REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

DEUTSCHE KNOWLEDGE SERVICES, PTE. LTD.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8443

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, *and*
COTANGCO-MANALASTAS, *JJ.*

Promulgated:

JUL 2 4 2015 11:15 am

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RESOLUTION

CASTAÑEDA, JR., *J.*:

For resolution is petitioner's **Motion For Partial Reconsideration of Decision dated July 7, 2014**, filed through registered mail on July 23, 2014 and received by this Court on July 30, 2014, without respondent's comment as per Records Verification[1] dated August 22, 2014.

On July 7, 2014, this Court rendered a Decision, partially granting petitioner's claim for refund or issuance of tax credit certificate in the reduced amount of ₱14,882,227.02 representing its unutilized input VAT on purchases of goods and services attributable to zero-rated sales for the first quarter of 2010, the dispositive portion of which reads as follows:

> "**WHEREFORE,** premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED.**

[1] Docket, p. 1481.

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.

SO ORDERED."[2]

In view of the above-cited Decision, respondent filed on July 21, 2014 her Motion for Partial Reconsideration (Re: Decision Promulgated July 7, 2014)[3], praying that the decision granting petitioner's claim of refund be reconsidered and set aside, with petitioner's Comment (Re: Respondent's Motion for Partial Reconsideration dated July 18, 2014)[4].

Subsequently, on July 23, 2014, petitioner filed through registered mail, an Omnibus Motion (For Partial Reconsideration of Decision dated July 7, 2014 and To Re-Open Trial to Present Supplemental Evidence)[5], which was received by the Court on July 30, 2014, without respondent's comment.

The Court, in its Resolution[6] dated October 13, 2014, denied respondent's Motion for Partial Reconsideration, while it granted petitioner's Motion to Re-Open Trial to Present Supplemental Evidence. The Court set the presentation of petitioner's supplemental evidence on November 5, 2014. Meanwhile, respondent opposed the said Resolution, through its Motion for Reconsideration (Re: Resolution Promulgated October 13, 2014)[7], arguing that the supplemental evidence sought to be presented in a special hearing is not newly discovered. During hearing on November 5, 2014, the Court denied said motion.[8]

When the trial was re-opened, petitioner presented Ms. Rachel M. Concepcion, its Legal Entity Controller. Thereafter, petitioner offered exhibits "P-1" to "P-34-a" in a Supplemental Formal Offer of Evidence (FOE)[9], with respondent's Comment (on Petitioner's

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[2] Docket, p. 1171.
[3] Docket, pp. 1187-1195.
[4] Docket, pp. 1468-1478.
[5] Docket, pp. 1199-1215.
[6] Docket, pp. 1483-1494.
[7] Docket, pp. 1759-1766.
[8] Minutes of the Hearing dated November 5, 2014, docket, p. 1768.
[9] Docket, pp. 1791-1797.

Supplemental Formal Offer of Evidence)[10]. Consequently, the Court admitted Exhibits "P-1" to "P-34-a" in a Resolution[11] dated April 30, 2015. Thereafter, the Court submitted for resolution the instant Motion for Partial Reconsideration.[12]

Hence, We now resolve petitioner's Motion for Partial Reconsideration.

In the instant motion, petitioner invokes the following grounds:

A. Petitioner's unutilized input VAT in the amount of Php33,868,101.19 is duly substantiated and therefore must be accordingly refunded.

B. 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.

The first issue has already been thoroughly addressed in the Court's Resolution dated October 13, 2014[13], nonetheless, We reiterate the ruling as follows:

> "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 P1,000,000.00, 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.

[10] Docket, pp. 1802-1803.
[11] Docket, pp. 1806-1807.
[12] *Ibid.*
[13] Docket, pp. 1483-1493.

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 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.

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Consequently, this 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."[14]

As regards the second issue, petitioner insists that it was able to prove the rest of its clients as non-resident foreign entities doing business outside the country. In order to prove that its non-resident clients are indeed doing business outside the Philippines, and thus, sales to its non-resident foreign clients are zero-rated, petitioner submitted the following supplemental evidence:

[14] Docket, pp. 1491-1492.

COMPANY NAME	Exhibit No. (Company Profile Fact Sheet)	Exhibit No. (Company Registration Document/Articles of Association/Articles of Incorporation/Restated Certificate/Organization Certificate/Memorandum of Association)
Deutsche Bank, Aktiengesellschaft, Inlandsbank	P-1	none
Deutsche Bank, Aktiengesellschaft, Filiale Amsterdam	P-2	P-20
Deutsche Bank, Aktiengesellschaft, Sociedad Anonima Espanola	P-3	none
Deutsche Bank, Aktiengesellschaft, Filiale Zurich	P-4	none
Deutsche Bank, Aktiengesellschaft, Filiale Karachi	P-5	P-21
Deutsche Bank, Aktiengesellschaft, Filiale Seoul	P-6	P-22
Deutsche Bank, Aktiengesellschaft, Filiale Tokyo	P-7	P-23
Deutsche Bank, Aktiengesellschaft, Filiale Paris	P-8	P-24
Deutsche Bank, Aktiengesellschaft, Filiale Prag	P-9	P-25
Deutsche Bank (China) Co., Ltd., Guangzhou Branch	P-10	none
RREEF Management GmbH	P-11	P-26
DB Hedgeworks Fund Services Limited	P-12	
Deutsche Bank Real Estate (Japan) Y.K.	P-13	P-27
Deutsche Bank Securities Inc.	P-14	P-28
Deutsche Bank Polska Spolka Akcyjna	P-15	none
Deutsche Bank Trust Company Americas	P-16	P-30
DB Services New Jersey, Inc.	P-17	P-31
Deutsche Bank National Trust Company	P-18	P-32
DBOI Global Services Private Limited	P-19	P-33
Deutsche Bank PBC S.A.		P-29

After a thorough evaluation of petitioner's Supplemental FOE, the Court observed that exhibits **"P-1"** to **"P-19"** which pertain to the Company Profile Fact Sheet, that provides the "Legal Information and Status" (Name, Date of Incorporation, Country), among others, were retrieved from the AMInet. Meanwhile, Exhibits **"P-20"** to **"P-33"** are foreign business registration documents, retrieved from the AMInet database as well.

All the abovementioned pieces of evidence were computer print-outs retrieved from petitioner's very own database. According to petitioner's witness, Ms. Rachel M. Concepcion, AMInet is a database set up by its head office located in Germany. In her Supplemental Sworn Statement[15], she testified that:

> "AMINET is a web-based database set up by Deutsche Bank Global, the head office located in Germany. The database is maintained in the regular course of business to comply with and fulfill the internal and external requirements of the German Federal Financial Supervisory Authority, better known as BaFin, which is the financial regulatory authority for the German government.
>
> The AMInet contains all the relevant details and information regarding the legal entities and other reportable vehicles within the DB Group pertaining to their respective company profiles, registered addresses, directors' information, annual reports and other financial information. The information in the database can be viewed, retrieved and printed."[16]

It is to be noted that while a particular item of evidence may be admissible, it does not mean that it would automatically be given evidentiary weight because it would depend on judicial evaluation within the guidelines set by the Rules of Court.[17] "Admissibility refers to the question of whether certain pieces of evidence are to be considered at all, while probative value refers to the question of whether the admitted evidence proves an issue."[18]

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[15] Exhibit P-34, docket, pp. 1499-1507.
[16] *Ibid.*, p. 1500.
[17] *Heirs of Lourdes Saez Sabanpan et al. v. Comorposa et al.,* G.R. No. 152807, August 12, 2003 citing *PNOC Shipping and Transport Corporation v. Court of Appeals,* 358 Phil 38; 297 SCRA 402, October 8, 1998.
[18] *Ibid.*

The Court gives scant probative value to exhibits "P-1" to "P-19", on account that these exhibits were prepared solely and exclusively by petitioner whereas exhibits "P-20" to "P-33" where taken from documents which were not presented, and thus self-serving, absent verification by independent documents.[19]

Following Section 1, Rule 7 of the Rules on Electronic Evidence, the factors that may be considered in determining the evidentiary weight of an electronic document are:

> " (a) The reliability of the manner or method in which it was generated, stored or communicated, including but not limited to input and output procedures, controls, tests and checks for accuracy and reliability of the electronic data message or document, in the light of all the circumstances as well as any relevant agreement;
>
> (b) The reliability of the manner in which its originator was identified;
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> (c) The integrity of the information and communication system in which it is recorded or stored, including but not limited to the hardware and computer programs or software used as well as programming errors;
>
> (d) The familiarity of the witness or the person who made the entry with the communication and information system;
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> (e) The nature and quality of the information which went into the communication and information system upon which the electronic data message or electronic document was based; or
>
> (f) Other factors which the court may consider as affecting the accuracy or integrity of the electronic document or electronic data message."[20]

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[19] *Equitable-PCI Bank (formerly known as Equitable Banking Corporation) v. Commissioner of Internal Revenue*, CA-G.R. SP No. 60786, July 31, 2001.
[20] Section 1, Rule 7, A.M. NO. 01-7-01-SC.

In the instant case, petitioner's witness was not the one who entered the details in the AMInet system, with respect to the alleged non-resident foreign corporations doing business outside the Philippines. Neither did she witness someone make the entry. During cross-examination, the witness admitted that she was not present when the entries were encoded.[21] Thus, we cannot give credence to Exhibits "P-1" to "P-33", which are electronic documents. In effect, this Court is not convinced that these entities are non-resident foreign corporations doing business outside the Philippines.

It has been ruled that "tax refunds, being in the nature of tax exemptions, are construed in *strictissimi juris* against the taxpayer and liberally in favor of the government. Accordingly, it is a claimant's burden to prove the factual basis of a claim for refund or tax credit".[22]

WHEREFORE, in view of the foregoing, petitioner's **Motion For Partial Reconsideration of Decision dated July 7, 2014** is **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

	(On Leave)
CAESAR A. CASANOVA	**AMELIA R. COTANGCO-MANALASTAS**
Associate Justice	Associate Justice

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[21] Transcript of Stenographic Notes dated February 11, 2015, p. 7.
[22] *Eastern Telecommunications Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.