REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

DEUTSCHE KNOWLEDGE SERVICES PTE., LTD., *Petitioner,*	**CTA *EB* NO. 2249** (CTA Case No. 9154)
	Present:
-versus-	**DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO,** *and* **CUI-DAVID,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUN 0 1 2022 11:10am

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AMENDED DECISION

MANAHAN, J.:

On October 4, 2019, the Court of Tax Appeals (CTA) Third Division rendered its Decision denying petitioner's claim for refund in CTA Case No. 9154, as follows:

> **WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for failure of petitioner to show its sales of services for the 3rd quarter of 2013 qualify for VAT zero-rating.
>
> **SO ORDERED**.[1]

Petitioner's appeal before the CTA *En Banc* was likewise denied in the December 14, 2021 Decision, as follows:

> All told, the Court finds no reason to reverse or modify the findings of the Court in Division in CTA Case No. 9154.

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[1] Division Decision dated October 4, 2019, p. 17.

WHEREFORE, the Petition for Review is **DENIED** for lack of merit. The Decision and Resolution dated October 4, 2019 and February 14, 2020, respectively, are **AFFIRMED**.

SO ORDERED.[2]

Thus, on February 2, 2022, petitioner filed its *Motion for Reconsideration Re: Decision dated December 14, 2021.* [3] Respondent filed his *Opposition (Re: Motion for Reconsideration of the Decision dated 8 February 2022) [sic].*[4]

In its *Motion*, petitioner argues that it has sufficiently proved that its services fall within the scope of "services other than processing, manufacturing, or repacking of goods" under Section 108(b)(2) of the 1997 National Internal Revenue Code (NIRC), as amended. Petitioner also argues that as a regional operating headquarters (ROHQ), it is only engaged in services performed only in the Philippines. Petitioner also argues that the Court erred when it decided based solely on the fact that the Intragroup Service Agreements (IGSAs) lack any indication as to where the services were actually performed. Petitioner points out that its witness testified that petitioner is a multinational company organized under the laws of Singapore and is licensed to do business as an ROHQ in the Philippines; 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; and, 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, and with BIR Certificate of Registration which clearly indicates that petitioner is subject to income tax, VAT and withholding tax in the Philippines.

In his *Opposition*, respondent states that the Honorable Court categorically ruled that petitioner's arguments are the same arguments raised before the CTA 3rd Division which were already resolved in the Decision dated October 4, 2019 and Resolution dated February 14, 2020. Respondent states that the claimant has the burden of proof to establish the factual basis of his/her claim for tax credit or refund; and, that claims for refund are construed strictly against the taxpayer.

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[2] EB Docket, Decision dated December 14, 2021, p. 92.
[3] EB Docket, pp. 104-121.
[4] EB Docket, pp. 125-132.

The *Motion* is partially granted.

After a second hard look at the facts and circumstances of this case, the Court finds that petitioner was able to sufficiently prove that its services rendered are under the category of services other than processing, manufacturing or repacking of goods, and that said services were performed in the Philippines.

The testimony of petitioner's witness, Ms. Rachel Concepcion, was unrebutted, to wit:

> Q4: As the Legal Entity Controller, can you state the nature of Petitioner's business?
>
> A: Yes. Petitioner, which is a multinational company organized and existing under and by virtue of the laws of Singapore, is licensed to do business as a regional operating headquarters (ROHQ) in the Philippines 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 personnel management; logistic services, research and development services and product development; technical support and maintenance; data processing and communication and business development.
>
> **Specifically, Petitioner acts as a shared services center, which handles regional, as well as global, accounting and related controlling processes, such as accounting production work in the global general ledger in SAP, developing and operating inter-company clearing house, accounting and head office reporting for non-regulated entities and product control**.
>
> Q5: What is your proof in saying so?
>
> A: We have Petitioner's Certificate of Registration and License issued by the Securities and Exchange Commission (SEC) on April 25, 2005, (*Emphasis supplied*)

This testimony was also corroborated by petitioner's Certificate of Registration and License (CRL) issued by the Securities and Exchange Commission (SEC), authorizing

petitioner to act as an ROHQ, to conduct the services enumerated in Ms. Concepcion's testimony quoted above.

Considering the foregoing are unrebutted, the Court finds that petitioner sufficiently established that its services are other than processing, manufacturing or repacking of goods.

As to whether said services were performed in the Philippines, Ms. Concepcion's testimony was likewise unrebutted, *to wit*:

> Q23: How did Petitioner incur the input VAT credits which are the subject of the present claim for refund?
>
> A: Petitioner purchased goods and services **in the course of rendering services in the Philippines as a shared services center** to clients engaged in business conducted in the Philippines. These clients are all part of the Deutsche Bank Aktiengesellschaft Group (DB Group). (*Emphasis supplied*)

This testimony was likewise corroborated by petitioner's purchases of goods and services in the Philippines to be utilized in the Philippines in the course of rendering services to petitioner's clients.

Given the foregoing, and considering that respondent has not presented any evidence during trial contrary to or to rebut petitioner's evidence, the Court finds sufficient basis to reconsider the assailed Decision and rule that petitioner has proven that the services rendered by petitioner to its affiliates are services other than processing, manufacturing, or repacking of goods; and, that said services are rendered in the Philippines.

Moreover, the Court's findings as to which of petitioner's affiliate-clients are non-resident foreign corporations not engaged in business in the Philippines are affirmed.

Considering the foregoing, there is a need to remand the present case to the Third Division for computation of the refundable amount due to the petitioner.

WHEREFORE, the *Motion for Reconsideration Re: Decision dated December 14, 2021* filed by petitioner is **PARTIALLY GRANTED**.

Accordingly, let the case be **REMANDED** to the CTA Third Division for computation of the refundable amount due to petitioner, if any.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(With Dissenting Opinion)
ERLINDA P. UY
Associate Justice

(With due respect, I join the
Dissenting Opinion of Justice Uy)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(With due respect, I join the
Dissenting Opinion of Justice Uy)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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DEUTSCHE KNOWLEDGE SEVICES PTE. LTD., Petitioner,	**CTA EB NO. 2249** (CTA Case No. 9154)
	Present:
- versus -	**DEL ROSARIO,** P.J., **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO,** and **CUI-DAVID,** JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** JUN 0 1 2022 11:10 am

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DISSENTING OPINION

UY, J.:

With all due respect, I dissent to the conclusion reached by the *ponencia* in partially granting petitioner's *Motion for Reconsideration* and in remanding the instant case to the Third Division for computation of the refundable amount due to petitioner, if any.

It is my opinion that petitioner failed to sufficiently prove that the services rendered fall under the category of "services other than processing, manufacturing or repacking of goods", and that the services were performed in the Philippines.

In this case, to establish the nature of the services rendered by petitioner to its affiliates as well as the rendition of the said services in the Philippines, petitioner primarily relied on the testimony of its witness, Rachel Concepcion.

Contrary to the position of my esteemed colleague, I humbly submit that the testimony of said witness, albeit unrebutted, did not sufficiently establish the nature of the services rendered by petitioner to its affiliates as well as the rendition of the said services in the Philippines.

A careful examination of the records shows that the following service recipients were **not** covered by any *IntraGroup Service Agreement*, to wit:

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

Clearly, absent the said *IntraGroup Service Agreements*, there is no way for this Court to determine with certainty which type of services were rendered by petitioner to the foregoing entities.

As for the remaining service recipients, a careful examination of the admitted *IntraGroup Service Agreements* reveals that these documents lack any indication that the services were actually performed in the Philippines.

Thus, it is evident that other than the bare testimony of its witness, there is nothing in the evidence presented by petitioner which would support a conclusion that the services rendered fall under the category of "services other than processing, manufacturing or repacking of goods", and that the services were performed in the Philippines. Indeed, the Court should not give weight to such self-serving allegation. It is basic in the rule of evidence that bare allegations, unsubstantiated by evidence, are not equivalent to proof. In short, mere allegations are not evidence.[1]

[1] *Virginia Real v. Sisenando H. Belo*, G.R. No. 146224, January 26, 2007.

Likewise, 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. To my mind, 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.

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. [2]

All told, I **VOTE to DENY** the instant *Motion for Reconsideration* for lack of merit.

ERLINDA P. UY
Associate Justice

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