REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

DEUTSCHE KNOWLEDGE SERVICES, PTE. LTD.,
Respondent.

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

x---x

DEUTSCHE KNOWLEDGE SERVICES, PTE. LTD.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

Present:

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

Promulgated:

JUN 26 2020
4:05 p.m.

x---x

RESOLUTION

CASTAÑEDA, JR., J.:

For resolution of the Court *En Banc* are the following:

(1) Commissioner of Internal Revenue's (CIR) Motion for Reconsideration (Re: Decision promulgated 4 November 2019) filed on November 19, 2019; and

(2) Deutsche Knowledge Services, Pte Ltd.'s (Deutsche) Motion for Reconsideration (Re: Decision dated November 4, 2019) filed on November 22, 2019, with CIR's Opposition (Re: Motion for Reconsideration) filed on January 8, 2020.

In his motion, the CIR asserts that Deutsche failed to establish that its input taxes are directly attributable to its zero-rated sales.

On the other hand, Deutsche asserts that: (1) It proved that the recipients of its services are doing business outside the Philippines; (2) Its out-of-period claims are proper; and (3) VAT substantiation may be served even if VAT was not separately indicated on the face of the official receipt or invoice.

A review of the foregoing shows that the parties failed to raise any new argument which warrants the consideration of the Court *En Banc*.

As to the CIR's assertion, the Court *En Banc* thoroughly examined the assailed Division Decision, thus:

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

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

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

> Moreover, to determine the eligible portion of the excess input VAT for refund or issuance of TCC, the Court in Division allocated proportionately the excess input VAT between the

total zero-rated sales declared per return and the valid zero-rated sales.

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

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

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

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

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

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

xxx xxx xxx

The CIR further asserts that in order to be entitled to a refund or issuance of TCC, the input tax must come from purchases of goods and services that form part of the finish

> product of the taxpayer and that the phrase directly attributable means 'arising from a particular source or cause.'
>
> However, Section 112(A) of the NIRC, as amended, simply requires that for the creditable input tax to qualify for refund, it must be attributable to zero-rated sales or effectively zero-rated sales to the extent that such input tax has not been applied against output tax. Thus, it is not required that the creditable input tax should form part of the finished product."

As to Deutsche's assertion that it proved that its services recipients are doing business outside the Philippines, the Court *En Banc* already ruled that:

> "After careful evaluation of the said findings, the Court *En Banc* agrees with the Court in Division. In addition, the above-findings of the Court in Division is consistent with the ruling of the Supreme Court in *Sitel Philippines Corporation (formerly Clientlogic Phils., Inc.) v. Commissioner of Internal Revenue*, where it was held that while Sitel's documentary evidence, which included Certifications issued by the Securities and Exchange Commission and Agreements between Sitel and its foreign clients, may have established that Sitel rendered services to foreign corporations and received payment therefor through inward remittances, the said documents failed to specifically prove that such foreign clients were doing business outside the Philippines or have a continuity of commercial dealings outside the Philippines.
>
> The Court *En Banc* also notes that the present issue presented by Deutsche is not novel. In fact, in *Our* most recent ruling in CTA EB Nos. 1763 and 1764 which are consolidated cases involving the same parties, *We* held that:
>
>> 'We agree with the Court in Division that to be considered as a non-resident foreign corporation doing business outside the Philippines, each entity must be supported, at the very least, by **BOTH** a Certificate of Nonregistration of Corporation/ Partnership issued by the Philippine Securities and Exchange Commission (SEC) **AND** Certificate/ Articles of Foreign Incorporation/ Association.
>>
>> These documents are necessary for the following reasons: gr

1. The SEC's negative certification establishes that the recipient of the service has no registered business in the Philippines; and

2. The Certificate/ Articles of incorporation/ Association will prove that the recipient is indeed foreign.

Applying the foregoing in the case at bar, while the Intra Group Service Agreements show the names of Deutsche's customers to whom it rendered services, nevertheless, it does not establish that such service recipients are nonresident foreign corporations doing business outside the Philippines.'

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

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

Finally, as to Deutsche's out-of-period claims and substantiation requirements, the Court *En Banc* correctly found in the assailed Decision that:

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

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

xxx xxx xxx

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

On the other hand, the amount of input tax should be shown separately in a VAT invoice or receipt in order to be creditable. Section 110(A)(1) of the NIRC, as amended, is categorical in requiring that any input tax to be creditable must be evidenced by a VAT invoice or official receipt issued in accordance with Section 113. Meanwhile, Section 113(B)(2)(a) of the NIRC, as amended, requires that the amount of input tax should be shown as a separate item in the invoice or receipt.

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

xxx xxx xxx

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

xxx xxx xxx

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

Return for the 1st quarter of CY 2013 reflects the amount of '0.00.' The amount of ₱249,651,814.19 actually pertains to the entry for "Others" under 'Allowable Input Tax.'"

In sum, the parties merely rehashed their arguments in their respective motions. Consequently, the Court *En Banc* finds no reason to disturb its findings in the assailed Decision. Hence, the denial of the instant motions is in order.

WHEREFORE, the CIR's Motion for Reconsideration (Re: Decision promulgated 4 November 2019) and Deutsche's Motion for Reconsideration (Re: Decision dated November 4, 2019), are both **DENIED**, for lack of merit.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice