REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

DEUTSCHE KNOWLEDGE SERVICES, PTE LTD.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 7940

Members:

DEL ROSARIO, *P.J., Chairperson,*
UY, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:

FEB 06 2020 · 10:55 a.m.

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RESOLUTION

UY, J.:

For resolution are the following:

1. Petitioner's "***Motion for Partial Reconsideration (Re: Decision dated August 14, 2019)***"[1] filed on September 11, 2019, without respondent's Comment despite due notice;[2] and

2. Respondent's ***"Motion for Partial Reconsideration"***[3] filed on September 10, 2019, with petitioner's ***"Comment (Re: Respondent's Motion for Reconsideration dated July 5, 2017)"***[4] filed on November 6, 2019.

In said Motions, the parties pray for reconsideration and setting aside of the Court's Decision dated August 14, 2019, the dispositive portion of which reads:

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[1] Docket, pp. 1042 to 1054.
[2] Docket, pp. 1078 to 1080.
[3] Docket, pp. 1055 to 1061.
[4] Docket, pp. 1071 to 1077.

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **PARTIALLY GRANTED.** Accordingly, respondent is hereby **ORDERED TO REFUND or ISSUE A TAX CREDIT CERTIFICATE** in the amount of **₱1,252,603.30,** representing petitioner's unutilized input VAT arising from its zero-rated sales for the 2nd quarter of CY 2007.
>
> **SO ORDERED.**"

<u>Petitioner's "***Motion for Partial Reconsideration (Re: Decision dated August 14, 2019)***"</u>

In support of its Motion, petitioner argues that:

1. Petitioner's sales for the second quarter of CY 2007 were made to non-resident foreign corporations doing business outside of the Philippines; and that

2. Petitioner's disallowed excess and unutilized input VAT is duly substantiated, and accordingly, must be allowed for refund.

<u>Respondent's ***"Motion for Partial Reconsideration"*** with petitioner's ***"Comment (Re: Respondent's Motion for Reconsideration dated July 5, 2017)"***</u>

In his Motion, respondent contends that:

1. Petitioner's sales of services that do not qualify for zero-rating should be subjected to 12% VAT and the output VAT thereon should be deducted from the amount of alleged unutilized input VAT being claimed for refund;

2. The determination of petitioner's output VAT liability is merely for the purpose of ascertaining petitioner's entitlement of its unutilized input VAT claim for refund and not for imposing any deficiency tax; and that

3. Petitioner is not entitled to the subject claim for refund because its output VAT is higher than the substantiated input VAT.

In its Comment to respondent's Motion, petitioner counters that:

1. Respondent's arguments do not have any legal basis as it effectively seeks to assess and collect from petitioner a deficiency output VAT for the second quarter of CY 2007 in violation of petitioner's right to due process of law.

2. The issuance of a valid formal assessment is a substantive prerequisite to tax collection. This case does not fall within the instances whereby respondent is allowed to forego the issuance of a pre-assessment notice. In this case, respondent effectively seeks collection of deficiency output VAT from petitioner without making a valid assessment in order to deny the claim for input VAT refund.

3. The case does not involve a disputed assessment for deficiency taxes. Respondent never issued any assessment notice to petitioner in relation to the alleged deficiency output VAT for the second quarter of 2007. Thus, the CTA has no jurisdiction over the issued raised by respondent regarding the alleged deficiency output VAT for the second quarter of CY 2007.

4. In any case, respondent's right to assess petitioner has already prescribed, pursuant to Section 203 of the Tax Code.

THE COURT'S RULING

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

Petitioner's "***Motion for Partial Reconsideration (Re: Decision dated August 14, 2019)***" lacks merit.

Petitioner failed to prove that its sales for the 2nd quarter of CY 2007 were made to non-resident foreign corporations doing business outside of the Philippines.

Petitioner contends that this Court erred in considering Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office (DBA-APHO) as a resident foreign corporation on the ground that (1) DBA-APHO is a segment of Deutsche Bank AG, and (2) that Deutsche Bank AG, based on several SEC Negative Certifications offered by petitioner, is a resident foreign corporation.

In support of the foregoing argument, petitioner states that DBA-APHO functions as an operating headquarters for DB AG's subsidiaries and branch offices in the Asia Pacific Region, and is recognized and approved by the Monetary Authority of Singapore as such, even if it is not registered with any regulatory bodies. Moreover, it is necessary to determine if Deutsche Bank AG in the SEC Negative Certification pertains to the same one that the Court treated as one with DBA-APHO.

We are not convinced.

In this case, the fact sought to be established by the petitioner is that DBA-APHO is a non-resident foreign corporation.

A careful review of petitioner's own evidence,[5] submitted before this Court, categorically states that "DBA-APHO is a segment of Deutsche Bank AG and is not a separate legal entity." Moreover, it was established that Deutsche Bank AG is a registered entity in the Philippines with SEC Registration No. F-1228.[6]

Considering that DBA-APHO is a mere segment of Deutsche Bank AG, without any separate juridical personality, this Court maintains its finding that the status of Deutsche Bank AG, as a resident foreign corporation, applies with equal force to DBA-APHO, since it has no personality distinct from DBA-APHO.

The foregoing arguments raised by the petitioner deserve scant consideration, as it merely propounds unsupported allegations, intending to cast doubt on the factual findings of this Court. Yet, it does not provide any basis or evidence to support its allegations. It is a basic rule that he who alleges must prove what is alleged.[7] Without any showing that this Court's factual findings with regard to DBA-APHO were erroneous, there is no reason to overturn the same.

Petitioner likewise argues that other documents should be accepted, such as the *IntraGroup Service Agreements (IGSA)* with foreign clients and foreign business registration documents retrieved from the AMINET database, which allegedly establishes the locations and addresses of petitioner's clients.

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[5] Exhibit "DD."
[6] Exhibits "F," "G," "H," "I," "N," "O," "P," "Q," "R," "T," "U," "V," "W," and "X."
[7] *Eastern Assurance and Surety Corporation vs. Con-Field Construction and Development Corporation*, G.R. No. 159731, April 22, 2008.

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We are not swayed.

As We ruled in Our assailed Decision dated August 14, 2019, in order to prove that an entity is a non-resident foreign corporation doing business outside the Philippines, each one must be supported by both a certificate of non-registration of corporation/partnership, issued by the Philippines Securities and Exchange Commission (SEC) and certificate/articles of foreign incorporation/association.

The *IGSA* is not a valid substitute for either of the two (2) required documents, as the said Agreements do not establish that such service recipients are non-resident foreign corporations doing business outside the Philippines. To be specific, there is no showing in the *IGSA* that the service-recipients are engaged in business outside of the Philippines, or that they are not engaged in business in the Philippines.

In the case of *Sitel Philippines Corporation (formerly Clientlogic Phils., Inc.) v. Commissioner of Internal Revenue*,[8] it was held that Sitel fell short of proving that the recipients of its services were non-resident foreign corporations, as its documentary evidence, namely: Certifications issued by the Securities and Exchange Commission and Agreements between Sitel and its foreign clients, failed to prove that such foreign clients were doing business outside the Philippines or have a continuity of commercial dealings outside the Philippines.

As for the alleged foreign business registration print-outs retrieved from the AMINET database, this Court finds that they are not among the evidence formally offered during trial. Bearing in mind that the court shall consider no evidence which has not been formally offered,[9] it is clear that there is insufficient evidence on record for this Court to form an opinion, much less a ruling, on the alleged documents.

It bears stressing that actions for tax refund, as in the instant case, are in the nature of claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven.[10]

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[8] G.R No. 201326, February 8, 2017.
[9] Section 34, Rule 132 of the Rules on Evidence.
[10] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008.

Finally, this Court notes that there is no issue on whether petitioner was able to prove its case by a preponderance of evidence. Rather, the issue at hand is a question of whether or not petitioner was able to prove that the entities to whom it rendered services are non-resident foreign corporations doing business outside the Philippines.

Petitioner failed to comply with invoicing requirements.

In this case, petitioner does not deny that it failed to comply with the invoicing requirements. However, petitioner argues that the input VAT may be readily computed based on the information contained therein. Moreover, the supporting documents it submitted were issued by its clients, over which it has no participation and control.

We are not swayed.

In *Microsoft Philippines, Inc. vs. Commissioner of Internal Revenue*,[11] the Supreme Court held that the taxpayer claiming a VAT input tax credit or refund has the burden of proving that he is entitled to the refund or credit by submitting evidence that he has complied with the requirements laid down in the tax code and the BIR's revenue regulations under which such privilege of credit or refund is accorded. The invoicing requirements for a VAT-registered taxpayer as provided in the NIRC and revenue regulations are clear. A VAT-registered taxpayer is required to comply with all the VAT invoicing requirements to be able to file for a claim for input taxes on domestic purchases for goods or services attributable to zero-related sales.

Based on the foregoing pronouncement, it is clear that it is the petitioner's burden to prove its entitlement for a claim for refund. In other words, an applicant for a claim for tax refund or tax credit must not only prove entitlement to the claim but also compliance with all the documentary and evidentiary requirements.[12] To be specific, compliance with all the VAT invoicing requirements provided by tax laws and regulations is mandatory.[13] Hence, when a VAT invoice or official receipt does not comply with the requirements, it cannot be included as part of the taxpayer-claimant's refundable amount. Even

[11] G.R. No. 180173, April 6, 2011.
[12] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.
[13] *Id.*

if petitioner claims that the same can be easily computed based on the supporting documents, the same cannot be done for being non-compliant with a legal requirement.

After all, statutes that grant tax exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. Tax refunds in relation to the VAT are in the nature of such exemptions.[14]

With regard to petitioner's contention that the subject VAT invoices or official receipts were issued without its participation and control whatsoever, this Court finds the same to be without merit. As earlier mentioned, it is petitioner, as the taxpayer-claimant, who has the burden of proof when it comes to its claim for tax refunds. Consequently, it must be vigilant in its affairs, exercise discretion, and require its suppliers of goods and services to issue the pertinent VAT invoice or official receipts, which are fully compliant with the requirements imposed by law and revenue regulations. Petitioner should have been circumspect in ensuring that its purchase of goods and services are duly supported by a legally compliant VAT official receipt or invoice.

Out-of-period claims should be disallowed for tax credit or refund.

Petitioner submits that it was able to sufficiently establish that its excess and unutilized input VAT for the second quarter of CY 2007 remains unutilized and unapplied against output VAT. Thus, petitioner argues that its out-of-period claims should be allowed.

We are not convinced.

As stated in the assailed Decision, out-of-period claims may be allowed, provided they comply with the following requirements, to wit:

1. That the VAT invoices/receipts are issued within the taxable year that the claim was made;
2. That the VAT invoices/receipts cover transactions for the same taxable year;

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[14] *Panasonic Communication Imaging Corporation of the Philippines vs. Commissioner of Internal Revenue*, G.R. No. 178090, February 8, 2010.

3. That they have not been claimed in any other quarter of the same or different taxable year; and
4. The invoices/receipts are not claimed in any period ahead of the actual date of the said invoices/receipts.

A perusal of the evidence submitted by petitioner however shows that it failed to show compliance with the 3rd and 4th requisite, *i.e.*, (1) the corresponding input VAT have not been claimed in any other quarter of the same or different taxable year; and (2) the invoices/receipts were not claimed in any period ahead of the actual date thereof.

Petitioner, for its part, insists that it carried over its excess and unutilized input VAT for the 2nd quarter of CY 2007 to the succeeding taxable quarters until the corresponding input VAT were deducted as "VAT Refund/TCC Claimed" from the total input VAT in the Quarterly VAT Return for the 2nd quarter of CY 2009.

However, the foregoing allegation of petitioner, does not squarely address the issue with regard to its compliance with the 3rd and 4th requisite. To be specific, the subject argument does not establish that the input VAT has not been claimed in any other quarter of the same or different taxable year, nor does it establish that the invoices/receipts were not claimed in any period ahead of the actual date of the said invoices/receipts. Thus, there is no merit to petitioner's contention that its out-of-period claims should be allowed.

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

Respondent's ***"Motion for Partial Reconsideration"*** has likewise, no merit.

Petitioner's sales of services that do not qualify for zero-rating cannot be subjected to 12% VAT.

Respondent contends that petitioner's sale of services that do not qualify for zero-rating, should be subjected to 12% VAT. Thereafter, the output VAT thereon should be deducted from the amount of alleged unutilized input VAT being claimed for refund.

We are not convinced.

In the case of *Commissioner of Internal Revenue vs. Euro-Philippines Airline Services, Inc.*[15] the Supreme Court categorically held that a taxpayer-claimant's failure to comply with invoicing requirements as mandated by law, does not deem the transaction subject to 12% VAT.

As applied to this case, petitioner's sale of services that do not qualify for zero-rating, for its failure to comply with invoicing requirements, does not automatically mean that the subject sale should be subjected to 12% VAT.

Moreover, in the case of *Commissioner of Internal Revenue vs. Toledo Power Company,*[16] the Supreme Court said that while in some cases, the determination of a taxpayer's liability in a refund case is allowed, thereby allowing the offsetting of taxes, these are only allowed involving cases for tax refund under Section 229 of the Tax Code, but not in claims for tax refund or credit under Section 112 of the NIRC of 1997, as amended, to wit:

> "But while TPC's sales of electricity to CEBECO, ACMDC, AFC are not zero-rated, we cannot hold it liable for deficiency VAT by imposing 10% VAT on said sales of electricity as what the CIR wants us to do.
>
> As a rule, taxes cannot be subject to compensation because the government and the taxpayer are not creditors and debtors of each other. However, we are aware that in several cases, we have allowed the determination of a taxpayer's liability in a refund case, thereby allowing the offsetting of taxes.
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> In *Commissioner of Internal Revenue v. Court of Tax Appeals*, we allowed offsetting of taxes in a tax refund case because there was an existing deficiency income and business tax assessment against the taxpayer. We said that "[t]o award such refund despite the existence of that deficiency assessment is an absurdity and a polarity in conceptual effects" and that "to grant the refund without determination of the proper assessment and the tax due would inevitably result in multiplicity of proceedings or suits."

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[15] G.R. 222436, July 23, 2018.
[16] G.R. No. 196415 and 196451, December 2, 2015.

Similarly, in *South African Airways v. Commissioner of Internal Revenue*, we permitted offsetting of taxes because the correctness of the return filed by the taxpayer was put in issue.

In the recent case of *SMI-ED Philippines Technology, Inc. v. Commissioner of Internal Revenue*, we also allowed offsetting because there was a need for the court to determine if a taxpayer claiming refund of erroneously paid taxes is more properly liable for taxes other than that paid. We explained that the determination of the proper category of tax that should have been paid is not an assessment but is an incidental issue that must be resolved in order to determine whether there should be a refund. However, we clarified that while offsetting may be allowed, the BIR can no longer assess the taxpayer for deficiency taxes in excess of the amount claimed for refund if prescription has already set in.

<u>But in all these cases, we allowed offsetting of taxes only because the determination of the taxpayer's liability is intertwined with the resolution of the claim for tax refund of erroneously or illegally collected taxes under Section 229 of the NIRC. A situation that is not present in the instant case</u>.

<u>In this case, TPC filed a claim for tax refund or credit under Section 112 of the NIRC, where the issue to be resolved is whether TPC is entitled to a refund or credit of its unutilized input VAT for the taxable year 2002. And since it is not a claim for refund under Section 229 of the NIRC, the correctness of TPC's VAT returns is not an issue. Thus, there is no need for the court to determine whether TPC is liable for deficiency VAT.</u>

Besides, it would be unfair to allow the CIR to use a claim for refund under Section 112 of the NIRC as a means to assess a taxpayer for any deficiency VAT, especially if the period to assess had already prescribed. As we have said, the courts have no assessment powers, and therefore, cannot issue assessments against taxpayers. The courts can only review the assessments issued by the CIR, who under the law is vested with the powers to assess and collect taxes and the duty to issue tax assessments within the prescribed period." rb

Based on the foregoing pronouncement, it is clear that the correctness of a taxpayer's VAT returns is not an issue in claims for tax refund or credit under Section 112 of the NIRC of 1997, as amended. On the contrary, the issue to be resolved is simply whether or not the taxpayer is entitled to a refund or credit of its unutilized input VAT for the taxable year in question. Consequently, it is not necessary to determine if the taxpayer would be liable for deficiency VAT.

In this case, the issue at hand involves a claim for tax refund or credit under Section 112 of the NIRC of 1997, as amended. Thus, the correctness of petitioner's VAT returns is not put in question, as the only issue to be resolved is whether or not petitioner is entitled to its claim for refund for unutilized input VAT. Hence, there is no basis for respondent's contention that petitioner's sales of services that do not qualify for zero-rating should automatically be subjected to 12% VAT.

WHEREFORE, in light of the foregoing considerations, petitioner's and respondent's respective Motions for Partial Reconsideration are hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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