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. 1266
(CTA Case No. 8402)

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DEUTSCHE KNOWLEDGE SERVICES PTE. LTD.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1267
(CTA Case No. 8402)

Present:
DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, and
RINGPIS-LIBAN, *JJ.*

Promulgated:

FEB 17 2016 11:20a.m.

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DECISION

CASANOVA, J.:

Before the Court *En Banc* are the consolidated Petitions for Review, filed by Commissioner of Internal Revenue[1] and Deutsche Knowledge Services, Pte. Ltd.[2] on February 9, 2015 and February 11,

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[1] En Banc Rollo (CTA EB No. 1266), pp. 7-30.
[2] En Banc Rollo (CTA EB No. 1267), pp. 6-27.

2015, respectively, appealing the Decision[3] (Assailed Decision) promulgated on September 16, 2014, and Resolution[4] promulgated on January 6, 2015, of the Third Division of the Court of Tax Appeals in CTA Case No. 8402, entitled *"Deutsche Knowledge Services, Pte. Ltd. vs. Commissioner of Internal Revenue"*. The dispositive portions thereof, respectively, read as follows:

Decision dated September 16, 2014:

"**WHEREFORE**, in view of the foregoing, the Petition for Review by petitioner Deutsche Knowledge Services, Pte Ltd. is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED** to refund to petitioner or issue a tax credit certificate in its favor the amount of Php15,859,091.24 representing the latter's unutilized input VAT attributable to its zero-rated sales for the fourth quarter of taxable year 2009.

SO ORDERED."

Resolution dated January 6, 2015:

"**WHEREFORE**, in view of the foregoing, the Court Motion for Partial Reconsideration (Re: Decision promulgated on 16 September 2014) filed by respondent is hereby **DENIED**, while the Omnibus Motion filed by petitioner is resolved, as follows:

1. Motion for Partial Reconsideration is hereby **DENIED** for lack of merit. However, the dispositive portion of the Decision dated September 16, 2014 is hereby modified as to the amount granted for the issuance of tax credit certificate to **Php15,856,069.97**;

2. Motion to Reopen Trial for Presentation of Supplemental Evidence is hereby **DENIED.**

3. Motion for Clarification is hereby **GRANTED.**

SO ORDERED."

[3] Division Docket (Vol. II), pp. 885-903.
[4] Ibid., pp. 1033-1048.

In CTA EB No. 1266, the Commissioner of Internal Revenue prays for the setting aside of the afore-quoted Decision and Resolution, and for the issuance of a new decision denying Deutsche Knowledge Services, Pte. Ltd.'s claim for refund in its entirety.

On the other hand, in CTA EB No. 1267, Deutsche Knowledge Services, Pte. Ltd. prays for the reversal of the said Decision and Resolution in so far as it partially denied its claim for refund of its excess and unutilized input VAT for the 4th quarter of calendar year (CY) 2009. It, specifically, seeks for the issuance of an Amended Decision granting its claim for refund of unutilized input VAT in the amount of Php34,107,284.30 representing its excess and unutilized input VAT on purchases of goods and services attributable to zero-rated sales for the 4th quarter of CY 2009, or in the alternative grant its motion to reopen trial to present supplemental evidence and to remand the case to the CTA-Division for the presentation of its supplemental evidence.

The Commissioner of Internal Revenue (CIR) is the head of the Bureau of Internal Revenue (BIR), empowered to perform the duties of her office, including among others, the duty to act upon and approve claims for refund or tax credit as provided by law, with office address at the 5th Floor, Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.[5]

Deutsche Knowledge Services, Pte. Ltd. (Deutsche Knowledge) is the Philippine branch of a multinational company organized and existing under and by virtue of the laws of Singapore, with registered office address at One Raffles Quay, #17-10 South Tower, Singapore 048583.[6] It 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 Investment Code of 1987, as amended by Republic Act No. 8756, and its implementing rules and regulations, to engage in the 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.[7]

The factual antecedents of the case, as found by the CTA Third Division, are as follows:

[5] Par. 1, The Parties, En Banc Rollo (CTA EB No. 1266), p. 8.
[6] Par. 3, The Parties, En Banc, Rollo (CTA EB No. 1267), p. 7.
[7] Par. 4, Ibid.

"On January 25, 2010, petitioner[8] filed with the BIR its original Quarterly VAT Return for the 4th quarter of taxable year 2009.

On August 3, 2011, petitioner filed with the BIR a written Application for Tax Credits/Refunds (BIR Form No. 1914) of its excess and unutilized input VAT for the same period, in the total amount of Thirty Four Million One Hundred Seven Thousand Two Hundred Eighty Four and 30/100 Pesos (Php34,107,284.30).

As the two-year period prescribed under Section 229 of the National Internal Revenue Code of 1997, as amended ('1997 NIRC') was about to expire, and respondent[9] had not acted upon the administrative claim for refund, petitioner filed a Petition for Review with the Court on December 28, 2011.

On February 10, 2012, respondent filed its Answer, interposing the following Special and Affirmative Defenses:

'SPECIAL AND AFFIRMATIVE DEFENSES

On the basis of the foregoing allegations and in further support of the Specific Denials herein set forth, respondent respectfully alleges as her defense that:

6. Taxes remitted to the BIR are presumed to have been made in the regular course of business and in accordance with the law.

7. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue. A claim for refund is not *ipso facto* granted because respondent CIR still has to investigate and ascertain the validity of the claim.

8. The amount of Thirty Four Million One Hundred Seven Thousand Two Hundred

[8] Deutsche Knowledge herein.
[9] CIR herein.

Eighty-Four and 30/100 pesos (Php34,107,284.30) being claimed by petitioner as alleged excess and unutilized input VAT attributable to zero-rated sales for the 4th quarter of taxable year is not properly documented.

9. Petitioner must prove that it has complied with the provisions of Section 112(A) and (C) of the National Internal Revenue Code of 1997, as amended, on the prescriptive period for claims for VAT refund/tax credit.

10. Petitioner must prove compliance with the prescribed checklist of requirements to be submitted involving claims for VAT refund pursuant to Revenue Memorandum Order No. 53-98, otherwise there would be no sufficient compliance with the filing of an administrative claim for refund, the administrative claim thereof being merely pro-forma. Further, Section 112(C) of the 1997 Tax Code, as amended, requires the submission of the complete documents in support of the application filed with the BIR before the 120-day audit period shall apply, and before the taxpayer could avail of judicial remedies as provided for in the law. Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the Petition for Review.

11. Petitioner must likewise prove that it has complied with the invoicing requirements mentioned in Sections 110 and 113 of the 1997 Tax Code, as amended, in relation to the provisions of Revenue Regulations No. 7-95.

12. Taxes are essential to governments very existence; **(CIR v. Solid [B]ank Corporation, G.R. No. 148191, November 25, 2003)** hence, the dictum that 'taxes are the lifeblood of the government.' For this reason, the right of taxation cannot easily be surrendered, statutes granting tax exemptions

are considered as a derogation of the sovereign authority. **(CIR v. Fortune Tobacco Corporation, G.R. Nos. 167274-75, July 21, 2008)** Since tax refunds are regarded as tax exemptions therefore, these are to be construed ***strictissimi juris*** against the person or entity claiming the exemption. **(Philippine Phosphate Fertilizer Corporation vs. Commissioner of Internal Revenue, G.R. No. 141973, June 28, 2005)**

13. In an action for refund, **the burden of proof is on the taxpayer who claims the exemption** and he must justify his claim by the clearest grant under the Constitutional or statutory law and cannot be permitted by vague implications **(BPI Leasing Corporation vs. Honorable Court of Appeals, G.R. 127624, November 18, 2003)** The taxpayer is charged with the heavy burden of proving that he has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund. **(Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc., G.R. 163835, July 7, 2010)**

14. Following the premise above-mentioned, petitioner has the burden of proving that the right to such tax refund indubitably exists and well-founded doubt is fatal to the claim.'

On April 2, 2012, the parties filed their Joint Stipulation of Facts and Issues ('JSFI'), which was approved by the Court on April 30, 2012 when it promulgated a Resolution to this effect.

On January 21, 2013, petitioner filed its Formal Offer of Evidence, which was resolved by the Court on March 22, 2013.

On April 10, 2013, petitioner filed a Motion for Reconsideration over the Resolution promulgated on March 22, 2013, which was resolved on June 3, 2013.

On July 15, 2013, in open court, respondent manifested that she will no longer present any evidence, thus the parties were given a period of thirty (30) days to file their respective Memoranda.

On August 13, 2013, respondent filed a Motion for Extension of Time to File Memorandum, while petitioner filed its own Motion for Extension of Time to File Memorandum the following day. The Court issued a Resolution on August 16, 2013, allowing respondent until September 13, 2013 to file her Memorandum. On the other hand, the Court also issued a Resolution allowing petitioner an extension until September 3, 2013 to file its Memorandum.

On September 3, 2013, petitioner filed its Memorandum, while respondent filed her Memorandum on September 13, 2013. Thus on September 18, 2013, the Court promulgated a Resolution submitting the case for Decision."[10]

On September 16, 2014, the Court in Division promulgated a Decision partially granting Deutsche Knowledge's claim for refund or issuance of tax credit certificate in the reduced amount of Php15,859,091.24 representing its unutilized input VAT attributable to its zero-rated sales for the fourth quarter of taxable year 2009.

Undaunted, CIR filed a Motion for Partial Reconsideration (Re: Decision promulgated on 16 September 2014)[11] on October 9, 2014, with Deutsche Knowledge's Comment (Re: Respondent's Motion for Partial Reconsideration dated October 8, 2014)[12] filed, thru registered mail, on October 30, 2014. Meanwhile, Deutsche Knowledge filed an Omnibus Motion[13], *via* registered mail, on October 9, 2014, with CIR's Comment (To Petitioner's Omnibus Motion dated 09 October 2014)[14], filed on November 21, 2014.

In a Resolution[15] dated January 6, 2015, the Court in Division resolved the foregoing Motions in this wise:

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[10] Decision dated September 16, 2014, Annex "A" to CIR's Petition for Review, En Banc Rollo (CTA EB No. 1266), pp. 32-35.
[11] Division Docket (Vol. II), pp. 904-914.
[12] Ibid., pp. 974-986.
[13] Id., pp. 945-962.
[14] Id., pp. 1017-1029.
[15] Id., pp. 1033-1048.

> "**WHEREFORE**, in view of the foregoing, the Court Motion for Partial Reconsideration (Re: Decision promulgated on 16 September 2014) filed by respondent is hereby **DENIED**, while the Omnibus Motion filed by petitioner is resolved, as follows:
>
> 1. Motion for Partial Reconsideration is hereby **DENIED** for lack of merit. However, the dispositive portion of the Decision dated September 16, 2014 is hereby modified as to the amount granted for the issuance of tax credit certificate to **Php15,856,069.97**;
>
> 2. Motion to Reopen Trial for Presentation of Supplemental Evidence is hereby **DENIED**.
>
> 3. Motion for Clarification is hereby **GRANTED.**
>
> **SO ORDERED.**"

By such reason, CIR filed on February 9, 2015, her Petition for Review[16], which was docketed as CTA EB No. 1266, while Deutsche Knowledge filed its Petition for Review[17] on February 11, 2015, which was docketed as CTA EB Case No. 1267.

Since both Petitions involved an appeal from the Court in Division's Decision and Resolution dated September 16, 2014 and January 6, 2015, respectively, in the case of *Deutsche Knowledge Services, Pte. Ltd. vs. Commissioner of Internal Revenue*, CTA Case No. 8402, the instant cases were consolidated in a Minute Resolution[18] dated February 18, 2015.

After considering the issues raised in the subject Petitions, with Deutsche Knowledge's Comment (Re: CIR's Petition for Review dated February 3, 2015)[19] in CTA EB No. 1267, filed on May 11, 2015, and CIR's Comment (To Petitioner's Petition for Review)[20] in CTA EB No. 1267, filed on June 1, 2015, both parties were required by the Court to submit their respective Memoranda in a Resolution[21] promulgated on July 8, 2015.

[16] See Footnote No. 1
[17] See Footnote No. 2.
[18] En Banc Rollo (CTA EB No. 1266), pp. 69-70.
[19] Ibid., pp. 76-89.
[20] Id., pp. 104-110.
[21] Id., pp. 115-116.

On August 20, 2015, CIR filed a Manifestation[22] stating therein that she is adopting her Petition for Review dated February 3, 2015 as her Memorandum, while Deutsche Knowledge, upon grant[23] of its motion for extension of time, filed its Memorandum[24] on August 25, 2015. Thus, the subject consolidated cases were submitted[25] for decision on October 8, 2015.

Hence, this decision.

THE ISSUES

CTA EB CASE NO. 1266:

In assailing the afore-quoted Decision and Resolution, CIR submits this sole assigned error for the consideration of the Court, *viz*:

> The Honorable Third Division erred in partially granting the refund in the reduced amount of Php15,856,069.97 allegedly representing excess and unutilized input Value Added Tax (VAT) on purchase of goods and services attributable to Deutsche Knowledge's zero-rated sales for the 4th quarter of calendar year 2009.

In support of the foregoing contention, CIR argues that Deutsche Knowledge failed to exhaust administrative remedies when it did not submit complete documents required under Revenue Memorandum Order (RMO) No. 53-98 dated June 1, 1998, in relation to Section 112 (C) of the National Internal Revenue Code of 1997 (NIRC of 1997), as amended, and other existing rules and regulations to warrant the grant of the application for refund; that Deutsche Knowledge is not entitled to a tax refund/credit in the reduced amount of Php15,856,069.97 representing its alleged excess and unutilized input VAT attributable to zero-rated sales for the 4th quarter of CY 2009 for its failure to prove that the recipient of such services is doing business outside of the Philippines; and, that, Deutsche Knowledge's judicial claim deserves no merit and should therefore be dismissed for failure on its part to establish clearly and convincingly that it is entitled to the claim being sought for.

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[22] Id., pp. 117-120.
[23] Minute Resolution dated August 25, 2015, Id., p. 126.
[24] Id., pp. 127-165.
[25] Resolution dated October 8, 2015, Id., pp. 167-168.

CTA EB CASE NO. 1267:

Deutsche Knowledge, on the other hand, proffers the following assignment of errors:

a. The CTA-Division gravely erred in ruling that Deutsche Knowledge failed to prove its zero-rated sales in the amount of Php1,782,873,522.27 for the 4th quarter of CY 2009;

b. The CTA-Division gravely erred in ruling that only the amortization for the 4th quarter of CY 2009 in the amount of Php31,796.71 may be claimed by Deutsche Knowledge as valid input tax credits for the 4th quarter of CY 2009;

c. The CTA-Division erred in ruling that Deutsche Knowledge's input VAT for the 4th quarter of CY 2009 should be applied against its output VAT of Php1,353,651.47; and

d. The CTA-Division erred in denying Deutsche Knowledge's Motion to Reopen Trial for Presentation of Supplemental Evidence.

Deutsche Knowledge also cites the following arguments in support of the Petition for Review: that there were several official receipts (OR) and proofs of inward remittances, duly presented and identified by its witness, which have not been considered by the Court in Division in rendering the Assailed Decision; that Deutsche Knowledge's purchases of capital goods exceeding Php1 Million for the 4th quarter of CY 2009 should have an estimated useful life of forty-eight (48) months instead of sixty (60) months, contrary to the findings of the Court in Division; that, the CTA–Division erred in applying Deutsche Knowledge's valid input VAT against its output VAT liability for the 4th quarter of CY 2009 when it has sufficiently established that it has excess input VAT carried over from the previous quarters in the amount of Php320,171,664.12 and that the entire sum of input taxes for the 4th quarter of CY 2009 in the amount of Php34,107,284.30 was taken out from the balance of input tax reflected in the Quarterly VAT Return for the 3rd quarter of CY 2011; and, that its Motion to Reopen Trial for presentation of supplemental evidence should be granted by the Court in furtherance of the greater interest of justice.

After a careful and thorough evaluation and consideration of the records and arguments of both parties, as well as the jurisprudence on the matter, *We* find no merit in the instant Petitions for Review.

CTA EB CASE NO. 1266:

We shall first resolve CIR's Petition for Review.

CIR claims that this Court has no jurisdiction over the instant cases on the ground that no valid administrative claim was filed by Deutsche Knowledge for its failure to submit complete documents required under Revenue Memorandum Order (RMO) No. 53-98, in relation to Section 112(C) of the NIRC of 1997, as amended.

We are not persuaded.

The issue on respondent's reliance on Revenue Memorandum Order (RMO) No. 53-98, as regards the submission of complete documents, has already been settled by the Supreme Court in the recent case of *Commissioner of Internal Revenue vs. Team Sual Corporation (formerly Mirant Sual Corporation)*[26], to wit:

> "The CIR's reliance on RMO 53-98 is misplaced. **There is nothing in Section 112 of the NIRC**, RR 3-88 or **RMO 53-98 itself that requires submission of the complete documents enumerated in RMO 53-98 for a grant of a refund or credit of input VAT.** The subject of RMO 53-98 states that it is a 'Checklist of Documents to be Submitted by a Taxpayer upon **Audit** of his Tax Liabilities . . . .' In this case, TSC was applying for a grant of refund or credit of its input tax. There was no allegation of an audit being conducted by the CIR. Even assuming that RMO 53-98 applies, it specifically states that some documents are required to be submitted by the taxpayer 'if applicable'." (Emphasis supplied)

It should, likewise, be stressed that the term "complete documents" should pertain to those documents that are necessary to support the application for refund or tax credit certificate, as determined by the taxpayer. The BIR examiner can require the taxpayer to submit additional documents but the examiner cannot demand what type of supporting documents should be submitted. Otherwise, the taxpayer will be at the mercy of the examiner, who may require the

[26] G.R. No. 205055, July 18, 2014.

production of documents that the taxpayer cannot submit. In addition, the BIR ought to know the tax records of all taxpayers.[27]

In these cases, considering that the BIR never requested for submission of additional documents at the administrative level, the presumption is that complete documents had been submitted by Deutsche Knowledge when it filed its administrative claim for refund or tax credit certificate on August 3, 2011. By such reason, CIR was not deprived of the opportunity to study Deutsche Knowledge's claim for refund before the filing of the latter's judicial claim on December 28, 2011.

CIR further argues that Deutsche Knowledge is not entitled to tax refund/credit in the reduced amount of Php15,856,069.97 for its failure to prove that the recipients of its services are doing business outside of the Philippines.

We are not persuaded.

The foregoing issue was sufficiently passed upon by the Court in Division in rendering the Assailed Decision. Thus, *We* adopt the ruling of the Third Division relative thereto, and quote pertinent portions thereon, as follows:

> "For the said taxable quarter, petitioner rendered services to the following entities, as enumerated:
>
> 1. Deutsche Bank Aktiengesellschaft, Inlandsbank
> 2. Deutsche Bank Aktiengesellschaft, Filiale Amsterdam
> 3. Deutsche Bank Aktiengesellschaft, Filiale Riad
> 4. Deutsche Bank Aktiengesellschaft, Filiale Zurich
> 5. Deutsche Bank Aktiengesellschaft, Filiale Wien
> 6. Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office

[27] Commissioner of Internal Revenue vs. Dakudao & Sons, Incorporated, CTA EB No. 1150 (CTA Case No. 8501), May 12, 2015, citing the cases of Diageo Philippines v. Commissioner of Internal Revenue, CTA Case Nos. 7846 and 7865, January 16, 2012, citing BPI-Family Savings Bank, Inc. v. Court of Appeals, et al., G.R. No. 122480, April 12, 2000, and Commissioner of Internal Revenue v. Ironcon Builders and Development Corporation, G.R. No. 180042, February 8, 2010.

7. Deutsche Bank Aktiengesellschaft, Filiale Singapur
8. Deutsche Bank Aktiengesellschaft, Filiale Bangkok
9. Deutsche Bank Aktiengesellschaft, Filiale Mumbai
10. Deutsche Bank Aktiengesellschaft, Filiale Hongkong
11. Deutsche Bank Aktiengesellschaft, Filiale Jakarta
12. Deutsche Bank Aktiengesellschaft, Filiale Karachi
13. Deutsche Bank Aktiengesellschaft, Filiale Ho-Chi-Minh-Stadt
14. Deutsche Bank Aktiengesellschaft, Filiale Seoul
15. Deutsche Asset Management (Asia) Limited
16. Deutsche Bank Aktiengesellschaft, Filiale New York
17. Deutsche Bank Aktiengesellschaft, Filiale London
18. Deutsche Bank Aktiengesellschaft, Filiale Tokyo
19. Deutsche Bank Luxembourg S.A.
20. Deutsche Securities, Inc.
21. Deutsche Bank (Suisse) SA
22. Deutsche Bank Societa per Azioni (SPA)
23. Deutsche Bank (China) Co. Ltd., Beijing Branch
24. Deutsche Bank (China) Co. Ltd., Shanghai Branch
25. DWS Holding & Service GmbH
26. Deutsche Bank Aktiengesellschaft, Reprasentanz Kiew
27. Deutsche Bank Real Estate (Japan) Y.K.
28. Deutsche Bank Securities Inc.
29. PT. Deutsche Securities Indonesia
30. Deutsche Group Services Pty Limited
31. Deutsche Bank PBC Spolka Akcyjna
32. Deutsche Securities Korea Co.
33. DB Services New Jersey, Inc.
34. DB Finance, Inc.
35. DB Trust Company Limited Japan
36. DB International (Asia) Limited
37. Rud, Blass & Cie AG Bankgeschaft
38. Global Markets Centre Private Limited
39. DB Consortium S. Cons. a.r.l. in liquidazione

The foregoing entities are all non-resident foreign corporations doing business outside the Philippines, as evidenced by the following:

(1) **SEC Certifications of Non-Registration of Company;**

(2) **Articles of Association; Authenticated Certificate of Registration; Company Profile Fact Sheet; Authenticated Certificate of Incorporation in Change of Names of Company; Authenticated Certificate of Good Standing; Certificate of Incorporation;**

(3) Intragroup Service Agreements; and

(4) Deutsche Bank List of Shareholdings 2008."[28] (Emphases ours)

By such reason, there is no basis for the CIR to claim that Deutsche Knowledge failed to prove that the recipients of its services are doing business outside of the Philippines.

CTA EB CASE NO. 1267

In its Petition for Review, Deutsche Knowledge posits that the following Official Receipts (OR) and proofs of inward remittances, duly presented and identified by its witness, have not been considered by the Court in Division in rendering the Assailed Decision:

Client	OR No.	Exhibit No.	Amount in Euro (€)	Inward Remittance Exhibit	Peso Equivalent (Php)
DB AG, Inlandsbank	601	M-55.2	2,374,690.00	M-55.3	165,723,203.44
DB Vienna AG BR	606	M-60.1	924.99	M-60.2	62,471.42
Total			**2,375,614.99**		**Php165,785,674.86**

As regards OR No. 606, Deutsche Knowledge points out that the Court erred in disregarding said official receipt on the sole basis that the "same did not indicate the amount of VAT in such transactions as required in Section 4.113-1 of Revenue Regulations (RR) No. 16-05"

[28] Pages 10-12, Decision dated September 16, 2014, En Banc Rollo (CTA EB Case No. 1266), pp. 40-42

Accordingly, it could not have indicated any amount of VAT on OR No. 606 considering that it was issued as proof of payment for zero-rated sale of services by petitioner.

Deutsche Knowledge's stance is well-taken.

Upon review of the records, the Court *En Banc* was able to verify that the sale of services to DB AG Vienna Branch in the amount of €924.99 is, indeed, subject to 0% VAT. Thus, there is really no reason for Deutsche Knowledge to indicate any amount of VAT in such transaction.

However, notwithstanding the foregoing finding, the Court *En Banc* cannot still consider the amount covered by OR No. 606 in changing the amount of refund granted to Deutsche Knowledge on the ground that DB AG Vienna Branch was not among those aforementioned clients of Deutsche Knowledge that were duly proven by the latter as non-resident foreign corporations doing business outside of the Philippines as discussed above in CTA EB Case No. 1266.

Anent OR No. 601, Deutsche Knowledge insists that the same should not have been disregarded by the Court since the said official receipt was already part of its evidence (Exhibit No. "M-55.2") and duly admitted by the CTA-Division in its Resolution dated March 22, 2013. It further submits that the same was duly examined and marked by the Court-commissioned independent certified public accountant and was made part of the latter's September 12, 2012 report.

We are not convinced.

After scrutiny of Deutsche Knowledge's folder of Exhibits from "M1" to "M81", the Court finds that OR No. 601, marked as Exhibit No. 55.2, cannot be found in the said record. Thus, the Court in Division is correct in not considering the same as part of Deutsche Knowledge's zero-rated sales for the 4th quarter of CY 2009.

Being interrelated, Deutsche Knowledge's request for leave to present official receipt nos. 542 to 546, and 618 will be discussed jointly with its motion to reopen trial for presentation of supplemental evidence.

On the allegation that Deutsche Knowledge's purchases of capital goods exceeding Php1 million for the 4th quarter of CY 2009 have estimated useful life of forty-eight (48) months instead of sixty (60) months, suffice it to say that the same has been discussed by the Court in Division, which the Court *En Banc* hereby quotes with approval:

"A perusal of the audited financial statements and the sales invoices on record show the following findings:

1) The notes 3 to the audited financial statement for the year ended December 31, 2009 expressly states that the Company Policy is to use a ten-year estimated useful life for its office equipment;

2) All the sales invoices complied with the invoicing requirements pursuant to Section 4.113-1 of RR 16-05; and

3) Almost all the submitted sales invoices relative to this transaction pertain to purchases of office equipment such as laptops or laptop batteries, except for Exhibit M-113 which indicated a Service Charge rather than a purchase of goods.

Since petitioner's Company Policy is based on an estimated useful life of ten years for its purchased office equipment, then its contention that the purchase of capital goods exceeding Php1 million be amortized only for 48 months is untenable.

Consequently, as based on Section 4.110-3 (a) of the RR 16-05, the said purchases should be amortized over 60 months computed as follows:

Registered Name of Supplier	Exhibit No.	Input VAT per QVAT Return	Life	Date of Purchased	Months Used	Allowable Input VAT
Accent Micro Technologies, Inc.	M-99	536.57	60	9/24/2009	3	26.83
Accent Micro Technologies, Inc.	M-109	168,846.43	60	10/19/2009	2	5,628.21
Accent Micro Technologies, Inc.	M-110	483.00	60	10/19/2009	3	24.15
Accent Micro Technologies, Inc.	M-111	1,449.00	60	10/19/2009	3	72.45
Accent Micro Technologies, Inc.	M-112	236,385.00	60	10/20/2009	3	11,819.25

Accent Micro Technologies, Inc.	M-114	804.43	60	10/29/2009	3	40.22
Accent Micro Technologies, Inc.	M-115	2,250.00	60	11/5/2009	2	75.00
Accent Micro Technologies, Inc.	M-116	623.14	60	11/9/2009	2	20.77
Accent Micro Technologies, Inc.	M-117	498.21	60	11/9/2009	2	16.61
Accent Micro Technologies, Inc.	M-118	708.86	60	11/9/2009	2	23.63
Accent Micro Technologies, Inc.	M-119	483.00	60	11/17/2009	2	16.10
Accent Micro Technologies, Inc.	M-120	483.00	60	11/17/2009	2	16.10
Accent Micro Technologies, Inc.	M-121	13,507.71	60	11/17/2009	2	450.26
Accent Micro Technologies, Inc.	M-122	2,107.29	60	11/27/2009	2	70.24
Accent Micro Technologies, Inc.	M-123	270,154.29	60	12/2/2009	1	4,502.57
Accent Micro Technologies, Inc.	M-124	337,692.86	60	12/2/2009	1	5,628.21
TOTAL		1,037,012.79				28,430.61

Further, it should be noted that Exhibit 'M-113' was removed from the list above since it pertains to a 'service charges for 4 Technical Support for BCP Project for the period of SEPTEMBER 26 to OCTOBER 25, 2009,' which should be considered as purchase of services. Since petitioner submitted only a sales invoice to substantiate this transaction instead of an Official Receipt as required by Section 4.113-1 (A) of RR 16-05, then the same should be disallowed."

Deutsche Knowledge also contends that CTA–Division erred in applying Deutsche Knowledge's valid input VAT against its output VAT liability for the 4th quarter of CY 2009 when it has sufficiently established that it has excess input VAT carried over from the previous quarters in the amount of Php320,171,664.12 and that the entire sum of input taxes for the 4th quarter of CY 2009 in the amount of Php34,107,284.30 was taken out from the balance of input tax reflected in the Quarterly VAT Return for the 3rd quarter of CY 2011.

Deutsche Knowledge's foregoing contention is untenable.

The Court *En Banc* in these cases agrees with the conclusion of the CTA Third Division in deducting Deutsche Knowledge's valid input VAT for the 4th quarter of CY 2009 from the output VAT for the same quarter. We adopt the factual and legal findings as follows:

> "However, in the case of Chevron Holdings, Inc. vs. Commissioner of Internal Revenue, the Court En Banc reiterated the discussion of requiring the submission of documentation for input tax carried over, to wit:
>
> > 'A mere reliance on an entry in the current year's Quarterly VAT Return that a certain amount was carried over from the previous taxable year is not enough. Petitioner must be able to prove that the amount in the Quarterly VAT Return is accurate and that it was properly carried over, before the Court En Banc can allow it.'
>
> Consequently, petitioner's contention that its input VAT for the 4th quarter of taxable year 2009 should not be applied against its output VAT for the same quarter since it has excess input VAT carried over from previous quarters in the amount of Php320,171,664.12 is untenable. Upon review of petitioner's FOE, the Court notes the following:
>
> 1) Only Monthly VAT Returns for October 2009 and November 2009 and Quarterly VAT Return for the fourth quarter of 2009 was submitted by the petitioner;
>
> 2) Line 17A (Input Tax Carried Over from Previous Period/Excess over 70% of Output VAT to Input Tax Carried Over from Previous Period) for both Monthly VAT Returns for October and November 2009 did not indicate any amount of Input VAT carried over from previous period;
>
> 3) Line 17E (Others) indicated the amount Php320,171,664.12, while Line 20E (Others) indicated the amount Php320,171,664.12;
>
> 4) Line 20A (Input Tax Carried Over from Previous Period) did not indicate any amount of Input Tax Carried Over from Previous Period;

5) The third quarter VAT Return was submitted as Annex 'A-7' of the subject Omnibus Motion; and

6) No additional official receipts or invoices were submitted to support the input VAT carried over from previous period in the amount of Php320,171,664.12.

Therefore, petitioner's mere declaration in its fourth quarter VAT return of the amount of input tax carried over without further supporting invoices and/or official receipts to substantiate the claim is insufficient. Thus, the Court did not err in deducting the input VAT for the fourth quarter of taxable year 2009 to the output VAT for the same quarter."

We shall now discuss the last issue raised by Deutsche Knowledge with regard to its motion to reopen trial for presentation of supplemental evidence.

Relevant to the reopening of a case is the provision of Section 5, Rule 30 of the 1997 Rules of Civil Procedure which provides:

"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:

(a) xxx xxx xxx

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."

A motion to reopen may properly be presented only after either or both parties have formally offered, and closed their evidence, but before judgment. 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 controlled by no other rule than that of the paramount interest 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.[29]

In the subject Petition, Deutsche Knowledge insists that it has dutifully presented OR Nos. 542 to 546, and 618 to the Court-commissioned ICPA in the course of the latter's examination of Deutsche Knowledge's voluminous documents in support of its claim for refund. However, it asserts that, for reasons beyond its control, the said documents have not been marked. Thus, it begs the indulgence of this Court to reverse the Court in Division's denial of its Motion to Reopen so that it may be allowed to submit and offer the aforementioned documents.

We agree with the findings of the Court in Division that there is no well-grounded reason to reopen the case.

As taxpayer-claimant, Deutsche Knowledge has the burden of proof to establish not only the factual but also the legal basis of its claim for refund. However, records clearly show that the proposed additional evidence/documents were already available during the trial of the instant cases. But despite the considerable length of time given to it to substantiate its claim for refund, Deutsche Knowledge still failed to include said documentary evidence as part of its Formal Offer of Evidence. Such situation could have been avoided had it exercised ordinary prudence and diligence in prosecuting its case. Thus, it has no one to blame but itself for the said predicament. It bears emphasis at this juncture that a litigation is not a "trial and error" proceeding.[30] Thus, to allow Deutsche Knowledge to belatedly submit such evidence, which could have been offered with the exercise of due diligence, goes against the orderly administration of justice.

Finding no reversible error, the Court *En Banc* affirms the Assailed Decision dated September 16, 2014 and the Assailed Resolution dated January 6, 2015, both rendered by the CTA Third Division.

WHEREFORE, premises considered, the present Petitions for Review are hereby **DENIED**, for lack of merit.

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[29] Alegre vs. Reyes, G.R. No. L-56923, May 9, 1988.
[30] Viking Industrial Corporation vs. The Court of Appeals and Jose L. Luison, Jr., G.R. No. 143794, July 13, 2004.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *en banc* before the case was 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. 1266
(CTA CASE NO. 8402)

DEUTSCHE KNOWLEDGE SERVICES PTE, LTD.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1267
(CTA CASE NO. 8402)

Present:

DEL ROSARIO, *P.J.,*
CASTANEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, and
RINGPIS-LIBAN, JJ.

Promulgated:
FEB 17 2016 11:20 a.m.

X---X

CONCURRING OPINION

DEL ROSARIO, PJ.:

I concur with the *ponencia* in denying the present Petitions for Review filed by the Commissioner of Internal Revenue (CIR) and Deutsche Knowledge Services Pte. Ltd (DKS) on February 9, 2015 and February 11, 2015, respectively.

Nevertheless, I would like to expound on the point raised by the CIR that DKS did not observe the doctrine of exhaustion of administrative remedies as it failed to submit complete documents required under Revenue Memorandum Order (RMO) No. 53-98. The CIR concluded that the Court has no jurisdiction, hence, the Petition for Review filed by DKS should be dismissed.

The *ponencia* is correct in rejecting the CIR's contention, citing *Commissioner of Internal Revenue vs. Team Sual Corporation (Formerly Mirant Sual Corporation),*[1] that submission of documents enumerated in RMO No. 53-98 is not a requirement for a grant of tax refund.

Moreover, there is no showing that the CIR sent a written notice requiring DKS to submit additional documents -- a process that is indispensable in computing the 120+30 day period. The recent *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue* (*Total Gas case*)[2] is instructive on this point, *viz*:

> "To summarize, for the just disposition of the subject controversy, the rule is that from the date an administrative claim for excess unutilized VAT is filed, a taxpayer has thirty (30) days within which to submit the documentary requirements sufficient to support his claim, unless given further extension by the CIR. Then, upon filing by the taxpayer of his complete documents to support his application, or expiration of the period given, the CIR has 120 days within which to decide the claim for tax credit or refund. Should the taxpayer, on the date of his filing, manifest that he no longer wishes to submit any other addition documents to complete his administrative claim, the 120 day period allowed to the CIR begins to run from the date of filing.
>
> xxx *First,* the 120-day period had commenced to run and the 120+30 day period was, in fact, complied with. As already discussed, **it is the taxpayer who determines when complete documents have been submitted for the purpose of the running of the 120- day period. It must again be pointed out that *this in no way precludes the CIR from requiring additional documents necessary to decide the claim, or even denying the claim if the taxpayer fails to submit the additional documents requested.***
>
> *Second,* the CIR **sent no written notice informing Total Gas that the documents were incomplete or required it to submit additional documents.** As stated above, such notice by way of a written request is required by the CIR to be sent to Total Gas. Neither was there any decision made denying the administrative claim of Total Gas on the ground that it had failed to submit all the

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[1] G.R. No. 205055, July 18, 2014.
[2] G.R. No. 207112, December 8, 2015.

> required documents. It was precisely the inaction of the BIR which prompted Total Gas to file the judicial claim. Thus, **by failing to inform Total Gas of the need to submit any additional document, the BIR cannot now argue that the judicial claim should be dismissed because it failed to submit complete documents."** (*Emphases supplied*)

Novel in the *Total Gas case* is the distinction between an appeal from the CIR's decision on the merits and inaction on the taxpayer's claim for refund involving input Value-Added Tax (VAT), *viz*:

> "A distinction must, thus, be made between administrative cases appealed due to inaction and those dismissed at the administrative level due to the failure of the taxpayer to submit supporting documents. **If an administrative claim was dismissed by the CIR due to the taxpayer's failure to submit complete documents despite notice/request**, then the judicial claim before the CTA would be dismissible, not for lack of jurisdiction, but for the taxpayer's failure to substantiate the claim at the administrative level. **When a judicial claim for refund or tax credit in the CTA is an appeal of an unsuccessful administrative claim, the taxpayer has to convince the CTA that the CIR had no reason to deny its claim. It, thus, becomes imperative for the taxpayer to show the CTA that not only is he entitled under substantive law to his claim for refund or tax credit, but also that he satisfied all the documentary and evidentiary requirements for an administrative claim.** It is, thus, crucial for a taxpayer in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place. **Consequently, a taxpayer cannot cure its failure to submit a document requested by the BIR at the administrative level by filing the said document before the CTA.**
>
> In the present case, however, Total Gas filed **its judicial claim due to the inaction of the BIR.** Considering that the administrative claim was never acted upon; there was no decision for the CTA to review on appeal *per se.* Consequently, **the CTA may give credence to all evidence presented by Total Gas, including those that may not have been submitted to the CIR as the case is being essentially decided in the first instance.** The Total Gas must prove every minute aspect of its case by presenting and formally offering its evidence to the CTA, which must necessarily include whatever is required for the successful prosecution of an administrative claim." (*Emphases supplied*)

In other words, if the appeal was made from the CIR's decision on the merits, it is crucial for the taxpayer to have submitted all the documents in the administrative level. Failure to do so would bar the taxpayer from presenting additional documents to this Court. If the appeal was made due to the CIR's inaction, the taxpayer is not

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precluded from submitting additional documents to prove its claim for refund.

In the case at bar, the appeal involves the CIR's inaction. Thus, DKS was allowed to present in evidence additional documents not submitted in the administrative level and the Court in Division correctly considered the same in arriving at the assailed Decision to refund or issue a Tax Credit Certificate in favor of DKS.

All told, I **VOTE** to **DENY** the Petitions for Review for lack of merit.

ROMAN G. DEL ROSARIO
Presiding Justice