REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner*,	**CTA *EB* NO. 2641** *(CTA Case No. 9227)*
-versus-	
DEUTSCHE KNOWLEDGE SERVICES PTE, LTD., *Respondent.*	
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DEUTSCHE KNOWLEDGE SERVICES PTE, LTD., *Petitioner*,	**CTA *EB* NO. 2644** *(CTA Case No. 9227)*
	Present:
-versus-	**DEL ROSARIO, P.J., RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: OCT 0 4 2023 3:45pm

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D E C I S I O N

MODESTO-SAN PEDRO, J.:

The Case

Before the Court *En Banc* are the following: a) the Commissioner of Internal Revenue's ("CIR") **PETITION FOR REVIEW ("CIR's Petition")**, filed on 11 July 2022,[1] with Deutsche Knowledge Services Pte, Ltd.'s ("Deutsche") **COMMENT (Re: Petition for Review dated July 8, 2022) ("Deutsche's Comment")**, filed on 30 August 2022;[2] and b) Deutsche's **PETITION FOR REVIEW ("Deutsche's Petition")**, filed on 14 July 2022,[3] with the CIR's Manifestation that he will adopt the arguments raised in his Petition as his comment to **Deutsche's Petition.**[4]

The Parties

Deutsche is the Philippine branch of a multinational company organized and existing under and by virtue of the laws of Singapore, with registered office address at One Raffles Quay, # 17-10 South Tower, Singapore 048583. It is licensed to do business as a regional operating headquarters ("ROHQ") in the Philippines by the Securities and Exchange Commission ("SEC") on 25 April 2005 with SEC Registration No. FS200506950, pursuant to the ***Omnibus Investment Code of 1987, as amended by Republic Act No. ("RA") 8756***, and its implementing rules and regulations, to engage in general administration and planning; business planning and coordination; sourcing/procurement of raw materials and components; corporate finance advisory services; marketing control and sales promotion; training and personal management; logistics services; research and development services and product development; technical support and maintenance; and data processing and communication and business development. It was registered with the Bureau of Internal Revenue ("BIR") on 16 June 2005 as a value added tax ("VAT") – registered taxpayer with Taxpayer Identification Number ("TIN") 238-763-115-000.[5]

The CIR is the head of the BIR with office address at the BIR National Office Building, Diliman, Quezon City. He is empowered to perform the duties of his office, including, among others, the duty to act upon and approve claims for refund or tax credit as provided by law.[6]

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1 CIR's Petition, Records for *EB* Case No. 2641, pp. 7-81.
2 *Id.*, pp. 106-120.
3 Deutsche's Petition, Records, for *EB* Case No. 2644, pp. 5-73.
4 CIR's Petition, Records for *EB* Case No. 2641, pp. 121-124.
5 Assailed Decision, pp. 1-2, Records for *EB* Case No. 2644, pp. 19-20.
6 *Id.*, p. 20.

The Facts

On 1 September 2015, Deutsche filed an administrative claim for VAT refund on alleged excess input VAT that it incurred during the fourth quarter of calendar year ("CY") 2013 in the amount of Thirty One Million Six Hundred Eighty One Thousand Two Hundred One and 78/100 Pesos (Php31,681,201.78).[7]

Deutsche's administrative claim was unacted upon by the CIR until 30 December 2015, which was the end of the 120-day period given to the latter to act upon VAT refund claims. As such, Deutsche filed a Petition for Review before the Court in Division to institute its judicial claim for VAT refund.[8]

On 18 November 2021,[9] the Court in Division issued the Assailed Decision which found Deutsche entitled to a partial VAT refund in the total amount of Nineteen Million Two Hundred Fifty Eight Thousand Seven Hundred Seventy Three and 94/100 pesos (Php19,258,773.94).[10]

Thereafter, both parties filed Motions for Partial Reconsideration impugning the Assailed Decision.[11] On 6 June 2022, the Court in Division promulgated the Assailed Resolution denying both Motions for Partial Reconsideration.[12]

Consequently, on 14 July 2022, Deutsche's Petition was filed before the Court *En Banc*,[13] while the CIR's Petition was filed before the Court *En Banc* on 11 July 2022.[14]

Deutsche's Comment was then filed on 30 August 2022.[15] On the other hand, the CIR filed a Manifestation on 6 September 2022 that he will simply adopt the arguments which he raised in his Petition as comment to Deutsche's Petition.[16]

In a Resolution, dated 12 October 2022, the instant case was submitted by the Court *En Banc* for Decision.

Hence, this Decision.

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7 *Id.*, pp. 20-23.
8 *Ibid.*
9 *Id.*, p. 19.
10 *Id.*, p. 61.
11 *Id.*, p. 64.
12 *Id.*, pp. 63-73.
13 *Id.*, pp. 5-73.
14 CIR's Petition, Records for *EB* Case No. 2641, pp. 7-81.
15 *Id.*, pp. 106-120.
16 *Id.*, pp. 121-124.

The Assigned Errors

In the **CIR's Petition**, the CIR raises the issue of whether the Court in Division erred in ruling that respondent was able to substantiate its claim for refund.[17]

On the other hand, in **Deutsche's Petition,** Deutsche raises the issues of: a) whether or not Deutsche was able to sufficiently prove that all of its zero-rated sales were made to non-resident foreign corporations ("NRFCs") doing business outside the Philippines; and b) whether or not Deutsche properly substantiated its zero-rated sales in accordance with ***Section 108 (B) (2) of the National Internal Revenue Code, as amended ("NIRC"),*** and ***Sections 4.113-1 (A) (2), (B) (1) and (2) (C) of Revenue Regulations No. ("RR") 16-2005.***[18]

Arguments of the Parties

The CIR argues as follows in the its **Petition**:[19]

1. The instant judicial claim should be denied for Deutsche's failure to substantiate the claim for refund at the administrative level;

2. Deutsche failed to prove that its services were performed in the Philippines;

3. Deutsche failed to prove that its clients are NRFCs doing business outside the Philippines;

4. Deutsche failed to prove that its alleged zero-rated sales were paid for in US Dollars and were properly accounted for;

5. A Petition for Review before the Court in Division of an unsuccessful administrative claim is not an original action. As an appellate court, the Court in Division is bound to review only the pieces of evidence presented by the taxpayer in the administrative claim for refund; and

6. Claims for refund are construed strictly against the taxpayer and in favor of the government.

On the other hand, Deutsche argued the following in its **Petition**:[20]

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17 *Id.*, p. 10.
18 Deutsche's Petition, Records for *EB* Case No. 2644 pp. 7-8.
19 CIR's Petition, Records for *EB* Case No. 2641, pp. 10-17.
20 Deutsche's Petition, Records for *EB* Case No. 2644 pp. 8-15.

1. Deutsche was able to sufficiently prove, by preponderance of evidence, that all of its zero-rated sales were made to NRFCs doing business outside the Philippines; and

2. Deutsche properly substantiated its zero-rated sales in accordance with ***Section 108 (B) (2) of the NIRC*** and ***Sections 4.113-1 (A) (2), (B) (1) and (2) (c) of RR 16-2005.***

In **Deutsche's Comment**, Deutsche alleged that the Court in Division is not precluded from accepting evidence assuming these were not presented at the administrative level as cases filed in the Court in Division are litigated *de novo.* Further, it alleges that is has duly proven that: a) its services were performed in the Philippines; b) its clients are NRFCs not doing business in the Philippines; and c) its zero-rated sales paid in acceptable foreign currencies were duly accounted for. Moreover, Deutsche insists that a tax refund case is still a civil case, where the quantum of evidence required to prove its claim is merely preponderance of evidence.[21]

The Ruling of the Court *En Banc*

This Court *En Banc* resolves to **DENY** both **Petitions** for lack of merit.

The CIR's Petition

The primary contention which the CIR raises is that the Court in Division erred in admitting documentary evidence leading to a partial grant of Deutsche's claim for refund even though such documentary proof was not even presented before the BIR during the proceedings for the administrative claim for refund.

This is terribly misplaced. This Court, in deciding judicial refund cases, is not limited to evidence presented during the administrative claim.

That this Court is a court of record which has the power to conduct a trial *de novo* has already been ruled upon by the High Court. Indeed, in ***Commissioner of Internal Revenue v. Manila Mining Corporation***,[22] the Supreme Court discussed this matter, as follows:

"This Court thus notes with approval the following findings of the CTA:

XXX XXX XXX

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21 CIR's Petition, Records for *EB* Case No. 2641, pp. 104-118.
22 G.R. No. 153204, 31 August 2005.

> Section 8 of Republic Act 1125 (An Act Creating the Court of Tax Appeals) provides categorically that the Court of Tax Appeals shall be a court of record and as such it is required to conduct a formal trial (trial de novo) **where the parties must present their evidence accordingly if they desire the Court to take such evidence into consideration."**
> (Emphasis, Ours.)

Considering this, every minute aspect of a taxpayer's judicial claim for refund must be proven before this Court. This means that for a judicial claim for refund to be granted by this Court, all necessary documentary evidence proving a taxpayer's entitlement to a tax refund must be offered and presented before this Court. This is true regardless of whether such documentary evidence had been presented before the BIR during the administrative claim for refund. ***Commissioner of Internal Revenue v. Philippine Bank of Communications***,[23] is instructive, to wit:

> "The failure in proving an administrative claim for a CWT refund/credit does not preclude the judicial claim of the same.
>
> We agree with the CTA en banc's ruling that the failure of PBCOM to comply with the requirements of its administrative claim for CWT refund/credit does not preclude its judicial claim.
>
> In the case of Commisioner of Internal Revenue v. Manila Mining Corporation, this Court held that **cases before the CTA are litigated de novo where party litigants should prove every minute aspect of their cases,** to wit:
>
> > **Under Section 8 of Republic Act No. 1125 (RA 1125), the CTA is described as a court of record. As cases filed before it are litigated de novo, party litigants should prove every minute aspect of their cases. No evidentiary value can be given the purchase invoices or receipts submitted to the BIR as the rules on documentary evidence require that these documents must be formally offered before the CTA.**
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> **As applied in the instant case, since the claim for tax refund/credit was litigated anew before the CTA, the latter's decision should be solely based on the evidence formally presented before it, notwithstanding any pieces of evidence that may have been submitted (or not submitted) to the CIR.** Thus, what is vital in the determination of a judicial claim for a tax credit/refund of CWT is the evidence presented before the CTA, regardless of the body of evidence found in the administrative claim.

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[23] G.R. No. 211348, 23 February 2022, *citing* Commissioner of Internal Revenue v. Univation Motor Philippines, Inc., G.R. No. 231581, 10 April 2019.

> In Commissioner of Internal Revenue v. Univation Motor Philippines, Inc. (Formerly Nissan Motor Philippines, Inc.), this Court has explained that the CTA is not limited by the evidence presented in the administrative claim, to wit:
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> > The law creating the CTA specifically provides that proceedings before it shall not be governed strictly by the technical rules of evidence. The paramount consideration remains the ascertainment of truth. Thus, **the CTA is not limited by the evidence presented in the administrative claim in the Bureau of Internal Revenue. The claimant may present new and additional evidence to the CTA to support its case for tax refund.**
> >
> > Cases filed in the CTA are litigated de novo as such, respondent 'should prove every minute aspect of its case by presenting, formally offering and submitting x x x to the Court of Tax Appeals all evidence x x x required for the successful prosecution of its administrative claim.' Consequently, the CTA may give credence to all evidence presented by respondent, including those that may not have been submitted to the CIR as the case is being essentially decided in the first instance."
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> (Emphasis and underscoring, Ours)

Given the foregoing, in deciding judicial claims for refund, the Court of Tax Appeals ("CTA") is not solely limited to evidence presented during the administrative claim. The CTA may also admit new evidence not presented during the administrative claim to make a complete determination of a taxpayer's judicial claim for refund. The CTA is not precluded from accepting evidence even if the same were not presented at the administrative level.[24] This is because the proceedings before the CTA are entirely different from those before the BIR. A taxpayer is given a fresh chance to prove its entitlement to a judicial claim for refund before the CTA. Cases filed before this Court are thus litigated *de novo*,[25] and a taxpayer-claimant may present new and additional evidence before this Court to support its claim for refund. A taxpayer's failure to present a particular documentary evidence before the BIR to prove its administrative claim does not affect its judicial claim for refund. It does not lessen the taxpayer's chance of having its judicial claim being granted by this Court. In essence, proceedings before the CTA in a relation to a judicial claim for refund is a fresh opportunity for a taxpayer to prove its claim for refund. The only question that remains is whether the evidence submitted by a taxpayer is sufficient to warrant the granting of the VAT refund prayed for.[26]

Consequently, the Court in Division properly admitted new documentary evidence offered by Deutsche when it sought to prove its judicial claim despite the fact that such documentary proof was not offered during the administrative claim before the BIR.

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[24] Philippine Airlines, Inc. v. Commissioner of Internal Revenue, G.R. Nos. 206079-80, 17 January 2018.
[25] Commissioner of Internal Revenue v. Philippine National Bank, G.R. No. 180290, 29 September 2014.
[26] Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue, G.R. No. 207112, 8 December 2015.

From this and after a thorough review of the evidence on record, we also agree with the detailed findings by the Court in Division in the Assailed Decision[27] and Assailed Resolution[28] that Deutsche proved, albeit partially, the requisites necessary for the grant of its judicial claim for refund (*i.e.*, that its services were performed in the Philippines; that its clients are NRFCs not doing business in the Philippines; and that its zero-rated sales paid in acceptable foreign currencies were duly accounted for).

Notably, the CIR did not even identify specific errors committed by the Court in Division when it found that Deutsche adequately proved the requisites necessary for its VAT refund claim entitling it to a partial grant of its VAT refund claim. A perusal of the **CIR's Petition** will simply show that the CIR made general claims that Deutsche failed to prove that: a) its services were performed in the Philippines; b) its clients are NRFCs doing business outside the Philippines; and c) its alleged zero-rated sales were paid for in US Dollars and were duly accounted for, then merely cited jurisprudence in support of such. As between general claims made by the CIR that the Court in Division erred in granting a partial VAT refund to Deutsche (without specifically pointing as to how such error was committed), and the Court in Division's specific findings of fact backed by a thorough examination of the evidence on record, the latter is more authoritative. This Court *En Banc* therefore agrees with the findings of fact made by the Court in Division

Tax refunds are construed strictly against the taxpayer. Despite the odds stacked against it, however, Deutsche was able to prove in the present case by a preponderance of evidence that it is entitled to a partial VAT refund. Accordingly, Deutsche must be granted such.

Thus, the **CIR's Petition** has no leg to stand on and must be denied for lack of merit.

Deutsche's Petition

In Deutsche's Petition, Deutsche argues that the Court in Division erred in not awarding its full VAT refund claim. First and foremost, Deutsche insists that it was able to sufficiently prove, by preponderance of evidence, that all of its zero-rated sales were made to NRFCs doing business outside the Philippines. Deutsche contends that even if the business registration documents which it submitted lacked the requisite English translation, the same should still be given the same probative effect as foreign Articles of Incorporation/Association proving that petitioner's clients are doing business outside the Philippines since it was actually issued by the respective foreign

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[27] CIR's Petition, Records for *EB* Case No. 2641, pp. 26-70.
[28] *Id.*, pp. 71-81.

government agencies having jurisdiction over the place of business of petitioner's foreign clients.

This argument is flawed.

Untranslated documents offered as evidence do not have probative value. Clearly, the reason for this is that without an English translation, the contents of a document written in a foreign language cannot be understood by a court. Hence, there is no way for a court to determine whether the foreign document actually supports the contention by a party-litigant for which such has been offered as evidence. In ***St. Martin Polyclinic, Inc. v. LWV Construction Corporation***,[29] the Supreme Court declared in categorical terms that it is erroneous for a court to give probative value to documents written in unofficial language, *viz.*:

> "At any rate, the fact that Raguindin tested positive for HCV could not have been properly established since the courts *a quo*, in the first place, **erred in admitting and giving probative weight to the Certification of the General Care Dispensary, which was written in an unofficial language.** Section 33, Rule 132 of the Rules of Court states that:
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> > Section 33. *Documentary evidence in an unofficial language.* - Documents written in an unofficial language **shall not be admitted** as evidence, **unless accompanied with a translation into English or Filipino**. To avoid interruption of proceedings, parties or their attorneys are directed to have such translation prepared before trial.
>
> **A cursory examination of the subject document would reveal that while it contains English words, the majority of it is in an unofficial language. Sans any translation in English or Filipino provided by respondent, the same should not have been admitted in evidence; thus their contents could not be given probative value, and deemed to constitute proof of the facts stated therein.**"
> (Emphasis and underscoring, Ours.)

Thus, the Court in Division did not err in refusing to give probative value to the untranslated documents submitted in evidence by Deutsche allegedly as proof of the foreign business registration of its clients. This is because the Court in Division, not being fluent in the language in which such documents were written, could not verify if such documents indeed constitute the foreign business registration of Deutsche's clients.

Any admission of said untranslated documents in the resolution of Deutsche's Formal Offer of Evidence is of no moment here, either. Such admission is not tantamount to ascribing evidentiary weight to said

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[29] G.R. No. 217426, 4 December 2017.

documents, an issue best left to the discretion of the Court when studying the merits of a given case.

Deutsche also generally claimed that it was able to substantiate all of its zero-rated sales in accordance with ***Section 108 (B) (2) of the NIRC*** and ***Sections 4.113-1 (A) (2), (B) (1) and (2) (c) of RR 16-2005***. Particularly, it requested that the Court *En Banc* (a) take a second look at Official Receipt ("OR") No. 4945 issued to DB Consorzio S. Cons. a.r.l. in the amount of Php262,584.33, dated 19 November 2013; (b) revisit its disallowance of zero-rated sales in the amount of Php150,849,774.47 as the same were not supported by valid VAT ORs; and (c) reconsider its disallowance of zero-rated sales in the amount of Php2,349,982.15 which was disallowed due to a variance between the amount claimed by Deutsche and the amounts actually reflected in the inward remittance. According to Deutsche, such variance occurred because there is a difference between the conversion rate of Euro to Peso on the date the service was actually billed and on the date the OR was actually issued.

This Court *En Banc* finds no credence in any of Deutsche's contentions.

As regards OR No. 4945, we agree with the findings by the Court in Division that the zero-rated sale amounting to Php262,584.33 to DB Consorzio S. Cons. a.r.l. is supported by a VAT OR and proofs of remittance as shown by OR No. 4945,[30] Inter-company Invoice,[31] and proof of inward remittance,[32] but that the Philippine Peso equivalent of the inward remittance cannot be ascertained. Indeed, in the proof of inward remittance, the peso equivalent of the foreign currency received was not indicated. It was incumbent upon Deutsche to prove the Peso equivalent of the amount of inward remittance it received from this transaction. Failing to do this, the Court could not determine if Php262,584.33, as posited by Deutsche, is the actual amount of zero-rated sales represented in the aforesaid documents. The disallowance of such amount by the Court in Division is thus proper.

With respect to the disallowance of zero-rated sales amounting to Php150,849,774.47 as the same were not supported by valid ORs, Deutsche did not particularly point out why this Court *En Banc* should reconsider the factual findings of the Court in Division as it merely raised a general request for a second look. A review of the factual findings of the Court in Division on the matter shows that the same was the result of a meticulous inspection by the Court in Division of the evidence on record. For instance, Deutsche alleged in its Schedule of Zero-Rated Sales that services in the amount of Php1,156,561.36 were rendered to a foreign client named Deutsche Bank Trust Company Americas. However, a closer examination of the referred OR

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30 Exhibit "P-10-113".
31 Exhibit "P-10-113A".
32 Exhibit "P-10-113B".

(*i.e.*, OR No. 4879, with date "10/23/13", and which was attached as Exhibit "P-10-54"), will reveal that services were rendered to a certain "DB AG New York Branch". The Court in Division thus properly disallowed this zero-rated sale since there is a discrepancy on the payor indicated per OR and per Schedule of Zero-Rated Sales.

Moreover, as already mentioned in our discussion of the CIR's arguments, the Court *En Banc* will, for obvious reasons, more favorably consider the factual findings of the Court in Division, reached through a thorough examination of the evidence on record, than merely general allegations that the Court in Division made unspecified errors in its factual findings.

There is accordingly no reason to disturb the disallowance made by the Court in Division of zero-rated sales amounting to Php150,849,774.47, as the same were not supported by valid ORs. Due to Deutsche's failure to comply with the proper invoicing requirement for its services to its foreign clients, this item disallowance must be retained.

Finally, with respect to Deutsche's allegation that the Court in Division erred in disallowing the amount of Php2,349,982.15, the same is equally unmeritorious.

Deutsche alleges that the variance between the amount it claimed as zero-rated sales and the amounts actually reflected in the inward remittance occurred because there is a difference between the conversion rate of Euro to Peso on the date the service was actually billed and on the date the OR was actually issued. In support of such contention, Deutsche offered a table reconciling the zero-rated sales reflected on the refund claim with that reflected on the ORs.[33]

A closer inspection of such reconciliation table will show that a variance was indeed produced by the aforesaid conversion rate and time difference. However, there is still no demonstration linking such variance to the amount claimed to explain such discrepancy. The table, moreover, failed to either match or explain away the Court in Division's findings as presented in its own table in the Assailed Decision.[34] The disallowance of Php2,349,982.15 must thus be retained.

Consequently, **Deutsche's Petition** must likewise be denied for lack of merit.

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[33] Deutsche's Petition, Records for *EB* Case No. 2644 pp. 12-14.
[34] *See* Assailed Decision, *id.*, pp. 44-46.

WHEREFORE, both the **CIR's Petition** and **Deutsche's Petition** are hereby **DENIED** for lack of merit. Accordingly, the Resolution, dated 6 June 2022, and Decision, dated 18 November 2021, promulgated by the Court in Division are hereby **AFFIRMED**.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

ON LEAVE

HENRY S. ANGELES
Associate Justice

CERTIFICATION

Pursuant to *Article VIII, Section 13 of the Constitution*, it is hereby certified that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice