REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

DEUTSCHE KNOWLEDGE SERVICES PTE. LTD., Petitioner,	**CTA CASE NO. 8443**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **CASANOVA,** *and* **COTANGCO-MANALASTAS,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** OCT 13 2014 ______________. 4:10 p.m.

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RESOLUTION

CASTAÑEDA, JR., *J.*:

For resolution are:

1. respondent's *Motion for Partial Reconsideration (Re: Decision Promulgated July 7, 2014)* filed on July 21, 2014, with petitioner's *Comment (Re: Respondent's Motion for Partial Reconsideration dated July 18, 2014)* filed on August 4, 2014; and

2. petitioner's *Omnibus Motion (For Partial Reconsideration of Decision dated July 7, 2014 and To Re-Open Trial to Present Supplemental Evidence)* filed through registered mail on July 23, 2014 and which was actually received on July 30, 2014, without respondent's comment as per Records Verification dated August 22, 2014.

Petitioner and respondent filed their respective motions for partial reconsideration of the assailed Decision dated July 4, 2014, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, let a tax refund or a tax credit certificate be issued in favor of petitioner in the amount of **₱14,882,227.02** representing its unutilized input VAT attributable to its zero-rated sales for the first quarter of 2010."

The Court shall first address the allegations contained in respondent's *Motion for Partial Reconsideration.*

Respondent alleges that petitioner failed to 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 (NIRC) of 1997.

Respondent invokes RMO No. 53-98 which allegedly requires the submission of complete documents relevant to substantiate a claim for refund with the Bureau of Internal Revenue (BIR). According to respondent, petitioner submitted merely four documents to support its application for tax refund which are way far from the requirements of RMO No. 53-98. Respondent further contends that in a claim for tax refund or tax credit, the applicant must prove not only entitlement to the grant of the claim under substantive law, but must also show satisfaction of all the documentary and evidentiary requirements for an administrative claim for a refund or tax credit.

Moreover, respondent avers that the power to interpret provisions of the tax code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner of Internal Revenue (CIR); and that the interpretation of an administrative government agency, which is tasked to implement a statute, is accorded with great respect and ordinarily controls the construction of the courts. Thus, according to respondent, the issuance by the CIR of RMO No. 53-98 is anchored on her interpretation that all the documents set forth therein must be submitted in support of an application for tax refund/credit.

In view thereof, respondent concludes that she was deprived of the opportunity to examine, evaluate, and act on petitioner's application for tax refund and that petitioner violated the doctrine of exhaustion of administrative remedies.

Petitioner opposes the foregoing allegations, interposing the following arguments:

1. strict compliance with the documentary requirements stated in RMO No. 53-98 is not the standard for compliance with the requirements for administrative claims for refund;
2. petitioner submitted complete documents as contemplated by Section 112(C) of the NIRC of 1997, as amended;
3. respondent was given ample opportunity to act on petitioner's application for tax refund; and
4. non-submission of complete documents at the administrative level is not fatal to the judicial claim for refund

Section 112(C) of the NIRC of 1997, as amended, provides:

> "SEC. 112. Refunds or Tax Credits of Input Tax. –
>
> xxx xxx xxx
>
> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals."

Perusal of the foregoing shows that Section 112 (C) of the NIRC of 1997, as amended, does not require the submission of the enumerated "complete documents" in RMO 53-98 to justify the grant of a refund or credit of input Value-Added Tax (VAT).

On the contrary, the Court sitting *En Banc* already explained the proper definition of "complete documents". In resolving the motions for reconsideration filed the parties against its Decision, the Court in the consolidated cases of *Team Sual Corporation (formerly: Mirant Sual Corporation) vs. Commissioner of Internal Revenue, and Commissioner of Internal Revenue vs. Team Sual Corporation (formerly Mirant Sual Corporation)*[1], ruled that **the completeness of documents to support a claim is determined by a taxpayer.** It is the duty of the BIR under the aforequoted Section 112(C) to act on the claim within the 120-day period from the date of submission of complete documents. Should the taxpayer decide to submit only certain documents, or should the taxpayer fail, or opted not, to submit any document at all, in support of its application for refund or tax credit certificate under Section 112 of the NIRC of 1997, it is reasonable and logical to conclude that the reckoning date of the 120-day period thereunder, should be reckoned from the filing of the said application.

Also, in the same case, the Court likewise held as follows:

> "xxx it has been held that the Commissioner ought to know the tax records of all taxpayers, and thus, the Commissioner can easily decide whether or not to grant the concerned taxpayer's administrative claim for refund or tax credit certificate. In this connection, **nothing in RMO No. 53-98 mandates that the list of documents therein stated, insofar as the VAT is concerned, should be submitted in connection with an application for refund or tax credit certificate under the said Section 112, upon the filing thereof.** Furthermore, said RMO is explicit, in its subject and objective, **that it provides a checklist of documents to be submitted "upon Audit", and that it was issued to "(i)dentify the documents to be required from a taxpayer during audit", respectively**. In this case, it was not shown that the audit was ever conducted by the BIR in connection with Team Sual's application for refund or tax credit certificate. This is manifested by the lack of BIR Records transmitted to this Court, and by the absence of any "report of investigation" concerning Team Sual's administrative claim for refund or tax credit certificate. But even if We are to assume that an audit

[1] CTA EB Nos. 649 and 651, Resolution dated March 21, 2012.

> was made, it was never established that the Commissioner ever required Team Sual to submit the documents stated in the said RMO." (*Emphasis supplied.*)

As mentioned in the above-quoted case, RMO No. 53-98 merely provides a checklist of documents to be submitted "upon Audit" and that it was issued to "(i)dentify the documents to be required from a taxpayer during audit". In this case, there was nothing in the records which would show that an audit was ever conducted by the BIR in connection with petitioner's application for refund or tax credit certificate and that it was never established that petitioner was required to submit the documents stated in the said RMO.

Furthermore, if respondent truly believes that petitioner failed to submit complete documents to support its claim for refund, respondent should have notified petitioner of its failure, pursuant to RMC No. 29-09, which respondent itself issued. The pertinent portion of RMC No. 29-09 reads:

> III. *Period within which Refund a Tax Credit of Input Taxes shall be Made.*
>
> Section 112(C) of the Tax Code of 1997, as amended by Republic Act No. 9337, provides among others, that in proper cases, **the Commissioner shall grant a refund or issue the tax credit certificate (TCC) for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents.** For the purpose of defining "proper cases" in the said provision, the taxpayer/claimant must have complied with the following conditions/requirements upon audit/verification of his/its claim:
>
> a. **Submission of complete documents** necessary to determine and/or ascertain the correctness of the return and the amount to be refunded;
>
> xxx xxx xxx
>
> **In cases where taxpayer failed to comply with the above conditions/requirements**, *i.e.*, failure to present accounting books and records for audit/verification, additional documents to explain discrepancies/findings are not submitted, taxpayer refuses or incurs delay in the submission of the

> Agreement Form, **the running of the 120-day period shall stop from the date of notification to the taxpayer**. Likewise, the running of the 120-day period shall be suspended in case a question of law arises during the conduct of audit/verification and/or review of the claim for tax refund/credit, and the issue is referred to the Legal Division or the Legal Service, as the case may be, for resolution and issuance of legal opinion, which should be rendered within thirty (30) working days from receipt of the request. (*Emphasis supplied*)

In this case, since the records do not show that a neither a written notice was sent by the BIR informing petitioner that the documents it submitted, which were attached to its claim for refund[2], were incomplete nor did she required petitioner to submit additional documents as mandated under RMC No. 20-09, then the 120-day period started and continued to run from October 21, 2011, the date when petitioner filed its administrative claim together with the supporting documents.

Likewise, as correctly pointed out by petitioner, the non-submission of complete documents at the administrative level is not fatal to a claim for refund in the judicial level. This was the consistent ruling of the Court in several *En Banc* cases, one of which is the case of *Commissioner of Internal Revenue vs. Toledo Power Company*[3] wherein the Court sitting *En Banc* ruled that:

> "In a VAT refund case such as the present case, **the alleged non-submission of complete documents at the administrative level is not fatal to a claim for refund in the judicial level** xxx. It will not bar the CTA from receiving, evaluating, and appreciating evidence submitted before it. **Once the claim for refund has been elevated to the CTA, the admissibility, materiality, relevancy, probative value and weight of evidence presented therein become subject to the Rules of Court. The question of whether or not the evidence submitted by a party is sufficient to warrant the granting of a claim for refund lies within the sound discretion and judgment of the Court.**" *(Emphasis supplied)*

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[2] Exhibit "H".
[3] CTA EB Case No. 589, Resolution dated January 12, 2011.

Accordingly, respondent's *Motion for Partial Reconsideration* praying for the denial of petitioner's claim for refund for the latter's failure to submit complete documents required under RMO No. 53-98, in relation to Section 112(C) of the NIRC of 1997, is **DENIED** for lack of merit.

On the other hand, in petitioner's *Omnibus Motion,* the grounds raised in support of the *Motion for Partial Reconsideration* are as follows:

1. petitioner's unutilized input VAT in the amount of ₱33,868,101.19 is duly substantiated and therefore must be accordingly refunded; and
2. petitioner proved that its sales to its non-resident foreign clients are zero-rated; hence, all its input VAT attributable to its zero-rated sales may be the proper subject of a claim for refund.

Anent the first ground, petitioner argues that petitioner's input VAT on capital goods purchases of ₱1,256,449.28 is duly substantiated and may be a proper subject of a claim for refund of input VAT attributable to zero-rated sales.

The Court holds that it did not err in finding that out of the total input VAT on capital goods purchases exceeding ₱1 Million of ₱1,256,449.28, only the amount of ₱741,571.07 was substantiated. The amount of ₱514,698.21 was correctly disallowed considering that the purported supporting VAT invoice was not presented before the Court. In fact, the Independent Certified Public Accountant (ICPA), Mr. Romeo de Jesus, likewise disallowed the same based on his findings that the related purchase was not supported by supplier's sales invoice.

Moreover, the Court is correct in ruling that only the amortized portion of the substantiated input VAT of ₱741,571.07 or the amortized amount of ₱22,027.35 may be claimed by petitioner as valid input tax credit for the 1st quarter of 2010. It may be recalled from the provision of Section 112(A) of the NIRC of 1997, as amended, that what may be the subject of an application for the issuance of a tax credit certificate or refund is the "creditable" input VAT attributable to zero-rated sales. In other words, when an input VAT is not (or not yet) creditable against the output VAT, it cannot be claimed under Section 112(A). For easy reference: *jc*

SEC. 112. ***Refunds or Tax Credits of Input Tax.*** —

(A) ***Zero-Rated or Effectively Zero-Rated Sales.*** — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, **apply for the issuance of a tax credit certificate or refund of** **<u>creditable input tax</u>** **due or paid attributable to such sales**, except transitional input tax, to the extent that such input tax has not been applied against output tax: . . . *(Emphasis and underscoring supplied)*

In relation thereto, Section 110 of the NIRC of 1997, as amended by RA No. 9337, which is the appropriate provision of the NIRC in the instant case and which was applied by the Court in the assailed Decision, enumerates the instances when an input VAT is creditable against the output VAT, to wit:

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**:

(a) Purchase or importation of goods:

xxx xxx xxx

(v) **For use in trade or business for which deduction for depreciation or amortization is allowed under this Code**.

xxx xxx xxx

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

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

> ***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 (₱1,000,000): . . . *Emphases and underscoring supplied)*

Thus, as a rule, the input VAT on domestic purchase or importation of goods or properties of a VAT-registered person shall be creditable to the output VAT to the purchaser, upon consummation of sale and on importation of goods or properties. As an exception, the input VAT on goods purchased or imported for use in trade or business, for which deduction for depreciation is allowed under the NIRC of 1997 and the aggregate acquisition cost of which exceeds ₱1,000,000.00, shall be spread evenly and creditable over a period of 60 months starting from the month of acquisition. Simply put, in the latter case, the input VAT is not fully creditable in the month of acquisition but will be distributed equally within the said 60-month period.

Such being the case, petitioner's insistence that its entire input VAT on capital goods is refundable, has no leg to stand on. Correspondingly, the Court sees no reason to reverse its findings that only the amount of ₱22,027.35 may be claimed by petitioner as valid input tax credit for the 1st quarter of 2010.

Petitioner further contends that it has presented sufficient documentary evidence to prove that the documents supporting its unutilized input VAT have complied with the applicable requirements of the law and that the amounts declared to be unsubstantiated were in fact properly substantiated.

On this matter, petitioner must be mindful that the Court already scrutinized every piece of evidence presented by petitioner in support of its input VAT claim such as the official receipts and sales invoices issued by its suppliers. And as found, the input VAT of ₱11,556,290.62 shall be disallowed for petitioner's 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, 4.110-8 and 4.113-1 of Revenue Regulations No. 16-05, the details of which and the specific reasons for its disallowances were presented in Annex A of the assailed Decision.

With respect to petitioner's contention that the results of the Independent Certified Public Accountant's (ICPA's) examination of the suppliers' invoices and official receipts revealed that the valid input VAT could not have only been ₱14,882,227.02; time and again, it has been ruled that the Court is not bound by the findings of the ICPA. Hence, in the case of *First Lepanto Taisho Insurance Corporation vs. Commissioner of Internal Revenue*,[4] the Court explained that "the report submitted by the ICPA is but a tool or guide to aid the Court in the decision of the case. The determination of the merit or the probative value of such report is still within the province of the Court. In addition, the Court is free to adapt or disregard, completely or partially, the findings of the ICPA. It can even make its own audit and evaluation of the documents pertinent to the case presented during the trial in order to intelligently resolve the conflict brought before it."

Consequently, the Court sees no reason to depart from its findings that the additional amount of ₱11,556,290.62 should be disallowed from petitioner's input VAT claim for the 1st quarter of 2010.

On to the second ground raised by petitioner in its *Motion for Partial Reconsideration*, petitioner alleges that it sufficiently proved that the rest of its clients are non-resident foreign entities doing business outside the country, when it presented and offered in evidence the Certificate of Non-Registration of Corporation issued by the Securities and Exchange Commission (SEC) and IntraGroup Service Agreements with petitioner's foreign clients stating the latter's locations and addresses.

Petitioner also prays for the Court to take judicial notice of other cases decided by other divisions of this Court which have factually recognized that a number of the above-mentioned entities are in fact doing business outside the country, specifically the cases of Deutsche Knowledge Services Pte. Ltd. Vs. Commissioner of Internal Revenue, CTA Case No. 8165, August 8, 2013 and Deutsche Knowledge Services Pte. Ltd. Vs. Commissioner of Internal Revenue, CTA Case No. 8012, June 26, 2013.

Accordingly, petitioner claims that the foregoing documents, taken collectively, will prove that petitioner's non-resident clients are indeed doing business outside of the Philippines. *gr*

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[4] CTA EB Case No. 563, March 1, 2011.

In addition, petitioner requests leave to submit the original print-outs of AMInet Company Profile Fact Sheets and the electronically-maintained copies of the Articles of Incorporation and business registration documents of its non-resident clients which were already attached to petitioner's *Omnibus Motion* to further prove that petitioner's non-resident clients are indeed doing business outside of the Philippines.

It must be noted that in the case of **BPI Family Savings Bank vs. Court of Appeals, et al.,**[5] the Supreme Court allowed the appreciation of the exhibit submitted after trial which was attached in the Motion for Reconsideration filed before the Court. This was in line with the avowed policy of the Court to liberally apply the rules of procedure in order to promote a just and speedy determination of every action and proceeding before the Court[6].

The paramount consideration remains the ascertainment of truth. Verily, the quest for orderly presentation of issues is not an absolute. It should not bar courts from considering undisputed facts to arrive at a just determination of a controversy.[7]

Considering that petitioner already attached in its *Omnibus Motion* the evidence it intends to present and in the interest of justice, petitioner's *Motion to Re-Open Trial to Present Supplemental Evidence* is **GRANTED**.

WHEREFORE, let the case be set for presentation of petitioner's supplemental evidence on November 5, 2014 at 9:00 a.m. Meanwhile, the resolution of petitioner's *Motion for Partial Reconsideration* filed through registered mail on July 23, 2014 is **HELD IN ABEYANCE**. Respondent's *Motion for Partial Reconsideration is* **DENIED**.

SO ORDERED.

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

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[5] G.R. No. 122480, April 12, 2000.
[6] Section 2, Rule 1, Revised Rules of the Court of Tax Appeals.
[7] *BPI Family Savings Bank vs. Court of Appeals, et al.*, *supra*, note 5.

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice