REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
****

DEUTSCHE KNOWLEDGE SERVICES PTE. LTD., Petitioner,	**CTA EB NO. 2421** (CTA Case No. 7921)
- versus -	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	
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COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2423** (CTA Case No. 7921)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO,** and **CUI-DAVID,** *JJ.*
DEUTSCHE KNOWLEDGE SERVICES PTE. LTD., Respondent.	***Promulgated:*** JUL 01 2022 9:50 a.m.
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DECISION

UY, *J.*:

Before the Court *En Banc* are two (2) consolidated *Petitions for Review*, assailing the Decision dated July 23, 2020[1] and

[1] EB Docket (CTA EB No. 2421 and 2423), pp.34 to 67; pp.19 to 52, respectively

Resolution dated January 14, 2021[2], rendered by the Second Division of this Court (Court in Division) in CTA Case No. 7921, entitled *"Deutsche Knowledge Services Pte. Ltd., Petitioner, vs. Commissioner of Internal Revenue, Respondent,"* the dispositive portions of which respectively read:

Decision dated July 23, 2020:

"**WHEREFORE**, premises considered, the instant Petition for Review filed by Deutsche Knowledge Services, Pte. Ltd. is **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is **ORDERED TO REFUND or ISSUE A TAX CREDIT CERTIFICATE** to petitioner in the amount of **NINE HUNDRED NINETY THOUSAND SEVEN HUNDRED THIRTY PESOS AND FIFTY-SIX CENTAVOS** (₱990,730.56), representing its excess and unutilized input VAT attributable to zero-rated sales for the first quarter of CY 2007.

SO ORDERED."

Resolution dated January 14, 2021:

"**WHEREFORE**, premises considered, respondent Deutsche Knowledge Services, Pte. Ltd.'s Motion for Reconsideration (Re: Decision dated July 23, 2020), filed on 20 August 2020, and petitioner Commissioner of Internal Revenue's Motion for Reconsideration, filed *via* registered mail on 24 August 2020 and received by the Court on 02 September 2020, are both **DENIED** for lack of merit.

SO ORDERED."

THE CONSOLIDATED PETITIONS FOR REVIEW

CTA EB No. 2421

CTA EB No. 2421 is entitled "Deutsche Knowledge Services, Pte. Ltd. (DKSPL), Petitioner, vs. Commissioner of Internal Revenue

[2] EB Docket (CTA EB No. 2421 and 2423), pp. 68 to 78; pp. 54 to 64, respectively.

(CIR), Respondent".[3] In this case, DKSPL prays that the assailed Decision and Resolution be reversed and set aside, insofar as it reduced the amount of claim for refund to ₱990,730.56. Moreover, it prays that this Court issue a judgment, ordering the CIR to refund and/or issue a tax credit certificate to DKSPL in the amount of ₱12,549,446.30, representing petitioner's excess and unutilized input value-added tax (VAT) on purchases of goods and services attributable to zero-rated sales for the 1st quarter of calendar year (CY) 2007.

CTA EB No. 2423

CTA EB No. 2423 is entitled "Commissioner of Internal Revenue, Petitioner, vs. Deutsche Knowledge Services, Pte. Ltd., Respondent".[4] In the instant case, the CIR prays that the assailed Decision and Resolution be reversed and set aside, and another be rendered, denying the entire claim for refund.

THE PARTIES

Deutsche Knowledge Services, Pte. Ltd. (DKSPL) 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. On April 25, 2005, the Securities and Exchange Commission (SEC), pursuant to the Omnibus Investments Code of 1987, as amended by Republic Act (RA) No. 8756 and its implementing rules and regulations, issued a license to DKSPL to do business as a regional operating headquarters (ROHQ) in the Philippines; to engage in general administration and planning, business planning and coordination, sourcing/procuring of raw materials and components, corporate finance advisory services, marketing control and sales promotion, training and personal management, logistic services, research and development services, product development, technical and support and maintenance, and data processing and communication and business development. On June 16, 2005, DKSPL also registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer with Taxpayer Identification No. (TIN) 238-763-115-000.

[3] EB Docket (CTA EB No. 2421), pp. 6 to 27.
[4] EB Docket (CTA EB No. 2423), pp. 6 to 17.

The CIR is the duly appointed Commissioner of Internal Revenue 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. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

THE FACTS

In the first quarter of CY 2007, DKSPL rendered services in the Philippines to persons engaged in business conducted outside the Philippines; the payments for which were made in Euro and other acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP).

On April 25, 2007, DKSPL filed its original quarterly VAT return for first quarter of CY 2007 with the BIR. Through the electronic filing and payment system (eFPS), DKSPL filed an amended quarterly VAT return for the first quarter of CY 2007 on April 17, 2008.

On March 31, 2009, DKSPL filed with the BIR-Revenue District Office No. 47 an Application for Tax Credits/Refunds of its excess and unutilized input VAT for the first quarter of CY 2007 in the amount of ₱12,549,446.30.

Due to the CIR's inaction, DKSPL filed a *Petition for Review* before the Court in Division on April 17, 2009, docketed as CTA Case No. 7921, praying for the Court to order the CIR to refund or issue tax credit certificate (TCC) in the amount of ₱12,549,446.30, representing its excess and unutilized input VAT on purchases of goods and services attributable to zero-rated sales for the first quarter of CY 2007. DKSPL based its claim on Section 108 (B) (2), in relation to Sections 110 (B) and 112 (A) of the National Internal Revenue Code (NIRC) of 1997, as amended by RA 9337.

On June 8, 2009, the CIR filed a *Motion to Dismiss* dated May 27, 2009, seeking the dismissal of CTA Case No. 7921 for lack of jurisdiction, and alleging that the claim for refund or tax credit was filed out of time, citing *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Mirant)*.[5] The CIR argued that *Mirant* has put

[5] G.R. No. 172129, September 12, 2008.

to rest the issue on the reckoning of the prescriptive period on claims for refund of input VAT attributable to zero-rated or effectively zero-rated sales, which should be from the close of the taxable quarter when the relevant sales were made. While the administrative claim for refund was filed on March 31, 2009, the judicial claim was allegedly filed with this Court only on April 17, 2009, beyond the two (2)-year period prescribed by law. On the same day, the CIR also filed his *Answer*.

On August 4, 2009, DKSPL filed a *Manifestation* alleging that it filed and served copies of the attached *Comment/Opposition Re: Respondent's Motion to Dismiss dated May 27, 2009 (with Motion to Set Case for Pre-Trial)* by registered mail.

In the Resolution dated October 28, 2009, the Court in Division granted the CIR's motion and dismissed the *Petition for Review* for having been filed out of time.

On November 16, 2009, DKSPL filed a *Motion for Reconsideration (Re: Resolution dated 28 October 2009)* and prayed for the Court to reconsider its Resolution dated October 28, 2009 and to set the case for pre-trial.

On January 11, 2010, the Court in Division issued an Order transferring the case to the Third Division pursuant to CTA Administrative Circular No. 01-2010.

On February 8, 2010, the Court's Former Second Division issued a Resolution denying DKSPL's Motion for Reconsideration.

After having been granted an extension of time to file, DKSPL filed its *Petition for Review* before the Court *En Banc* on March 15, 2010, docketed as CTA EB Case No. 596.

In its Resolution dated June 2, 2010, the Court *En Banc* noted that, despite notice, the CIR failed to file his Comment to the said Petition for Review. The Court *En Banc* then gave due course to the *Petition for Review* and directed the parties to submit their memoranda within a period of thirty (30) days.

On July 29, 2010, the Court *En Banc* noted that DKSPL filed its *Memorandum* on July 22, 2010 while the CIR failed to file his

Memorandum within the period granted. The Court *En Banc* thereafter deemed the case submitted for decision.

On July 22, 2011, the Court *En Banc* promulgated a Decision in CTA EB Case No. 596 affirming with modification the October 28, 2009 Resolution of the Former Second Division and its February 8, 2010 Resolution. It held that CTA Case No. 7921 was prematurely filed pursuant to the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[6]

In disagreement with the Court *En Banc*, DKSPL filed a *Petition for Review* before the Supreme Court, docketed as G.R. No. 197980, assailing the July 22, 2011 Decision of the Court *En Banc*. Further, it sought the issuance of an order directing the parties to continue with the trial of the case before the Court in Division.

After the filing of the Solicitor General's *Comment* and DKSPL's *Reply (and Motion for Leave to File Supplemental Reply with the attached Supplemental Reply),* the Supreme Court issued a Decision on December 1, 2016, reversing and setting aside the Court *En Banc*'s assailed Decision in CTA EB Case No. 596. It also ordered the Court in Division to proceed with the hearing and resolution of CTA Case No. 7921.

On April 26, 2018, the Court *En Banc* remanded the case to the Former Second Division for further proceedings. On May 24, 2018, the case was set for pre-trial on June 21, 2018.

On July 11, 2018, both parties filed a *Joint Stipulation of Fact and Issues*. On July 20, 2018, the Court in Division issued a Pre-Trial Order.

Thereafter, trial ensued. DKSPL presented two (2) witnesses, namely: (1) Maricel Tio-Balagtas, DKSPL's Legal Entity Controller; and, (2) Glenn Ian D. Villanueva, the court-commissioned Independent Certified Public Account (ICPA). Upon resolution of its *Formal Offer of Evidence* and *Amended FOE,* DKSPL rested its case.

In view of the CIR's manifestation on October 15, 2018 that he will no longer present evidence in CTA Case No. 7921, the Court in

[6] G.R. No. 184823, 06 October 2010.

Division directed the parties to submit their respective memoranda within thirty (30) days from notice. Considering the filing of DKSPL's *Memorandum* on July 26, 2019, and the CIR's failure to submit his memorandum, despite notice, CTA Case No. 7921 was submitted for decision on August 23, 2019.

In the assailed *Decision* dated July 23, 2020, the Court in Division partially granted DKSPL's claim for refund, and ordered the CIR to refund DKSPL the amount of ₱990,730.56, representing its excess and unutilized input VAT attributable to zero-rated sales for the first quarter of CY 2007.

Aggrieved, DKSPL filed a *Motion for Reconsideration (Re: Decision dated July 23, 2020)* on August 20, 2020, without the CIR's comment. For his part, the CIR filed his *Motion for Reconsideration* on August 24, 2020, with DKSPL's *Comment (Re: Motion for Reconsideration dated August 24, 2020).*

In the assailed *Resolution* dated January 14, 2021, the Court in Division denied both Motions for lack of merit.

Undaunted, on February 2, 2021, DKSPL filed before the Court *En Banc* a *Motion for Extension of Time To File Petition for Review*,[7] praying for an extension of fifteen (15) days from February 2, 2021, or until February 17, 2021, within which to file its *Petition for Review*. As prayed for, the Court *En Banc* granted DKSPL's motion.[8]

Likewise, the CIR filed a *Motion for Extension of Time to File Petition for Review* on February 4, 2021,[9] praying for an additional period of fifteen (15) days from February 6, 2021, or until February 21, 2021, to file his *Petition for Review*. The Court *En Banc* also granted the CIR's motion.[10]

On February 17, 2021, DKSPL filed its *Petition for Review* before the Court *En Banc*, docketed as CTA EB No. 2421,[11] while

[7] EB Docket (CTA EB No. 2421), pp. 1 to 4.
[8] Minute Resolution dated February 3, 2021, EB Docket (CTA EB No. 2421), p. 5.
[9] EB Docket (CTA EB No. 2423), pp. 1 to 4.
[10] Minute Resolution dated February 5, 2021, EB Docket (CTA EB No. 2423), p. 5.
[11] EB Docket (CTA EB No. 2421), pp. 6 to 27.

the CIR filed his *Petition for Review* on February 22, 2021, docketed as CTA EB No. 2423.[12]

Considering that the instant cases are appeals from the Decision dated July 23, 2020 and Resolution dated January 14, 2021, both rendered by the Court in Division in CTA Case No. 7921, CTA EB No. 2423 was consolidated with CTA EB No. 2421 on March 1, 2021.[13]

In the Resolution dated March 18, 2021,[14] the Court *En Banc* ordered DKSPL to submit the following: (a) proof of the date of its receipt of the assailed Resolution; and (b) its Comment to the Petition filed by the CIR, both within ten (10) days of notice. Pursuant thereto, DKSPL filed its *Compliance*[15] on May 26, 2021, and its *Comment (Re: Petition for Review dated February 22, 2021)*[16] on May 31, 2021.

In the Resolution[17] dated June 21, 2021, DKSPL's *Compliance* was noted and the CIR was ordered to file his comment to DKSPL's *Petition for Review* within ten (10) days from receipt thereof. On July 2, 2021, the CIR filed *Respondent's Comment (On Petitioner's Petition for Review dated 17 February 2021).*[18]

Thereafter, the instant consolidated cases were deemed submitted for decision in the Resolution dated July 28, 2021.[19] Hence, this Decision.

THE ISSUE

In **CTA EB No. 2421**, DKSPL alleges that the CTA-Division partially denied its claim for refund and reduced the total claim by ₱11,558,715.73. However, DKSPL claims that it is entitled to the entire claim for refund in the amount of ₱12,549,446.30.

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[12] EB Docket (CTA EB No. 2423), pp. 6 to 17.
[13] Minute Resolution dated March 1, 2021, EB Docket (CTA EB No. 2421), p. 79.
[14] EB Docket (CTA EB No. 2421), pp. 81 to 82.
[15] EB Docket (CTA EB No. 2421), pp. 83 to 85.
[16] EB Docket (CTA EB No. 2421), pp. 86 to 93.
[17] EB Docket (CTA EB No. 2421), pp. 95 to 96.
[18] EB Docket (CTA EB No. 2421), pp. 97 to 106.
[19] EB Docket (CTA EB No. 2421), pp. 109 to 110.

In **CTA EB No. 2423**, the CIR contends that the Court in Division erred in partially granting DKSPL's claim for tax refund in the amount of P990,730.56 representing the latter's excess and unutilized input VAT attributable to zero-rated sales for the first quarter of CY 2007.

In light of the foregoing arguments raised by both parties, the general issue for the Court *En Banc's* resolution is as follows:

> "Whether or not DKSPL is entitled to its claim for refund or issuance of TCC of its alleged excess or unutilized input VAT attributable to zero-rated sales in the total amount of ₱12,549,446.30 for the first quarter of CY 2007."

DKSPL's arguments

In its *Petition for Review* in CTA EB Case No. 2421, DKSPL contends that it has sufficiently shown by preponderance of evidence – the standard of proof required by law – that its clients are nonresident foreign corporations doing business outside the Philippines.

It disagrees with the position that the SEC's negative certification and certificate/articles of foreign incorporation/ association are requirements *sine qua non* in proving that an entity is a nonresident foreign entity doing business outside the Philippines.

DKSPL likewise argues that the proofs it submitted are not self-serving evidence as defined in jurisprudence. Self-serving evidence pertains to statements made outside of the Court or extra-record evidence where the opposing party was not given a chance to cross-examine or challenge its content.

Finally, DKSPL avers that its input VAT in the amount of ₱12,549,446.30 for the 1st quarter of CY 2007 is properly substantiated and attributable to its zero-rated sales.

In its *Comment* in CTA EB Case No. 2423, DKSPL counters that the errors raised by the CIR in his Petition deserve scant consideration.

According to DKSPL, the testimony of a custodian of records kept in the regular conduct of business activity is exempted from the rule on hearsay evidence. Moreover, the sales invoices that contained erasures and countersignatures were supported by notarized documents attesting to the corrections therein.

Finally, it has been able to prove by sufficient and competent evidence its entitlement to the refund or issuance of a TCC for its excess and unutilized input VAT for the 1st quarter of CY 2007 in the amount of ₱12,549,446.30, attributable to its zero-rated sales and purchases of goods for the period.

CIR's arguments:

In his *Petition for Review* in CTA EB Case No. 2423, the CIR contends that the Court in Division erred in giving credence to the testimony of DKSPL's witness, Maricel Tio Balagtas, as its Legal Entity Controller. Moreover, the Court in Division erred in giving probative value to the testimony of Glenn Ian D. Villanueva, the court-commissioned ICPA, on the sales invoice with erasures and countersignatures.

Finally, the CIR avers that the Court in Division erred in relaxing the technical rules of evidence and giving weight to the Certificates of Non-Registration, despite noted discrepancies in the names of claimed affiliate clients.

In his *Comment* in CTA EB Case No. 2421, CIR counters that the documents submitted by DKSPL failed to specifically prove that its clients are non-resident foreign corporation doing business outside the Philippines. Moreover, DKSPL allegedly failed to fully substantiate its alleged incurred input VAT in the amount of ₱12,549,446.30 attributed to zero-rated sales.

THE COURT *EN BANC*'S RULING

Both *Petitions for Review* lack merit.

According to DKSPL, the case of *Commissioner of Internal Revenue vs. Deutsche Knowledge Services PTE. LTD. (Deutsche*

Case),[20] does *not* categorically state that the SEC's negative certification and certificate/articles of foreign incorporation/ association are requirements *sine qua non* to prove that an entity is a non-resident foreign entity doing business outside the Philippines.

We agree with DKSPL.

In the *Deutsche Case,* the Supreme Court held that for purposes of VAT zero-rating under Section 108(B)(2) of the Tax Code, the claimant must establish the two (2) components of its client's status as a non-resident foreign corporation, namely: (1) it is not a domestic corporation; *and* (2) it is not engaged in trade or business in the Philippines. Thus, the failure to present proof of the second element, *i.e.,* that the affiliate is not doing business in the Philippines, is fatal to its claim for refund, to wit:

> "xxx To the Court's mind, the SEC Certifications of Non-Registration show that their affiliates are foreign corporations. On the other hand, the articles of association/certificates of incorporation stating that these affiliates are registered to operate in their respective home countries, outside the Philippines are *prima facie* evidence that their clients are not engaged in trade or business in the Philippines.
>
> Proof of the above-mentioned second component sets the present case apart from *Accenture, Inc. v. Commissioner of Internal Revenue* and *Sitel Philippines Corp. v. Commissioner of Internal Revenue*. In these cases, the claimants similarly presented SEC Certifications and client service agreements. However, the Court consistently ruled that documents of this nature only establish the *first* component *(i.e.*, that the affiliate is foreign). **The absence of any other competent evidence (e.g., articles of association/certificates of incorporation) proving the second component (i.e., that the affiliate is not doing business here in the Philippines) shall be fatal to the claim for credit or refund of excess input VAT attributable to zero-rated sales**." *(Emphasis supplied.)*

[20] G.R. No. 234445, July 15, 2020.

Based on the foregoing, the taxpayer claiming credit or refund of excess input VAT attributable to zero-rated sales is mandated to submit *competent evidence* that its client is a foreign corporation, and that it is not engaged in trade or business in the Philippines.

As for what constitutes *competent evidence*, the *Deutsche case* did not make any limitations as to what would be considered as competent evidence to prove an entity's status as a non-resident foreign corporation. Rather, the *Deutsche case* confirmed that an SEC Certification of Non-Registration is adequate to prove that an entity is a foreign corporation; and the Articles of Association/ Certificates of Incorporation are sufficient to prove that an entity is not doing business in the Philippines.

In other words, taxpayers are not precluded from adducing other *competent evidence* to prove an entity's status as a non-resident foreign corporation. Hence, DKSPL is correct in asserting that the articles of association/certificates of incorporation only serves as example of what constitutes *prima facie* evidence, and that it can utilize other pieces of evidence to prove that its clients are not engaged in trade or business in the Philippines.

DKSPL failed to submit* competent evidence *that its clients are nonresident foreign corporations doing business outside the Philippines.

DKSPL argues that it has sufficiently shown by preponderance of evidence, that its clients are nonresident foreign corporations doing business outside the Philippines.

To be specific, DKSPL avers that the foreign business registration printouts retrieved from the AMINET database, are not self-serving, and should be considered sufficient evidence to prove that its clients are doing business outside the Philippines.

We are not persuaded.

In the instant case, DKSPL presented "*foreign business registration printouts.*"[21] To be specific, it submitted AMINET

[21] EB Docket (CTA EB No. 2423), p. 17.

Company Profile Fact Sheets,[22] one of which contained an unauthenticated copy of the Articles of Association,[23] and two of which contained unauthenticated documents in a foreign language.[24]

With regard to the submission of foreign business registration documents, reference must be made to Section 24 of Rule 132 of the Revised Rules on Evidence,[25] which states the procedure for the proper authentication and proof of official records, to wit:

> **"Section 24. *Proof of official record.*** — The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody.
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> **If the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office**." *(Emphasis supplied.)*

Clearly from the foregoing provision, if the record of the public document is in a foreign country, the copy of the public document must be accompanied by a certificate that the attesting officer has the legal custody thereof. The certificate may be issued by any of the authorized Philippine embassy or consular officials stationed in the foreign country in which the record is kept, and authenticated by the seal of his office. The attestation must state, in substance, that the copy is a correct copy of the original, or a specific part thereof,

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[22] Exhibits "P-8" to "P-8.14," Division Docket (CTA Case No. 7921), Vol. IV, pp. 1404 to 1519.
[23] Exhibit "P-8.4," Division Docket (CTA Case No. 7921), Vol. IV, pp. 1410 to 1496.
[24] Exhibits "P-8.6" and "P-8.7," Division Docket (CTA Case No. 7921), Vol. IV, pp. 1499 to 1510.
[25] The 2019 Amendments to the 1989 Revised Rules on Evidence (A.M. No. 19-08-15-SC) only took effect on May 1, 2020.

as the case may be, and must be under the official seal of the attesting officer.[26]

In the case at bar, if DKSPL seeks to prove that its clients are not doing business in the Philippines, through the submission of foreign business registration documents. Hence, it ought to have submitted duly authenticated proof of such official records. However, in lieu of submitting duly authenticated proof of official foreign records, following the procedure outlined in Section 24 of Rule 132 of the Revised Rules on Evidence, DKSPL submitted mere print-outs thereof, retrieved from the AMINET database.

It bears stressing that the subject print-outs of foreign business registration documents, as well as the AMINET Company Profile Fact Sheets, are not adequate substitute for duly authenticated copies of official records.

As correctly found by the Court in Division, the AMINET database is a database maintained by DKSPL's Head Office in Germany. Hence, this Court cannot give credence or probative value to the documents retrieved therefrom, considering that it is prone to manipulation in favor of DKSPL, and in view of its affinity with the entity that maintains or keeps the database. As such, the information contained therein cannot be given full faith and credence by this Court.

DKSPL maintains, however, that the documents retrieved from the AMINET database should be considered by the Court since these are prepared *ante litem motam*, citing the case of *Golden (Iloilo) Delta Sales Corp. vs. Pre-Stress International Corp. et al. (Golden [Iloilo] Case),*[27] and there are sufficient safeguards to preserve the integrity of the information contained in its electronic documents.

We are not swayed.

It is well-settled that the CTA being a court of record, means that the cases filed before it are litigated *de novo* and party litigants should prove every minute aspect of its case.[28] It is a claimant's

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[26] *Manufacturers Hanover Trust Co. and/or Chemical Bank vs. Rafael Ma. Guerrero,* G.R. No. 136804, February 19, 2003.
[27] G.R. No. 176768, January 12, 2009.
[28] *Commissioner of Internal Revenue vs. Manila Mining Corporation,* G.R. No. 153204, August 31, 2005.

burden to prove the factual basis of a claim for refund or tax credit.[29] Thereafter, the question of whether the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgment of the Court.[30]

In this case, DKSPL's allegations with regard to the integrity of the AMINET database, unsubstantiated by adequate evidence, is not equivalent to proof.

Anent its reliance on the *Golden (Iloilo) case*, this Court notes that the factual antecedents therein are not on all fours with the instant case, especially so, that it is not a tax refund case.

Actions for tax refund or credit, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven. The burden is on the taxpayer to show that he has strictly complied with the conditions for the grant of the tax refund or credit. Since taxes are the lifeblood of the government, tax laws must be faithfully and strictly implemented as they are not intended to be liberally construed.[31]

In view thereof, this Court affirms the factual findings of the Court in Division that DKSPL failed to adduce competent proof that all of its clients are not engaged in trade or business in the Philippines.

DKSPL failed to specifically rebut the ruling and findings of the Court in Division.

DKSPL likewise contends that its input VAT in the amount of ₱12,549,446.30 for the 1st quarter of CY 2007 is properly substantiated and attributable to its zero-rated sales. In support thereof, DKSPL states that the Court-commissioned ICPA found

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[29] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.
[30] *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 207112, December 8, 2015.
[31] *Coca-Cola Bottlers Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 222428, February 19, 2018.

that it properly substantiated input VAT attributable to its zero-rated sales, in the amount of at least ₱2,815,534.70.

We are not convinced.

In the assailed Decision, the Court in Division disallowed some of its input VAT from purchases of goods (other than capital goods) and purchases of services, for not being properly substantiated by VAT invoices or official receipts (ORs) as required under Sections 110(A), 113(A) and (B), 237, and 238 of the NIRC of 1997, as amended, in relation to Sections 4.110-2, 4.110-8(a), and 4.113-1 of Revenue Regulations (RR) No. 16-05, as amended.

In its Petition for Review in CTA EB No. 2421 however, DKSPL fails to specifically rebut any of the factual findings of the Court in Division anent the subject disallowances. Aside from citing the findings of the ICPA that it was allegedly able to substantiate input VAT in the partial amount of ₱2,815,534.70, DKSPL did not pinpoint any error, or validly argue against the Court in Division's findings and consequent ruling.

However, to the mind of the Court *En Banc,* DKSPL's reliance on the findings of the ICPA are misplaced.

Section 3, Rule 13 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended, provides:

> "**SEC. 3. *Findings of independent CPA***. -The submission by the independent CPA of pre-marked documentary exhibits shall be subject to verification and comparison with the original documents, the availability of which shall be the primary responsibility of the party possessing such documents and, secondarily, by the independent CPA. **The findings and conclusions of the independent CPA** may be challenged by the parties and **shall not be conclusive upon the Court, which may, in whole or in part, adopt such findings and conclusion subject to verification**." *(Emphasis supplied)*

As stated above, the findings of the ICPA are not conclusive upon the Court, and the same are subject to verification, to determine their accuracy, veracity and merit. The Court may either

adopt or reject the ICPA Report, wholly or partially, depending on the outcome of its own independent verification.

In the instant case, We affirm the Court in Division's independent verification that some of DKSPL's input VAT were not properly substantiated by VAT invoices or ORs as required by law and regulations.

Thus, in the absence of specific allegations on the alleged reversible errors made by the Court in Division in its appreciation of the evidence presented, DKSPL's general averments that it was able to fully substantiate its claim for refund, will not warrant a reversal of the factual findings made by the Court in Division, for being vague and uncertain. As between the specific findings of, and ruling rendered by the Court in Division, and the general averments of DKSPL, the former must perforce prevail.

Further, it is a basic rule that he who alleges must prove what is alleged.[32] In this case, DKSPL failed to discharge its burden of disproving the findings of facts made by the Court in Division. Well settled is the rule that findings of fact by the Court in Division are not to be disturbed without any showing of grave abuse of discretion considering that the members of the Division are in the best position to analyze the documents presented by the parties.[33]

Consequently, the factual findings of the Court in Division, that DKSPL was able to substantiate its claim for VAT refund, albeit in the reduced amount of ₱990,730.56, is hereby sustained.

The Court in Division did not err in giving credence to the testimonies of Maricel Tio-Balagtas and Glenn Ian D. Villanueva.

The CIR argues that the testimony of Maricel Tio-Balagtas, DKSPL's Legal Entity Controller, should not be given credence.

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[32] *Eastern Assurance and Surety Corporation vs. Con-Field Construction and Development Corporation*, G.R. No. 159731, April 22, 2008.

[33] *Republic of the Philippines, represented by the Commissioner of Internal Revenue vs. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation)*, G.R. No. 188016, January 14, 2015 citing *Sea-Land Service, Inc. vs. Court of Appeals*, G.R. No. 122605, April 30, 2001, 357 SCRA 441, 445-446. Refer also to *Rhombus Energy, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 206362, August 1, 2018.

Likewise, the testimony of Glenn Ian D. Villanueva, the Court-commissioned ICPA, on the sales invoice with erasures and countersignatures, should not be given probative value.

We are not swayed.

As correctly found by the Court in Division, Tio-Balagtas is the custodian of DKSPL's corporate and financial documents, including tax returns and financial statements.[34] As such, she has personal knowledge as to existence of the said documents in the records of DKSPL, and therefore, her testimony is not hearsay, because it relates to facts which she knows of her personal knowledge, which are derived from her own perception.[35]

Anent the testimony of Glen Ian D. Villanueva on the sales invoices that contained erasures and countersignatures, the Court finds that they were duly supported by duly notarized *Sworn Statements of Corrections,*[36] attesting to the corrections therein.

Section 23, Rule 132 of the Rules on Evidence provides:

> "**SEC. 23.** ***Public documents as evidence***. — Documents consisting of entries in public records made in the performance of a duty by a public officer are *prima facie* evidence of the facts therein stated. All other public documents are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter."

Relative thereto, Section 19 (b), Rule 132 of the Rules on Evidence states:

> "**SEC. 19.** ***Classes of documents***. — For the purpose of their presentation in evidence, documents are either public or private.
>
> Public documents are:

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[34] Q&A No. 4, *Sworn Statement of Maricel Tio-Balagtas to Questions Propounded by Atty. Ian Jerrick B. Inandan,* Division Docket (CTA Case No. 7921), Vol. III, pp. 704 to 705.

[35] Section 36, Rule 130, Revised Rules on Evidence. The 2019 Amendments to the 1989 Revised Rules on Evidence (A.M. No. 19-08-15-SC) only took effect on May 1, 2020.

[36] Exhibit "P-18," CD.

xxx xxx xxx

(b) Documents acknowledged before a notary public except last wills and testaments; and

xxx xxx xxx."

Applying the aforesaid provisions, when documents, such as the subject *Sworn Statements of Corrections*, are acknowledged before a notary public, these become public documents. Thus, the same are *prima facie* evidence of the facts stated therein.

It is a rule in our jurisdiction that the act of notarization by a notary public converts a private document into a public document, making it admissible in evidence without further proof of its authenticity. By law, a notarial document is entitled to full faith and credit upon its face. It enjoys the presumption of regularity and is a *prima facie* evidence of the facts stated therein – which may only be overcome by evidence that is clear, convincing and more than merely preponderant. Without such evidence, the presumption must be upheld.[37]

It bears stressing that as public documents, they are admissible in evidence even without further proof of their due execution and genuineness.[38]

In this case, the notarized *Sworn Statements of Corrections* are considered public documents. As such, it no longer requires further proof of its due execution and genuineness, and are actually considered *prima facie* evidence of the facts stated therein. Hence, the CIR's assertion that the notarized *Sworn Statements of Corrections* should have been verified by the presentation of a party having personal knowledge of the same, lacks legal basis.

Moreover, as noted by the Court in Division, the CIR did not interpose any objection to the testimonies of the witnesses, and failed to object[39] to DKSPL's *Formal Offer of Evidence* and

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[37] *Heirs of Spouses Angel Liwagon and Francisca Dumalagan, et al. vs. Heirs of Spouses Demetrio Liwagon and Regina Liwagon, et al.*, G.R. No. 193117, November 26, 2014.
[38] *Yasuo Iwasawa vs. Felisa Custodio Gangan, et al.*, G.R. No. 204169, September 11, 2013.
[39] Division Docket (CTA Case No. 7921), Vol. IV, pp. 1598, 1600 to 1603; Division Docket (CTA Case No. 7921), Vol. V, pp. 1642, 1644 to 1646.

Amended Formal Offer of Evidence. Neither did the CIR present any evidence to refute both the testimonial and documentary evidence presented by DKSPL.

In the absence of timely objections and the utter lack of evidence to rebut the testimonies of DKSPL's witnesses or the notarized *Sworn Statements of Corrections*, there is no reason to disturb the findings of the Court in Division or question the probative value accorded to the evidence on record.

DKSPL was able to sufficiently explain the noted discrepancies in the Certificates of Non-Registration.

Finally, the CIR avers that the Court in Division erred in relaxing the technical rules of evidence and giving weight to the Certificates of Non-Registration, despite noted discrepancies in the names of claimed affiliate clients.

We are not persuaded.

In the assailed Decision, the Court in Division gave weight to the Certificates of Non-Registration of Deutsche Bank Aktiengesellschaft, Deutsche Bank Aktiengesellschaft Filiale Singapur and Deutsche Bank Aktiengesellschaft Hong Kong Branch, and found that DKSPL was able to sufficiently explain the reasons for the noted disparities, to wit:

> "While this Court notes that the discrepancies in the names of Deutsche Bank Aktiengesellschaft, Deutsche Bank Aktiengesellschaft, Filiale Singapur, Deutsche Bank Aktiengesellschaft Hongkong Branch, as regards the words 'Inlandsbank' and 'Filiale,' petitioner has nevertheless explained sufficiently the reason for the disparity; such that the word 'Inlandsbank' is merely a descriptive word which, in German, means 'domestic bank.' 'Filiale,' on the other hand, is a German translation of the term 'branch.' Therefore, 'Deutsche Bank Aktiengesellschaft' may be considered as the same entity as 'Deutsche Bank Atiengesellschaft Filiale Inlandsbank' and that 'Deutsche Bank Aktiengesellschaft, Filiale Singapur' and 'Deutsche Bank Aktiengesellschaft Hongkong Branch' are mere

> branches of the said entities in Singapore and Hongkong, respectively.
>
> With the above, the Court is convinced to consider the same as properly supported by the two required documents.
>
> Moreover, this Court further notes the difference in the word 'Atiengesellschaft' as provided in the SEC Certificates of Non-Registration to the word 'Aktiengesellschaft' in various documents and deems the names stated in the SEC Certificates of Non-Registration as substantially compliant with the requirement to show that the said entities have no registered business in the Philippines."

In contrast, aside from his general assertion that the Court in Division should not have relaxed the technical rules of evidence, the CIR did not indicate any reversible error made by the Court in Division in its appreciation of the subject Certificates, nor did he disprove DKSPL's justifications for the said disparities.

As between the bare assertions of the CIR that the Certificates should not have been given weight, and the explanation provided by DKSPL for the noted disparities, this Court agrees with the factual findings of the Court in Division, and concurs in its appreciation of the evidence on record.

In view of the foregoing disquisition, this Court finds no compelling reason to reverse or modify the findings of the court *a quo* in the assailed Decision and Resolution.

WHEREFORE, in light of the foregoing considerations, both *Petitions for Review* are hereby **DENIED** for lack of merit. The Decision dated July 23, 2020 and Resolution dated January 14, 2021, rendered by the Second Division of this Court in CTA Case No. 7921 are hereby **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
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

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 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