₱67,743.72
[16] Court in Division Docket, Vol. V, p. 3980.

Thus, the CIR's allegation that there was no determination on the part of the Court in Division that the input taxes were directly attributable to the zero-rated sales[17] is wrong.

With regard to the CIR's claim that Deutsche failed to prove that its input VAT was not applied against any output tax for the current or succeeding quarters of the following taxable year, the Court in Division found that:

> "Even though the claimed input VAT was carried over by petitioner in its succeeding Quarterly VAT Returns, the same remained unutilized until it was deducted as "VAT Refund/TCC Claimed" in its Quarterly VAT Return for the first quarter of CY 2014. Consequently, the subject claim no longer formed part of the excess input VAT of P83,094,023.33 as of the end of the first quarter of CY 2014 which was to be carried over to the succeeding second quarter of CY 2014."[18]

The CIR based his arguments on Section 110(B) of the NIRC, as amended, which reads:

> "**(B)** ***Excess Output or Input Tax.*** – If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters. *Provided, however,* that any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112."

The CIR asserts that a taxpayer is given an option either to carry over to succeeding quarters any unutilized input tax or to file a claim for refund pursuant to Section 112 of the NIRC, as amended. Thus, in order to ensure that the subject VAT claimed for refund was not utilized in the succeeding taxable quarters, Deutsche must prove that the same were no longer included in the succeeding taxable quarters of 2014.[19]

The CIR further argues that the information contained in Deutsche's VAT return for taxable year 2013 should not be given weight as the same were mere results of self-declarations of Deutsche that were still subject to audit investigation. Likewise, the pertinent documents and records which

[17] Par. 20, Petition for Review, Court *En Banc* Docket, p. 12.
[18] See Note 1, p. 60.
[19] Par. 26, Petition for Review, Court *En Banc* Docket, p. 14.

were subjected to evaluation by the Court in Division were those pertaining to the taxable year 2013 only.[20]

Finally, the CIR asserts that the Court in Division cannot rule that the claimed input tax remained unutilized based solely on the VAT returns for taxable year 2013. The VAT returns for taxable year 2014 should have been presented by Deutsche to prove the subject claim is no longer included in the "Input Tax Carried Over from previous Period".[21]

On the other hand, Deutsche contends that the VAT returns filed, having been made under the penalty of perjury, are presumed correct. Thus, it sufficiently proved that the input VAT being claimed for refund remained unutilized.[22] Moreover, Deutsche avers that it deducted the amount claimed for refund from its available input VAT in the 1st quarter of CY 2014.[23]

The Court *En Banc* finds the CIR's assertion untenable.

Deutsche presented the following Original Quarterly VAT returns (BIR form No. 2550-Q) as well as its Amended Quarterly VAT returns to prove that the claimed excess input taxes remained unutilized:

Exhibit	CY 2013	Period	Original/Amended
P-3[24]	1st Quarter	January – March 2013	Original Return
P-3.1[25]	2nd Quarter	April – June 2013	Original Return
P-3.2[26]	3rd Quarter	July – September 2013	Original Return
P-3.3[27]	4th Quarter	October – December 2013	Original Return
P-3.4[28]	4th Quarter	October – December 2013	Amended Return
Exhibit	**CY 2014**	**Period**	**Original/Amended**
P-3.5[29]	1st Quarter	January – March 2014	Original Return
P-3.6[30]	2nd Quarter	April – June 2014	Original Return
P-3.7[31]	2nd Quarter	April – June 2014	Amended Return

A perusal of the said VAT returns shows that the subject claim for refund amounting to ₱20,881,608.09 was carried over throughout CY 2013

[20] Par. 27, Petition for Review, Court *En Banc* Docket, p. 14.
[21] Par. 28, Petition for Review, Court *En Banc* Docket, p. 14.
[22] Par. 13, Comment (To the Commissioner of Internal Revenue's Petition for Review dated November 24, 2017), Court *En Banc* Docket, p.195.
[23] Par. 15, Comment (To the Commissioner of Internal Revenue's Petition for Review dated November 24, 2017), Court *En Banc* Docket, p.196.
[24] Exhibit P-3, Court in Division Docket, Vol. II, pp.1671-1674.
[25] Exhibit P-3.1, Court in Division Docket, Vol. II, pp. 1675-1679.
[26] Exhibit P-3.2, Court in Division Docket, Vol. II, p. 1680.
[27] Exhibit P-3.3, Court in Division Docket, Vol. II, pp. 1681-1682.
[28] Exhibit P-3.4, Court in Division Docket, Vol. IV, pp. 3212-3216.
[29] Exhibit P-3.5, Court in Division Docket, Vol. II, pp. 1688-1692.
[30] Exhibit P-3.6, Court in Division Docket, Vol. II, pp. 1693-1694.
[31] Exhibit P-3.7, Court in Division Docket, Vol. IV, pp. 3283-3287.

under "Others" (Line 20E), but was eventually deducted by Deutsche as "VAT Refund/TCC Claimed" in its Original Quarterly VAT return for the 1st quarter of taxable year 2014[32] when it filed an administrative claim on March 13, 2014.[33] Hence, the subject claim no longer formed part of the "Input Tax Carried Over from Previous Period" amounting to ₱83,094,023.33 reported in its Amended Quarterly VAT return for the 2nd quarter of taxable year 2014[34].

Thus, the Court in Division aptly ruled that Deutsche has proven that the input taxes were not applied against any output VAT liability.

The CIR further asserts that in order to be entitled to a refund or issuance of TCC, the input tax must come from purchases of goods and services that form part of the finish product of the taxpayer[35] and that the phrase directly attributable means "arising from a particular source or cause."[36]

However, Section 112(A) of the NIRC, as amended, simply requires that for the creditable input tax to qualify for refund, it must be attributable to zero-rated sales or effectively zero-rated sales to the extent that such input tax has not been applied against output tax. Thus, it is not required that the creditable input tax should form part of the finished product.

Considering the foregoing, the Court *En Banc* finds that the Court in Division's assailed findings are in order.

The Court *En Banc* shall now rule on petitioner Deutsche's claims.

Deutsche failed to prove that the recipients of its services are doing business outside the Philippines

In ruling against Deutsche, the Court in Division found that:

> "While the SEC Certificates of Non-Registration show that the named entities therein are not registered corporations/partnerships in the Philippines, the same do not prove that such entities are non-resident foreign corporations doing business outside the Philippines. Likewise, the service agreements only show the names and addresses of petitioner's

[32] Line 23D, Exhibit P-3.5, Court in Division Docket, Vol. II, p. 1688.
[33] Exhibit P-4 and P-4-a, Court in Division Docket, Vol. II, pp. 1697-1702.
[34] Line 20A, Exhibit P-3.7, Court in Division Docket, Vol. IV, p. 3283.
[35] Par. 16, Petition for Review, Court *En Banc* Docket, p. 11.
[36] Par. 15, Petition for Review, Court *En Banc* Docket, p. 11.

customers to whom it renders services but the same do not establish that such customers are non-resident foreign corporations doing business outside the Philippines. Also, the Certificates/Articles of Association/Registration/Foreign Incorporation only prove that the named entities therein were incorporated/organized abroad but do not establish that such entities are not doing business in the Philippines.

In order 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 **and** Certificates/Articles of Association/Registration/Foreign Incorporation, and that there is no other indication that the recipient of the services is doing business in the Philippines.

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

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Correspondingly, only the sales of services by petitioner to entities which have the said two (2) required documents will be treated as subject to the 0% VAT rate, pursuant to Section 108 (B) (2) of the NIRC of 1997, as amended."[37]

After careful evaluation of the said findings, the Court *En Banc* agrees with the Court in Division. In addition, the above-findings of the Court in Division is consistent with the ruling of the Supreme Court in *Sitel Philippines Corporation (formerly Clientlogic Phils., Inc.) v. Commissioner of Internal Revenue*[38], where it was held that while Sitel's documentary evidence, which included Certifications issued by the Securities and Exchange Commission and Agreements between Sitel and its foreign clients, may have established that Sitel rendered services to foreign corporations and received payment therefor through inward remittances, the said documents failed to specifically prove that such foreign clients were doing business

[37] See Note 1, pp. 44-46.
[38] G.R. No. 201326, February 8, 2017.

outside the Philippines or have a continuity of commercial dealings outside the Philippines.

The Court *En Banc* also notes that the present issue presented by Deutsche is not novel. In fact, in *Our* most recent ruling in CTA EB Nos. 1763 and 1764[39] which are consolidated cases involving the same parties, *We* held that:

> "We agree with the Court in Division that to be considered as a non-resident foreign corporation doing business outside the Philippines, each entity must be supported, at the very least, by **BOTH** a Certificate of Nonregistration of Corporation/ Partnership issued by the Philippine Securities and Exchange Commission (SEC) **AND** Certificate/ Articles of Foreign Incorporation/ Association.
>
> These documents are necessary for the following reasons:
>
> 1. The SEC's negative certification establishes that the recipient of the service has no registered business in the Philippines; and
>
> 2. The Certificate/ Articles of incorporation/ Association will prove that the recipient is indeed foreign.
>
> Applying the foregoing in the case at bar, while the Intra Group Service Agreements show the names of Deutsche's customers to whom it rendered services, nevertheless, it does not establish that such service recipients are nonresident foreign corporations doing business outside the Philippines."

The above findings were also consistently applied in several cases before the Court *En Banc*, *i.e.*, *Nokia (Philippines), Inc. v. Commissioner of Internal Revenue*,[40] where it was held that:

> "Time and again, *We* have consistently held in a plethora of cases that for an entity to be considered a non-resident foreign corporation doing business outside the Philippines, the said entity must be supported **at the very least** by the Certification of Non-Registration of Corporation/Partnership duly issued by the SEC **and** proof of incorporation or registration in a foreign country (e.g., Certificate of

[39] June 7, 2019, penned by Associate Justice Cielito N. Mindaro-Grulla.
[40] CTA EB No. 1313, September 22, 2016, penned by Retired Associate Justice Caesar A. Casanova.

Incorporation, Memorandum and Articles of Association, and Certificate of Registration) or any other equivalent document."

Incidentally, Deutsche asserts that the Court in Division failed to give credence to its pieces of evidence, *i.e.*, foreign business registrations printed out from AMInet (Exhibits "P-8 to "P-8.41").[41] However, a perusal of the assailed decision shows that the said pieces of evidence were considered[42] in the computation of its valid zero-rated sales,[43] as follows:

	SEC Certificate of Non-Registration (Exhibit No.)	**Certificate/Article of Association/Registration /Foreign Incorporation (Exhibit No.)**
Deutsche Bank Aktiengesellschaft Inlandsbank	P-5	P-7
Deutsche Bank Aktiengesellschaft Filiale Johannesburg	P-35	**P-8**
Deutsche Bank Aktiengesellschaft, Filiale Amsterdam	P-5.1	None
Deutsche Bank Aktiengesellschaft, Filiale Riad	P-5.2	**P-8.1**
Deutsche Bank Aktiengesellschaft, Filiale Dubai (DIFC)	P-5.3	None
OOO Deutsche Bank	P-42	None
Deutsche Bank Sociedad Anonima Espanola	P-5.4	None
Deutsche Bank Aktiengesellschaft, Filiale Zurich	P-5.5	None
Deutsche Bank Aktiengesellschaft, Filiale Wien	P-5.6	None
Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office	P-5.7	P-45
Deutsche Bank Aktiengesellschaft, Filiale Singapore	P-5.8	**P-8.6**
Deutsche Bank Aktiengesellschaft, Filiale Bangkok	P-5.9	**P-8.7**
Deutsche Bank Aktiengesellschaft, Filiale Mumbai	P-5.10	**P-8.8**
Deutsche Bank Aktiengesellschaft, Filiale Hongkong	P-5.11	P-7.1/**P-8.9**
Deutsche Bank Aktiengesellschaft, Filiale Jakarta	P-5.12	P-7.2
Deutsche Bank Aktiengesellschaft, Filiale Ho-Chi-Minh City	P-5.13	**P-8.11**
Deutsche Bank Aktiengesellschaft, Filiale Seoul	P-5.14	P-47
Deutsche Bank Aktiengesellschaft, Filiale Labuan	P-5.15	**P-8.13**
DWS Investment SA	P-41	None
Deutsche Bank Americas Holding Corp.	P-36	**P-8.15**
Deutsche Bank Aktiengesellschaft, Filiale Brussel	P-5.16	None
Deutsche Bank (Malaysia) Berhad	P-5.17	P-44
Deutsche Bank Aktiengesellschaft, Filiale New York	P-5.18	P-46
Deutsche Bank Aktiengesellschaft, Filiale London	P-5.19	P-7.3/**P-8.17**
Deutsche Bank Aktiengesellschaft, Filiale Tokyo	P-5.20	None
Deutsche Bank Aktiengesellschaft, Filiale Paris	P-5.21	**P-8.19**

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[41] Par. 22, Petition for Review, Court *En Banc* Docket, p. 88.
[42] Decision, Court in Division Docket, Vol. V, pp. 3965-3966.
[43] Decision, Court in Division Docket, Vol. V, pp. 3969-3972.

Deutsche Bank Aktiengesellschaft, Filiale Prague	P-5.22	None
Deutsche Bank Luxembourg S.A.	P-5.23	**P-8.20**
Deutsche Securities, Inc.	P-5.24	P-7.4
Deutsche Bank Polska Spolka Akcyjna	P-38	None
Deutsche Bank Suisse SA	P-5.26	None
Deutsche Bank Societa Per Azione	P-5.27	None
Deutsche Asset Management Investmentgesselchaft	P-5.28	None
Deutsche Bank China Co. Ltd. Shanghai Branch	P-5.29	None
DWS Holding & Service GMBH	P-5.30	**P-8.23**
RREEF Management GMBH	P-5.31	**P-8.24**
Deutsche Bank Real Estate Japan YK	P-5.32	None
Deutsche Investment Management Americas, Inc.	P-39	None
RREEF Management LLC	P-5.33	None
Deutsche Asset Management Korea Company Limited	P-34	**P-8.28**
Deutsche Bank Securities, Inc.	P-5.34	P-49
Deutsche Asia Pacific Holdings Pte. Ltd.	P-5.35	P-7.5
PT Deutsche Securities Indonesia	P-5.36	None
Deutsche Group Services Pty Limited	P-5.37	P-7.6
Deutsche Bank PBC Spolka Akcyjna	P-5.25	None
Deutsche Securities Korea Co.	P-40	**P-8.33**
Deutsche Bank Trust Company Americas	P-5.38	None
DB Services New Jersey, Inc.	P-5.39	None
DB Investment Partners, Inc.	None	**P-8.35**
Bankers International Corporation	P-31	None
DB International (Asia) Limited	P-5.40	P-43
DB Energy Trading LLC	P-32	**P-8.36**
DBOI Global Services Private Limited	P-5.41	None
Global Markets Centre Private Limited	P-5.42	None
Deutsche Global Markets Limited	None	**P-8.38**
Deutsche Trustees Malaysia Berhad	P-5.43	**P-8.39**
Deutsche Bank Netherlands N.V.	P-37	**P-8.40**
DB Consorzio S. Cons. A.R.L.	P-5.44	None
Deutsche Bank Aktiengesellschaft	None	P-48

Meanwhile, exhibits P-8.2 to P-8.5[44], P-8.10[45], P-8.12[46], P-8.14[47], P-8.16[48], P-8.18[49], P-8.21 to P-8.22[50], and P-8.41[51] were not considered because the Court cannot ascertain whether the documents pertain to those foreign business registrations given that they were written in foreign languages with no English translation.

[44] Court in Division Docket, Vol. II, pp. 2101-2183.
[45] Court in Division Docket, Vol. II, p. 2231.
[46] Court in Division Docket, Vol. II, pp. 2237-2251.
[47] Court in Division Docket, Vol. II, pp. 2255-2277.
[48] Court in Division Docket, Vol. II, pp. 2297-2300.
[49] Court in Division Docket, Vol. II, pp. 2308-2311.
[50] Court in Division Docket, Vol. III, pp. 2328-2367.
[51] Court in Division Docket, Vol. III, pp. 3021-3063.

On the other hand, exhibits P-8.25 to P-8.27[52], P-8.29 to P-8.32[53], P-8.34[54], and P-8.37[55] were denied admission for failure to present their originals for comparison.[56]

Considering the foregoing, the Court *En Banc* sees no cogent reason to disturb the Court in Division's ruling.

The disallowance of Deutsche's out-of-period claims is proper

The amount of input tax should be shown separately in a VAT invoice or receipt in order to be creditable

The total disallowed input VAT as found by the Court in Division in the total amount of ₱4,460,754.98 is broken down as follows:

Other Findings by ICPA[57]	₱1,549,896.77
Per Court's Verification[58]	2,910,858.21
Total disallowed input VAT	**₱4,460,754.98**

Deutsche avers that Revenue Memorandum Circular (RMC) No. 42-03 allows out-of-period claims, provided certain requirements are met which it has sufficiently complied with.[59]

Additionally, Deutsche contends that its invoices and ORs where the amount of input VAT were not separately indicated should not be disallowed.[60] Pursuant to Section 4.106-4, Revenue Regulations (RR) No. 16-05, VAT is deemed included in the selling price as stated in the OR when the amount of VAT is not separately indicated therein.[61] Moreover, citing RR No. 18-2011, Deutsche insists that the penalty for non-compliance with the invoicing requirements must be borne by the issuer who failed to comply with the requirement and not by the recipient of the non-compliant invoice or ORs.[62] Likewise, it posits that it had no control over the issuance of its supplier's invoices and ORs. If at all, it can only choose not to purchase goods or services from suppliers that are non-compliant with the invoicing

[52] Court in Division Docket, Vol. III, pp. 2393-2500.
[53] Court in Division Docket, Vol. III, pp. 2692-2850.
[54] Court in Division Docket, Vol. III, pp. 2880-2913.
[55] Court in Division Docket, Vol. III, pp. 2917-2955.
[56] Resolution, August 28, 2015, Court in Division Docket, Vol. IV, pp. 3219-3221; Resolution, March 16, 2016, Court in Division Docket, Vol. IV, pp. 3269-3270.
[57] Decision, Court in Division Docket, Vol. V, pp. 3974-3975.
[58] Decision, Court in Division Docket, Vol. V, pp. 3975-3978.
[59] Pars. 36 & 37, Petition for Review, Court *En Banc* Docket, pp. 94-95.
[60] Par. 42, Petition for Review, Court *En Banc* Docket, p. 95.
[61] Par. 49, Petition for Review, Court *En Banc* Docket, p. 97.
[62] Par. 57, Petition for Review, Court *En Banc* Docket, p. 99.

requirements. However, it cannot compel the supplier to correct previously issued invoices and ORs for goods and services that were already purchased.[63]

Deutsche submits that the purpose of the substantiation requirement will still be served despite the absence of the required separate indication of input VAT.[64]

The Court *En Banc* finds Deutsche's arguments untenable.

It is noteworthy that the issues raised by Deutsche was adequately addressed by the Court in Division. As extensively discussed in the assailed Resolution,[65] even if RMC No. 42-03 allows out-of-period claims of input VAT, the same cannot be adhered to, as it contravenes Section 110(A)(2) of the NIRC as amended.[66]

Section 110(A)(2) provides that the corresponding input VAT on the purchase of goods is creditable upon consummation of sale, *i.e.*, upon the issuance of the corresponding invoice. On the other hand, the corresponding input VAT on the purchase of services is creditable upon payment of compensation, rental, royalty or fee, *i.e.*, upon the date of official receipts.[67] As stated in the assailed resolution citing *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.*[68], Section 110(A) is explicit – upon consummation, in the case of domestic purchases of goods, and upon payment, in the case of purchases of services. It does not provide any qualification.[69]

As held in *PAGCOR v. Bureau of Internal Revenue, et. al.*[70], in case of discrepancy between basic law and a rule or regulations issued to implement said law, the basic law prevails, because said rule or regulation cannot go beyond the terms and provisions of the basic law.

Thus, the Court finds that the disallowance of Deutsche's out-of-period claim is in order.

On the other hand, the amount of input tax should be shown separately in a VAT invoice or receipt in order to be creditable. Section 110(A)(1) of the NIRC, as amended, is categorical in requiring that any

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[63] Par. 60, Petition for Review, Court *En Banc* Docket, p. 100.
[64] Par. 43, Petition for Review, Court *En Banc* Docket, p. 96.
[65] Resolution, November 3, 2017, Court in Division Docket, Vol V, pp. 4038-4046.
[66] Resolution, November 3, 2017, Court in Division Docket, Vol V, pp. 4042-4043.
[67] Resolution, November 3, 2017, Court in Division Docket, Vol V, p. 4043.
[68] CTA EB Nos. 1297 & 1302, May 18, 2017.
[69] Resolution, November 3, 2017, Court in Division Docket, Vol V, p. 4043.
[70] G. R. No. 215427, December 10, 2014.

input tax to be creditable must be evidenced by a VAT invoice or official receipt issued in accordance with Section 113. Meanwhile, Section 113(B)(2)(a) of the NIRC, as amended, requires that the amount of input tax should be shown as a separate item in the invoice or receipt.

Moreover, a reading of Section 4.106-4 of RR 16-2005 shows that the provision on which Deutsche based its argument pertains to the sale, barter or exchange of real property subject to VAT only. Thus:

> "**SECTION 4.106-4.** ***Meaning of the Term "Gross Selling Price".*** — The term "gross selling price" means the total amount of money or its equivalent which the purchaser pays or is obligated to pay to the seller in consideration of the sale, barter or exchange of the goods or properties, excluding VAT. The excise tax, if any, on such goods or properties shall form part of the gross selling price.
>
> **In the case of sale, barter or exchange of real property subject to VAT**, gross selling price shall mean the consideration stated in the sales document or the fair market value whichever is higher. **If the VAT is not billed separately in the document of sale, the selling price or the consideration stated therein shall be deemed to be inclusive of VAT.**" (Emphasis Supplied)

Basic is the rule in taxation that tax refunds, being in the nature of tax exemptions, are construed in *strictissimi juris* against the taxpayer and liberaly in favor of the government. Accordingly, it is a claimant's burden to prove the factual basis of a claim for refund or tax credit.[71]

Thus, in order to prove entitlement to refund or issuance of TCC, Deutsche should have exercised due diligence in its transactions with its suppliers to ensure that the VAT invoices/ORs issued to it are fully compliant with the invoicing requirements.

Deutsche failed to prove that it has sufficient excess input VAT carried over from previous quarters to cover its output VAT liability for the 1st quarter of CY 2013

Deutsche avers that the Court in Division erred in offsetting its output VAT liability against its unutilized input VAT for the 1st quarter of CY 2013

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

for lack of basis.[72] It holds that it has sufficient excess input VAT carried over from previous quarters to cover its output VAT liability for the 1st quarter of CY 2013.[73]

Further, it claims that pursuant to Section 110(B) of the NIRC, as amended, and as implemented by Section 4.110-7(b) of RR No. 16-05, it is clear that a taxpayer may apply the amount of its available unutilized input VAT carried over from the previous quarter to its output VAT liability for the current taxable year.[74]

The Court *En Banc* finds Deutsche's claims unmeritorious.

As explained in the assailed Resolution, Deutsche failed to present and offer in evidence any VAT invoice or OR to support the alleged input tax carried over from previous quarter in the amount of ₱249,651,814.19, which it seeks to be credited or charged against its output VAT liability in the 1st quarter of CY 2013. Moreover, the Court in Division noted that the "Input Tax Carried Over from Previous Period" in the Quarterly VAT Return for the 1st quarter of CY 2013 reflects the amount of "0.00." The amount of ₱249,651,814.19 actually pertains to the entry for "Others" under "Allowable Input Tax."[75]

Considering the foregoing, the Court *En Banc* finds that the assailed Decision and Resolution are in order.

The Court in Division is correct in denying Deutsche's Motion to Re-open trial

Finally, Deutsche submits that the Court in Division erred in not granting its Motion to re-open trial on the ground that the interest of justice will be served by allowing it to submit additional evidence.[76]

The Court *En Banc* likewise finds the same unmeritorious.

In *Ramon J. Alegre vs. Hon. Manuel T. Reyes, etc. and the People of the Philippines*,[77] the Supreme Court declared that:

> "xxx the reopening of a case for the reception of additional evidence after a case has been submitted for decision **but before judgment is actually rendered** is, it has been said,

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[72] Par. 62, Petition for Review, Court *En Banc* Docket, p. 101.
[73] Par. 63, Petition for Review, Court *En Banc* Docket, p. 101.
[74] Par. 66, Petition for Review, Court *En Banc* Docket, p. 102.
[75] Resolution, November 3, 2017, Court in Division Docket, Vol. V, pp. 4044-4045.
[76] Petition for Review, Court *En Banc* Docket, pp. 83-84.
[77] G.R. No. L-56923, May 9, 1988, 161 SCRA 231.

> controlled by no other rule than that of the paramount interests of justice, resting entirely in the sound judicial discretion of a Trial Court; and its concession, or denial, by said Court in the exercise of that discretion will not be reviewed on appeal unless a clear abuse thereof is shown."[78] *(Emphasis supplied)*

Based on *Alegre*, a motion to reopen is proper where a judgment has not been actually rendered.

Further, in *Republic of the Philippines v. Sandiganbayan*,[79] the Supreme Court explained the nature of a motion to reopen a case to introduce further evidence, as follows:

> "The basis for a motion to reopen a case to introduce further evidence is Section 5, Rule 30 of the Rules of Court, which reads:
>
> *Sec. 5. Order of trial.* – Subject to the provisions of section 2 of Rule 31, and unless the court for special reasons otherwise directs, the trial shall be limited to the issues stated in the pre-trial order and shall proceed as follows:
>
> xxx xxx xxx
>
> (f) The parties may then respectively adduce rebutting evidence only, **unless** the court, for **good reasons and in the furtherance of justice**, permits them to **adduce evidence upon their original case.**
>
> Under this rule, a party who has the burden of proof must introduce, at the first instance, all the evidence he relies upon and such evidence cannot be given piecemeal. The obvious rationale of the requirement is to avoid injurious surprises to the other party and the consequent delay in the administration of justice.
>
> A party's declaration of the completion of the presentation of his evidence prevents him from introducing further evidence; but where the evidence is *rebuttal* in character, whose necessity, for instance, arose from the shifting of the burden of evidence from one party to the other; or where the evidence sought to be presented is in the nature of *newly discovered* evidence, the party's right to introduce further

[78] Id., citing Moran, Comments on the Rules, 1979 ed., Vol. 2 pp. 212-213, citing cases; Francisco, The Revised Rules, 1966 ed., Vol. 2, p. 494, also citing cases.
[79] G.R. No. 152375, December 13, 2011, 662 SCRA 185-187.

evidence must be recognized. Otherwise, the aggrieved party *may* avail of the remedy of *certiorari*.

Largely, the exercise of the court's discretion under the exception of Section 5(f), Rule 30 of the Rules of Court depends on the **attendant facts** – i.e., on whether the evidence would qualify as a 'good reason' and be in furtherance of 'the interest of justice.' For a reviewing court to properly interfere with the lower court's exercise of discretion, the petitioner must show that the lower court's action was attended by grave abuse of discretion. Settled jurisprudence has defined this term as the capricious and whimsical exercise of judgment, equivalent to lack of jurisdiction; or, the exercise of power in an arbitrary manner by reason of passion, prejudice, or personal hostility, so patent or so gross as to amount to an evasion of a positive duty, to a virtual refusal to perform the mandated duty, or to act at all in contemplation of the law. Grave abuse of discretion goes beyond the bare and unsupported imputation of caprice, whimsicality or arbitrariness, and beyond allegations that merely constitute errors of judgment or mere abuse of discretion.

In *Lopez v. Liboro*, we had occasion to make the following pronouncement:

After the parties have produced their respective direct proofs, they are allowed to offer rebutting evidence only, but, it has been held, the court, for good reasons, in the furtherance of justice, may permit them to offer evidence upon their original case, and its ruling will not be disturbed in the appellate court where no abuse of discretion appears. **So, generally, additional evidence is allowed** when it is newly discovered, or **where it has been omitted through inadvertence or mistake**, or where the purpose of the evidence is to correct evidence previously offered. The omission to present evidence on the testator's knowledge of Spanish had not been deliberate. It was due to a misapprehension or oversight."

In the instant case, Deutsche failed to present any attendant circumstance to warrant the reopening of the instant case. It must be reminded that the invocation of the phrase "in the interest of justice" is not a magical incantation that would automatically suffice to warrant new trial or reopening of this case. It behooves upon Deutsche to show the Court *En Banc* the jurisprudential circumstances that warrant the grant thereof.

To end, both parties failed to present meritorious arguments to justify the reversal of the assailed Decision and Resolution. Thus, there is no cogent reason to disturb the same.

WHEREFORE, the Petitions for Review in CTA EB Nos. 1742 and 1748 are both **DISMISSED**, for lack of merit. Accordingly, the assailed Decision and Resolution of the Court in Division are **AFFIRMED**.

SO ORDERED.

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

WE CONCUR:

(See Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
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

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. 1742
(CTA Case No. 8861)

x- -x

DEUTSCHE KNOWLEDGE SERVICES, PTE. LTD.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1748
(CTA Case No. 8861)

Present:

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

Promulgated:
NOV 04 2019 10:30am

x- -x

CONCURRING OPINION

DEL ROSARIO, PJ.:

For lack of merit, I concur in the denial of the Petitions for Review.

In cases[1] previously decided by the Court involving the same parties, albeit concerning different taxable periods, I took the position that the Intra-Group Service Agreements between Deutsche Knowledge Services Pte, Ltd. *(Deutsche)* and its foreign clients are sufficient to establish that the entities mentioned therein are doing business outside the Philippines as they specify the nature of services that Deutsche renders in support of its clients' business process.

I reiterated this position in my Concurring and Dissenting Opinion dated July 10, 2017 appended to the assailed Decision.

The Supreme Court, however, eventually declared in *Sitel Philippines Corporation (formerly Clientlogic Phils., Inc.) vs. Commissioner of Internal Revenue,*[2] that such Service Agreements between Deutsche and its foreign clients are not sufficient to prove that Deutsche's foreign clients are doing business outside the Philippines.

It is by virtue of this pronouncement in *Sitel* that I am constrained to modify my earlier position.

All told, I **VOTE** to concur with the *ponencia.*

ROMAN G. DEL ROSARIO
Presiding Justice

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[1] *Commissioner of Internal Revenue vs. Deutsche Knowledge Services Pte. Ltd./ Deutsche Knowledge Services Pte. Ltd. vs. Commissioner of Internal Revenue,* CT A EB Nos.1244 & 1345, March 30, 2017; and *Deutsche Knowledge Services Pte Ltd. vs. Commissioner of Internal Revenue,* CTA EB No. 1290, August 16, 2016.
[2] G.R. No. 201326, February 8, 2017.