REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

DEUTSCHE KNOWLEDGE SERVICES PTE., LTD.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9154

Members:

UY, *Chairperson,*
RINGPIS-LIBAN, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

FEB 14 2020 10:50 a.m.

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RESOLUTION

UY, J.:

For this Court's resolution is petitioner's "**Motion For Reconsideration (Re: Decision dated October 4, 2019)"** filed on October 28, 2019, with respondent's **"Opposition (Re: Motion for Reconsideration of the Decision promulgated 4 October 2019)** filed on November 22, 2019, praying for the reversal and setting aside of the Court's Decision dated October 4, 2019, the dispositive portion of which reads:

> "**WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is **DENIED** for failure of petitioner to show that its sales of services for the 3rd quarter of 2013 qualify for VAT zero-rating.
>
> **SO ORDERED**."

In its *Motion*, petitioner argues that the Court failed to consider that petitioner was licensed to do business in the Philippines as a Regional Operating Headquarters (ROHQ).

Petitioner further argues that as a ROHQ, it may only engage in services specifically allowed by law. Thus, the assailed Decision should be reversed on the basis of the following grounds:

a. Petitioner, as an ROHQ, renders services other than processing, manufacturing or repacking of goods;

b. Petitioner presented evidence sufficient to establish that its services were performed in the Philippines; and

c. Petitioner presented preponderant evidence to prove that its zero-rated sales for the third quarter of CY 2013 were made to non-resident foreign corporations doing business outside the Philippines.

In his opposition, respondent avers that petitioner's contention that it has proven by preponderance of evidence that the entities to whom it rendered services are non-resident foreign corporations doing business outside of the Philippines, is bereft of merit. Allegedly, the claimant has the burden of proof to establish the factual basis of his claim for tax credit or refund. As claims for refund partake the nature of exemptions, the same are strictly construed against the claimant and cannot be allowed unless granted in the most and explicit and categorical language.

THE COURT'S RULING

After a careful review of the arguments raised by the parties, the Court finds petitioner's *Motion for Reconsideration* without merit.

Petitioner failed to prove that its services to its service recipients fall within the scope of "services other than processing, manufacturing, or repacking of goods" under Section 108 (B)(2) of the NIRC of 1997, as amended.

Petitioner argues that the Court erred in relying solely on the Intra Group Service Agreement (IGSA) as basis to establish the nature of the services rendered by petitioner. Allegedly, the Court should have considered the fact that petitioner, as ROHQ, can only render services specifically allowed by law, which necessarily excludes the category of services classified as processing, manufacturing, or repacking of goods.

Petitioner further posits that the IGSA were offered to establish the fact that its clients are non-resident entities, doing business outside the Philippines, and it was unjust for the Court to conclude that a certain evidence is defective or insufficient to establish a fact, other than that for which it was offered. Hence, there is allegedly no basis for the Court to conclude that it cannot determine whether petitioner's services fall under the category other than processing, manufacturing, or repacking of goods in order to qualify as VAT zero-rated sales pursuant to Section 108(B)(2) of the Tax Code in relation to Section 108(B)(1) of the same.

The Court is not swayed.

As held in the assailed Decision, the following elements must be present for a transaction to be treated as subject to the zero percent (0%) VAT under Section 108(B)(2) of the National Internal Revenue Code of 1997, as amended, to wit:

1) the subject services must be performed in the Philippines;
2) the recipient of such services is doing business outside the Philippines;
3) the services must be other than processing, manufacturing or repacking of goods, and
4) the consideration for the services is paid for in acceptable foreign currency accounted for in accordance with the BSP rules and regulations.

Anent the third requirement, petitioner failed to present specific evidence to show that the following service recipients, who are non-resident foreign corporations, were rendered services by petitioner, other than processing, manufacturing or repacking of goods, namely:

1) DB Energy Trading LLC;
2) DB Investments Partners Inc.;
3) DBOI Global Services UK Limited;
4) Deutsche Bank Privat-und Geschaftskunden Aktieng/ Deutache Bank Pgk-Ag;
5) Deutsche Bank Securities Inc.;
6) Deutsche Bank Trust Corporation; and
7) RREEF Management L.L.C.

We do not agree with petitioner's claim that simply because it is a ROHQ by nature, it need not present sufficient evidence to establish that the services it performed to its aforementioned service recipients fall under services other than processing, manufacturing or repacking of goods.

It must be remembered that petitioner, as a ROHQ, is not prohibited from engaging in services of processing, manufacturing or repacking of goods. Hence, it is incumbent upon petitioner to present sufficient evidence to show that the services it performed to its service recipients fall under **"services other than processing, manufacturing or repacking of goods"**. However, petitioner failed to do so in the instant case.

Petitioner failed to prove that its services to its service recipients were performed in the Philippines

Petitioner argues that as a ROHQ, it is engaged in services performed only in the Philippines. That since it obtained its license, petitioner has been allowed to derive income within the Philippines by performing services to its affiliates, subsidiaries or branches. According to petitioner, since the income allowed to be derived in the Philippines involved the performance of services, the services to be rendered must necessarily be performed in the Philippines.

Moreover, petitioner contends that this Court erred when it decided based solely on the fact that the Intra Group Services Agreement lack any indication as to where the services were actually performed. Petitioner contends that it does not necessarily follow that if the Intra Group Services Agreement do not indicate the place where petitioner rendered services, petitioner must have rendered services outside the Philippines.

In support of its position, petitioner argues that petitioner's witness testified that the services rendered by petitioner were actually performed in the Philippines, hereby quoted as follows:

a. Petitioner's witness testified that petitioner, which is a multinational company organized under the laws of Singapore, is **licensed to do business as an ROHQ in the Philippines.**

b. Petitioner's witness testified that petitioner incurred input VAT credits since it purchased goods and services **in the course of rendering services in the Philippines** as a shared service center to clients engaged in business conducted outside the Philippines.

c. When asked about petitioner's registration with other government agencies **in line with its business in the Philippines,** petitioner's witness replied that petitioner is registered with the BIR as a VAT taxpayer, proof of which is petitioner's certificate of registration with the BIR, which clearly indicates that petitioner is subject to income tax, VAT and withholding tax in the Philippines.

Petitioner further contends that the Court-commissioned Independent Certified Accountant (ICPA) verified petitioner's zero-rated sales by checking among other procedures performed, the terms and conditions of the services to be rendered by petitioner, as well as the nature thereof. Furthermore, the ICPA, in verifying petitioner's zero-rated sales, examined and presented evidence such as sale schedules, Intra Group Services Agreement, and official receipts with attached invoices, which if taken altogether, may establish the fact the petitioner's services were indeed performed in the Philippines.

The Court is not convinced.

It must be noted that the issue as to whether or not petitioner performed services in the Philippines is a question of fact. Hence, it must be proven by specific evidence. Petitioner cannot merely rely on the provision that ROHQs are licensed to do business in the Philippines to prove a fact in issue. To the mind of the Court, although it was shown that petitioner is a ROHQ, it is still necessary on its part to prove that its services were performed in the Philippines.

Furthermore, the testimony of petitioner's witness failed to establish that the services rendered by petitioner to its service recipients, who are non-resident foreign corporations doing business outside the Philippines, were performed in the Philippines. Likewise, the verification of petitioner's zero-rated sales by the ICPA failed to satisfactorily establish the same.

It must be emphasized that tax refunds, which are in the nature of tax exemptions, are construed strictly against the taxpayer and liberally in favor of the government. This is because taxes are the lifeblood of the nation. [1]

In this regard, the requirements laid down under the NIRC of 1997, as amended, and other related laws and regulations must be met. At the same time, the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven.[2] The burden of proof to establish entitlement to refund is upon the claimant proving the factual basis of his claim.[3] In this case, petitioner failed to discharge this burden.

Petitioner failed to prove that its sales for the 3rd quarter of CY 2013 were made to non-resident corporations doing business outside the Philippines

Petitioner argues that it presented preponderant evidence to prove that its zero-rated sales for the third quarter of Calendar Year 2013 were made to non-resident foreign corporations doing business outside the Philippines.

In support of the foregoing, petitioner contends that Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office (DBA-APHO) functions as an operating headquarters for Deutsche Bank AG's subsidiaries and branch offices in the Asia Pacific Region. That while DBA-APHO may not have been registered separately with any regulatory bodies, it has been recognized and approved by the Monetary Authority of Singapore as an operating headquarters. Moreover, petitioner claims that the Court has no basis to treat Deutsche Bank AG as a resident foreign corporation based on the SEC Negative Certifications which states that Deutsche Bank AG is registered with the SEC and it is necessary to determine whether the entity referred to as Deutsche Bank AG in the SEC Negative

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[1] *Eastern Telecommunications Phils., vs. Commissioner of Internal Revenue*, G.R. No. 168856, August 29, 2012.
[2] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue,* G.R. No. 159490, February 18, 2008.
[3] *Eastern Telecommunications Phils., vs. Commissioner of Internal Revenue*, G.R. No. 168856, August 29, 2012.

Certifications pertains to the same Deutsche Bank AG which this Court treated as one with DBA-APHO.

Lastly, petitioner also contends that the Court erred in ruling that Deutsche Bank AG is a resident foreign corporation despite the fact that such issue was never raised during cross-examinations or the Court's clarificatory questions.

We are not convinced.

It bears stressing that the pivotal issue is 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 and not simply a determination on whether or not petitioner was able to prove its case by preponderance of evidence.

To reiterate, claimants of tax refunds bear the burden of proving the factual basis of their claims.[4] Thus, it behooves this Court to look into the factual basis of a refund claim which necessarily includes looking into whether or not Deutsche AG is a resident foreign corporation, despite the fact that such issue was never raised by the parties.

Moreover, contrary to petitioner's argument that the Court made a baseless ruling that Deutsche Bank AG is a resident foreign corporation, it must be emphasized that in the assailed Decision, the Court looked into petitioner's evidence, specifically Exhibit "P-7.2", purporting to be an "Authenticated Company Registration of Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office", with an attached Certification stating that it "is a segment of Deutsche Bank AG and is not a separate entity." On the basis thereof, the Court made a determination that DB-APHO is a segment of Deustsche Bank AG.

It must be emphasized that petitioner failed to refute the findings of this Court. Bare and unsubstantiated allegations do not constitute substantial evidence and have no probative value.[5] As such, petitioner's bare allegations, unsubstantiated by sufficient documentary evidence, cannot be given credence by the court.

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

[5] *LNS International Manpower Services vs. Padua, Jr.*, G.R. No. 179792, March 5, 2010.

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Petitioner likewise contends that the Court failed to give credence to the AMINET database for being self-serving and prone to manipulation in favor of petitioner. Petitioner also avers that the Intra Group Services Agreements and the foreign business registration documents retrieved from the AMINET database establishes the locations and addresses of petitioner's clients, when taken together, the documents prove that petitioner's clients are branches, subsidiaries or segments of the Deutsche Bank Group of Companies which have business domiciles and activities outside of the Philippines.

The Court does not agree.

As held in the assailed Decision, to be considered as a non-resident foreign corporation doing business outside the Philippines, each service-recipient must be supported, at the very least, by both a certificate of non-registration of corporation/partnership issued by the Philippine Securities and Exchange Commission (SEC) and certificate/ articles of foreign incorporation / association.

The IGSAs and the business registration retrieved from the AMINET database are insufficient to prove that petitioner's clients are non-resident foreign corporation doing business outside the Philippines. The IGSAs show only the names and addresses of petitioner's clients to whom it renders services, but the same do not establish that such clients are non-resident foreign corporations doing business outside the Philippines.

Similarly, the business registration documents retrieved from the AMINET database are not sufficient to establish the fact that the service recipients are non-resident foreign corporations doing business outside the Philippines, as they may be considered self-serving because the said documents were retrieved from the AMINET database, a database set up by Deutsche Bank Group.[6] Additionally, these documents are not duly authenticated.

At this juncture, it bears to emphasize that tax refunds or tax credits - just like tax exemptions – are strictly construed against taxpayers, the latter having the burden to prove strict compliance with the conditions for the grant of the tax refund or credit.[7]

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[6] Par. 39, Petitioner's Memorandum, Docket – Vol. VIII, p. 3937.

[7] *Sitel Philippines Corporation (Formerly Clientlogic Phils., Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 201326, February 8, 2017.

WHEREFORE, in view of the foregoing considerations, petitioner's **Motion for Reconsideration** is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice