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. 2248
(CTA Case Nos. 8720, 8736, 8754 & 8767)

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COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

DEUTSCHE KNOWLEDGE SERVICES, PTE. LTD.,
Respondent.

CTA EB NO. 2252
(CTA Case Nos. 8720, 8736, 8754 & 8767)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO, *and*
REYES-FAJARDO, *JJ.*

Promulgated:

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DECISION

MANAHAN, J.:

This resolves the *Petition for Review*[1] filed by petitioner Deutsche Knowledge Services, PTE. LTD. (DKS) under CTA EB

[1] *Rollo*, CTA EB No. 2248, pp. 6-44.

Case No. 2248 on June 30, 2020, and the *Petition for Review*[2] filed by petitioner Commissioner of Internal Revenue (CIR) under CTA EB No. 2252 on June 29, 2020, both pursuant to Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended[3], which both pray for the reversal and setting aside of the *Decision* dated October 14, 2019[4] (Assailed Decision) and the *Resolution* dated February 14, 2020[5] (Assailed Resolution) promulgated by the Second Division of the Court of Tax Appeals (CTA) in CTA Case Nos. 8720, 8736, 8754 and 8767 entitled "*Deutsche Knowledge Services, PTE. Ltd. vs. Commissioner of Internal Revenue*", and the rendition of a new judgment ruling, respectively, in their favor.

The Facts

As culled from the records of the instant case, petitioner DKS, under CTA EB No. 2248, is a corporation organized and existing under the laws of Singapore, with office address at Net Quad Center, 31st Street corner 4th Avenue, E-Square Zone Crescent Park West, Bonifacio Global City, Taguig City. It is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer, with Taxpayer Identification No. (TIN No.) 238-763-115-000, and with BIR Certificate of Registration No. OCN9RC0000270209.[6]

Petitioner DKS is licensed and authorized by the Securities and Exchange Commission (SEC) to operate as regional operating headquarters in the Philippines which provides qualifying services of 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

[2] *Rollo*, CTA EB No. 2252, pp. 7-20.
[3] Rules of the Court of Tax Appeals – approved by the Supreme Court on November 22, 2005 (A.M. No. 05-11-07-CTA); Amendments to the 2005 Rules of Court of the Court of Tax Appeals – approved by the Supreme Court on September 16, 2008 (A.M. No. 05-11-07-CTA; and Additional Amendments to the 2005 Revised Rules of the Court of Tax Appeals – approved by the Supreme Court on February 10, 2009 (A.M. No. 05-11-07-CTA).
[4] *Rollo*, CTA EB No. 2248, pp. 65-151.
[5] *Id.*, pp. 52-62.
[6] *Id.*, p. 66.

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development; technical support and maintenance; data processing and communication and business development.[7]

On the other hand, respondent, under CTA EB No. 2248, is the duly appointed Commissioner of Internal Revenue (CIR) who holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[8]

Petitioner DKS filed with the BIR its monthly and quarterly value-added tax (VAT) Returns, through the Electronic Filing and Payment System (eFPS), on the following dates:[9]

PERIOD COVERED	DATE FILED
January 2012	February 16, 2012
February 2012	March 19, 2012
First Quarter of 2012	April 19, 2012
April 2012	May 21, 2012
May 2012	June 19, 2012
Second Quarter of 2012	July 20, 2012 (original) May 21, 2013 (amended)
July 2012	August 20, 2012
August 2012	September 17, 2012
Third Quarter of 2012	October 18, 2012 (original) October 23, 2012 (amended)
October 2012	November 15, 2012
November 2012	December 11, 2012
Fourth Quarter of 2012	January 22, 2013

For the calendar year (CY) 2012, petitioner DKS claims to have rendered services in the Philippines to persons engaged in businesses conducted outside the Philippines, the payments for which were made in Euro and other acceptable foreign currency and accounted for in accordance with the rules and regulations of Bangko Sentral ng Pilipinas (BSP). As such, it allegedly accumulated excess input tax in the total amount of ₱148,152,889.37. And out of this total amount, ₱147,159,034.53 was purportedly attributable to its zero-rated sales, which remained unutilized and/or unapplied against its output VAT liability.[10]

Thus, petitioner DKS separately filed with respondent CIR its administrative claims for refund/TCC of its unutilized

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[7] *Id.*
[8] *Rollo*, CTA EB No. 2248, *Decision* dated October 14, 2019, p. 66.
[9] *Id.*, p. 67.
[10] *Id.*

input VAT attributable to its zero-rated sales for CY 2012 on the following dates:[11]

TAXABLE QUARTER OF 2012	DATE ADMINISTRATIVE CLAIM WAS FILED	AMOUNT CLAIMED FOR REFUND
1st Quarter	May 23, 2013	Php 35,343,482.10
2nd Quarter (Amended)	June 26, 2013	34,618,094.91
3rd Quarter (Amended)	August 8, 2013	40,305,286.80
4th Quarter	October 8, 2013	36,892,170.72
TOTAL		**Php147,159,034.53**

There being no action taken by respondent CIR on petitioner's administrative claim for refund/TCC, petitioner DKS filed a judicial appeal, via 4 separate Petitions for Review, with the Court of Tax Appeals (CTA) on October 18, 2013, docketed as CTA Case No. 8720; on November 19, 2013, docketed as CTA Case No. 8736; on January 6, 2014, docketed as CTA Case No. 8754; and on February 19, 2014, docketed as CTA Case No. 8767.[12]

After respondent CIR filed his respective Answers in the abovementioned cases, the CTA First Division issued a Resolution consolidating CTA Case No. 8754 with CTA Case Nos. 8720, 8736 and 8767 on April 29, 2014.[13]

In an Order dated September 26, 2018, the above-captioned cases were transferred to the Second Division, pursuant to CTA Administrative Circular No. 02-2018, "Reorganizing the Three (3) Divisions of the Court", dated September 18, 2018.[14]

After the trial, the Court in Division under the Assailed Decision partially granted petitioner's claim for refund where the dispositive portion reads as follow:[15]

> "**WHEREFORE**, premises considered, the instant Petitions for Review are **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND or ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of ₱68,879,499.15, representing the latter's unutilized excess input VAT attributable to its zero-rated sales for the four quarters of CY 2012.

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[11] *Id.*, p. 68
[12] *Rollo*, CTA EB No. 2248, *Decision* dated October 14, 2019, p. 68
[13] *Id.*, p. 99.
[14] *Id.*, p. 103.
[15] *Supra*, Note

SO ORDERED."

Petitioner DKS, felt aggrieved by the Assailed Decision, moved for partial reconsideration of said decision while respondent CIR moved for the reconsideration of the entire decision which the Court in Division both denied for lack of merit. The dispositive portion of the Assailed Resolution reads as follow:

> "**WHEREFORE**, in light of the foregoing considerations, respondent's Motion for Reconsideration [Decision dated 14 October 2019] and petitioner's Motion for Partial Reconsideration (Re: Decision dated October 14, 2019) are both **DENIED** for lack of merit.
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> **SO ORDERED.**"

Thus, the parties filed their respective appeal through the filing of the instant petitions for review.

On July 1, 2020, this Court consolidated CTA EB No. 2252 with CTA EB No. 2248.[16] On October 6, 2020, the parties were directed to file their respective comments to the counter-party's Petition for Review.[17]

Respondent CIR under CTA EB No. 2248 posted his comment on October 22, 2020 while respondent DKS under CTA EB No. 2252 filed its comment on October 23, 2020. Thus, the case was submitted for decision on November 24, 2020.[18]

The Issue

The sole issue to be resolved in the instant petition is:

> Whether petitioner DKS is entiled to the partial grant of its claim for refund of the unutilized input VAT attributable to its zero-rated sales for CY 2012.

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[16] *Rollo*, Minute Resolution dated July 1, 2020, p. 152.
[17] *Id.*, Resolution dated October 6, 2020, pp. 169-170.
[18] *Id.*, Resolution dated November 24, 2020, pp. 200-201.

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Arguments of Petitioner DKS under CTA EB No. 2248[19]

Petitioner DKS argues that it was able to sufficiently prove, by preponderant evidence, that all of its zero-rated sales for the four quarters of CY 2012 were made to non-resident foreign corporations doing business outside the Philippines.

Petitioner insists that Section 108(B)(2) of the 1997 National Internal Revenue Code (NIRC), as amended, does not require submission of certificate/articles of foreign incorporation/association or issuance of official receipts before a transaction may be considered as zero-rated sale but may be substantiated through other equally relevant and competent evidence.

Petitioner also faulted this court in disallowing the input VAT not separately indicated in the Official Receipts (ORs) issued by its suppliers as it has no control over such issuance. It insists that the issuer should be penalized for such non-compliance and not the disallowance of petitioner's claim.

Arguments of Respondent CIR under CTA EB No. 2248

On the other hand, respondent CIR in his *Comment (On Petitioner's Petition for Review filed on June 30, 2020)*[20] counter-argues that petitioner DKS did not submit sufficient documents to prove that its clients are non-resident foreign corporations doing business outside the Philippines and that the VAT invoice should conform with the requisites under Section 113 of the 1997 NIRC, as amended, pursuant to the doctrine of *stricticissimi juris* on claim for refund which is in the nature of tax exemptions.

Argument of Petitioner CIR under CTA EB No. 2252[21]

Petitioner CIR argues that respondent DKS was not able to establish or prove its entitlement to the said claim for refund and the amount sought to be refunded is indeed attributable to its zero-rated sales considering that refunds are strictly construed against the taxpayer.

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[19] *Supra*, Note 1.
[20] *Rollo*, CTA EB No. 2248, pp. 188-196.
[21] *Supra*, Note 2.

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Arguments of Respondent DKS under CTA EB No. 2252

On the other hand, respondent DKS counter-argues in its *Comment (Re: Petition for Review dated June 25, 2020)* [22] that it was able to prove that it had export sale of services in CY 2012 and that the input VAT amounting to ₱147,159,054.54 for CY 2012 was properly substantiated and directly attributable to its zero-rated sales.

Respondent insists that such claim for refund of erroneously paid taxes, like any other ordinary civil case, necessitates only preponderance of evidence for its approbation.

Ruling of the Court *En Banc*

This Court shall determine first whether the instant petitions are filed on time. Sections 1 and 3(b) of the Revised Rules of the Court of Tax Appeals (RRCTA) provide that:

> SECTION 1. *Review of cases in the Court en banc.*- In cases falling under the exclusive appellate jurisdiction of the Court *en banc*, the petition for review of a decision or resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division.
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> xxx xxx xxx
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> SEC. 3. *Who may appeal; period to file petition.*- (a) xxx xxx xxx
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> (b) **A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration** or new trial **may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution**. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (*Emphasis supplied*)

The records of the case reveal that the petition of petitioner DKS under CTA EB Case No. 2248, and the petition of petitioner CIR under CTA EB Case No. 2252 were preceded

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[22] *Rollo*, CTA EB No. 2248, pp. 171-187.

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by a Motion for Partial Reconsideration and Motion for Reconsideration, respectively, which are the subject of the Assailed Resolution dated February 14, 2020. The latter Resolution was allegedly received by petitioner DKS, under CTA EB No. 2248, on February 20, 2020. In accordance with the abovementioned provisions of the RRCTA, petitioner DKS had until March 6, 2020 within which to file its petition.

However, petitioner DKS filed a *Motion for Extension of Time to File Petition for Review* on March 6, 2020 requesting for additional period of fifteen (15) days or until March 21, 2020 to file said petition which was granted under Minute Resolution dated March 10, 2020.

On the other hand, petitioner CIR under CTA EB No. 2252, received the Assailed Resolution on February 26, 2020. Hence he had until March 12, 2020 to file the instant petition. However, petitioner CIR filed a *Motion for Extension of Time to File Petition for Review* on March 11, 2020 requesting for additional period of fifteen (15) days to file said petition which was granted under Minute Resolution dated June 1, 2020.

Due to the increasing number of COVID-19 cases, the Supreme Court (SC) issued Administrative Circular (AC) Nos. 31-2020, 34-2020, 35-2020, and 39-2020. The last SC circular provides *inter alia* that:

> "4. The filing of petitions, appeals, complaints, motions, pleadings and other submissions that fall due up to 31 May 2020 before the courts in areas under MECQ areas is extended for 30 calendar days, counted from 1 June 2020, but pleadings and other court submissions may still be filed by the parties within the reglementary period on or before 31 May 2020 through electronic means, if preferred and able. In the same manner, the periods for court actions with prescribed periods of courts in areas under MECQ are likewise extended for 30 calendar days counted from 1 June 2020."

Thus, the filing of petitioner DKS under CTA EB No. 2248 and petitioner CIR under CTA EB No. 2252 of their Petition for Review on June 30, 2020 and June 29, 2020, respectively, were on time.

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Now, on the substantive issue of the instant case. Petitioner DKS avers that it has successfully proven its zero-rated sales for the four quarters of CY 2012 to non-resident foreign corporations doing business outside the Philippines and that Section 108(B)(2) of the 1997 NIRC, as amended, does not require submission of certificate/articles of foreign incorporation/association or issuance of official receipts before a transaction may be considered as zero-rated sale but maybe substantiated through other equally relevant and competent evidence.

As elucidated in the Assailed Decision, only those supported by both SEC Certificate of Non-Registration and Certificate of Registration/Foreign Incorporation/Association were considered as Non-Resident Foreign Corporation (NRFC).

In the recent case of *Commissioner of Internal Revenue v. Deutsche Knowledge Services PTE Ltd.*[23], the Supreme Court affirmed such documentary requirements for a claimant in a refund of input VAT under Section 108(B)(2) to prove that its client's are foreign corporations and are not doing business in the Philippines, and that the absence of one is fatal to any claim for refund of input VAT, to wit:

> "For purposes of zero-rating under Section 108(B)(2) of the Tax Code, **the claimant must establish the two components of client's NRFC status, *viz*: (1) that their client was established under the laws of a country not the Philippines or, simply, is not a domestic corporation; and (2) that it is not engaged in trade or business in the Philippines**. To be sure there must be sufficient proof of *both* of these components: showing not only that the clients are foreign corporations, but also are not doing business in the Philippines.
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> Such proof must be especially required from ROHQs such as DKS. That the law expressly authorizes ROHQs to render services to local and foreign affiliates alike only stresses the ROHQ's burden to distinguish among their clients' nationalities and actual places of business operations and establish that they are seeking refund or credit of input VAT only to the extent of their sales of services to foreign clients doing business outside the Philippines.
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> To recall, the CTA found that the SEC Certification of Non-Registration of Company and Authenticated Articles of Association and/or Certificates of Registration/Good

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[23] G.R. No. 234445, July 15, 2020.

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> Standing/ Incorporation sufficiently established the NRFC status of DKS's affiliates clients.
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> The Court upholds these findings.
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> xxx xxx xxx
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> Proof of the above-mentioned second components sets the present case apart from *Accenture, Inc. v. Commissioner of Internal Revenue* and *Sitel Philippines Corp. v. Commissioner of Internal Revenue.* In these cases, the claimants similarly presented SEC Certifications and client service agreements. However, the Court consistently ruled that documents of this nature only establish the *first* component (*i.e.*, that the affiliate is foreign). **The absence of any other competent evidence (e.g., articles of association/certificates of incorporation) proving the *second* component (*i.e.*, that the affiliate is not doing business here in the Philippines) shall be fatal to a claim for credit or refund of excess input VAT attributable to zero-rated sales**."

Thus, the Court in Division had correctly excluded those petitioner's clients which did not comply with the presentation of the required SEC Certificate of Non-Registration and Certificate of Registration/Foreign Incorporation/Association.

Petitioner DKS also questions the disallowance of the supplier's ORs where input VAT were not separately indicated therein considering that it has no control over such issuance. It insists that the issuer should be penalized for such non-compliance and not the disallowance of petitioner's claim.

Stress is made, however, that due diligence on the part of petitioner should have been observed in checking the completeness of the information in the said ORs considering that it is the one who needs such documents to prove its claim for refund as tax refunds are akin to tax exemptions, hence, any discrepancy should be construed against it as held in *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*[24], to wit:

> "Clearly, it would not be proper to allow Atlas to simply prevail and compel a tax credit or refund in the amount it claims without proving the amount of its claim. After all, "[t]ax refunds are in the nature of tax exemptions," and are to be construed *strictissimi juris* against the taxpayer."

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[24] G.R. No. 159490, February 18, 2008.

Petitioner CIR under CTA EB No. 2252, on the other hand, argues that respondent DKS was not able to establish or prove its entitlement to the said claim for refund and the amount sought to be refunded is indeed attributable to its zero-rated sales considering that refunds are strictly construed against the taxpayer.

Petitioner CIR should be aware that what he is assailing were factual findings of the Court in Division, hence, in the absence of any allegation and evidence of grave abuse of discretion on the part of the Court in Division, the same must prevail and remain, as held in *Republic of the Philippines, represented by the Commissioner of Internal Revenue, v. Team (Phils.) Energy Corporation (Formerly Mirant (Phils.) Energy Corporation)*[25], *viz*:

> "With regard to the second requirement, it is fundamental that the findings of fact by the CTA in Division are not to be disturbed without any showing of grave abuse of discretion considering that the members of the Division are in the best position to analyze the documents presented by the parties...."

In the instant petition, petitioner CIR failed to adduce any empirical evidence that the Assailed Decision was attended by grave abuse of discretion on the part of the Court in Division. Thus, this Court will not disturb its factual findings.

WHEREFORE, premises considered, petitioner DKS' Petition for Review under CTA EB No. 2248 and petitioner CIR's Petition for Review under CTA EB No. 2252 are hereby **DENIED** for lack of merit. Accordingly, the *Decision* dated October 14, 2019[26] and the *Resolution* dated February 14, 2020[27] are hereby **AFFIRMED.**

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

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[25] G.R. No. 188016, January 14, 2015.
[26] *Supra.*, Note 3.
[27] *Supra.*, Note 4.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
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