REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

DEUTSCHE KNOWLEDGE SERVICES, PTE LTD., Petitioner,	**CTA CASE NO. 8243**
	Members:
- versus -	**DEL ROSARIO,** *P.J., Chairperson,* **UY,** *and* **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: OCT 26 2016 2:46 p.m.

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AMENDED DECISION

MINDARO-GRULLA, *J.*:

For this Court's resolution are the following:

1. petitioner's **Motion for Partial Reconsideration (Re: Decision dated January 4, 2016) (With Motion to Re-Open Trial)**, filed on January 25, 2016, with respondent's **Comment/Opposition (To Petitioner's Motion for Partial Reconsideration)**, filed through registered mail on February 29, 2016 and received by the Court on March 9, 2016; and

2. respondent's **Motion for Partial Reconsideration**, filed through registered mail on January 27, 2016 and received by the Court on February 5, 2016, with petitioner's **Comment (To Respondent's Motion for Partial Reconsideration dated January 22, 2016)**, filed through registered mail on May 10, 2016 and received by the Court on May 19, 2016.

The Court shall first discuss the propriety of petitioner's Motion to Re-Open Trial for presentation of supplemental evidence.

Petitioner seeks the presentation of the Securities and Exchange Commission (SEC) Certificates of Non-Registration of Corporation/Partnership of the following clients: (a) Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office; (b) Deutsche Bank Aktiengesellschaft, Filiale Seoul; (c) Deutsche Bank Aktiengesellschaft, Filiale New York; and (d) Deutsche Bank Societa per Azioni[1] to prove that its clients are doing business outside the Philippines. Considering the nature of the relief sought, it is evident that what the petitioner seeks before the Court was actually a motion for new trial on the ground of newly discovered evidence. Hence, the Court shall treat the present motion as a motion for new trial.

The relevant provisions are Sections 1 and 2, Rule 37 of the Rules of Court which provide:

> "**SECTION 1.** *Grounds of and period for filing motion for new trial or reconsideration.* — Within the period for taking an appeal, the aggrieved party may move the trial court to set aside the judgment or final order and grant a new trial for one or more of the following causes materially affecting the substantial rights of said party:
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> (a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights; or
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> (b) Newly discovered evidence, which he could not, with reasonable diligence, have discovered and produced at the trial, and which if presented would probably alter the result.
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> Within the same period, the aggrieved party may also move for reconsideration upon the grounds that the damages awarded are excessive, that the evidence is insufficient to justify the decision or final order, or that the decision or final order is contrary to law.

[1] Docket, Vol. IV, p. 1762.

SEC. 2. *Contents of motion for new trial or reconsideration and notice thereof.* — The motion shall be made in writing stating the ground or grounds therefor, a written notice of which shall be served by the movant on the adverse party.

A motion for new trial shall be proved in the manner provided for proof of motions. A motion for the cause mentioned in paragraph (a) of the preceding section shall be supported by affidavits of merits which may be rebutted by affidavits. A motion for the cause mentioned in paragraph (b) shall be supported by affidavits of the witnesses by whom such evidence is expected to be given, or by duly authenticated documents which are proposed to be introduced in evidence.

A motion for reconsideration shall point out specifically the findings or conclusions of the judgment or final order which are not supported by the evidence or which are contrary to law, making express reference to the testimonial or documentary evidence or to the provisions of law alleged to be contrary to such findings or conclusions.

A *pro forma* motion for new trial or reconsideration shall not toll the reglementary period of appeal."

Relative to these provisions are Sections 5 and 6, Rule 15 Revised Rules of the Court of Tax Appeals (RRCTA), to wit:

"SEC. 5. *Grounds of motion for new trial.* – A motion for new trial may be based on one or more of the following causes materially affecting the substantial rights of the movant:

(a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which the rights of such aggrieved party has probably been impaired in his rights; or

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(b) Newly discovered evidence, which the party could not, with reasonable diligence, have discovered and produced at the trial and, which, if presented, would probably alter the result.

A motion for new trial shall include all grounds then available and those not included shall be deemed waived.

SEC. 6. *Contents of motion for reconsideration or new trial and notice.* — The motion shall be in writing stating its grounds, a written notice of which shall be served by the movant on the adverse party.

A motion for new trial shall be proved in the manner provided for proof of motions. A motion for the cause mentioned in subparagraph (a) of the preceding section shall be supported by affidavits of merits which may be rebutted by counter-affidavits. A motion for the cause mentioned in subparagraph (b) of the preceding section shall be supported by affidavits of the witnesses by whom such evidence is expected to be given, or by duly authenticated documents which are proposed to be introduced in evidence.

A motion for reconsideration or new trial that does not comply with the foregoing provisions shall be deemed *pro forma*, which shall not toll the reglementary period for appeal."

Based on the foregoing, a party may file a motion for new trial on the grounds of fraud, accident, mistake or excusable negligence; or of newly discovered evidence, in the manner provided for proof of motions.

A reading of the present motion, however, shows that the same was neither based on fraud, accident, mistake or excusable negligence which should be supported by affidavits of merit, nor based on newly discovered evidence which should be supported by affidavits of witnesses or duly authenticated documents proposed to be introduced in evidence.

Considering that petitioner intends to present additional evidence, the Court's resolution shall center on the determination of the nature of the SEC Certificates of Non-Registration of Corporation/Partnership of petitioner's clients, either as newly discovered evidence so as to warrant the re-opening of the trial or allow the presentation of the proposed evidence, or merely forgotten evidence which can no longer be considered.

In *Luzon Hydro Corporation vs. Commissioner of Internal Revenue*[2], the Supreme Court enumerated the requisites for the grant of a motion for new trial on the ground of newly discovered evidence in this wise:

> "In order that newly discovered evidence may be a ground for allowing a new trial, it must be fairly shown that: (a) the evidence is discovered after the trial; (b) such evidence could not have been discovered and produced at the trial even with the exercise of reasonable diligence; (c) such evidence is material, not merely cumulative, corroborative, or impeaching; and (d) such evidence is of such weight that it would probably change the judgment if admitted."

A newly discovered evidence refers to that which already exists prior to or during a trial, but the existence is not known to the offering litigant; or, though known, could not have been secured and presented during the trial despite reasonable diligence. What is essential for a particular piece of evidence to be properly regarded as "newly discovered" is that the offering party exercised reasonable diligence in seeking to locate the evidence before or during the trial, but nonetheless failed to secure it. Thus, a party who knows of the existence of specific pieces of evidence cannot offer them as "newly discovered" without any explanation for not presenting them earlier.[3]

The evidence is considered newly discovered when it could not have been discovered and produced at the trial with reasonable diligence. The party asking for new trial has the burden of showing that the new evidence has complied with the requisites to justify the holding of a new trial. The threshold question in resolving a motion for new trial based on newly discovered evidence is whether the

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[2] G.R. No. 188260, November 13, 2013.
[3] *Office of the Ombudsman Represented by Hon. Simeon V. Marcelo vs. Carmencita D. Coronel,* G.R. No. 164460, June 27, 2006.

proferred evidence is in fact a newly discovered evidence which could not have been discovered by due diligence.[4]

In the present case, petitioner failed to prove that the SEC Certificates of Non-Registration of Corporation/Partnership of petitioner's clients were discovered after trial or could not have been discovered and produced at the trial with reasonable diligence. There was no explanation as to why these pieces of evidence are to be presented only after trial. In the absence of any valid justification, the Court cannot consider the same as newly discovered evidence, but merely as "forgotten evidence" which petitioner intends to present only after obtaining an unfavorable decision.

The nature of "forgotten evidence" was discussed in the case of *Office of the Ombudsman, Represented by Hon. Simeon V. Marcelo vs. Carmencita D. Coronel*[5] as follows:

> "Forgotten evidence refers to evidence already in existence or available before or during a trial; known to and obtainable by the party offering it; and could have been presented and offered in a seasonable manner, were it not for the sheer oversight or forgetfulness of the party or the counsel. Presentation of forgotten evidence is disallowed, because it results in a piecemeal presentation of evidence, a procedure that is not in accord with orderly justice and serves only to delay the proceedings. A contrary ruling may open the floodgates to an endless review of decisions, whether through a motion for reconsideration or for a new trial, in the guise of newly discovered evidence."

Petitioner further invokes the liberal application of the rules of procedure on the ground of substantial justice and that the proceedings before the Court are not governed by strict procedural rules so as to warrant the presentation of its additional evidence. However, the mere invocation of substantial justice will not automatically justify the liberal application of procedural rules.

In the case of *Gregorio De Leon, doing business as G.D.L. Marketing vs. Hercules Agro Industrial Corporation, et al.*,[6] the Supreme Court ruled:

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[4] *Romeo D. Cabarlo vs. People of the Philippines,* G.R. No. 172274, November 16, 2006.

[5] G.R. No. 164460, June 27, 2006.

"To be sure, the relaxation of procedural rules cannot be made without any valid reasons proffered for or underpinning it. To merit liberality, petitioner must show reasonable cause justifying its non-compliance with the rules and must convince the Court that the outright dismissal of the petition would defeat the administration of substantial justice. x x x. The desired leniency cannot be accorded absent valid and compelling reasons for such a procedural lapse. x x x.

We must stress that the bare invocation of 'the interest of substantial justice' line is not some magic wan[d] that will automatically compel this Court to suspend procedural rules. Procedural rules are not to be belittled, let alone dismissed simply because their non-observance may have resulted in prejudice to a party's substantial rights. Utter disregard of the rules cannot be justly rationalized by harping on the policy of liberal construction."

Therefore, in the absence of any reasonable cause, petitioner cannot implore the liberal application of procedure rules on the bare allegation and mere invocation of substantial justice. Thus, the Court resolves to deny petitioner's motion on re-opening of trial for the presentation of supplemental evidence.

Going into the parties' Motions for Partial Reconsideration of the Decision[7] promulgated on January 4, 2016 (assailed Decision), the dispositive portion of which reads:

"**WHEREFORE**, premises considered, the present Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **₱2,178,213.10** representing the latter's unutilized input VAT attributable to its zero-rated sales for the first quarter of 2009.

SO ORDERED."

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[6] G.R. No. 183239, June 2, 2014, citing the case of *Building Care Corporation/Leopard Security & Investigation Agency v. Macaraeg*, G.R. No. 198357, December 10, 2012.

[7] Docket, Vol. IV, pp. 1707-1751.

Petitioner's Motion for Partial Reconsideration

According to petitioner, the Court gravely erred in partially denying a substantial amount of petitioner's total claim for input value-added tax (VAT) refund for the first quarter of calendar year (CY) 2009 for the following reasons:

A. petitioner presented preponderant evidence to prove that all of its zero-rated sales for the first quarter of CY 2009 were made to non-resident foreign corporations doing business outside the Philippines;

B. petitioner sufficiently substantiated its claim for input VAT refund in the amount of ₱92,010.31 on purchases of capital goods exceeding ₱1Million for the first quarter of CY 2009;

C. the Court's disallowance of petitioner's claimed input VAT for the first quarter of CY 2009 for failure to meet substantiation requirements under the Tax Code and Revenue Regulations No. (RR) No. 16-05 is untenable since the amounts of input VAT claimed by petitioner are readily obtainable from the documentary evidence disregarded by the Court; and

D. petitioner has sufficient excess input VAT carried over from previous quarters to sufficiently cover its output VAT liability for the first quarter of CY 2009.

On the other hand, respondent disagrees with petitioner's arguments for being misplaced, erroneous and bereft of factual and legal bases. Respondent points out that petitioner's arguments are mere repetition and reiteration of the arguments already passed upon in the assailed Decision, hence, the motion is a *pro forma* motion.

Petitioner's Motion for Partial Reconsideration is partly meritorious.

A. Petitioner's zero-rated sales

In order to be considered as "non-resident foreign corporation doing business outside the Philippines" for the purpose of proving zero-rated sales in a claim for refund of input VAT, each entity must be supported, at the very least, by **both** SEC Certificate of Non-Registration of Corporation/Partnership and Certificate/Articles of Foreign Incorporation/Association/Registration.[8]

To recall, the following clients of petitioner were considered as non-resident foreign corporations doing business outside the Philippines:[9]

Entity Code	Client	SEC Certificate of Non-Registration	AMI.net Company Profile Fact Sheet, Articles of Association, Certificate of Registration, and Certification of Incorporation on Change of Name of Company
100	Deutsche Bank Aktiengesellschaft, Inlandsbank	O-12	O-49
743	Deutsche Bank Sociedad Anónima Española	O-37	O-50
744	Deutsche Bank Aktiengesellschaft, Filiale Zürich	O-44	O-51
747	Deutsche Bank Aktiengesellschaft, Filiale Wien	O-40	O-52
781	Deutsche Bank Aktiengesellschaft, Filiale Singapur	O-20	O-7
783	Deutsche Bank Aktiengesellschaft, Filiale Bangkok	O-25	O-53
786	Deutsche Bank Aktiengesellschaft, Filiale Hongkong	O-18	O-5
788	Deutsche Bank Aktiengesellschaft, Filiale Jakarta	O-19	O-6
801	Deutsche Asset Management (Asia) Limited	O-22	O-8
840	**Deutsche Bank Aktiengesellschaft, Filiale London**	**O-14**	**O-55**
845	Deutsche Bank Aktiengesellschaft, Filiale Prag	O-32	O-56
871	Deutsche Bank Luxembourg S.A.	O-34	O-57
872	Deutsche Securities Inc.	O-17	O-4
910	Deutsche Bank (China) Co. Ltd., Beijing Branch	O-36	O-59
935	DWS Holding & Service GmbH	O-39	O-60
5046	Deutsche Asia Pacific Holdings Pte Ltd.	O-15	O-3
5157	PT Deutsche Securities Indonesia	O-38	O-61
5180	Deutsche Group Services Pty Limited	O-16	O-10
5735	Deutsche Bank PBC Spolka Akcyjna	O-33	O-62
6201	Deutsche Bank Trust Company Americas	O-35	O-63
6502	DB Finance Inc.	O-30	O-64
6518	DB Trust Company Limited Japan	O-31	O-65
6822	DB International (Asia) Limited	O-48	O-66
9478	DBOI Global Services Private Limited	O-24	O-67
9608	Global Markets Centre Private Limited	O-47	O-68

[8] Decision, Docket, Vol. IV, p. 1732.
[9] *Ibid*, pp. 1732-1733.

According to petitioner, the Court found the entity "Deutsche Bank Aktiengesellschaft, Filiale London (DB London)" a non-resident foreign corporation doing business outside the Philippines, however, the Court failed to consider the amount of ₱348,715,234.07 worth of sales to DB London as VAT zero-rated.

This argument deserves consideration.

A review of the related inward remittance[10] and official receipt (OR)[11] discloses that petitioner's sales to DB London amounting to €5,554,074.84, with a peso equivalent of ₱339,648,338.69[12], should have been considered. Thus, petitioner's total valid zero-rated sales for the first quarter of CY 2009 should be adjusted to ₱629,521,289.76, as computed below:

Zero-rated sales per assailed Decision	₱ 289,872,951.07
Add: Zero-rated sales to DB London	339,648,338.69
Adjusted Zero-Rated Sales	**₱ 629,521,289.76**

Meanwhile, petitioner maintains that the following clients are also non-resident foreign corporations doing business outside the Philippines, considering the following documents presented by petitioner equally prove such fact: (a) IntraGroup Service Agreements; and (b) Certificates/Articles of Foreign Incorporation/Association/Registration or AMInet Company Profile Fact Sheets with its foreign clients which indicate the client's locations and addresses, as summarized below:

Company Name	SEC Certification of Non-Registration	Address (Intra-Group Service Agreement)	Evidence Showing that Petitioner's Affiliate is Doing Business Outside the Philippines (Certificate/ Articles of Foreign Incorporation/ Association or Registration or AMInet Company Profile Fact Sheet)
Deutsche Bank	-	One Raffles Way, #12-00	Exhibit O-9

[10] Exhibit "J-1556", Docket, Vol. IV, p. 1669.
[11] Exhibit "J-322".
[12] As reflected in the supporting inward remittance.

Aktiengesellschaft, Asia Pacific Head Office		South Tower 048583 Singapore (Exhibit P)	
Deutsche Bank Aktiengesellschaft, Filiale Seoul	-	18th Floor, YoungPoong Building, 33 SeoRing-ding, Cheongro-gu Seoul 110-752	Exhibit O-54
Deutsche Bank Aktiengesellschaft, Filiale New York	-	9 West 57th Street, New York and 60 Wall Street, New York, New York (Exhibit O-1)	Exhibit O-1
Deutsche Bank Society per Azioni	-	-	Exhibit O-58

Petitioner argues that it was able to prove with preponderant evidence that its zero-rated sales of services for the first quarter of CY 2009 were made to non-resident foreign corporations doing business outside the Philippines. Being civil in nature, the quantum of evidence that is required to sustain petitioner's claim for input VAT refund is a mere preponderance of evidence.

Petitioner's argument must fail.

As already held in the assailed Decision, the foregoing document when standing alone, is inadequate to prove that petitioner's client is a non-resident foreign corporation doing business outside the Philippines. To reiterate, the Intra-Group Service Agreements only show the names of the taxpayer's customers to whom it rendered services, but the same do not establish that such customers are non-resident foreign corporations doing business outside the Philippines. Moreover, the Articles of Association and Certificates of Registration/Incorporation of the foreign company only prove that the foreign corporations were incorporated/organized abroad; however, they also do not establish that such entities are not doing business in the Philippines.

Thus, 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 Certificates of Non-Registration of Corporation/Partnership and Certificate/Articles of Foreign Incorporation/Association/Registration.[13]

As tax refunds are in the nature of tax exemptions, there is a need to employ a stricter standard in determining whether the submissions filed by the taxpayer is sufficient to support the claim for refund or issuance of tax credit certificate. Since petitioner failed to

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[13] Decision, Docket, Vol. IV, pp. 1731-1732.

provide sufficient evidence to prove its claim, petitioner's arguments cannot be given due course.

B. Petitioner's claimed input VAT arising from purchases of capital goods exceeding ₱1,000,000.00 for the first quarter of CY 2009

In the assailed Decision, the Court found that while petitioner was able to substantiate the amount of ₱1,472,164.08 out of the total claimed input VAT of ₱1,500,608.79 on capital goods purchases exceeding ₱1,000,000.00, only the amortization for the first quarter of CY 2009 in the amount of ₱48,902.99 may be claimed by petitioner as valid input tax credits. This is pursuant to Section 110(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, and as implemented by Section 4.110-3 of RR No. 16-2005.

Petitioner asserts that the correct amount of its amortized input VAT arising from its purchases of capital goods exceeding ₱1,000,000.00 for the first quarter of CY 2009 should be ₱92,010.31, and not ₱48,902.99, as determined by this Court. Petitioner submits that this Court erred in automatically assigning sixty (60)-month useful life for all of its purchased capital goods exceeding ₱1,000,000.00 when its VAT return reflects that these assets only have a useful life of forty-eight (48) months.

Petitioner's assertion is unfounded.

There is nothing in the VAT return that indicates petitioner's assets have a useful life of 48 months only. Since the Court cannot determine the actual life of the capital goods, the estimated useful life of 60 months was applied in arriving at the amortization of ₱48,902.99.

C. Disallowance of petitioner's input VAT for the first quarter of CY 2009 for failure to meet the substantiation requirements under the NIRC of 1997, as amended, and RR No. 16-2005

In the assailed Decision, the Court disallowed petitioner's claimed input VAT in the amount of ₱41,000,124.19 for failure to meet the substantiation requirements under Sections 110(A) and 113(A) and (B) of the NIRC of 1997, as amended by Republic Act (RA) No. 9337, and as implemented by Sections 4.110-2, 4.110-8 and 4.113-1 of RR No. 16-2005. The details of the specific violations of the substantiation requirements are as follows:

Findings	**Disallowed Input VAT**
1. Input VAT not separately indicated in the supporting invoices or official receipts	₱ 38,125,236.67
2. Input VAT supported by official receipts dated not within the first quarter of 2009	375,300.75
3. Input VAT supported by documents other than invoices or official receipts	200,241.05
4. Input VAT supported by zero-rated official receipt	102,464.20
5. Input VAT supported by TIN official receipts	18,932.15
6. Input VAT supported by official receipts not in the name of petitioner	17,634.65
7. Input VAT supported by official receipts imprinted with the phrase "not valid source of input tax"	3,198.86
8. Input VAT on purchases of services without supporting official receipts	2,157,115.86
Total	**₱ 41,000,124.19**

Input VAT not separately indicated.

Petitioner contends that the purpose of the substantiation requirements will still be served despite the absence of the required separate indication of the input VAT since the amount of input tax due may still be computed readily from the information in the invoices and ORs of petitioner's supplier. Petitioner adds that it should not be penalized for its clients' error in not separately indicating the amount of VAT in the invoices and ORs issued to petitioner.

Petitioner's contention has no merit.

Section 113(B)(2)(a) of the NIRC of 1997, as amended, states:

"SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* –

xxx xxx xxx

> (B) *Information Contained in the VAT Invoice or VAT Official Receipt.* – The following information **shall** be indicated in the VAT invoice or VAT official receipt:
>
> xxx xxx xxx
>
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: *Provided*, That:
>
> (a) The amount of the tax **shall** be shown as a separate item in the invoice or receipt;" (Emphasis supplied)

It is elementary that the word "shall" underscores the mandatory character of the rule. It is a word of command; one always has or must be given a compulsory meaning, and is generally imperative or mandatory.[14]

The word "shall" is categorically stated in the law; as such, it is mandatory for the amount of the tax to be shown as a separate item in the invoice or receipt. Thus, in this case, the disallowance of input VAT not separately indicated in the supporting invoices or ORs is proper.

Out-of-period claims.

As correctly found by petitioner, the input VAT amounting to ₱11,400.00 supported by OR No. 2109 (Exhibit "J-1487") dated March 4, 2009 is actually within the first quarter of CY 2009. However, an examination of the same OR No. 2109 (Exhibit "J-1487") reveals that the input VAT amount was not separately indicated therein. Thus, the same shall still be disallowed in accordance with Section 113(B)(2)(a) of the NIRC of 1997, as amended, and as implemented by Section 4.113-1(B)(2)(a) of RR No. 16-2005.

For the rest of the invoices/ORs, petitioner argues that out-of-period claims are allowed by Revenue Memorandum Circular (RMC) No. 42-03.

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[14] *SM Land, Inc. vs. Bases Conversion and Development Authority, et. al.*, G.R. No. 203655, August 13, 2014, citing *Regalado vs. Go.*, G.R. No. 167988, February 6, 2007.

The Court is not persuaded.

Section 110(A) of the NIRC of 1997, as amended, provides:

"Sec. 110. *Tax Credits.* —

(A) *Creditable Input Tax.* —

xxx xxx xxx

(2) The input tax on domestic purchase or importation of goods or properties by a VAT-registered person shall be creditable:

(a) To the purchaser upon consummation of sale and on importation of goods or properties; and

xxx xxx xxx

Provided, That the input tax on goods purchased or imported in a calendar month for use in trade or business for which deduction for depreciation is allowed under this Code, shall be spread evenly over the month of acquisition and the fifty-nine (59) succeeding months if the aggregate acquisition cost for such goods, excluding the VAT component thereof, exceeds One million pesos (P1,000,000.00): *Provided, however,* That if the estimated useful life of the capital goods is less than five (5) years, as used for depreciation purposes, then the input VAT shall be spread over such a shorter period: *Provided, finally,* That **in the case of purchase of services**, lease or use of properties, **the input tax shall be creditable to the purchaser**, lessee or licensee **upon payment of the compensation**, rental, royalty or fee." *(Emphasis supplied)*

Section 110(A) is explicit. For purchases of goods, the corresponding input VAT of which is creditable to the purchaser upon consummation of sale, that is, upon the issuance of the corresponding invoice. On the other hand, for purchases of services, the corresponding input VAT of which is creditable to the purchaser upon payment of compensation, rental, royalty or fee, that is, upon the date of official receipt. It states "upon consummation", in the case of domestic purchases of goods, and "upon payment", in the case of purchases of services.

It is indubitable on the part of the petitioner to declare the input VAT on domestic purchases of goods and services at the end of the corresponding taxable quarter where purchases of goods were consummated, as evidenced by VAT invoice, and for payment of services, as evidenced by VAT OR.

Therefore, applying Section 110(A) in relation to Section 112(A) of the NIRC of 1997, as amended, the input taxes which are supported by VAT invoices and ORs which are dated outside the period of petitioner's claim, *i.e.,* first quarter of taxable year 2009, cannot be refunded.

Purchases without valid ORs or invoices.

Petitioner contends that Exhibits "J-816" and "J-834" are compliant with the substantiation requirements under Sections 110(A), 113(A) and (B) of the NIRC of 1997, as amended, and as implemented by Sections 4.110-2, 4.110-8 and 4.113-1 of RR No. 16-05. In view thereof, the input VAT subject of these documents, in the amounts of ₱6,251.80 and ₱100.80, should be refunded.

Petitioner is not correct.

The OR marked as Exhibit "J-816" bears the amounts of ₱10,692.38 and ₱11,587.00, the corresponding input taxes amount to ₱1,145.61 and ₱1,241.46, respectively, or in the total amount of ₱2,387.07. On the other hand, the OR marked as Exhibit "J-834" bears the amounts of ₱2,070.00, ₱1,873.00, ₱2,246.00 and ₱18,742.21, the corresponding input taxes of which amount to ₱221.79, ₱200.68, ₱240.64 and ₱2,008.09 or in the total amount of ₱2,671.20.

As may be observed, petitioner's claimed input taxes (₱6,251.80 and ₱100.80) do not tally with the input taxes, as manually computed per OR marked as Exhibits "J-816" and "J-834". Moreover, these ORs are not compliant with the substantiation requirements under Section 113(B)(2)(a) of the NIRC of 1997, as amended, *i.e.,* the corresponding input VAT amounts are not

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separately indicated therein. Therefore, the same cannot be refunded.

D. Petitioner's excess input VAT carried over from the previous quarters

Petitioner submits that the Court erred in applying petitioner's unutilized input VAT to its output VAT liability for the first quarter of CY 2009 as it does not have any valid legal basis. Also, petitioner claims that it has enough excess input VAT carried over from the previous quarters to sufficiently cover its output VAT liability for the first quarter of CY 2009.

The Court does not agree.

Under Section 110(A)(1) of the NIRC of 1997, as amended, the rule is that **any input tax shall be creditable against the output tax only if it is evidenced by a VAT invoice or VAT OR**. The relevant portion of the said provision is quoted below:

> "SEC. 110. *Tax Credits.* —
>
> (A) *Creditable Input Tax.* —
>
> (1) Any **input tax evidenced by a VAT invoice or official receipt** issued in accordance with Section 113 hereof on the following transactions **shall be creditable against the output tax**: . . ." *(Emphasis supplied)*

Consistent with the foregoing is Section 4.110-8 of RR No. 16-2005, *viz:*

> "SEC. 4.110-8. *Substantiation of Input Tax Credits.* —
>
> (a) **Input taxes for** the importation of goods or **the domestic purchase of goods, properties or services** is made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT, **must be substantiated and**

supported by the following documents, and must be reported in the information returns required to be submitted to the Bureau:

(1) . . .

(2) For the domestic purchase of goods and properties — **invoice showing the information required under Secs. 113 and 237 of the Tax Code.**

(3) . . .

(4) For the purchase of services — **official receipt showing the information required under Secs. 113 and 237 of the Tax Code.**"

In this case, petitioner did not present and offer in evidence any VAT invoice or VAT OR to support the claimed excess and unutilized input VAT from the previous quarters, thus, the same cannot be credited or charged against its output VAT liability for the first quarter of CY 2009.

Accordingly, petitioner's output VAT liability of ₱567,254.03 shall be offset against its valid input VAT of ₱10,795,843.81. Hence, only the remaining input VAT of ₱10,228,589.78 can be attributed to the entire zero-rated receipts declared by petitioner in the amount of ₱1,153,711,928.39 and only the input VAT of **₱5,581,215.62** is attributable to the valid zero-rated receipts of ₱629,521,289.76, as computed below:

Valid Input VAT	₱ 10,795,843.81
Less: Output VAT	567,254.03
Excess Valid Input VAT	**₱ 10,228,589.78**
Divided by Declared Zero-Rated Receipts	1,153,711,928.39
Multiply by Adjusted Substantiated Zero-Rated Receipts	629,521,289.76
Adjusted Excess Input VAT Attributable to Substantiated Zero-Rated Receipts	**₱ 5,581,215.62**

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

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Respondent invites the attention of the Court to review, re-evaluate and take a second hard look at the documentary evidence (*i.e.* invoices and ORs) of petitioner in support of the partially granted input VAT refund since the said invoices and ORs do not indicate the full required information under Section 113(A)(B) in relation to Section 237 of the NIRC of 1997, as amended, and as implemented under Sections 4.110-8 and 4.113-1 of RR No. 16-2005. The said ORs/invoices have no probative value, hence, must be treated as immaterial and irrelevant to prove that indeed petitioner complied with the invoicing requirements.

In its Comment, petitioner submits that the grounds relied upon by respondent deserve scant consideration and do not merit the reversal and setting aside of this Court's Decision. Petitioner avers that respondent did not point to specific invoices or ORs which allegedly failed to meet the substantiation requirements under the law and regulations. Also, respondent did not raise the specific documentary requirements upon which the invoices and ORs were allegedly deficient/non-compliant.

Respondent's arguments must fail.

The Court already scrutinized petitioner's evidence, such as the ORs and invoices, in support of its claimed input VAT. Again, petitioner's input VAT of ₱47,589,404.60 shall be disallowed for failure to meet the substantiation requirements under Sections 110(A) and 113(A) and (B) of the NIRC of 1997, as amended by RA 9337, and as implemented by Sections 4.110-2, 4.110-3, 4.110-8 and 4.113-1 of RR No. 16-2005, the details of which and the specific reasons for its disallowances were presented in the assailed Decision.

While claims for tax refund are strictly construed against the taxpayer and liberally in favor of the State, petitioner has, with respect to the refundable amount of ₱5,581,215.62, overcome the burden of showing strict compliance with the conditions for the grant of a tax refund.

WHEREFORE, premises considered, petitioner's **Motion for Partial Reconsideration (Re: Decision dated January 4, 2016)** is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED** to **REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the adjusted amount of **₱5,581,215.62** representing the

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latter's unutilized input VAT attributable to its zero-rated receipts for the first quarter of 2009.

On the other hand, petitioner's **Motion to Re-Open Trial** and respondent's **Motion for Partial Reconsideration** are **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

(On Leave)
ERLINDA P. UY
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice