REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

MANILA NORTH TOLLWAYS CORPORATION,
Respondent.

CTA EB NO. 1157
(CTA Case No. 7870)

Present:

Del Rosario, P.J.,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, and
Ringpis-Liban, JJ.

Promulgated:

SEP 3 0 2015 3:30 pm

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RESOLUTION

CASTAÑEDA, JR., J.:

For the Court *En Banc*'s resolution is petitioner's **Motion for Reconsideration (Re: Decision promulgated on 20 July 2015)**, filed through registered mail on August 13, 2015 and received by the Court on August 28, 2015, with respondent's **Opposition (to the Motion for Reconsideration dated 12 August 2015)**, filed on September 1, 2015.

Considering the pleadings submitted by the parties before this Court, petitioner's motion for reconsideration is hereby submitted for resolution. Hence, this Resolution.

Petitioner contends in the subject motion that respondent failed to prove that Philippine National Construction Corporation (PNCC) exercised the option to be refunded, which is fatal to respondent's claim because an option to carry-over could no longer be converted into a claim for tax refund under the irrevocability rule provided in Section 76 of the National Internal Revenue Code of 1997, as amended (NIRC of 1997, as amended).

On the other hand, respondent asserts that PNCC need not indicate in its Returns the option to carry-over or claim for refund because there was nothing more to carry over or refund, the same having been reimbursed by respondent to PNCC. Moreover, respondent states that it proved before this Court that it made an overpayment to the BIR amounting to 3% Creditable Withholding Tax (CWT), which overpayment was not credited by PNCC against its income tax liabilities, nor made subject of a claim for refund.

The issues to be resolved by the Court *En Banc* are (1) whether or not it is incumbent upon respondent to prove that PNCC exercised its option to carry-over or refund, and (2) whether or not respondent duly proved its entitlement to its claim for refund.

We deny the instant motion.

At the onset, the issues raised by petitioner in her motion had already been resolved by the Court *En Banc* in the assailed Decision, as follows:

> "We find petitioner's contention untenable.
>
> Section 76 of the NIRC of 1997, as amended, provides:
>
> > 'SEC. 76. **Final Adjustment Return.** - Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:
> >
> > (A)Pay the balance of tax still due; or
> >
> > (B)Carry-over the excess credit; or
> >
> > (C)Be credited or refunded with the excess amount paid, as the case may be.

> In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor.'

The above-quoted provision enunciates the *irrevocability rule*, where once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor.

While Section 76 of the NIRC of 1997, as amended, requires the observance of the irrevocability rule, We find that the same is inapplicable in the present case.

Here, respondent already reimbursed PNCC the overpaid 3% CWT prior to respondent's filing of its claim for refund. Considering that respondent had already reimbursed PNCC of the said amount, PNCC need not indicate in its Return the option to carry-over or claim for refund the overpaid amount, because there is nothing more to carry-over or to refund.

In other words, the irrevocability rule under Section 76 of the NIRC of 1997, as amended, is inapplicable in this case considering that the respondent –as withholding agent, already refunded to the principal taxpayer PNCC the amount which could have been the latter's basis for carry-over, refund or issuance of a tax credit certificate. PNCC has no more basis in order for it to exercise the option to carry-over, refund, or request for the issuance of a tax credit certificate, because it had already been reimbursed by respondent of the said amount."[1]

[1] Decision dated July 20, 2015, Court *En Banc* Docket, pp. 189-190.

To reiterate, there is no basis for PNCC to indicate in its Returns the option to carry-over or to refund, because the subject CWT was already reimbursed by petitioner to PNCC.

Moreover, We agree with the findings of the Court's Special First Division that:

> "In fine, the amount of ₱16,960,448.65 representing the withheld 3% CWT on PNCC's NLEX toll revenue share plus interest covering the period of February 2005 to November 2006 erroneously remitted to the BIR by petitioner which amount was not applied by PNCC against its income tax liabilities for the years 2005 to 2011, constitutes erroneously paid tax which may be a proper subject of a claim for refund under Sections 204(C) and 229 of the NIRC of 1997, as amended."[2]

There being no new issue raised or that the issues raised by petitioner were already squarely addressed by the Court *En Banc* and the Court's Special First Division, We see no cogent reason to deviate from the Decision dated July 20, 2015.

WHEREFORE, in view thereof, petitioner's Motion for Reconsideration (Re: Decision promulgated on 20 July 2015) is hereby **DENIED**, for lack of merit.

SO ORDERED.

INHIBITED
ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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[2] Amended Decision dated December 5, 2013, CTA Case No. 7870, penned by Associate Justice Esperanza R. Fabon-Victorino, Court *En Banc* Docket, p. 94.

ESPERANZA R. FABON- VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice